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THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS

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 CYNTHIA GRIMES,  
DAVID CLARK AND JERRY RUMPF

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I, Patrick Cleveland, file this Objection to the Cross Rebuttal Testimony of Cynthia Grimes,  
David Clark and Jerry Rumpf (hereinafter SHLAA) in the above captioned case.

The original questions and answers were un-numbered, so I have taken the liberty to number the  
ones to which I object for easier referral in the future. I object to the following questions and  
answers:

1. Q. WHICH INTERVENORS OPPOSE SELECTION OF ROUTES Z1 AND AA1? A. "As  
*described in more detail below, the only intervenors actually located along key segments in  
Route Z1 and AA1 who oppose use of those key segments are the NISD (as to Segment 42a, even  
though it is in the floodplain area behind the school), Anaqua (as to Segment 36 even though it  
only goes in front of its entrance and by one habitable structure which is its entrance gatehouse),  
Jauer (as to Segment 36 even though it only goes in front of its entrance and by no habitable  
structures), Rose Palace (as to Segment 54 which goes along the road by its affiliated ranch but  
not along the road by the Rose Palace itself), and Mr. Steven Herrera (as to Segment 54, and in  
the entire Scenic Hills subdivision is the only one with property along Toutant Beauregard Road  
that intervened in this case).*"

OBJECTION: These statements are a misstatement of the evidence, assume facts not in  
evidence, are speculative, misleading, and lack foundation. There are 30 habitable structures  
along Route AA1 and also 30 habitable structures along Route Z1. There are many properties

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1 adjacent to or crossed by Route AA1 and Z1 and many of these property owners have intervened  
2 and objected to those segments.  
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5 2. Q. MR. CICHOWSKI AND THE ANAQUA WITNESS MR. MARK ANDERSON  
6 EXPRESS CONCERN ABOUT THE HOMES NEAR SUBSTATION SITE 7. HOW DO YOU  
7 RESPOND? A. *“Cynthia Grimes: For example, the property for the family with the horse stable  
8 boarding business along Segment 15 which I identified in my direct testimony backs up to  
9 Substation Site 6. They are members of SHLAA, and oppose the use of Substation Site 6 and line  
10 segments which utilize that substation.”*

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15 OBJECTION: This statement is hearsay, to which there is no exception.  
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18 3. Q. DOES HE SAY THE ROSE PALACE IS HISTORIC? A. *“No. The Rose Palace is a large  
19 structure suitable for sporting and other events, but not historic in appearance.”*  
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22 OBJECTION: The witnesses are not testifying as experts and have not alleged any specialized  
23 knowledge in cultural and historical appearances of buildings, thus, their opinion on the historic  
24 appearance of the Rose Palace should be stricken, subject to Tex. R. Evid. 701.  
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27 4. Q. WHAT CPS ENERGY PROPOSED LINE SEGMENTS AND ROUTES APPEAR TO BE  
28 OF CONCERN TO MR. PATRICK CLEVELAND? A. *“His testimony says he opposes Routes  
Gl, Jl, AA1, and EE, which include Segment 49a, because it goes through High Country Ranch.*

*While he opposes routes which include Segment 49a, such as Route AA1, it appears that he does  
not oppose Route Z1 because, unlike Route AA1, it uses Segment 46b which would run along the  
northern property line of the Hill Country Ranch (sic), rather than going through that ranch. He  
cites a number of other features regarding Route Z and its variant Z1 that he thinks are more  
favorable compared to Route AA1 (such as shortest length), and disagrees with the Texas Parks  
and Wildlife Department on its original recommendation of Route AA (the variant of which is  
now Route AA1) instead of Route Z. As a result, while he says he is not advocating for Route Z1,  
he clearly favors Route Z1 over Route AA1, and does not oppose it outright.”*

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1 OBJECTION: These statements regarding support or opposition to routes AA1 and Z1 are a  
2 misstatement of the evidence, assume facts not in evidence, are speculative, misleading, lack  
3 foundation, and the witness lacks authority to state my position. I oppose both Routes AA1 and  
4 Route Z1 “outright.” My comparison of these routes was simply to show that TPWD’s  
5 comparison of them and selection was not supported by the evidence. In no way did I intend my  
6 testimony to favor Route Z1 over Route AA1.  
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11 5. Q. PLEASE SUMMARIZE AND RESPOND TO THE PORTIONS OF THE TESTIMONY  
12 OF MR. CLEVELAND THAT ARE OF CONCERN TO SHLAA. A. *“So the actual playground*  
13 *is more than 300 feet from Segment 42a, and only the grassy edge of a sports field is what is*  
14 *within 280 feet of the segment. The grassy edge of a sports field would have a much more*  
15 *intermittent use than both the actual playground and the permanent school building. That is*  
16 *much different than the situation with Segment 36, which would be within 300 feet of a*  
17 *permanent school building and the entrance to the school. And the grassy edge of a sports field*  
18 *is not a “habitable structure” as the Commission rules define it (and as we quoted it in our*  
19 *direct testimony).”*  
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25 OBJECTION: These statements regarding a “grassy edge” are a misstatement of the evidence,  
26 speculative, misleading, and assume facts not in evidence. The actual testimony of CPS Energy  
27 never mentions the word “edge” but instead, states, “[b]ased on fencing and other indications of  
28 potential property use, the distance between proposed Segment 42 and the closest corner of an  
outdoor area on the elementary school property that POWER Engineers, Inc. believes may be  
accessible to children on a regular basis is approximately 335 feet to the area with playground  
structures and approximately 280 feet to the grass area with a baseball/kickball backstop in the  
southwest corner of the elementary school property.” CPS Energy’s Response to Patrick  
Cleveland’s First Request for Information, No. 51023-432, filed on 12/16/20.

6. CONTINUED FROM PREVIOUS QUESTION. A. *“Moreover, routes which Mr. Cleveland*  
*apparently prefers further south and which go through the SHLAA area would be within or near*  
*the recreational areas of the SHLAA area as well as families with home schooling.*

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1 OBJECTION: These statements regarding recreational areas of the SHLLA are a misstatement  
2 of the evidence, speculative, misleading, lack foundation, and assume facts not in evidence.  
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4 There is no evidence that any routes in the south go through any recreational areas or are within  
5 1,000 feet of any recreational areas, based on testimony submitted and the Environmental  
6 Assessment provided by CPS Energy in this case.  
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10 7. Q. ARE THERE AREAS OF AGREEMENT BETWEEN THE ROCKWOOD AND SHLAA  
11 POSITIONS? A. *“While the Rockwoods say they favor using Routes Fl, Nl, P, Ql, Rl, and Ul, all*  
12 *of which SHLAA opposes, they do not appear to directly oppose use of Route Zl, which SHLAA*  
13 *does support. Therefore, there is some consistency between SHLAA's support of Route Zl and the*  
14 *Rockwoods' concern about but not outright opposition to Route Zl. As with Mr. Cleveland's*  
15 *position, SHLAA can agree with selection of Route Zl so as to have the line run along the*  
16 *northern border of High country Ranch rather than through the middle of it.”*  
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21 OBJECTION: These statements regarding support or opposition to route Z1 are a misstatement  
22 of the evidence, assume facts not in evidence, are speculative, misleading, lack foundation, and  
23 the witness lacks authority to state the Rockwoods' position. Stephen Rockwood stated,  
24 “Additionally, I am also concerned about routes E, H, Y, Bl, Cl, Dl, Il, Ml, Tl, X1, Zl, DD, Gl,  
25 Jl, AA1 and their potential impact to HCRA. More specifically, these routes include segments,  
26 40, 46b, and 49a. which could potentially impact HCRA and those parcels referenced above. **My**  
27 **objection to these routes** is largely based on PURA criteria and the Environmental Assessment  
28 and Alternative Route Analysis provided for this proposed project.” Amended Testimony of  
Stephen Rockwood, No. 51023-592, filed on 2/26/21, (emphasis added). Clearly, Mr.  
Rockwood is objecting to Route Z1, which constitutes outright opposition. Also, by this  
objection, Mr. Rockwood is clearly not favoring route 46b over route 49a.

8. Q. ARE THERE AREAS OF AGREEMENT BETWEEN THE NISD AND SHLAA  
POSITIONS? A. *“NISD testimony indicates that its concern regarding Segment 42a is because*  
*using that segment would not take into account the "outdoor recreation area of the school. As a*  
*result, it appears that NISD ranks Segments 41 and 35 as the lines segments of most concern to*  
*it, and ranks Segment 42a as the lesser one of concern.”*

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1 OBJECTION: These statements regarding ranking of segments and that segment 42a is a lesser  
2 concern than segments 41 and 35 are a misstatement of the evidence, speculative, misleading,  
3 lack foundation, and assume facts not in evidence. Mr. Villarreal actually states, "As with the  
4 other proposed segments on or near the school property, due to the unknown concerns of  
5 electromagnetic frequencies, there are safety concerns especially for at-risk children who are  
6 taught in our schools. In addition, while the documents may show that proposed 42a is more than  
7 300 feet from the school building, it is not more than 300 feet from the playgrounds and outdoor  
8 education areas for the school. It is also closer to the water treatment plant and the school's drain  
9 field which is believed to be very near or right under proposed Segment 42a. The proximity of  
10 42a is concerning to both the elementary school and middle school properties." Direct Testimony  
11 of Jacob Villarreal, No. 51023-429, filed on 2/17/21. Nowhere in his testimony does he indicate a  
12 ranking or less concern for segment 42a over segments 41 and 35.  
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20 9. Q. WHAT ARE THE AREAS OF AGREEMENT AND DISAGREEMENT BETWEEN MR.  
21 CRAIG AND SHLAA? A. *"SHLAA of course opposes the use of Segments 15 or 16 and*  
22 *Substation 6. However, his position regarding Segment 13 and Substation Sites 1, 2,3, and 5 is*  
23 *consistent with the position of SHLAA, since none of those are part of Routes Z1 or AA1."*  
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27 OBJECTION: These statements are misleading, lack foundation, assume facts not in evidence  
28 and the witness lacks authority to state the positions of other parties. Based on his testimony,  
Mr. Craig's position is inconsistent with SHLAA's position as he states, "I am very strongly  
opposed to proposed line Segments 13, 14, 2, and 5, and to substation locations 1 and 7. I am  
also opposed to proposed line Segments 54 and 17, and to substation locations 2, 3 and 5."  
Direct Testimony of Paul Craig, No. 51023-594, filed on 3/1/21. The fact that he is opposed to a  
few segments in addition to those that are included in Routes AA1 and Z1 does not make his  
position consistent with SHLAA. Whatever coincidental consistency exists should be given no  
weight because his position is clearly against SHLAA's.

10. Q. WHAT ARE THE AREAS OF AGREEMENT AND DISAGREEMENT BETWEEN  
MS. REYNA AND SHLAA? A. *"Ms. Reyna, like Ms. Sykes, opposes use of Segment 17, and*  
*also opposes use of Substation Site1. Routes Z1 and AA1 do not include Segment 17 or*

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1 *Substation Site 1. Therefore, her position opposing use of Segment 17 or Substation Site 1 is*  
2 *consistent with the position of SHLAA supporting Routes Z1 and AA1.”*  
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5 OBJECTION: These statements regarding support of Routes Z1 and AA1 are misleading, lack  
6 foundation, assume facts not in evidence and the witness lacks authority to state the positions of  
7 other parties. Ms. Reyna’s silence on opposition to Routes Z1 and AA1 should not be distorted  
8 to mean that her position is consistent with SHLAA. She states, “I support all routes using  
9 Substation 6,” which is clearly an inconsistent position with SHLAA. Direct Testimony of  
10 Yvette Reyna, No. 51023-547, pg. 5, filed on 2/19/21. Whatever coincidental consistency exists  
11 should be given no weight because her position is clearly inconsistent with SHLAA’s.  
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16 11. Q. WHAT ARE THE AREAS OF AGREEMENT AND DISAGREEMENT  
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18 BETWEEN MS. BIEMER AND SHLAA? A. *“Ms. Biemer testifies that she opposes the use of*  
19 *Segment 17 and the routes which include it. Routes Z1 and AA1 do not include Segment 17.*  
20 *Therefore, the position of SHLAA in support of Routes Z1 and AA1 is consistent with Ms.*  
21 *Biemer's opposition to the use of Segment 17 and the routes which include that segment.”*  
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25 OBJECTION: These statements regarding support of Routes Z1 and AA1 are misleading, lack  
26 foundation, assume facts not in evidence and the witness lacks authority to state the positions of  
27 other parties. Ms. Biemer’s position is clearly inconsistent with SHLAA’s as she is against  
28 Segment 54, which is part of Routes AA1 and Z1 and she is in favor of Routes N1, P, Q1, R1  
and U1. See Direct Testimony of Laura Biemer, No. 51023-537, filed on 2/19/21. The fact that  
she is opposed to a few segments in addition to those that are included in Routes AA1 and Z1  
does not make her position consistent with SHLAA. Whatever coincidental consistency exists  
should be given no weight because her position is clearly against SHLAA’s.

12. Q. WHAT ARE THE AREAS OF AGREEMENT AND DISAGREEMENT BETWEEN  
MR. BERNSEN AND SHLAA? A. *“Mr. Bernsen testifies that he opposes the use of Segment 17*  
*and the routes which include it. As is the case with the other intervenors along Segment 17,*  
*Routes Z1 and AA1 do not include Segment 17. Therefore, the position of SHLAA in support of*

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1 *Routes Z1 and AA1 is consistent with Mr. Bernsen's opposition to the use of Segment 17 and the*  
2 *routes which include it."*  
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5 OBJECTION: These statements regarding support of Routes Z1 and AA1 are misleading, lack  
6 foundation, assume facts not in evidence and the witness lacks authority to state the positions of  
7 other parties. Mr. Bernsen states, "I oppose any of the routes that include segments 17, 20, 31,  
8 33, 34, 35, 36, 41, and 42a." Direct Testimony of Robert Bernsen, No. 51023-558, pg. 4, filed  
9 on 2/22/21. Segments 20, 36, and 42a are all a part of Routes AA1 and Z1. The fact that he is  
10 opposed to a few segments, in addition to those that are included in Routes AA1 and Z1, does  
11 not make his position consistent with SHLAA. Whatever coincidental consistency exists should  
12 be given no weight because his position is clearly against SHLAA's.  
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18 13. SHLAA's above statements show a pattern of attempting to show alignment with other  
19 parties, but such alignment does not exist. With respect to the testimony of Mr. Craig, Ms.  
20 Reyna, Ms. Biemer, and Mr. Bernsen, SHLAA repeatedly asserts that their opposition to  
21 Segment 17 is consistent with its position of favoring Routes AA1 and Z1, even though the  
22 parties are clearly against SHLAA's position. This is like saying the Universities of Texas and  
23 Oklahoma football teams are allies because they both want to win their respective games against  
24 Texas Tech. Although such a statement is not untruthful, it is misleading and meaningless as it  
25 is unrelated to their real goal, which is to prevail against each other. In addition, SHLAA's claim  
26 that their position is consistent with those that oppose Segment 17 rings hollow and can be easily  
27 tested. If it came down to a choice between southern routes or a route including Segment 17,  
28 nobody could seriously doubt that SHLAA would use all their available resources to advocate for  
Segment 17.

In summary, all of the above statements should be excluded either because they are misstatements of the evidence, speculative, misleading, lack foundation, assume facts not in evidence, and/or pursuant to Tex. R. Evid. 403 because their probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury (in this case, the tribunal).

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WHEREFORE, for the above reasons, I, Patrick Cleveland, respectfully submit this  
Objection to Cross Rebuttal Testimony and ask that my objections be sustained.

Respectfully submitted this 26<sup>th</sup> day of March 2021.

/Patrick Cleveland/  
\_\_\_\_\_  
Patrick Cleveland  
State Bar #24101630  
High Country Ranch  
26332 Willoughby Way  
Boerne, TX 78006  
T. 908-644-8372  
Email: pjb gw@gv tc.com

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