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UTILITY COMMISSION
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APPLICATION OF THE CITY OF SAN ANTONIO ACTING BY AND THROUGH THE CITY PUBLIC SERVICE BOARD (CPS ENERGY) TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED SCENIC LOOP 138-KV TRANSMISSION LINE IN BEXAR COUNTY § BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

BEXAR RANCH, L.P.’S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS’ ASSOCIATION AND BRAD JAUER/BVJ PROPERTIES, LLC OBJECTIONS, MOTIONS TO STRIKE PORTIONS OF INTERVENOR DIRECT TESTIMONY, AND MOTION TO REQUIRE THE DESIGNATION OF SPOKESPEOPLE

Intervenor BEXAR RANCH, L.P., hereby files this RESPONSE TO ANAQUA SPRINGS HOMEOWNERS’ ASSOCIATION AND BRAD JAUER/BVJ PROPERTIES, LLC (‘together, the Movants’) OBJECTIONS, MOTIONS TO STRIKE PORTIONS OF INTERVENOR DIRECT TESTIMONY, AND MOTION TO REQUIRE THE DESIGNATION OF SPOKESPEOPLE and respectfully responds to the portion of said Motion directed to the witnesses of Bexar Ranch, L.P. (‘Respondent’) as follows:¹

Witness	Location of Testimony	Objection	Bexar Ranch, L.P.’s Response
Mark Turnbough	Page 14, lines 17-20, the entire sentence beginning with ‘The study area appears to have been defined . . .’	Speculation	Dr. Turnbough is an expert witness and entitled to testify as to his observation and opinions regarding CPS’ CCN Application. Thus, this objection should be overruled and the motion to strike this testimony should be denied.
Mark Turnbough	Page 17, line 6 Page 18, line 15 <i>incorrect habitable structure count for Route Z1</i>	Assumes facts not in evidence	A second erratum to Dr. Turnbough’s Direct Testimony has been filed. Thus, these objections are now moot. Thus, this objection should be overruled and the motion to strike this testimony should be denied.

¹ The portion of the motion requesting the designation of a spokesperson is not directed to Bexar Ranch.

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Mark Turnbough	Page 20, lines 15 to 17: "In the context . . . open space."	Legal conclusion	Dr. Turnbough as an expert witness in this case is entitled to provide his opinion as to the definition of land fragmentation from a land use perspective. Thus, this objection should be overruled and the motion to strike this testimony should be denied.
Mark Turnbough	<p>Page 21, line 6: "Segment 43 and" "fragment[s] parcel F-006 for [its] entire length."</p> <p>Page 21, lines 7-10: "Approximately . . . east/west line."</p> <p>Page 21, lines 10-13: "Inspection . . . compatible ROW."</p>	<p>Improper foundation, conclusory, and vague</p> <p>Segment 43 doesn't "fragment" F-006 for its "entire length," even according to Turnbough in his own assessment which follows in same paragraph.</p> <p>The foundation for the conclusory statement that "[a]pproximately 30 percent of Segment 43 runs parallel . . . " and the subsequent reference to "70 percent" is unclear and not provided.</p> <p>Continuation of issues addressed above.</p>	<p>A second erratum to Dr. Turnbough's Direct Testimony has been filed to state that "Segment 44 fragments parcel F-006 for its entire length." Thus, the first portion of this objection is now moot. As to the objections for improper foundation, conclusory and vague, Dr. Turnbough testified that he personally inspected the Bexar Ranch property. His testimony regarding fragmentation that would be caused by Segments 43, 44 and 45 are based upon his personal observations and experience. Thus, the objections are not proper. Anaqua Springs HOA and Brad Jaurer/BVJ Properties can cross examine Dr. Turnbough regarding his opinion as to the fragmentation that would be caused by Segments 43, 44 and 45 across Bexar Ranch. Thus, this objection should be overruled and the motion to strike this testimony should be denied.</p> <p>The reference "Continuation of issues addressed above" is assumed to refer to page breaks in the table. If this is incorrect, Respondent requires clarification before a response can be provided.</p>

<p>Mark Turnbough</p>	<p>Page 23, line 24, l. 2 “general agreement among experts who participated” “there were two strongly supported hypotheses” “there is modeled evidence”</p>	<p>Hearsay, assumes facts not in evidence.</p>	<p>Dr. Turnbough as an expert witness in this case is entitled to rely upon hearsay. Furthermore, he is entitled to state his observations and opinions. The Diamond Study referenced in this testimony is included in CPS’ file share materials regarding this project and is available for review by the movants. Moreover, it is referenced in the application at Tables 4-1 and 4-2. Thus, this objection should be overruled and the motion to strike this testimony should be denied.</p>
<p>Michael Bitter</p>	<p>Page 19, lines 10-15 “The clearing . . . Morales Springs” Page 20, lines 5-6 “but it will . . . issues” Page 20, lines 7-9 “Rain . . . case”</p>	<p>Improper expert testimony. Mr. Bitter’s qualifications do not demonstrate that he can testify about erosion.</p>	<p>The objected-to testimony consists of Mr. Bitter’s general statements of concern and lay opinions regarding possible erosion that may be caused to Bexar Ranch given its unique topography and the proposed locations with respect to Segments 43, 44 and 45. These statements and opinions are legitimate statements of concern of Mr. Bitter and should not be struck from the record. These statements are relevant under Rules 401 and 402 of the Texas Rules of Evidence and appropriate lay witness opinion testimony pursuant to Rule 701 of the Texas Rules of Evidence as they are “rationally based on the witness’s perception” and “helpful to clearly understand the witness’s testimony.” The administrative law judges are correct to accord such testimony the appropriate weight as has been done in most PUC routing cases; however, striking such testimony would not be proper. Thus, this objection should be overruled and the motion to strike this testimony should be denied.</p>

Michael Bitter	Page 9, line 11 "It . . . sanctuary"	Assumes facts not in evidence. There is no indication that Bexar Ranch has been designated as a wildlife sanctuary.	In his testimony, Mr. Bitter did not claim that Bexar Ranch was a designated wildlife sanctuary. Instead, he testified based upon his personal observations that Bexar Ranch has numerous wildlife. This objection is improper and should be overruled and the motion should be denied.
Michael Bitter	Page 23, lines 7-15 "Those routes . . . dangerous"	Speculation and improper opinion testimony. Mr. Bitter cannot know CPS's motivation. He cannot testify regarding whether CPS will be able to construct on the ranch.	As set forth throughout Mr. Bitter's testimony, Mr. Bitter is intimately familiar with Bexar Ranch which has been owned by his family for many generations. The objected-to testimony concerns Mr. Bitter's concerns and opinions regarding the topography, heavy wooded terrain, lack of roads, and therefore, he is entitled to express his concerns as to CPS' ability to access and construct a transmission line on his family's property. He has extensive personal knowledge of the ranch and its topography, terrain, and lack of roads. Thus, this objection should be overruled and the motion to strike this testimony should be denied.
Michael Bitter	Page 25, lines 9-13 "This is exactly . . . objectives"	Speculation	As stated on Page 25, lines 5-9 of Mr. Bitter's testimony, Bexar Ranch is currently in the process of being considered for the City of San Antonio's Aquifer Protection Program, which if successful, would place Bexar Ranch in a conservation easement to prevent the development and protect the Edward's Aquifer. The objected-to testimony is based upon Mr. Bitter's personal observation, knowledge and experience and constitutes proper lay witness opinion testimony under Rule 701 of the Texas Rules of Evidence as it is "rationally based on the witness's perception" and "helpful to clarify and understand the witness's testimony." This objection should be overruled and the motion to strike should be denied.

Michael Bitter	Page 26, line 21- page 27 line 2 "Bexar . . . lines"	Assumes facts not in evidence. Bexar Ranch does not currently have a CPS transmission line on its property.	This objection is improper. Bexar Ranch is already burdened with an existing CPS transmission line on portions of the western boundary of the property. Thus, this objection should be overruled and the motion to strike this testimony should be denied.
Sarah Bitter	Page 19 line 9-18 "As a . . . ranch"	Speculation. Ms. Bitter cannot know what CPS engineering requirements will be.	The objected-to testimony consists of Ms. Bitter's general statements of concern and lay opinions regarding clearing of vegetation and access issues given Bexar Ranch's unique topography, amount of dense vegetation, lack of roads and the proposed locations with respect to Segments 43, 44 and 45. These statements and opinions are legitimate statements of concern of Ms. Bitter and should not be struck from the record. These statements are relevant under Rules 401 and 402 of the Texas Rules of Evidence and appropriate lay witness opinion testimony pursuant to Rule 701 of the Texas Rules of Evidence as they are "rationally based on the witness's perception" and "helpful to clearly understand the witness's testimony." They are based on her personal knowledge. The Administrative Law Judges should accord such testimony the appropriate weight as has been done in most PUC routing cases. Thus, this objection should be overruled and the motion to strike this testimony should be denied.

<p>Sarah Bitter</p>	<p>Page 21, lines 3-6 "Further . . . etc."</p> <p>Page 21, lines 18-19 "as well as access"</p>	<p>Improper opinion testimony. Ms. Bitter is not qualified to testify as to the ecological impacts to water quality.</p> <p>She cannot testify about engineering and construction challenges.</p>	<p>The objected-to testimony consists of Ms. Bitter's general statements of concern and lay opinions regarding the clearing and grading that may be necessary if Segments 43, 44 or 45 are selected and the possible impact such clearing and grading may have upon the existing springs located on Bexar Ranch and the natural flow of water. The objected-to testimony also concerns Ms. Bitter's concerns with respect to access on Bexar Ranch given the topography, dense vegetation, lack of roads and the proposed locations of Segments 43, 44 and 45. Ms. Bitter is intimately familiar with Bexar Ranch, its topography, water flow, location of natural springs, topography, vegetative cover and access. These statements and opinions are legitimate statements of concern of Ms. Bitter and should not be struck from the record. These statements are relevant under Rules 401 and 402 of the Texas Rules of Evidence and appropriate lay witness opinion testimony pursuant to Rule 701 of the Texas Rules of Evidence as they are "rationally based on the witness's perception" and "helpful to clearly understand the witness's testimony." The ALJs should accord such testimony the appropriate weight as has been done in most PUC routing cases. Thus, this objection should be overruled and the motion to strike this testimony should be denied.</p>
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Stephen Bitter	Entire testimony	Cumulative and lack of foundation. Mr. Bitter's testimony simply adopts the other Bexar Ranch witnesses' testimony and does not indicate his interest in Bexar Ranch	Mr. Bitter is part of the family that owns Bexar Ranch. Stephen Bitter, Michael Bitter and Sarah Bitter are siblings. Mr. Bitter's family has owned Bexar Ranch for several generations. While Mr. Bitter's testimony largely adopts the testimonies of his brother and sister, there is nothing improper of doing so. Furthermore, the Hearing on the Merits in this case is scheduled for a 7-day period. Given the number of parties in this case and the length of trial, it is possible that scheduling issues could arise with respect to the presentation of witnesses. Out of an abundance of caution, Bexar Ranch has included Mr. Stephen Bitter and Vince Terracina's testimonies so that Bexar Ranch will have flexibility with respect to witness presentation at trial should a conflict, illness, family emergency, etc. arise. Thus, this objection should be overruled and the motion to strike this testimony should be denied.
Vince Terracina	Entire testimony	Cumulative and lack of foundation. Mr. Bitter's testimony simply adopts the other Bexar Ranch witnesses' testimony and does not indicate his interest in Bexar Ranch	By marriage, Mr. Terracina is a member of the Bitter family that owns Bexar Ranch. He is intimately familiar with the property and has personal knowledge of the property. For the same reasons cited above with respect to Stephen Bitter's testimony, Mr. Terracina's testimony is proper and should not be struck. The Hearing on the Merits in this case is scheduled for a 7-day period. Given the number of parties in this case and the length of trial, it is possible that scheduling issues could arise with respect to the presentation of witnesses. Out of an abundance of caution, Bexar Ranch has included Mr. Stephen Bitter and Vince Terracina's testimonies so that Bexar Ranch will have flexibility with


		<p>respect to witness presentation at trial should a conflict, illness, family emergency, etc. arise. Thus, this objection should be overruled and the motion to strike this testimony should be denied.</p>
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PRAYER

WHEREFORE, PREMISES CONSIDERED, BEXAR RANCH, L.P. respectfully request that the Administrative Law Judges (1) overrule Movants' objections; (2) deny Movant's Motion; and (3) grant Respondent all other and further relief, both in law and in equity, to which Respondent is justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed in the records of Docket 51023 in the above-captioned proceedings, on this 12th day of March, 2021.



 Soledad M. Valenciano