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THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS

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STATE OFFICE OF ADMINISTRATIVE HEARINGS
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In re 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 Project
in Bexar County, Texas

Docket Number: 51023
SOAH Docket No. 473-21-0247
OBJECTIONS TO CROSS REBUTTAL
TESTIMONY OF MICHAEL BITTER

I, Patrick Cleveland, file this Objection to the Cross Rebuttal Testimony of Michael Bitter (hereinafter CRTB) in the above captioned case.

I object to the following testimony and exhibits:

CRTB Page 4-6: “[A]s I stated on page 9 of my Direct Testimony, Bexar Ranch ‘is heavily wooded, with a wide variety of oaks, elms, walnuts, pecans, a few rare madrones, and ash juniper (cedar), as well as lots of mountain laurel, agarita, native grass fields and cactus. There are many, many heritage trees. It is mostly green year-round with bright colors in the fall. Given my family’s long-standing commitment to keeping Bexar Ranch in a natural state, ‘alterations of vegetation’ are limited. As one of the caretakers of this property, I believe I can credibly state that the since 2010, the date of the referenced Diamond report, the vegetation on Bexar Ranch has proliferated and become denser. This is partly why our ‘two-track’ roads tend to become impassible by vehicle and easier to travel by horseback or on foot. Below are three photographs which are true and accurate depictions of this density of cedar and related cover on Bexar Ranch in the areas of Segments 43, 44, and 45, respectively. Moreover, based on the attached 2008 CPS Golden Cheeked Warbler Study Habitat, a true and correct copy of which is attached, we believe our ranch has significant confirmed warbler sightings.”

OJECTION: These statements and associated photos and exhibits are cumulative, beyond the scope of direct testimony and are an attempt to supplement Mr. Bitter’s own direct testimony.

Mr. Bitter states that this rebuttal is based on the testimony of Brad Jauer, who stated that the

Handwritten signature or initials.

1 front of his property had “a growth of mature Ashe juniper trees, or ‘cedar’ trees as we call them
2 here in Texas that I understand are suitable golden checked warbler habitat.” Mr. Bitter also
3 bases his rebuttal on Steve Cichowski’s testimony that “Route W also performs exceedingly well
4 in the amount of high-value golden-checked warbler habitat that is impacted by the route.”
5 Finally, Mr. Bitter bases his rebuttal on my testimony that “the extensive area of mixed Live
6 Oak, Juniper and deciduous trees along the intermittent stream is considered prime habitat for the
7 endangered Golden Cheeked Warbler per the Diamond report referenced in Power Engineers
8 Environmental Assessment” and my statement that “[a]pproximately ½ of HCR is covered by
9 native grass and brush and the remainder is covered by Live Oak and Juniper trees.”
10 The fact that our properties have Golden Cheeked Warbler (GCW) habitat does not go above or
11 beyond what was already known and reported in Power Engineers’ Environmental Assessment
12 and what should’ve been known to Mr. Bitter at the time of his direct testimony. Our
13 testimonies make no reference or challenge to whether Bexar Ranch has suitable GCW habitat.
14 In addition, Mr. Bitter makes no allegations that any of the three testimonies are incorrect. If Mr.
15 Bitter wanted to rebut the fact that any of us were challenging his GCW habitat or that our
16 testimonies regarding our own properties were inaccurate, then that would be a different story
17 and obviously allowed as rebuttal. Instead, he carefully extracts these statements as an excuse to
18 bolster his own direct testimony regarding his own property.

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It would be nice if I could add testimony today that I initially omitted, like finding artifacts on High Country Ranch in the form of a 19th Century coffee pot and what appear to be the iron parts of a wagon, but I cannot. The deadline for my direct testimony has passed, just as it has for Mr. Bitter.

CRTB, page 7: “*DO YOU HAVE OTHER EVIDENCE TO SUPPORT YOUR CONTENTION THAT BEXAR RANCH AND YOUR FAMILY HAVE A LONG-STANDING COMMITMENT TO KEEPING BEXAR RANCH IN ITS MOST NATURAL STATE?*”

Beyond such family values that have endured generations, Bexar Ranch, led by my father Joseph Bitter, has been in communication with Green Space Alliance of South Texas and The Nature Conservancy, contractors for the City of San Antonio’s Edwards Aquifer Protection Program, to pursue placing Bexar Ranch in a conservation easement. As shown on the attached letter from

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1 *Green Space Alliance of South Texas, a true and correct copy of which is attached to my*
2 *testimony as Exhibit MB-5 Rebuttal Bexar Ranch is considered a top property for consideration*
3 *into this conservation program. Included with this letter are additional business records of Bexar*
4 *Ranch, L.P., for a total of 79 pages, which records are kept in the normal course of the business*
5 *of Bexar Ranch, L.P., by me, a custodian of these records, and I am thus familiar with the*
6 *manner in which these records were made and maintained. The records were made at the time*
7 *noted by the dates included on each and were made by or transmitted with persons of knowledge*
8 *of the matter set forth in same. It is the regular practice of Bexar Ranch to maintain these*
9 *business records.”*

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16 **OBJECTION:** The above statements and attachments/exhibits are beyond the scope of direct
17 testimony and are an attempt to supplement Mr. Bitter’s direct testimony. Mr. Bitter fails to cite
18 to any direct testimony that mentions or challenges Bexar Ranch’s commitments to their
19 property.
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24 *CRTB, pages 7-8: In his Direct Testimony, Patrick Cleveland discussed a routing methodology*
25 *that gives weight to not being on a road and to the “number of properties affected by each of the*
26 *proposed segments and routes.” Thus, by negative implication, he makes paralleling roads an*
27 *unfavorable factor. I don’t believe his methodology appropriately considers the applicable*
28 *routing factors and it unfairly penalizes larger properties like Bexar Ranch. Mr. Cleveland’s*
approach would also encourage gamesmanship – one can predict a proliferation of postage-
stamp parcels emerging along proposed segments. It is my understanding that paralleling roads
is a valid routing factor, and there is no dispute that Toutant Beauregard is a road in the study
area.

OBJECTION: These statements misstate the evidence and are misleading. Not once in my
testimony have I indicated in the slightest way that paralleling roads is an unfavorable factor. In
fact, I have re-iterated that paralleling roads is an important factor in my direct testimony. See
Direct Testimony of Patrick Cleveland, Page 16. Mr. Bitter provides no pinpoint cite to my

1 testimony, because no such statement exists. Finally, counting the number of properties affected
2 by each proposed segment has nothing to do with paralleling roads.
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6 CRTB, page 14: *“In summary, Mr. Cichowski, Mr. Jauer, Mr. Cleveland and Mr. Anderson’s*
7 *testimonies reveal that they would have the Administrative Law Judges and the Commission*
8 *believe that routes that parallel a public roadway. . . . are somehow worse than Route W. . . .”*
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12 OBJECTION: This statement misstates the evidence and is misleading in the same way as the
13 previous statement; therefore, I repeat the previous objection with respect to paralleling public
14 roadways.
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17 *“CRTB, Page 15-16: On page 15 of his Direct Testimony, Patrick Cleveland states that*
18 *“Segment 49a is the only segment in the entire study area that goes through a recreational*
19 *area.” He identifies such recreational areas on HCR as having “canyons and springs.” Bexar*
20 *Ranch is not disputing that there are areas on HCR that are recreational; however, Mr.*
21 *Cleveland’s testimony fully ignores the nearly 3,200 acre “recreational area” that is Bexar*
22 *Ranch, which also has canyons and springs. In addition to being a working ranch, Bexar Ranch*
23 *is a family gathering place that, as my sister Sarah testified, and I agree, is used for “family*
24 *rodeo nights,” hiking, sightseeing, camping, and so forth. On page 10 of my testimony I state,*
25 *“[i]f you like the outdoors, there is a lot to do: hiking, mountain biking, hunting and fishing,*
26 *fossil-hunting, water activities, or simply sitting outside on the porch.” My testimony and*
27 *Sarah’s describe the multiple springs, streams, canyons, bluffs, hills, and valleys that proliferate*
28 *Bexar Ranch. If there is any property in the study area that most fits Mr. Cleveland’s definition*
of “recreational,” it is Bexar Ranch. It has all of the characteristics that Mr. Cleveland
describes. Moreover, the segments proposed on Bexar Ranch, (with the exception of portions
along Segment 43 in part) fully bisect the property. If anything, Mr. Cleveland should
understand that the devastation he anticipates on HCR is only amplified on Bexar Ranch.
Fortunately, he has the option with Route Z1 to avoid any type of interior bisect, unlike my
family that faces the possibility of Segments 43, 44 or 45 fragmenting our ranch, a ranch that
has been in our family for five generations.”

PATRICK CLEVELAND: OBJECTION TO CROSS REBUTTAL TESTIMONY OF
MICHAEL BITTER - 4

1 OBJECTION: These statements misstate the evidence, are misleading, are cumulative, are
2 beyond the scope of direct testimony and are an attempt to supplement Mr. Bitter's own direct
3 testimony. Mr. Bitter admits that he is not disputing the fact that HCR is a recreation area.
4 Certainly if he did dispute such a fact, then rebuttal evidence would be allowed. But he isn't.
5 Rather, Mr. Bitter is attempting to supplement his own direct testimony by claiming Bexar
6 Ranch is a recreational area, just like High Country Ranch. This is not true, rather, it is pure
7 supplementation of his direct testimony regarding the terrain and activities enjoyed at Bexar
8 Ranch.
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14 The CCN Application states, "list all parks and recreational areas owned by a
15 governmental body or an organized group, club, or church and located within 1,000 feet of the
16 center line of the route." The High Country Ranch (HCR) Home Owner's Association (HOA) is
17 an organized group that has by-laws, declarations of covenants and restrictions. Direct
18 Testimony of Patrick Cleveland, pg. 5. HCR includes 15 lots owned by individual members and
19 a common area of approximately 300 acres, which is available to all members of HCR HOA for
20 recreational purposes. *Id.* **Unlike Bexar Ranch, it is not a family ranch used solely for the**
21 **benefit of one family, rather, members are unrelated and come and go over time. *Id.* In**
22 **addition, HCR cannot be sold at the whim of one family or owner, rather, it was designed**
23 **to be preserved for an eternity. *Id.* (The only way HCR can be dissolved is if 80% of the**
24 **members vote to do such). *Id.***
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CPS Energy via Power Engineers has recognized similar organizations as being recreational areas in previous cases. See PUC No. 45866 (recognizing numerous HOA's and common areas, including greenbelts and open spaces as recreational areas) and PUC No. 47192 (recognizing that a common area owned by an HOA was a recreational area). However, Mr. Bitter cites to no case where a utility or administrative body has recognized a family ranch as a recreational area, simply because recreational activities take place upon it, despite the fact that CPS Energy and other utilities have placed electric towers on multitudes of family ranches over the last several decades. This does not mean that I agree with such a policy, because I don't. I have, and continue to object to CPS Energy's actions in proposing any segments that fragment

1 intact land and parallel no roads, whether the property is a ranch or a recreational area. But I
2 cannot change what CPS Energy has done; I can only provide facts and argument in support of
3 HCR after what it's done.
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6 I would also like to repeat and supplement stories of all the wonderful activities I and
7 other members of HCR and our many guests have enjoyed on this property, like the numerous
8 close encounters with wildlife, bird watching, sunsets on the porch, hunting for fossils and
9 artifacts, hiking through the many deer trails, and the fall roundup of cattle, but I cannot. The
10 deadline for my direct testimony on all this has passed, just as it has for Mr. Bitter.
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15 Finally, I understand what it's like to live on a large ranch and the culture therein, as I
16 was raised and grew up on a ranch over three times the size of Bexar Ranch. So, while I can
17 appreciate Mr. Bitter's love of Bexar Ranch, he should not get special exemption from the law or
18 the procedural rules in this case because of it. We all love our land, whether it's one acre or
19 3,000.
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23 WHEREFORE, for the above reasons, I, Patrick Cleveland, respectfully submit this
24 Objection to Cross Rebuttal Testimony and ask that my objections be sustained and the
25 statements and exhibits described herein be stricken from the record.
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Respectfully submitted this 26th day of March 2021.

/Patrick Cleveland/

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CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on March 26, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/Patrick Cleveland/

Patrick Cleveland