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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 § BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS §

ANAQUA SPRINGS HOMEOWNERS' ASSOCIATION'S RESPONSES TO CITY PUBLIC SERVICE BOARD'S OBJECTIONS TO WITNESS TESTIMONY

Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") files this Response to the City Public Service Board's ("CPS Energy") Objections to testimony of Anaqua Springs HOA's witness Lauren Pankratz, M.D. Objections to the witnesses' testimony were filed on March 8, 2021, after 3:00 p.m. Therefore, this response is timely filed.

I. OBJECTIONS REGARDING ROUTE R1 MODIFIED

CPS Energy has objected to all testimony related to Route R1 Modified. Based on the Administrative Law Judges' ("ALJs") ruling striking that testimony, Anaqua Springs HOA agrees to strike those portions of the testimony at this time. However, Anaqua Springs HOA reserves the right to pursue any available avenues of appeal on the issues related to Route R1 Modified and to make an offer of proof during the hearing on the merits.

II. RESPONSES TO OBJECTIONS TO MARK ANDERSON'S TESTIMONY

CPS's objections to pages 11, line 16 and page 17, lines 1-5 relate to testimony regarding Route R1 Modified. As outlined above, Anaqua Springs HOA will strike that testimony pursuant to the ALJs' order, subject to an offer of proof and any avenues for appeal. CPS also objects that Mr. Anderson has not established a proper predicate for portions of testimony on page 11 line 16. In that testimony Mr. Anderson explained that his recommendation shortens the route by 0.284 miles and reduces the cost by \$1.78 million.

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Mr. Anderson carefully explained his calculation. As to the number of miles, Mr. Anderson explained as follows:

“I measured the length of the new Segments 38a and 43a and the corresponding lengths of 38 and 43. I used a full-sized print of Figure 2-4 Amended when doing this. It has a scale of 1” = 1,000 feet. When I compared the two sets of measurements, I determined that the proposed modification decreased the length of Route R1 by .284 miles. Route R1 is 4.76 miles long, so Route R1 Modified would be 4.476 miles long.”¹

As to the cost, Mr. Anderson provided the following explanation, based on information provided by CPS that he referenced, that Route R1 has an estimated total cost of \$29,759,151 and a length of 4.76 miles.² As he further explained, this is \$6.25 million per mile. He concludes:

“Multiplying the shorter length of R1 Modified by that cost per mile (\$6.25 million), I get \$1.78 million in savings resulting from the modifications effected by Segments 38a and 43a incorporated into Rout R1 Modified.”³

Mr. Anderson has explained his calculation in detail and that calculation is based on evidence in CPS’s application. Accordingly, CPS’s Motion to Strike Mr. Anderson’s testimony at page 11, line 16 should be denied.

CPS has also requested that a portion of Mr. Anderson’s testimony on page 17, lines 1-5 be struck. Mr. Anderson testified about the importance of the number of impacted habitable structures on routing decisions.⁴ Mr. Anderson provided ample evidence of his expertise related to transmission and generation development.⁵ He provided specific examples of transmission projects that he has worked on and his experience with evaluating routing for transmission lines.⁶

¹ Direct Testimony of Mark Anderson at 11:17–23 (Anderson Direct).

² Table 3, entitled “Transmission Facilities Total Estimated Costs,” in CPS Energy’s Application Amendment (Dec. 20, 2020), Attachment 3.

³ Anderson Direct at 12:1–5.

⁴ *Id.* at 5:1–6:21.

⁵ *Id.*

⁶ *Id.* at 6:9–17.

He also explained the basis of his familiarity with transmission line routing criteria in Texas.⁷ In his testimony, Mr. Anderson outlined the information gleaned from questionnaires completed by members of the impacted community. Thus, he identified the community values that reinforce a recommendation made based upon his extensive experience. Further, he applied his expertise to the information identified. CPS also asserts an objection to lack of personal knowledge under TRE 602, which by its own terms does not apply to expert testimony. In addition, CPS asserts, without proof that the methodology employed by Mr. Anderson to determine the costs referenced on page 17, lines 1-5 is not the methodology used in the application. This is not a valid objection. If CPS has an issue with Mr. Anderson's methodology, it should be addressed through cross-examination. Accordingly, CPS's Motion to Strike Mr. Anderson's testimony for improper foundation and relevancy at page 17, lines 1-5 should be denied.

Finally, CPS's Motion to Strike testimony on page 21 should also be denied for similar reasons.⁸ The basis for testimony encompassed by lines 7-9 is provided on the same page where Mr. Anderson notes that Segment 54 is built along a narrow and constrained transportation and utility corridor.⁹ Here again, CPS asserts an objection under TRE 602, which does not apply to expert witness testimony.

III. LAUREN PANKRATZ, M.D. TESTIMONY

The parties have entered into a Rule 11 Agreement regarding Dr Pankratz's testimony. The agreement is attached as Exhibit 1. Based on the agreement, CPS withdraws its objection to her testimony.

⁷ *Id.* at 9:18-23.

⁸ CPS cited at 21:7-8 but the text quoted is from 21:8-9.

⁹ Anderson Direct at 21:1-5.

IV. RESPONSES TO OBJECTIONS TO SUNIL DWIVEDI, M.D.'S TESTIMONY

CPS has requested that a portion of Dr. Dwivedi's testimony be struck noting his observation that "[c]onstruction sites can seem like attractive playscapes for children, and a transmission tower can seem like something fun to try to climb."¹⁰ Dr. Dwivedi testified that he is the parent of three children with 9 years old twins and a 13-year-old daughter. The testimony to which CPS Energy objects is reasonable based on his personal experience as a parent and rationally based on his experience as a parent. It is not speculative. The objection should be overruled and the motion to strike denied.

V. RESPONSES TO OBJECTIONS TO STEVE CICHOWSKI'S DIRECT TESTIMONY ON BEHALF OF ANAQUA SPRINGS HOA

CPS's objections to page 30, lines 20-21 relate to Mr. Cichowski's testimony that Anaqua Springs HOA is concerned about routing the line close to the elementary school. Mr. Cichowski is expressing a concern that he and the HOA have about lines routed close to McAndrew elementary school and the basis for that concern. Contrary to CP's objection he does not indicate he has any expertise in determining whether there is an impact, just that he is concerned about it. He is permitted to testify about his concerns and the basis for those concerns. The objection and motion to strike should be overruled and denied.

CPS's objections to pages 21 line 5 - page 22 line 15 relate to Mr. Cichowski's testimony regarding his opinion and impression of the case. They are not speculative and are based on his personal knowledge. His opinions are based on the routing map presented to the public at the open house and the direct testimony of Tom Dreiss, as well as Mr. Cichowski's own meetings with Mr. Dreiss and CPS representatives. At the most, these objections should go to the weight of the testimony and not the admissibility. Mr. Cichowski has personal knowledge of the record in this

¹⁰ CPS Energy Motion to Strike at 2; Direct Testimony of Sunil Dwivedi, M.D. at 3:17-18 (Dwivedi Direct).

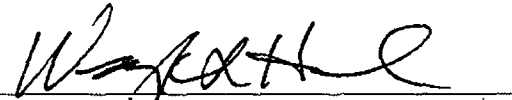
case. He personally attempted to engage in discussions and negotiations with representatives from the Toutant Ranch parties and was unable to do so because of the agreement between Toutant Ranch and CPS. Mr. Cichowski has been actively involved in this case since the open house.

As to the objection of mischaracterization, the statements objected to are rationally based on Mr. Cichowski's perception and within the purview of T.R.E. 701. The ALJs can determine whether the conclusions drawn from the available evidence is reasonable, but different conclusions CPS draws from the same evidence do not support striking the evidence as a mischaracterization.

VI. CONCLUSION

For the foregoing reasons, the ALJs should overrule the objections and deny the motions to strike.

Respectfully submitted,

By: 

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**Joined on the responses to the objections to
Mark Anderson's testimony**

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March 2021, notice of the filing of this document was provided to all parties of record via the PUC Interchange in accordance with SOAH Order No. 3.



Wendy K. L. Harvel

Stephanie Tanner

From: Wendy Harvel
Sent: Monday, March 15, 2021 1:26 PM
To: Stephanie Tanner
Subject: FW: Rule 11 Agreement regarding Lauren Pankratz testimony [IMAN-JWDOCS.FID4061346]

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From: Rasmussen, Kirk <kasmussen@jw.com>
Sent: Monday, March 15, 2021 1:06 PM
To: Wendy Harvel <wendy.harvel@crtxlaw.com>
Subject: RE: Rule 11 Agreement regarding Lauren Pankratz testimony [IMAN-JWDOCS.FID4061346]

Agreed. Substituting the word "or" for "of" between expert and lay as follows . . . "not as the opinions of an expert [or] lay witness . . ."

Kirk Rasmussen
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From: Wendy Harvel <wendy.harvel@crtxlaw.com>
Sent: Monday, March 15, 2021 12:07 PM
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Subject: Rule 11 Agreement regarding Lauren Pankratz testimony

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Mr. Rasmussen,
Based on our discussions today, we have agreed that Dr. Pankratz's testimony related to health concerns from EMF may be admitted only as an expression of her personal concerns and not as the opinions of an expert of lay witness under TRE 701 and 702. Based on that agreement, CPS will withdraw its objection filed to her testimony on March 8, 2021. Please respond that you are in agreement. Thank you.

Wendy Harvel

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