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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

BEXAR RANCH, L.P.'S RESPONSE TO OBJECTIONS AND MOTIONS TO STRIKE PORTIONS OF CROSS REBUTTAL TESTIMONY OF MICHAEL W. BITTER, SARAH A. BITTER AND MARK TURNBOUGH, PHD

Bexar Ranch, L.P., hereby timely responds to the Objections and Motion to Strike filed by Anaqua Springs Homeowners' Association; Brad Jauer and BVJ Properties, LLC; Northside Independent School District; San Antonio Rose Palace, Inc. and Strait Promotions; and Patrick Cleveland, and respectfully states as follows:

I. INTRODUCTION

Originally, CPS Energy's Application included 29 alternative routes, 14 of which crossed Bexar Ranch. At time of direct testimony, there were 31 alternative routes identified in CPS Energy's Amended Application, 14 of which would still cross Bexar Ranch. CPS Energy's "best meets" route and the Texas Parks and Wildlife's choice, however, did not include any routes that crossed Bexar Ranch. Thus, at the direct testimony phase, given this position of not having to defend against routes suggested by CPS Energy and TPWD, it would not have been necessary or appropriate for Bexar Ranch, L.P. to submit extensive direct testimony addressing every conceivable argument that might be raised against the 14 routes that could cross Bexar Ranch. Following direct

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testimony, the parties review the direct testimony submitted by others and may choose to respond in cross rebuttal. That is what the Bexar Ranch rebuttal witnesses did.

Specifically, on March 22, 2021, Bexar Ranch, L.P. filed cross-rebuttal testimony via Mark Turnbough, PhD, Sarah A. Bitter, and Michael W. Bitter. In each instance, these witnesses responded to contentions raised by intervenors and their representatives in their direct testimony. For example, Anaqua Springs Homeowners Association (“Anaqua HOA”) advocated for Route W, one of the most costly routes in CPS Energy’s data set. Route W includes Segment 44, an east-to-west interior bisect across the entire width of Bexar Ranch. Route W bisects other properties as well. Anaqua HOA’s argument for W ignores these issues and is based in part on alleged low golden-cheek warbler modeling from the “2010 Diamond Report.” Thus, the Bexar Ranch, L.P.’s rebuttal testimony, for example, addresses fragmentation, paralleling and actual warbler surveys conducted on CPS Energy’s behalf that were otherwise not addressed or considered by those parties. This is the approach that the Bexar Ranch Rebuttal Testimony followed throughout its cross-rebuttal testimony. In other words, it focused solely on responding to and rebutting the direct testimony of certain intervenors.

Below, Bexar Ranch, L.P., fully responds to the objections raised by the noted movant. Ultimately, the movants may explore the specific testimony to which they object on cross examination. Moreover, the Administrative Law Judges may admit testimony at issue and then give it its appropriate weight, if any.

II. RESPONSE TO OBJECTIONS

| Movant: Patrick Cleveland | | |
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| Testimony | Basis | Response |
| <p>Michael Bitter Rebuttal (CRTB Page 4-6: “[A]s I stated . . . sightings ”)</p> | <ul style="list-style-type: none"> - cumulative - beyond scope of direct testimony - attempt to supplement | <p>This testimony is proper rebuttal testimony and not an attempt to supplement the record except for purposes of rebuttal.</p> <p>This testimony addresses the contention of several intervenors, including those specifically quoted by Cleveland in his motion (i.e , Brad Jauer, Steve Cichowski on behalf of Anaqua HOA, and Patrick Cleveland), that their properties have certain plant life that is conducive to golden-cheeked warbler habitat and Anaqua HOA's ultimate contention that Route W is allegedly a better route than Route Z-1 due to the “2010 Diamond Report's” modeling of potential warbler habitat. Michael Bitter’s testimony rebuts the contention that Route W, which includes Segment 44 on Bexar Ranch, is superior in this regard because (1) the 2010 Diamond Report has not been appropriately updated for undeveloped tracts like Bexar Ranch; and (2) because there is an actual survey (the “2008 CPS Golden Cheeked Warbler Study”) that confirms, rather than models, the actual existence of golden-cheeked warbler on Bexar Ranch, thereby rebutting the contention that Route W is a better choice on this factor. Moreover, because the 2010 Diamond Report is admittedly not updated to account for undeveloped properties, and this deficiency was not addressed by the testimony of intervenors, rebuttal testimony on this deficiency is warranted so as to properly rebut the allegation in direct testimony that Route W is a more appropriate route due to alleged golden-cheek warbler habitat.</p> <p>Mr. Bitter’s original testimony regarding the trees on Bexar Ranch was descriptive, as were references to streams and wildlife. This testimony was not a discussion about warbler habitat. Thus, the very limited testimony provided by Mr. Bitter that referred to his direct testimony solely provides context for his rebuttal to contentions regarding Route W, but that</p> |

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| | | alone does not make his testimony cumulative. |
| <p>Michael Bitter Rebuttal CRTB, Page 7: "DO YOU... maintain these records."</p> | <ul style="list-style-type: none"> - cumulative - beyond scope of direct testimony | <p>This testimony is proper rebuttal testimony and not an attempt to supplement the record except for purposes of rebuttal.</p> <p>This testimony addresses the contention of Brad Jauer, Steve Cichowski on behalf of Anaqua HOA, and Patrick Cleveland, that their properties have certain plant life that is conducive to golden-cheeked warbler habitat and Anaqua HOA's ultimate contention that Route W is allegedly a better route than Route Z-1 due to the "2010 Diamond Report's" modeling of potential warbler habitat. Michael Bitter's testimony rebuts the contention that Route W, which includes Segment 44 on Bexar Ranch, is superior in this regard because (1) the 2010 Diamond Report has not been appropriately updated for undeveloped tracts like Bexar Ranch, and (2) because there is an actual survey (the "2008 CPS Golden Cheeked Warbler Study") that confirms, rather than models, the actual existence of golden-cheeked warbler on Bexar Ranch, thereby rebutting the contention that Route W is a better choice on this factor. Moreover, because the 2010 Diamond Report is admittedly not updated to account for undeveloped properties, and this deficiency was not addressed in direct testimony by any movants, rebuttal testimony on this deficiency is warranted so as to properly rebut the allegation that Route W is a more appropriate route due to allegations related to the importance of golden-cheek warbler habitat.</p> <p>This testimony includes a business-records prove up by Mr. Bitter of the business records of Bexar Ranch, to include communications with Green Space Alliance of South Texas and the Nature Conservancy, contractors for the City of San Antonio's Edwards Aquifer Protection Program, who have worked with Bexar Ranch in its efforts to place Bexar Ranch in a conservation easement. It directly speaks to Bexar Ranch remaining undeveloped for this particular purpose of being selected for a conservation easement. It rebuts any direct testimony that relies on the 2010 Diamond Report to advocate for Route W due to its alleged warbler quality, because demonstrates</p> |

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| | | <p>that Bexar Ranch would be one of the undeveloped properties that the 2010 Diamond Report fails to account for Mr. Bitter did not discuss Route W or warbler habit in his direct testimony. There is no need for there to be a “challenge to Bexar Ranch’s commitments to their property” for this to be proper rebuttal testimony.</p> <p>Bexar Ranch, L.P. further requests application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence “may be admitted if the evidence is. (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person’s affairs. See TEX. GOV’T CODE ANN § 2001.081 (Vernon 2000).</p> |
| <p>CRTB, pages 7-8: “In his Direct ... area.”</p> | <p>- Misstates the evidence, misleading</p> | <p>While Mr. Cleveland’s objection is not entirely clear, Mr. Bitter was responding to Mr. Cleveland’s direct testimony whereby Mr. Cleveland described a unique route evaluation process that Mr. Cleveland relied upon in making his routing recommendation. Mr. Cleveland is not a routing expert, his testimony regarding his route evaluation process is difficult to follow, and it has an analysis that tries to use factors that are not routing factors, including the number of properties (not houses) affected by transmission line and length not paralleling roads and property lines. This route evaluation process did not mirror the PUC standards and was confusing. To the extent Mr. Cleveland now “re-iterate[s] that paralleling roads is an important factor” then Mr. Bitter and Mr. Cleveland are in agreement that paralleling roads is an important routing factor Mr. Cleveland can cross-examine Mr. Bitter on any other issues that remain regarding Mr. Bitter’s understanding of Mr. Cleveland’s route evaluation process.</p> |
| <p>CRTB, page 14: “In summary . . . worse than Route W . . .”</p> | <p>- Misstates the evidence, misleading</p> | <p>Mr. Bitter was responding to Mr. Cleveland’s direct testimony whereby Mr. Cleveland described a unique route evaluation process that Mr. Cleveland relied upon in making his routing recommendation Mr. Cleveland is not a routing expert, his testimony regarding his route evaluation process is difficult to</p> |

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| CRTB, Page 15-16 "On page 15 ... five generations." | <ul style="list-style-type: none"> - Misstates the evidence, misleading cumulative - beyond scope of direct testimony - attempt to supplement | Mr. Cleveland's direct testimony stated that only one segment "goes through" a "recreational area." Mr. Bitter's testimony rebuts this contention Segments 43, 44, and 45 "go through" (i.e., they bisect, not run along a perimeter of) Bexar Ranch, which is both a working ranch and a recreational ranch. Mr. Bitter was also responding to this contention as it relates to bisecting and fragmenting and to respond that use of Route Z1 avoids "going through" Mr. Cleveland's property Mr. Cleveland can cross examine Mr. Bitter on the definition of "recreational area " However, it does not appear that Mr. Cleveland disagrees with Mr. Bitter and would advocate against bisecting properties as well |
| Movant: Brad Jauer and BVJ Properties, LLC | | |
| Mark Turnbough, page 3/4 , line 17 to page 4, line 7 | <ul style="list-style-type: none"> - Not rebuttal testimony | This rebuttal testimony, in 9 lines, briefly summarizes for the Administrative Law Judges that Dr. Turnbough recommended Route Z-1 in his direct testimony. It provides context and foundation for his remaining rebuttal testimony. |
| Mark Turnbough, page 11/12, lines 14-15 "In the intervening decade . . in this area." | <ul style="list-style-type: none"> - Speculation - Relevance | This testimony addresses the contention of Steve Cichowski on behalf of Anaqua HOA that Route W is allegedly a better route than Route Z-1 due to alleged warbler habitat quality derived from the "2010 Diamond Report " Therefore, it is relevant. Here, it is undisputed that the 2010 Diamond Report has not been appropriately updated for undeveloped tracts Because the 2010 Diamond Report is admittedly not updated to account for undeveloped properties, and this deficiency was not addressed in direct |

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| | | <p>testimony by any movants, rebuttal testimony on this deficiency is warranted, relevant and appropriate.</p> <p>Here, Dr. Turnbough makes two statements: "The Diamond Study was published in 2010 " This is true and there is no objection as to that fact. Then, Dr. Turnbough states, "In the intervening decade, GCW habitat may have increased in quality and quantity in this area." With respect to the phrase "in this area," Dr. Turnbough is specifically discussing Segment 44, a segment he has physically inspected on Bexar Ranch. To be clear, however, Dr. Turnbough did not make a definitive conclusion that GCW habitat has increased on Segment 44. Rather, he simply states he believes that in the intervening ten years, "it may have increased." This is not speculation. Rather, this is material that Jauer/BVJ can cross examine Dr. Turnbough on. To the extent it is considered speculation, which is denied, Dr. Turnbough is an expert in his field who has visited the study area and Segment 44 in particular, and he has reviewed the 2010 Diamond Report. It is reasonable for him to state that "In the intervening decade, GCW habitat may have increased in quality and quantity in this area "</p> <p>Bexar Ranch, L.P. further requests application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence "may be admitted if the evidence is: (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. See TEX. GOV'T CODE ANN. § 2001.081 (Vernon 2000).</p> |
| <p>Mark Turnbough, page 12/13, lines 14-16 "It should be noted ...segments."</p> | <ul style="list-style-type: none"> - Not rebuttal testimony - Conclusory - No foundation - Relevance | <p>In this section of his rebuttal testimony, Dr. Turnbough is rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1. Dr. Turnbough does so by referring to "essential criteria in the Power EA." (Page 10:1). The Power EA has been amended to include Routes AA-1 and AA-2, which are routes that contain many of</p> |

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| | | <p>the same segments as Route Z-1. Dr. Turnbough's rebuttal testimony makes the point that if Z-1, AA-1 and AA-2 are "generally comparable," which is shown on the EA to be true, then Routes AA-1 and AA-2 would also be better candidates than Routes W or R-1 for the same reasons. This statement is not conclusory as it refers to the EA for its basis. It serves to rebut the testimony that advocates for routes that do not parallel a public road for substantial portions and it is relevant to the overall routing decision that is the basis for these proceedings. Furthermore, Jauer/BVJ may cross examine Dr. Turnbough on the comparability of Routes AA-1 and AA-2 vis-à-vis any of the Routes included in the Application.</p> |
| <p>Mark Turnbough, page 13/14, lines 9-13 "With respect to ... 280 feet."</p> | <ul style="list-style-type: none"> - Lack of personal knowledge - Speculation - No foundation | <p>Jauer's complaint is that Dr. Turnbough did not cite the source of his information with respect to measurements taken from the centerline of Route Z-1. These measurements are taken from CPS Energy's Responses to Commission Staff's First Requests for Information No. 1-2 (Document No. 379) and CPS Energy's Response to Patrick Cleveland's First Request for Information No. 1-10 (Document No. 432) both of which were filed by Applicant CPS Energy under oath. Accordingly, Jauer/BVJ may cross examine Dr. Turnbough on these measurements. However, because he is an expert, Dr. Turnbough may rely on the work performed by others, including CPS Energy and its contractors. In this instance, it is reasonable to rely on CPS Energy's measurements because CPS Energy is sponsoring other similar measurements.</p> <p>Dr. Turnbough will be providing an errata to his rebuttal testimony clarifying the source of these measurements.</p> |
| <p>Mark Turnbough, page 13/14, line 19 to page 14/15, line 13 "By way of comparison ... depiction of each elementary school."</p> | <ul style="list-style-type: none"> - Relevance - Foundation - Speculation | <p>Several intervenors, including Mark Anderson on behalf of Anaqua HOA, take issue with a transmission line being routed "close to a school." The arguments run from issues of EMF to attractive nuisance to wholesale rejection of being anywhere "close to the school." It is undisputed that Route Z-1 does not cross Northside Independent School District's property in the study area. Here, Mark Anderson on behalf of Anaqua HOA unequivocally rules out being "close to a school." Therefore, Dr. Turnbough's evidence rebuts these</p> |

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| | | <p>arguments. Therefore, his testimony and exhibits of NISD elementary schools in the vicinity of transmission lines are relevant to show that NISD can operate safely with transmission lines “close” to its schools.</p> <p>Jauer/BVJ objects to testimony and photographs of electric transmission lines located on or near several Northside Independent School District elementary schools’ properties.</p> <p>Dr. Turnbough states, “By way of comparison, I looked at locations of other schools within the Northside Independent School District (NISD) using the NISD website and selected Google Earth images. See Exhibit Rebuttal MT-1 for photographs and maps for each of the schools referenced below. For each school shown, there is an aerial photograph, a ground level photograph, and a map showing the location of the school in a given neighborhood. The schools I looked at include Jerry D. Allen Elementary, Braun Station Elementary, R.R. Cable Elementary, Jimmy Elrod Elementary, Galm Elementary, Hatchett Elementary, Mary Hull Elementary, and Raba Elementary. Inspection of the aerial and ground photography for each school listed indicates that there is placement of electric transmission lines near each of the school properties at distances comparable to the distance of proposed Route Z-1 to McAndrew Elementary. In one case, R.R. Cable Elementary, there are not only multiple electric transmission lines in relative proximity to the school property, there is also a substation. Five of the schools listed also have local distribution lines located on school property. The point worth emphasizing with regard to Mr. Anderson’s commentary about the relative proximity of proposed Route Z-1 to McAndrew Elementary is that the proposed alignment of Route Z-1 seems to follow that of several schools within the NISD. Exhibit Rebuttal MT-1 is a true and accurate depiction of each elementary school.”</p> <p>Thus, Dr. Turnbough not only responds to and rebuts Mr. Anderson’s testimony, he provides the foundation for his conclusion that Route Z-1’s alignment appears to</p> |
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| | | <p>follow that of several schools within the NISD. The photographs provided are stated to be true and accurate depiction of each elementary school referenced. An examination of the photographs show that it is reasonable to conclude that the transmission lines are in very close proximity to the elementary schools. It is also relevant to show that NISD safely operates several schools with transmission lines that are "close to the school"</p> <p>However, Jauer/BVJ contends, without reference to any statute or rule, that the foundation that Dr. Turnbough should have laid would be to show that each NISD school was outside the corporate limits of San Antonio and thus subject to the PUC's routing criteria. However, there is no routing criteria that singles out schools or gives them preference. Moreover, there is no routing criteria that gives properties adjacent to school-owned properties any preference</p> |
| Exhibit Rebuttal MT-1 | <ul style="list-style-type: none"> - Hearsay - Relevance - No foundation - Speculation | <p>Several intervenors, including Mark Anderson on behalf of Anaqua HOA, take issue with a transmission line being routed "close to a school." The arguments run from issues of EMF to attractive nuisance to wholesale rejection of being anywhere "close to the school." It is undisputed that Route Z-1 does not cross Northside Independent School District's property in the study area. Here, Mark Anderson on behalf of Anaqua HOA unequivocally rules out being "close to a school." Therefore, Dr. Turnbough's evidence rebuts these arguments. Therefore, his testimony and exhibits of NISD elementary schools in the vicinity of transmission lines are relevant to show that NISD can operate safely with transmission lines "close" to its schools</p> <p>Jauer/BVJ objects to testimony and photographs of electric transmission lines located on or near several Northside Independent School District elementary schools' properties.</p> <p>Dr. Turnbough states, "By way of comparison, I looked at locations of other schools within the Northside Independent School District (NISD) using the NISD website and selected Google Earth</p> |

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| | | <p>and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. See TEX. GOV'T CODE ANN § 2001.081 (Vernon 2000). Furthermore, Dr. Turnbough is an expert and may rely on hearsay, although such allegation of hearsay is denied here.</p> <p>An examination of the photographs show that it is reasonable to conclude that the transmission lines are in very close proximity to the elementary schools. It is also relevant to show that NISD safely operates several schools with transmission lines that are "close to the school."</p> <p>However, Jauer/BVJ contends, without reference to any statute or rule, that the foundation that Dr. Turnbough should have laid would be to show that each NISD school was outside the corporate limits of San Antonio and thus subject to the PUC's routing criteria. However, there is no routing criteria that singles out schools or gives them preference. Moreover, there is no routing criteria that gives properties adjacent to school-owned properties any preference.</p> |
| <p>Mark Turnbough, page 14/15, line 14 to page 15/16, line 4 "The third issue . . . structures."</p> | <ul style="list-style-type: none"> - Improper expert testimony - No foundation - Speculation | <p>Jauer/BVJ contends that Dr. Turnbough's criticism of Dr. Anderson's analysis of Substation 7 should be struck because Dr. Turnbough does not have experience in "substation siting and construction." Jauer/BVJ overstates Dr. Turnbough's testimony and understates Dr. Turnbough's experience.</p> <p>However, Dr. Turnbough has extensive experience in site suitability as shown by his resume that is attached to his Direct Testimony and as stated in his testimony.</p> <p>In particular, on page 3 and 6 of Dr. Turnbough's testimony states, "A significant amount of my work deals with site suitability analysis and regulatory permitting. Most of that work is related to land use analysis, facility permitting and compliance, environmental assessment, statistical analysis, regulatory impact assessment, policy analysis, water resource protection, and multi-disciplinary project management. . . . I continue to be very active in site selection, site suitability</p> |

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| | | <p>analysis and related land use analyses for complex non-linear siting efforts.”</p> <p>If cross-examined, Dr. Turnbough can explain that non-linear siting efforts include site suitability analyses, including for such complex items as nuclear reactors.</p> <p>His testimony continues, “For example, in 2006 I was selected by the French nuclear power company AREVA and the Washington Group International (now known as AECOM URS) to manage the characterization of and selection of a site for the U.S. Department of Energy’s Global Nuclear Energy Partnership (GNEP) that would be suitable for a Consolidated Interim Storage Facility for High Level Radioactive Waste, a Spent Fuel Reprocessing Facility and a Next Generation Nuclear Reactor. A suitable “greenfield” site was selected and fully characterized for the GNEP in southeastern New Mexico. It received the highest level of DOE funding for any of the alternatives under consideration.”</p> <p>All of the following projects included below, and noted in Dr. Turnbough’s resume, included an assessment of the suitability of property for an electrical substation. Substations are not mentioned explicitly in any of the entries because they are not the primary focus of the project, although they are a necessary component.</p> <p>For example, from 2002-2009, Dr. Turnbough was retained as a consultant to the LES/URENCO National Enrichment Facility (NEF), where he provided specialized regulatory consulting for the acquisition of environmental permits from the state of New Mexico (January 2002-July 2009). Dr. Turnbough worked with EXCEL Energy to coordinate placement of the electrical substation for the power supply for this uranium enrichment facility.</p> <p>He was also an environmental consultant who conducted site suitability assessments for the Lea County Economic Development Corporation in New Mexico from October 2010-March 2011.</p> <p>He was a site suitability consultant for Lea County, New Mexico for its Nuclear Facility</p> |
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| | | <p>Sites in Hobbs, New Mexico from August 2007 to January 2015.</p> <p>He conducted a "Site Suitability Study for Superconducting Magnetic Energy Storage System - ETM", Prepared for El Paso Electric Company, El Paso, Texas, 1988. He prepared "Southern New Mexico Superconducting Super Collider Site Proposal", DOE Submission, September 1987 He prepared "Far West Texas (Hudspeth County), Superconducting Super Collider Site Proposal", DOE Submission, September, 1987.</p> <p>He prepared the "Preliminary Feasibility Report on Land Use Alternatives - ASARCO El Paso Property", Prepared for Nebyn Peterson & Associates, Houston, Texas, 1986.</p> <p>He prepared the "Comprehensive Evaluation of Infrastructure: Sunland Park/Santa Teresa, New Mexico", Prepared for Santa Teresa Associates, Santa Teresa, New Mexico, 1986. He prepared the "Land Use Assessment for Proposed Comanche Peak Nuclear Power Plant Transmission Lines", Prepared for Texas Power & Light, EH & A Document, 1985.</p> <p>He prepared "Exhibit E, Land Management, Economic and Recreation Resources", prepared for Brazos River Authority, Morris Sheppard Hydroelectric Dam F.E.R.C Permit, EH & A Document, August, 1984. He prepared "Environmental Update, South Texas Project (Nuclear Power Plant) (31,400 square miles)", Prepared for Houston Light & Power, EH & A Document, 1984.</p> <p>Thus, Jauer/BVJ may cross examine Dr. Turnbough on this experience</p> <p>Dr. Turnbough's experience also extends to preliminary grading and drainage analysis. Thus, Jauer/BVJ may cross examine Dr. Turnbough on this experience.</p> <p>Dr Turnbough's experience qualifies him to state that "normal grading and drainage management practices" can address Mr Anderson's concerns regarding the grade of Substation Site 7.</p> |
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| | | <p>Mr. Anderson is advocating for use of a 5-acre site, while Substation 7 is a larger tract, at 7.2 acres. Dr. Turnbough testified in his direct and rebuttal testimony that he is relying on CPS Energy's Application and its EA. Dr. Turnbough's testimony accurately describes the Substation 7 site property. Dr. Turnbough relays CPS Energy's position that the inspection of the layout for a typical substation indicates that the substation could be built on Substation site 7 on a location on this property that is set back from the road and screened by trees.</p> <p>This depiction is evident from CPS Energy's maps and its application where it states Route Z-1 "[u]tilizes Substation Site 7, which will allow for greater shielding of the substation from public roadways." With respect to Dr. Turnbough commenting that "normal grading and drainage management practices" can be utilized to address any gradient concerns reiterates Section 14 of the EA ("Construction Considerations").</p> <p>The "substation layout" referenced and relied upon is also included on Figure 1-6 of the EA</p> <p>In summary, Dr. Turnbough is an expert and his qualifications with respect to these issues can be addressed on cross examination.</p> |
| <p>Mark Turnbough, page 17/18, lines 8-9 "It is apparent ... neighborhood."</p> | <ul style="list-style-type: none"> - Lack of personal knowledge - Speculation - No foundation | <p>The area along Toutant Beauregard Road is characterized by several subdivisions in varying levels of completion. Dr. Turnbough's statement relates specifically to the fact that the 7.2 acre property identified as Substation Site 7 has not been developed into a residential subdivision although it is large enough to accommodate multiple ½ acre homesites. His statement speaks to his opinion that the site has not been an attractive option for this purpose. The foundation for this statement is based on review of CPS Application, EA and mapping that shows the non-development of this tract for a residential subdivision. There is no speculation that there has been no development of the tract as a residential subdivision. Jauer/BVJ can cross examine Dr. Turbough on this statement.</p> |

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| <p>Mark Turnbough, page 18/19, line 9-10 "Typically .. along the route."</p> | <p>- Not rebuttal testimony</p> | <p>This testimony relates to historical marker designations. Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc. discusses a particular historical marker in his direct testimony. On page 5, lines 32-34 of his testimony, Jason Buntz states, "Although the OTHM is strategically located at a publicly accessible point in the intersection of the three roadways that make up the historic travel corridor, the marker is not the historic resource."</p> <p>Dr. Turnbough states "Typically, these designations by the Legislature are memorialized by the placement of historical markers in accessible locations along the route." This testimony is in response to and agrees with the testimony of Jason Buntz with respect to locations of historical markers.</p> <p>Like Mr. Buntz, Dr Turnbough has extensive experience in preparing and reviewing environmental impact statements. It is not uncommon, especially in Texas, to see references to historical markers in these environmental impact statements, and the vast majority, if not all, of these markers, in Dr Turnbough's experience, are located along roads where they are accessible to the public. Jauer/BVJ is able to cross examine Dr. Turnbough regarding his experience with respect to the placement of historical markers in accessible locations</p> <p>Jauer/BVJ can also cross examine Dr. Turnbough regarding his knowledge regarding the process by which such designation is obtained and he can explain how this is achieved by the Texas Historical Commission carrying out the Texas Legislature's intent.</p> |
| <p>Mark Turnbough, page 19/20, line 7 – page 20/21, line 4 "Route R-1 .. placement."</p> | <p>- Not rebuttal testimony</p> | <p>Dr. Turnbough's rebuttal testimony is framed in the context of responding to and rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1.</p> <p>Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc. discusses in his testimony the basis for which he supports Route R-1. Buntz states his concerns regarding siting the transmission line adjacent to historical property due to the "visual effect" the line</p> |

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| | | <p>would have that “would also alter the rural character” of that property.</p> <p>The testimony that Jauer/BVJ objects to describes the “visual effect” that Route R-1 would have on Bexar Ranch and Bexar Ranch’s historical significance. Dr. Turnbough discusses the path of Segment 43 and how its bisecting nature without comparable or compatible right of way or natural/cultural features. Then, Dr. Turnbough addresses that Bexar Ranch is also adjacent to a designated historic district, namely the White Ranch. In further rebuttal, Dr. Turnbough addresses that Bexar Ranch and White Ranch “used to be part of the same ranch” adding “It is difficult to imagine that the historic significance of White Ranch stops at the contiguous east/west boundary of the White and Bexar Ranches.”</p> <p>This testimony is in direct rebuttal to Buntz’s contention that Heidemann Ranch is worthy of protection, making note that it may be more detrimental to Bexar Ranch insofar as the visual impact would be far worse given the bisecting nature of Segment 43 on Bexar Ranch.</p> <p>Thus, BVJ/Bauer is incorrect that this testimony is not proper rebuttal testimony. It is offered to rebut Buntz’s arguments as the relate to visual impact and historical impacts.</p> |
| <p>Michael Bitter, page 5, lines 1-10</p> | <ul style="list-style-type: none"> - Supplemental direct - Improper expert testimony - Lack of foundation - hearsay | <p>This testimony is proper rebuttal testimony and not an attempt to supplement the record except for purposes of rebuttal.</p> <p>This testimony addresses the contention of several intervenors (i.e., Brad Jauer, Steve Cichowski on behalf of Anaqua HOA, and Patrick Cleveland), as asserted in their direct testimony, that their properties have certain plant life that is conducive to golden-cheeked warbler habitat and Anaqua HOA’s ultimate contention that Route W is allegedly a better route than Route Z-1 due to the “2010 Diamond Report’s” modeling of potential warbler habitat. Michael Bitter’s testimony rebuts the contention that Route W, which includes Segment 44 on Bexar Ranch, is superior in this regard because (1) the 2010 Diamond Report has not been appropriately updated for undeveloped</p> |

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| | | <p>tracts like Bexar Ranch; and (2) because there is an actual survey (the "2008 CPS Golden Cheeked Warbler Study") that confirms, rather than models, the actual existence of golden-cheeked warbler on Bexar Ranch, thereby rebutting the contention that Route W is a better choice on this factor. Moreover, because the 2010 Diamond Report is admittedly not updated to account for undeveloped properties, and this deficiency was not addressed in direct testimony by any movants, rebuttal testimony on this deficiency is warranted so as to properly rebut the allegation in direct testimony that Route W is a more appropriate route due to alleged golden-cheek warbler habitat.</p> <p>Mr. Bitter's testimony and his rebuttal testimony establish he is a caretaker of Bexar Ranch and that he has extensive experience with Bexar Ranch. Thus, he has laid the proper foundation to state he knows about the alterations of vegetation on Bexar Ranch over the past 10 years and the fact that it is easier to travel on Bexar Ranch's "two-track" roads by horseback or foot than by vehicle due to vegetation growth. He recites his personal knowledge that since 2010 "the vegetation on Bexar Ranch has "proliferated and become denser." He provided three pictures of different parts of Bexar Ranch, each relating to one of the three segments, showing the density of vegetation. Under oath Mr. Bitter stated these photographs are true and accurate depictions of the ranch at areas of Segments 43, 44 and 45. Mr. Bitter attached Exhibit MB-1A Rebuttal to his testimony, stating under oath that it is a true and correct copy of the 2008 CPS Golden Cheeked Warbler Study that confirms his belief that Bexar Ranch has significant confirmed warbler sightings. The 2008 CPS Golden Cheeked Warbler Study is a document prepared by PBS&J for CPS Energy and is directly responsive to testimony about warbler importance as it relates to route selection. CPS Energy is a party to these proceedings and thus this is an admission of party opponent, making it an exception to the rule on hearsay. PBS&J is a predecessor of sorts of POWER Engineer who prepared the EA in these proceedings.</p> |
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| | | <p>Bexar Ranch, L.P. further requests application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence “may be admitted if the evidence is: (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person’s affairs. See TEX. GOV’T CODE ANN § 2001.081 (Vernon 2000). Furthermore, Mr. Bitter is not purporting to be an expert in warbler habitat, but as many of the intervenors confirm, it does not take an expert to know that cedar and juniper are commonly considered to be warbler habitat. Ultimately, Mr. Bitter is testifying to his personal knowledge and beliefs as the relate to his extensive experience on Bexar Ranch over many years.</p> |
| <p>Michael Bitter, Exhibit MB-1A Rebuttal “2008 CPS Golden Cheek Warbler Study Habitat”</p> | <ul style="list-style-type: none"> - hearsay - supplemental direct | <p>The 2008 CPS Golden Cheek Warbler Study is an admission of party opponent and thus an exception to the hearsay rule. It is offered to rebut the allegations that reliance on the 2010 Diamond Report, which only uses modeling instead of actual surveys like the 2008 CPS Golden Cheek Warbler Study, is sufficient to support selection of Route W as the best meets route. Until Route W, one of the costliest routes in CPS Energy’s array of routes, was suggested, there would have been no need to rebut allegations of its preferability on this basis. To the extent the 2008 CPS Golden Cheeked Warbler Study is not an admission of party opponent, it offered not for its truth but to support why Mr. Bitter believes that Bexar Ranch has confirmed warbler sightings Bexar Ranch, L.P. further requests, to the extent necessary, application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence “may be admitted if the evidence is: (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person’s affairs. See TEX. GOV’T CODE ANN. § 2001 081 (Vernon 2000).</p> |

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| <p>Michael Bitter, Exhibit MB-2A Rebuttal, Exhibit MB-3A Rebuttal, Exhibit MB-4A Rebuttal</p> <p>(combined entries)</p> | <ul style="list-style-type: none"> - no foundation - hearsay - supplemental direct | <p>These three exhibits (actually named "MB-2 Rebuttal, MB-3 Rebuttal, and MB-4 Rebuttal) are three photographs of Bexar Ranch, taken at Segments 43, 44 and 45. Under oath, Mr. Bitter, who is familiar with Bexar Ranch, states that these are true and accurate depictions of the density of cedar and related cover on Bexar Ranch in the areas of Segments 43, 44 and 45. They are not hearsay simply because they are photographs Bexar Ranch, L.P. further requests, to the extent necessary, application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence "may be admitted if the evidence is (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. See TEX. GOV'T CODE ANN. § 2001.081 (Vernon 2000). The photographs are offered to rebut the testimony of Brad Jauer, Steve Cichowski on behalf of Anaqua HOA, and Patrick Cleveland that their properties have certain plant life that is conducive to golden-cheeked warbler habitat and Anaqua HOA's ultimate contention that Route W is allegedly a better route than Route Z-1 due to the "2010 Diamond Report's" modeling of potential warbler habitat. Michael Bitter's testimony rebuts the contention that Route W, which includes Segment 44 on Bexar Ranch, is superior in this regard because (1) the 2010 Diamond Report has not been appropriately updated for undeveloped tracts like Bexar Ranch; and (2) because there is an actual survey (the "2008 CPS Golden Cheeked Warbler Study") that confirms, rather than models, the actual existence of golden-cheeked warbler on Bexar Ranch, thereby rebutting the contention that Route W is a better choice on this factor. Moreover, because the 2010 Diamond Report is admittedly not updated to account for undeveloped properties, and this deficiency was not addressed in direct testimony by any movants, rebuttal testimony on this deficiency is warranted so as to properly rebut the allegation in direct testimony that Route W is a more</p> |
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| <p>Michael Bitter, page 7, lines 4-17 "... Bexar Ranch, led by my father . . . conservation easement . . . business records" Exhibit MB-5 Rebuttal</p> | <p>- supplemental direct</p> | <p>appropriate route due to alleged golden-cheek warbler habitat.</p> <p>Keeping Bexar Ranch in its most natural state is relevant to rebut the direct testimony of Anaqua HOA that Route W is allegedly a better route than Route Z-1 due to the "2010 Diamond Report's" modeling of potential warbler habitat. Michael Bitter's testimony rebuts the contention that Route W, which includes Segment 44 on Bexar Ranch, is superior in this regard because the 2010 Diamond Report has not been appropriately updated for undeveloped tracts like Bexar Ranch.</p> <p>The testimony that BVJ/Jauer objects to relates to the Bitter Family's efforts to place Bexar Ranch in a conservation easement and qualities that have made it an attractive property for conservation – namely its undeveloped state. Jauer/BVJ does not explain why the business records exception does not apply to Bexar Ranch. There is no exception to the business records for ranch properties or for PUC proceedings for example. Here, Mr. Bitter, has specifically proven up the records using the language of Tex. R. Evid. 803, and did so under oath. The fact that there are multiple agencies corresponding in these records is precisely why the business records exception to the rule on hearsay is applicable here. Bexar Ranch, L.P. further requests, to the extent necessary, application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence "may be admitted if the evidence is: (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. See TEX. GOV'T CODE ANN. § 2001.081 (Vernon 2000). These are records that Bexar Ranch relies on in its affairs, in particular, in its efforts to place Bexar Ranch in a conservation easement.</p> |
| <p>Michael Bitter, page 12, lines 1-18.</p> | <p>- Improper expert testimony - No foundation - Speculation - Legal conclusion</p> | <p>Jauer/BVJ objects to testimony by Mr. Bitter regarding Toutant Beauregard Road being a favorable routing factor, and the fact that distribution lines are "electric facilities." The testimony is in response to Mr. Bitter pointing out that Anaqua HOA</p> |

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| | | <p>provided a photograph of its entrance that hid the distribution lines. Mr. Bitter tied this together to state that by routing along a road, or here along both a road and existing distribution lines (aka "facilities"), the impact of Route Z-1 could be moderated.</p> <p>While Mr. Bitter is an attorney, this is not the basis on which he reads Rule 16 TAC 25.101(B)(3)(b) to state that distribution lines are electric facilities. Section 25 sets forth routing factors that are relevant to the routing analysis. 16 TAC 25.101(B)(3)(b)(i) looks at whether the routes parallel or utilize existing compatible rights-of-way for <u>electric facilities</u>, including the use of vacant positions on existing multiple-circuit <u>transmission lines</u>." Thus, Mr. Bitter is only stating that distribution lines are also a form of electric facility This is supported by the plain text of Section 25 that refers to both "distribution facilities" and "transmission facilities" throughout, depending on the context, and more importantly, the wording in this provision that shows that "electric facilities" (plural) is not the exact same thing as "transmission lines." Moreover, 16 TAC 25.101(B)(3)(b)(ii) clearly speaks to "roads." The language in Section 25 is not complex. Mr. Bitter does not need to be an expert to read and interpret it, and lay intervenors are regularly expected to be able to interpret this plain language in order to participate in PUC CCN routing cases.</p> |
| <p>Michael Bitter, page 12, line 22 "In contrast ... " through page 13, line 5.</p> | <p>- attempt to supplement the record</p> | <p>Jauer/BVJ testified to the impact of Segment 36 on its property in terms of the number of "football fields."</p> <p>The testimony that Jauer/BVJ now objects to is Bexar Ranch's corresponding measurements using Bauer/BJV's standard of measurement.</p> <p>Bexar Ranch's testimony is necessary to put into context Mr. Jauer's original testimony and to respond that while Mr Jauer complains of 2 ¼ football fields of length of electric transmission line on his property, his recommendation would place anywhere from 35 to 46 football fields of length of electric transmission line on Bexar Ranch. Bexar Ranch also responded to address that the Jauer/BVJ impact would be on its boundary, rather</p> |

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| | | than as a full or partial bisect as on Bexar Ranch. |
| Michael Bitter, page 14, line 19 to page 15, line 2 | - argumentative | This testimony summarizes Mr. Bitter's <u>rebuttal</u> testimony, in part. Mr. Bitter explains that he disagrees with selecting routes that bisect undeveloped properties that are under consideration to enter the City of San Antonio's Aquifer Protection Program and that have significant confirmed golden-cheeked warbler habitat. This rebuts testimony that suggest Routes P or R-1 over Route Z-1. Jauer/BVJ can cross examine Mr. Bitter on the basis of his contention that Routes P and R-1 are not preferable over Route Z-1 |
| Michael Bitter, page 17, lines 1-12, and Page 19, lines 4-10 | - speculation - no foundation | Mr Bitter's testimony refers to photographs of the entrance to Tower 501, one of two communication towers in the study area. Mr. Bitter is directly responding to the testimony of Carl G. Huber on behalf of Jauer/BVJ where Mr. Huber states his concerns with the difficulty of entering the site from Toutant Beauregard Road. The photographs, to which no objection is asserted, show that the service road to Tower 501 is already crossed by CPS Energy's electric distribution lines – and Mr. Bitter notes that Mr. Huber's photographs do not show these distribution lines. Mr. Bitter's testimony rebuts the contention that transmission lines will not worsen the situation on Segment 36. While it is now unclear what Jauer/BVJ's concerns were given the phrasing of the motion vis-à-vis the testimony of Mr. Huber, it should be noted that Mr. Bitter also states that he "could be wrong" but it may be that the new electric transmission line misses the service road altogether. However, Mr. Bitter's testimony does not go so far as to speculate that Segment 36 will absolutely cross Jauer/BVJ's property at any particular point (i.e., before or after the service road), it simply states that if it does cross the service road, it is unclear how that would make use of the service road or entry into the site any more difficult given the existing distribution line that already has to be navigated by Mr. Huber's company. To the extent Jauer/BVJ wants to confirm Mr. Bitter's understanding of Mr. Huber's testimony, this can be done on cross examination. |

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| <p>Michael Bitter, page 23, line 5 "The following . . . through page 25, line 7</p> | <ul style="list-style-type: none"> - Improper expert testimony - Speculation | <p>Mr. Bitter is responding to the testimony of Steve Cichowski regarding Mr. Cichowski's concerns regarding use of Substation 7. Mr Bitter's testimony directly rebuts the basis for Mr. Cichowski advocating for a route that uses Substation 6 by comparing the two substation sites (6 and 7) in terms of their available natural coverage, by providing photographs that Mr. Bitter states under oath are true and accurate depictions of each substation site, and by referring to the language in CPS Application and discovery responses that speaks to CPS Energy's original reason for selecting Substation 7 - for example, its its size, shape, and natural vegetation that provides visual shielding.</p> <p>In this context, Mr. Bitter provides two photographs of Substation 7 and states that the row of trees shown "could" provide the shielding from the road that CPS describes. This testimony is his lay opinion based on his personal observation and the photographs. Mr. Bitter is not testifying as to how to preserve trees, which trees to preserve, or about tree preservation generally. Thus he is not being offered as an expert on tree preservation. Mr. Bitter also provides a photograph of Substation 6, which is obviously less treed and indisputably smaller than Substation 7. Mr. Bitter does not need to be a substation engineer to comment on the space, shape, and natural foliage characteristics of each site in order to comment that in his lay opinion based on these personal observations, it appears Substation 6 does not have the same visual shielding opportunities as does Substation 7. Mr. Bitter is not purporting to be a substation expert or a tree preservation expert. He is simply using personal observations to rebut Mr Cichowski's testimony.</p> |
| <p>Michael Bitter, page 26, lines 3-5, 6-13, line 15 to page 27, line 4</p> <p>(combined response)</p> | <ul style="list-style-type: none"> - Speculation - No foundation - Relevance | <p>Mr. Bitter provides testimony to rebut Mr. Cichowski's testimony on behalf of Anaqua HOA, who states that Segment 42a, which does not run on the school's property, would be problematic because "children would likely be tempted to explore the transmission line towers." Mr. Bitter then states that Mr. Cichowski fails to give credit to NISD that it (NISD) is well equipped to handle electric transmission line easements on or near their schools. This testimony is offered to rebut the contention</p> |

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| | | <p>that electric lines here will be a problem for the school, but not a problem for the residents (which includes children) of subdivisions that would be crossed by Route W or Route R-1.</p> <p>Mr. Bitter testifies, "Ultimately, however, Mr. Cichowski fails to give Northside Independent School District ("NISD") credit that, as a very large, 6A school district in Texas, NISD is likely very well equipped to handle electric transmission line easements on or near their schools. For example, Jerry D. Allen Elementary School, Braun Station Elementary School, R.R. Cable Elementary School, Jimmy Elrod Elementary School, Galm Elementary School, Hatchett Elementary School, Mary Hull Elementary School and Raba Elementary School are all located in very close proximity to electric transmission lines of varying styles. R.R. Cable Elementary School is located next door to a substation. This information is easily verified using NISD's website or visiting the school in person. True and accurate photographs of these schools, as well as photographs of the elementary school in the study area, are attached as exhibits to my testimony. Under Mr. Cichowski's logic, NISD has placed many students in danger. However, I think the truth lies elsewhere. It is my opinion that NISD knows very well how to safely operate a school in the vicinity of an electric transmission line – otherwise, one would question how it could operate the schools listed in my testimony. Here, CPS Energy's transmission line would be on an entirely different property, and it would be relatively hard for the students to get to it, in my opinion. It may be that the two large drainage ditches are more "tempting" to explore – they are certainly closer to the school – actually on the school property – so they are more accessible. So, I believe Mr. Cichowski's concerns are unwarranted. Moreover, to the extent they are warranted, how would routing the powerline into neighborhoods like Canyons, Clear Water Ranch, or Altair, where children and families live 24-7 be a safer and better choice? If anything, Segment 42a complies with many of the Northside ISD's concerns, including not running the powerline in the front of the</p> |
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| | | <p>school or where it would impact vacant land reserved for a future middle school.”</p> <p>This testimony is relevant to the arguments that Mr. Cichowski makes to protect the school but not the children that live in subdivisions like the Canyons, Clear Water Ranch or Altair. This testimony is relevant to whether students' safety is somehow compromised here but not at the NISD elementary schools that currently have electric transmission lines on or near their property as shown by the photographs.</p> <p>Mr. Bitter provides a foundation for the photographs he includes in his testimony by stating the presence of the electric transmission lines shown in the photographs and discussed in his testimony which can be easily verified by going to the named schools in person or visiting NISD's website</p> <p>In rebutting Mr. Cichowski's speculation that the power lines are dangerous to only the students at the elementary school but not the children in the subdivisions, Mr. Bitter states his lay opinion that he believes that Mr. Cichowski's concerns are unwarranted and that Segment 42a seems to comply with many of NISD's concerns. Mr. Bitter states "It is my opinion that NISD knows very well how to safely operate a school in the vicinity of an electric transmission line – otherwise, one would question how it could operate the schools listed in my testimony." This opinion is Mr. Bitter's lay opinion, based on his personal knowledge, and it is rationally based on the fact that there are several elementary schools that are open for business in NISD despite having electric transmission lines on the same property or nearby the property. In this context it is not speculation.</p> <p>Finally, Jauer/BVJ contends, without reference to any statute or rule, that the foundation that Mr. Bitter should have shown whether each NISD school was outside the corporate limits of San Antonio and thus subject to the PUC's routing criteria. However, there is no routing criteria that singles out schools or gives them preference. Moreover, there is no routing criteria that gives properties</p> |
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| | | <p>adjacent to school-owned properties any preference either. Furthermore, the issue is Mr. Cichowski's contention that the powerline is only dangerous to children at this particular school, but not otherwise.</p> <p>Ultimately, this testimony is relevant to rebut the testimony of Mr. Cichowski on behalf of Anaqua HOA regarding transmission lines "near" schools being problematic or dangerous. Mr. Bitter's testimony squarely rebuts this.</p> |
| <p>Michael Bitter, Exhibit MB-18 Rebuttal (all pages)</p> | <ul style="list-style-type: none"> - Relevance - No foundation | <p>Mr. Bitter provides several photographs of NISD schools near electric transmission lines</p> <p>These photographs are relevant to rebut the testimony of Mr. Cichowski on behalf of Anaqua HOA regarding transmission lines "near" schools being problematic or dangerous. Mr. Bitter's testimony squarely rebuts this.</p> <p>The photographs are of the following NISD elementary schools:</p> <ul style="list-style-type: none"> - Jerry D. Allen Elementary School, - Braun Station Elementary School, - R.R. Cable Elementary School, - Jimmy Elrod Elementary School, - Galm Elementary School, - Hatchett Elementary School, - Mary Hull Elementary School and - Raba Elementary School. <p>Mr. Bitter lays a foundation for his testimony as shown in the preceding response and provides a foundation for the photographs and how to verify them. He states, "This information is easily verified using NISD's website or visiting the school in person."</p> <p>Mr. Bitter proves up the photographs by stating under oath that, "True and accurate photographs of these schools, as well as photographs of the elementary school in the study area, are attached as exhibits to my testimony." Accordingly, they are not hearsay. Bexar Ranch, L.P. further requests, to the extent necessary, application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence "may</p> |

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| | | be admitted if the evidence is: (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. See TEX. GOV'T CODE ANN. § 2001.081 (Vernon 2000). |
| Sarah Bitter, page 5, line 13-15 ("Based on ... Toutant Beauregard Road.") | - speculation | Ms Bitter's testimony is based on her reading of Mr Buntz's testimony. Mr. Buntz specifically describes the Rose Palace as "a destination venue for horse shows, roping competitions, cattle auctions, and rodeos" has a "100,000 square foot equestrian center" and "seating for 4,500 spectators." It is for this reason that Ms. Bitter states, "Based on other testimony by Mr Buntz regarding the Rose Palace, I do not believe he will dispute that the Rose Palace is a busy commercial establishment located on Toutant Beauregard Road." First, this statement is not speculation – as worded, it states what Sarah Bitter believes based on reading Mr Buntz's testimony. This is her belief. Second, even if it is speculation, which is denied, it is rationally based on Ms. Bitter's reading of the testimony of Mr. Buntz. Ultimately, Jauer/BVJ may cross examine Ms. Bitter on her belief. |
| Sarah Bitter, page 6 line 16 through page 10 line 16 | - improper supplemental direct | Ms. Bitter's rebuttal testimony is framed in the context of responding to and rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1 Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc discusses in his testimony the basis for which he supports Route R-1. Buntz states his concerns regarding siting the transmission line adjacent to historical property due to the "visual effect" the line would have that "would also alter the rural character" of that property. He does so in the context of referring to adjacent properties. Notably, Rose Palace and Strait Promotions' properties are not adjacent to Heidemann Ranch. Mr. Buntz specifically identifies Heidemann Ranch and White Ranch as having historical significance Mr Buntz also states that the historical significance of the White Ranch has been overstated by CPS Energy. |

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| | | <p>The testimony that Jauer/BVJ objects to addresses that Bexar Ranch is also adjacent to a designated historic district, namely the White Ranch. Ms. Bitter describes the physical, familial, and historic connections between White Ranch and Bexar Ranch. She describes the connection between historic buildings on one side of the original 10,000 acres and historic settler homesteads on the other side of it. She references how time has relatively stood still on Bexar Ranch, thereby questioning how Buntz could state its historical import is overstated, and she references the bisecting nature of the east-to-west Segments 43, 44 and 45 and how that adverse impact was indeed understated by Buntz.</p> <p>In rebuttal to Buntz's contention, Sarah Bitter states that Bexar Ranch and White Ranch "used to be part of the same ranch," adding "It is difficult to imagine that the historic significance of White Ranch stops at the contiguous east/west boundary of the White and Bexar Ranches." This testimony is in direct rebuttal to Buntz's contention that Heidemann Ranch is worthy of protection. She explains that, with reference to Buntz's visual impact argument, it may be more detrimental to Bexar Ranch insofar as the visual impact would be far worse given the bisecting nature of Segments 43, 44 and 45 on Bexar Ranch.</p> <p>Ms. Bitter visually shows the connectivity between White Ranch, Bexar Ranch, and Segments 43, 44 and 45 using Buntz's own exhibit, adding green highlight to show the outline of Bexar Ranch.</p> <p>Thus, BVJ/Bauer is incorrect that this testimony is not proper rebuttal testimony. Ms. Bitter's testimony is offered to rebut Mr. Buntz's arguments as they relate to visual impacts, historical impacts, and the alleged overstatement by CPS Energy as to the historical significance of White Ranch. Moreover, it rebuts Mr. Buntz's ultimate conclusion that Route Z-1 should not be selected due to the historical import of the Heidemann Ranch, which is not crossed by Route Z-1. Finally, Ms. Bitter's testimony rebuts Mr. Buntz's contention</p> |
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| | | that his recommendation better preserves an area of historical import. |
| Movant: Anaqua Springs Homeowners' Association | | |
| Michael Bitter, page 5, line 1 to page 6, line 5 | <ul style="list-style-type: none"> - Attempt to supplement direct - Improper expert testimony | <p>Mr. Bitter's testimony is not offered as that of a scientist. He does, however, have extensive personal knowledge of Bexar Ranch, obtained over many years, including personal observations of the trees that grow on Bexar Ranch and the manner in which the property is preserved to remain "in its most natural state."</p> <p>This testimony is proper rebuttal testimony and not an attempt to supplement the record except for purposes of rebuttal. This testimony addresses the contention of several intervenors (i.e., Brad Jauer, Steve Cichowski on behalf of Anaqua HOA, and Patrick Cleveland), that their properties have certain plant life that is conducive to golden-cheeked warbler habitat and Anaqua HOA's ultimate contention that Route W is allegedly a better route than Route Z-1 due to the "2010 Diamond Report's" modeling of potential warbler habitat. Michael Bitter's testimony rebuts the contention that Route W, which includes Segment 44 on Bexar Ranch, is superior in this regard because (1) the 2010 Diamond Report has not been appropriately updated for undeveloped tracts like Bexar Ranch; and (2) because there is an actual survey (the "2008 CPS Golden Cheeked Warbler Study") that confirms, rather than models, the actual existence of golden-cheeked warbler on Bexar Ranch, thereby rebutting the contention that Route W is a better choice on this factor. Moreover, because the 2010 Diamond Report is admittedly not updated to account for undeveloped properties, and Anaqua Springs did not address this deficiency in its testimony, rebuttal testimony on this deficiency is warranted so as to properly rebut the allegation in direct testimony that Route W is a more appropriate route due to alleged golden-cheek warbler habitat.</p> |
| Michael Bitter, Exhibit MB-5 Rebuttal | - Hearsay | Testimony that speaks to keeping Bexar Ranch in its most natural state is relevant to rebut the direct testimony of Anaqua HOA that Route W is allegedly a better route than Route Z-1 due to the "2010 Diamond |

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| | | <p>Report's" modeling of potential warbler habitat. Michael Bitter's testimony rebuts the contention that Route W, which includes Segment 44 on Bexar Ranch, is superior in this regard because the 2010 Diamond Report has not been appropriately updated for undeveloped tracts like Bexar Ranch. Because Anaqua HOA did not address the deficiency in the Diamond Report in its direct testimony – namely that the report is not updated for undeveloped properties – it became necessary for Bexar Ranch to respond given Anaqua HOA's reliance on the report to advocate for Route W.</p> <p>The documents that Anaqua HOA objects to relate to the Bitter Family's efforts to place Bexar Ranch in a conservation easement and qualities that have made it an attractive property for same. Anaqua HOA does not explain why the business records exception does not apply to Bexar Ranch. There is no exception to the business records for ranch properties or for PUC proceedings for example. Here, Mr. Bitter, has specifically proven up the records using the language of Tex. R. Evid. 803, and did so under oath. The fact that there are multiple agencies corresponding in these records is precisely why the business records exception to the rule on hearsay is applicable here. Bexar Ranch, L.P. further requests, to the extent necessary, application of Section 2001.081 of the Texas Government Code, which allows that otherwise inadmissible evidence under the Texas Rules of Evidence "may be admitted if the evidence is: (1) necessary to ascertain facts not reasonably susceptible of proof under those rules; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. See TEX. GOV'T CODE ANN. § 2001.081 (Vernon 2000) These are records that Bexar Ranch relies on in its affairs, in particular, in its efforts to place Bexar Ranch in a conservation easement.</p> |
| Movant: Northside Independent School District | | |
| Michael Bitter, page 26, line 6-13 | <ul style="list-style-type: none"> - Speculation - Relevance - Photos not admissible under TRE 901 | Mr. Bitter is not submitting testimony as an expert However, he is providing information as a lay witness whose |

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| | <p>- Not an expert</p> | <p>opinions are rationally based on observation and personal experience.</p> <p>Here, Mr. Bitter is providing information regarding several elementary schools in the Northside ISD that have electric transmission lines on or near them.</p> <p>Mr Bitter provides testimony to rebut Mr. Cichowski's testimony on behalf of Anaqua HOA, who states that Segment 42a, which does not run on the school's property, would be problematic because "children would likely be tempted to explore the transmission line towers."</p> <p>Mr. Bitter then states that Mr. Cichowski fails to give credit to NISD that it (NISD) is well equipped to handle electric transmission line easements on or near their schools. This testimony is offered to rebut the contention that electric lines here will be a problem for the school, but not a problem for the residents (which includes children) of subdivisions that would be crossed by Route W or Route R-1.</p> <p>Mr Bitter states, "Ultimately, however, Mr. Cichowski fails to give Northside Independent School District ("NISD") credit that, as a very large, 6A school district in Texas, NISD is likely very well equipped to handle electric transmission line easements on or near their schools. For example, Jerry D Allen Elementary School, Braun Station Elementary School, R R Cable Elementary School, Jimmy Elrod Elementary School, Galm Elementary School, Hatchett Elementary School, Mary Hull Elementary School and Raba Elementary School are all located in very close proximity to electric transmission lines of varying styles R.R. Cable Elementary School is located next door to a substation. This information is easily verified using NISD's website or visiting the school in person. True and accurate photographs of these schools, as well as photographs of the elementary school in the study area, are attached as exhibits to my testimony.</p> <p>Mr. Bitter provides the photographs to argue that under Mr Cichowski's logic, NISD has placed many students in danger.</p> |
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| | | <p>This testimony is relevant to the arguments that Mr. Cichowski makes to protect the school but not the children that live in subdivisions like the Canyons, Clear Water Ranch or Altair. This testimony is relevant to whether students' safety is somehow compromised here but not at the NISD elementary schools that currently have electric transmission lines on or near their property as shown by the photographs.</p> <p>Mr. Bitter provides a foundation for the photographs he includes in his testimony by stating the presence of the electric transmission lines shown in the photographs and discussed in his testimony which can be easily verified by going to the named schools in person or visiting NISD's website.</p> <p>It is unclear how Mr. Bitter's testimony whereby he states, under oath, that the photographs are true and accurate depictions of the particular schools is insufficient to support a finding that the photographs are what Mr. Bitter claims they are. Texas Rule of Evidence 901 is not an exhaustive list of how authentication or identification can occur. Mr Bitter did not violate Rule 901.</p> <p>Any opinion he provides in the objected-to testimony is Mr. Bitter's lay opinion, based on his personal observations. In this context it is not speculation.</p> <p>Finally, NISD, without reference to any statute or rule, that the foundation that Mr. Bitter should have shown whether each NISD school was outside the corporate limits of San Antonio and thus subject to the PUC's routing criteria. However, there is no routing criteria that singles out schools or gives them preference. Moreover, there is no routing criteria that gives properties adjacent to school-owned properties any preference either.</p> <p>Ultimately, this testimony is relevant to rebut the testimony of Mr. Cichowski on behalf of Anaqua HOA regarding transmission lines "near" schools being problematic or dangerous. Mr. Bitter's testimony squarely rebuts this.</p> |
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Movant: Northside Independent School District

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| <p>Mark Turnbough, page 13, lines 14-15</p> | <ul style="list-style-type: none"> - Speculation - Assumes facts not in evidence - Not rebuttal testimony - Not relevant | <p>Dr. Turnbough is an expert in these proceedings. This testimony is offered in part to rebut the contention that electric lines here will be a problem for NISD. He testified, "The McAndrew Elementary School is not atypical of tracts dedicated for or donated to governmental entities in which new housing subdivisions are being developed." Dr. Turnbough can be cross examined on this statement generally and specifically given that the immediate predecessor in title to the NISD elementary school tract appears to be Pinson Interests, LTD, LLP.</p> |
| <p>Mark Turnbough, page 13, lines 16-18</p> | <ul style="list-style-type: none"> - Not relevant - Assumes facts not in evidence - Improper rebuttal testimony | <p>NISD objects to the following whereby Dr Turnbough testified, "It is not uncommon for developers to provide land for schools that is less useful for the primary intended purposed (building houses) of the subdivision. In this instance the school property is adjacent to a drainage easement, a wastewater treatment plant, and a floodplain."</p> <p>Dr. Turnbough is an expert in these proceedings. This testimony is offered in part to rebut the contention that electric lines here will be a problem for NISD. He testified, "The McAndrew Elementary School is not atypical of tracts dedicated for or donated to governmental entities in which new housing subdivisions are being developed." Dr. Turnbough can be cross examined on this statement to determine his basis for this statement generally and specifically given that the immediate predecessor in title to the NISD elementary school tract appears to be Pinson Interests, LTD, LLP. Furthermore, the evidence does show that the elementary school in question here is burdened by two large drainage easements and water treatment facility, both located closer to the school than Segment 42a, and moreover, between the school and Segment 42a.</p> |
| <p>Mark Turnbough, page 13, line 19 – page 14, line 13</p> | <ul style="list-style-type: none"> - Not relevant - Speculation - Lacks proper foundation - Not admissible under TRE 901 | <p>NISD objects to the following whereby Dr. Turnbough testified, "By way of comparison, I looked at locations of other schools within the Northside Independent School District (NISD) using the NISD website and selected Google Earth</p> |

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| | | <p>images. See Exhibit Rebuttal MT-1 for photographs and maps for each of the schools referenced below. For each school shown, there is an aerial photograph, a ground level photograph, and a map showing the location of the school in a given neighborhood. The schools I looked at include Jerry D. Allen Elementary, Braun Station Elementary, R.R. Cable Elementary, Jimmy Elrod Elementary, Galm Elementary, Hatchett Elementary, Mary Hull Elementary, and Raba Elementary. Inspection of the aerial and ground photography for each school listed indicates that there is placement of electric transmission lines near each of the school properties at distances comparable to the distance of proposed Route Z-1 to McAndrew Elementary. In one case, R.R. Cable Elementary, there are not only multiple electric transmission lines in relative proximity to the school property, there is also a substation. Five of the schools listed also have local distribution lines located on school property. The point worth emphasizing with regard to Mr. Anderson's commentary about the relative proximity of proposed Route Z-1 to McAndrew Elementary is that the proposed alignment of Route Z-1 seems to follow that of several schools within the NISD. Exhibit Rebuttal MT-1 is a true and accurate depiction of each elementary school."</p> <p>Dr Turnbough is an expert in these proceedings He may rely on these photographs to support his opinion</p> <p>Here, Dr. Turnbough is providing information regarding several elementary schools in the Northside ISD that have electric transmission lines on or near them.</p> <p>Dr Turnbough provides testimony to rebut Mr. Cichowski's testimony on behalf of Anaqua HOA, who states that Segment 42a, which does not run on the school's property, would be problematic because "children would likely be tempted to explore the transmission line towers."</p> <p>Dr Turnbough provides a foundation for the photographs he includes in his testimony by stating the presence of the electric transmission lines shown in the</p> |
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| | | <p>photographs and discussed in his testimony which can be easily verified by going to the named schools in person or visiting NISD's website.</p> <p>It is unclear how Dr. Turnbough testimony whereby he states, under oath, that the photographs are true and accurate depictions of the particular schools is insufficient to support a finding that the photographs are what Dr. Turnbough claims they are. Texas Rule of Evidence 901 is not an exhaustive list of how authentication or identification can occur. Dr. Turnbough did not violate Rule 901.</p> <p>Finally, NISD, without reference to any statute or rule, that the foundation that Dr. Turnbough should have shown whether each NISD school was outside the corporate limits of San Antonio and thus subject to the PUC's routing criteria. However, there is no routing criteria that singles out schools or gives them preference. Moreover, there is no routing criteria that gives properties adjacent to school-owned properties any preference either.</p> <p>Ultimately, this testimony is relevant to rebut the testimony of Mr Cichowski on behalf of Anaqua HOA regarding transmission lines "near" schools being problematic or dangerous. Dr. Turnbough's testimony squarely rebuts this</p> |
| Movant: Rose Palace, Inc. and Strait Promotions, Inc. | | |
| Sarah Bitter, page 3, lines 13-15 | <ul style="list-style-type: none"> - Improper direct testimony - Facts not in evidence | <p>Rose Palace objects to Ms. Bitter's testimony that describes the level of development along Toutant Beauregard Road. Ms. Bitter's rebuttal testimony is framed in the context of responding to and rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1 due to historical import. Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc discusses in his testimony the basis for which he supports Route R-1 noting Z-1 would adversely affect Toutant Beauregard and Heidemann Ranch by altering the "rural character." Thus, Ms. Bitter is responding that Mr. Buntz failed to acknowledge the</p> |

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| | | development that has and is occurring. This is proper rebuttal testimony, the absence of which leaves the false impression in the record that the area is somehow undeveloped. These facts are in evidence in part by Buntz own testimony where he describes the area. Ultimately, movant may cross examine Ms Bitter on her observations and the basis for them. |
| Sarah Bitter, page 5, lines 18-20 ("While . . . Road", 20-22 ("Therefore ... road " | <ul style="list-style-type: none"> - Speculative - Mischaracterization of testimony | Ms. Bitter's rebuttal testimony is framed in the context of responding to and rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1 due to historical import. Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc discusses in his testimony the basis for which he supports Route R-1 noting Z-1 would adversely affect Toutant Beauregard and Heidemann Ranch by altering the "rural character." Thus, Ms. Bitter is responding that Mr. Buntz failed to acknowledge Rose Palace is a busy commercial establishment that contributes to the urbanization of Toutant Beauregard Road. This is proper rebuttal testimony, the absence of which leaves the false impression in the record that the area is somehow undeveloped or that Rose Palace, which by Buntz's admission, sits 4,500 spectators, hasn't contributed to the urbanization. These facts are in evidence in part by Buntz own testimony where he describes Rose Palace and the area generally. Ultimately, movant may cross examine Ms. Bitter on her observations and her understanding of Mr. Butnz's testimony as well as the basis for her testimony. |
| Sarah Bitter, page 9, lines 7-17 | <ul style="list-style-type: none"> - Relevance - Assumes facts not in evidence - Mischaracterization of testimony | Ms. Bitter's rebuttal testimony is framed in the context of responding to and rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1 due to historical import. Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc. discusses in his testimony the basis for which he supports Route R-1. Buntz states his concerns regarding siting the transmission line adjacent to historical property due to the "visual effect" the line would have that "would also alter the rural character" of that property. Mr. Buntz speaks extensively about RL White Ranch but fails to acknowledge that Bexar Ranch was once part of the RL White and that but for a |

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| | | <p>property line, they would be one in the same in terms of historical interest and import. Ms. Bitter points out that historical significance of Bexar Ranch should not be ignored because “no transformation has occurred on Bexar Ranch .. we have served as caretakers, preserving Bexar Ranch int is natural state ” Her testimony responds to an absent record – namely that Buntz did not acknowledge that Bexar Ranch was once part of the WL White Ranch. It does not assume facts not in evidence – it rebuts the facts not presented by Mr Buntz to properly inform the record. Ultimately, movant may cross examine Ms Bitter on the basis for her testimony and any mischaracterization or misunderstanding of Mr. Buntz’s testimony.</p> |
| <p>Sarah Bitter, page 9, lines 19-21 (rather .. family)</p> | <ul style="list-style-type: none"> - Assumes facts not in evidence - Mischaracterization of testimony | <p>Ms. Bitter’s rebuttal testimony is framed in the context of responding to and rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1 due to historical import. Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc. discusses in his testimony the basis for which he supports Route R-1. Buntz states his concerns regarding siting the transmission line adjacent to historical property due to the “visual effect” the line would have that “would also alter the rural character” of that property. Mr. Buntz speaks extensively about RL White Ranch but fails to acknowledge that Bexar Ranch was once part of the RL White and that but for a property line, they would be one and the same in terms of historical interest and import. Ms. Bitter points out that Bexar Ranch should not be ignored because “no transformation has occurred on Bexar Ranch . we have served as caretakers, preserving Bexar Ranch int is natural state ” Ms Bitter’s testimony responds to an absent record – namely that while Z-1 would never cross Heidemann Ranch, the routes that Buntz is advocating wouldn’t just come “within 1000 feet” of RL White, they would cross 10,000 feet of a recognized 10,000-acre ranch that is held by the Bitter’s extended family. Ultimately, movant may cross examine Ms. Bitter on the basis for her testimony and any alleged misunderstanding or mischaracterization of Mr. Buntz’s testimony.</p> |

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| <p>Sarah Bitter, pages 9-10, lines 22-23 and carryover lines 1-2 (Given ... claims)</p> | <ul style="list-style-type: none"> - Mischaracterization testimony - Speculative | <p style="text-align: center;">of</p> <p>Ms Bitter's rebuttal testimony is framed in the context of responding to and rebutting testimony that Route W or R-1 are allegedly superior to Route Z-1 due to historical import. Jason Buntz on behalf of the San Antonio Rose Palace and Strait Productions, Inc. discusses in his testimony the basis for which he supports Route R-1 Buntz states his concerns regarding siting the transmission line adjacent to historical property due to the "visual effect" the line would have that "would also alter the rural character" of that property. Mr. Buntz speaks extensively about RL White Ranch but fails to acknowledge that Bexar Ranch was once part of the RL White and that but for a property line, they would be one and the same in terms of historical interest and import. Ms. Bitter's testimony responds to an absent record – namely that while Z-1 would never cross Heidemann Ranch, the routes that Buntz is advocating wouldn't just come "within 1000 feet" of RL White, they would cross 10,000 feet of a recognized 10,000-acre ranch that is held by the Bitter's extended family. Ms. Bitter's testimony voices her disagreement with Mr. Buntz's conclusions on historic import. Ultimately, movant may cross examine Ms. Bitter on the basis for her testimony and any alleged misunderstanding or mischaracterization of Mr. Buntz's testimony.</p> |
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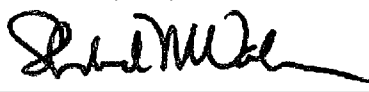
CONCLUSION AND PRAYER

Bexar Ranch, L.P. has fully responded to the objections of the movants. The rebuttal testimony at issue is proper. Movants may fully explore the specific testimony to which they object on cross examination of these witnesses. Additionally, or in the alternative, the Administrative Law Judges may give the objected to testimony appropriate weight, if any.

WHEREFORE, PREMISES CONSIDERED, it is respectfully requested that the movants' objections to the rebuttal testimony of BEXAR RANCH, L.P. be overruled; that any motions to strike be denied; and that the rebuttal testimony offered by Michael W. Bitter, Sarah A. Bitter and Mark Turnbough, PhD, on behalf of Bexar Ranch, L.P., be admitted into the record in their entirety.

Respectfully submitted,

SPIVEY VALENCIANO, PLLC
McAllister Plaza – Suite 130
9601 McAllister Freeway
San Antonio, Texas 78216
Telephone: (210) 787-4654
Facsimile: (210) 201-8178

By: 

James K. Spivey
jkspivey@svtxlaw.com
State Bar No. 00794680
Soledad M. Valenciano
State Bar No. 24056463
svalenciano@svtxlaw.com

ATTORNEYS FOR BEXAR RANCH, L.P.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed in the records of Docket 51023 on this 5th day of April, 2021.



Soledad M. Valenciano