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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 PUBLIC UTILITIES §
OF §
ADMINISTRATIVE HEARINGS §

BRAD JAUER AND BVJ PROPERTIES, LLC'S OBJECTIONS AND MOTIONS TO STRIKE PORTIONS OF INTERVENOR CROSS-REBUTTAL TESTIMONY

Brad Jauer and BVJ Properties, LLC file the following objections and motions to strike intervenor cross-rebuttal testimony.

Much of the purported cross-rebuttal testimony does not rebut any witness testimony but rather improperly attempts to provide additional direct testimony that should have been filed at the time intervenor direct testimony was filed.

Brad Jauer and BVJ Properties, LLC move to strike this improper cross-rebuttal testimony as an attempt to file supplemental direct testimony, as well as the other cross-rebuttal testimony also objected to in the chart below:

PARTY	WITNESS	LOCATION	OBJECTION
Bexar Ranch	Mark Turnbough	Page 3/4, ¹ line 17 to page 4, line 7	This testimony is not rebuttal testimony. As Mr. Turnbough expressly states, it is a recitation of his direct testimony.
		Page 11/12, lines 14-15 "In the intervening decade. . . in this area"	Speculation/Relevance Testimony that is "conclusory or speculative" is not relevant evidence because it does not tend to make any material fact more probable or less probable. TRCE 401.
		Page 12/13, lines 14-16 "It should be noted here . . . routes and segments."	Not rebuttal testimony, conclusory/relevance; no foundation.

¹ Mr. Turnbough's cross-rebuttal testimony contains two *different* page numbers on each page: one is a single number, and the other is contained in the footer. Both numbers (separated by a "back slash") are included in the objections.

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			Testimony that is “conclusory or speculative” is not relevant evidence because it does not tend to make any material fact more probable or less probable. TRCE 401.
		Page 13/14, lines 9-13. “With respect to . . .280 feet.”	Lack of personal knowledge, speculation, no foundation. Mr. Turnbough provides no indication as to the source of this information or that he has personal knowledge thereof
		Page 13/14, line 19 to page 14/15, line 13 “By way of comparison . . . depiction of each elementary school.”	Relevance, no foundation, speculation. Mr. Turnbough provides no indication as to whether the transmission lines that he claims to impact the referenced schools were outside San Antonio’s corporate limits and, therefore, subject to the jurisdiction of the PUC and its routing criteria when they were built, as in the present case. (It is counsel’s understanding that the present case is CPS Energy’s first transmission line routing case before the PUC, and a review of the Interchange supports that understanding).
		Exhibit Rebuttal MT-1	Hearsay, relevance, no foundation, speculation Mr. Turnbough provides no indication as to whether the transmission lines that he claims to impact the depicted schools were outside San Antonio’s corporate limits and, therefore, subject to the jurisdiction of the PUC and its routing criteria when they were built, as in the present case. (It is counsel’s understanding that the present case is CPS Energy’s first transmission line routing case before the PUC, and a review of the Interchange supports that understanding).
		Page 14/15, line 14 to page 15/16, line 4 “The third issue . . . any other structures.”	Improper expert testimony, no foundation, speculation. According to Mr. Turnbough’s testimony on page 3, line 7, he is “an environmental/land use and regulatory consultant.” There is no indication in either his direct testimony or his cross-rebuttal testimony that he has any experience or expertise in substation siting and construction. In fact, in his description of his “educational and

			professional qualifications [and] consulting experience” on pages 4-8 of his direct testimony, the term “substation” is never even mentioned.
		Page 17/18, lines 8-9 “It is apparent . . . neighborhood.”	Lack of personal knowledge, speculation, no foundation Substation site 7 has a home on it, as do the tracts surrounding it.
		Page 18, lines 9-10 “Typically, . . . along the route.”	Improper expert testimony, no foundation, speculation. Mr. Turnbough has not provided any evidence that he has the experience or the expertise to opine as to the typical actions associated with the Legislature’s designation of historic roadways.
		Page 19/20, line 7 to page 20/21, line 4	The entirety of this testimony is not rebuttal but is an attempt to introduce new evidence and is improper supplemental direct testimony.
Bexar Ranch	Michael Bitter	Page 5, lines 1-10	Improper attempt to insert supplemental direct testimony into the record, improper expert witness testimony, lack of foundation, hearsay This testimony is an attempt to insert supplemental direct testimony into the record. The amount of modeled golden cheeked warbler habitat was presented in CPS’s application and should have been addressed in intervenor direct testimony. In addition, it is improper expert testimony coming from Mr. Bitter, who is not an expert, and, relatedly, his reference to and attempt to introduce Exhibit MB-1A is inadmissible hearsay coming from a lay witness. Mr. Bitter is not a scientist and cannot testify about golden cheeked warbler habitat.
		Exhibit MB-1A Rebuttal “2008 CPS Golden Cheek Warbler Study Habitat”	Hearsay (see immediately above), and an attempt to insert supplemental direct testimony into the record. Mr. Bitter is not rebutting any witness’s testimony when he gratuitously introduces the topic of his “family’s long-standing commitment to keeping Bexar Ranch in a natural state . . .” (page 5, lines 1-2) and ultimately inserts Exhibit MB-1A.

		Exhibit MB-2A Rebuttal Page 5, lines 11-12	No foundation, hearsay, an attempt to insert supplemental direct testimony into the record. The exhibit is a photo inserted in the testimony with no foundation or predicate of any kind.
		Exhibit MB-3A Rebuttal Page 6, lines 1-2	No foundation, hearsay, an attempt to insert supplemental direct testimony into the record. The exhibit is a photo inserted in the testimony with no foundation or predicate of any kind.
		Exhibit MB-4A Rebuttal Page 6, lines 4-5	No foundation, hearsay, an attempt to insert supplemental direct testimony into the record. The exhibit is a photo inserted in the testimony with no foundation or predicate of any kind.
		Page 7, lines 4-7 “. . .Bexar Ranch, led by my father . . . conservation easement.”	This testimony is an attempt to insert supplemental direct testimony into the record.
		Page 7, lines 8-10 “As show on . . . conservation program.” Exhibit MB-5 Rebuttal Page 7, lines 10-17 “Included with this letter . . . business records.” Page “Bexar Ranch, L.P. 74” to “Bexar Ranch, L.P. 152” (“records” <i>referenced above which is correspondence with multiple people and entities that are neither parties nor witnesses in this proceeding</i>)	Hearsay, and an attempt to insert supplemental direct testimony into the record. As he did above with Exhibit MB-2A Rebuttal, Mr. Bitter is not rebutting any witness’s testimony when he responds to the question “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 NATURAL STATE?” (page 5, lines 1-2) and then proceeds to ultimately insert Exhibit MB-1A and numerous pages of third-party correspondence into the record. The Business Records exception to the Hearsay Rule [TRE 803(6)], which is asserted by Mr. Bitter doesn’t apply. First, the authentication requirements have not been met. Second, the exception expressly pertains to “A record of an act, event, condition, opinion, or diagnosis . . .” made “in the course of a regularly conducted business activity” and as “a regular practice of

			that activity”. Such is not the case with the correspondence attempted to be inserted as supplemental direct testimony via “rebuttal” testimony.
		Page 12, lines 1-18	Improper expert testimony, no foundation, speculation, legal conclusion Mr. Bitter is not qualified to testify as to whether distribution lines constitute “existing electric facilities” as contemplated by 16 TAC 25.101(B)(3)(b) or whether “existing distribution lines on Route Z1 may help moderate the impact of Route Z1 . . .“
		Page 12, line 22 “In contrast . . .” through page 13, line 5.	This testimony is an attempt to insert supplemental direct testimony into the record.
		Page 14, line 19 to page 15, line 2	Argumentative
		Page 17, lines 1-12 Page 19, lines 4-10	Speculation, no foundation. Mr. Bitter is conflating the risks associated with driving up and down a steep grade directly under Segment 32 (which Mr. Huber addresses expressly, but Mr. Bitter ignores completely) and turning into the property under and along Segments 20 and 36 as they and their corners are positioned to cross <i>over</i> Toutant Beauregard directly in front of Mr. Huber’s property (which Mr. Huber addresses expressly, but Mr. Bitter ignores completely), with driving under the distribution line which is currently positioned at the <i>after</i> the 90-degree turn would be complete and <i>before</i> the steep service road begins.
		Page 23, line 5 “The following . . . through page 25, line 7	Improper expert testimony, speculation. Mr. Bitter is not a substation engineer and cannot testify on how or where trees will be preserved during construction. He also speculates in his testimony about which trees could be preserved.
		Page 26, lines 3-5	Speculation
		Page 26, lines 6-13	Relevance, no foundation, speculation. Mr. Bitter provides no indication as to whether the transmission lines that he claims to impact the referenced schools were outside San Antonio’s corporate

			limits and, therefore, subject to the jurisdiction of the PUC and its routing criteria when they were built, as in the present case. (It is counsel's understanding that the present case is CPS Energy's first transmission line routing case before the PUC, and a review of the Interchange supports that understanding).
		Page 26, line 15 to page 27, line 4 "It is my opinion . . . school."	Speculation
		Exhibit MB-18 Rebuttal (all pages)	Relevance no foundation
Bexar Ranch	Sarah Bitter	Page 5, line 13-15 "Based on . . . Toutant Beauregard Road."	Speculation
		Page 6, line 16 through page 10 line 16	Improper supplemental direct.
Save Huntress Lane Area Association	Harold Hughes	Page 12, line 4 to page 14, line 9	Not rebuttal testimony, but, instead, an improper attempt to insert supplemental direct testimony into the record.
		Page 13, line 7 through line 20	Relevance. "Equity" is not a routing criterion.
Save Huntress Lane Area Association	Grimes et al	Page 2, lines 18 to Page 3, line 4 "In your direct testimony . . . water well locations"	Hearsay, speculation, not rebuttal testimony/ improper supplemental direct Any CPS Energy statements to the effect indicated are not in the record, and Cynthia Grimes is not an expert who can rely on hearsay testimony; therefore, they are hearsay. Moreover, any inference from CPS's silence that CPS "does not dispute" is pure speculation. Moreover, this testimony is not cross-rebuttal responding to any testimony from any other witness; therefore, it is improper supplemental direct.
		Page 3, line 25 to page 4, line 9 "Has TPWD addressed . . . Route DD."	Improper supplemental direct. This testimony is not cross-rebuttal responding to any testimony from any other witness; therefore, it is improper supplemental direct. As indicated on page 3, line 27, TPWD's position to which this testimony was responding is in a Feb. 18 th letter, submitted over a month ago. It could

			have been addressed in direct testimony but was not.
		Page 4, the entire answer to question "Which intervenors oppose selection of routes Z1 and AA1?" ²	Mischaracterization of testimony. Misleading. There is no testimony regarding what a "key" segment is." Multiple intervenors testified against Route Z1 or any route utilizing Toutant Beauregard.
		Page 5, lines 17-18 "CPS Energy has not . . . not the case."	Speculation
		Page 7, line 29 to page 8, line 2 "As noted earlier . . . those other homeowners."	Speculation, hearsay. The number of interventions is not in any way determinative of the impact on landowners.
		Page 9, line 3,"and . . . substation."	Hearsay. Ms. Grimes cannot testify about the position of another individual.
		Page 12, second full paragraph, starting with "Cynthia Grimes:"	Hearsay.
		Page 18, second full paragraph from "However . . .below."	Assumes facts not in evidence. Mischaracterizes the evidence. Hearsay.
		Page 18, second full paragraph, last sentence	Legal conclusion.
		Page 22, last three lines through page 23	Hearsay. Improper expert opinion testimony.
		Page 25, entire answer to question: "The NISD testimony expresses EMF concerns from having a transmission in proximity to the school. How do you respond?"	Hearsay.
		Page 25, last answer from "In short . . . accordingly"	Mischaracterizes the evidence. NISD has taken no position with respect to any "constituents." NISD's position is that it does not want the lines in proximity to its school.

² Grimes et al. do not use line numbers in their testimony; therefore, line numbers were counted as part of the preparation of the indicated objections.

		Page 31, paragraph that starts with "In addition . . . school"	Hearsay
		Page 33, entire answer to the question: "Mr. Herrera supports use of Route R1 due to what he says is its relatively shorter length compared to the other routes he supports, How do you respond?"	Mischaracterizes Mr. Herrera's testimony.
		Page 34, entire answer to last question on the page	Improper expert testimony
		Page 37-38, answer to the community values question	Mischaracterizes the evidence.
		Page 38, entire answer to first question under developer right of way donations.	Hearsay and Speculation

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th 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.

/s/ Lynn Sherman
Lynn Sherman