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APPL. OF THE CITY OF SAN ANTONIO §
TO AMEND ITS [CCN] FOR THE §
SCENIC LOOP 138-KV TRANS. LINE IN §
BEXAR COUNTY, TX §

STATE OFFICE OF
ADMINISTRATIVE HEARINGS

**SAVE HUNTRESS LANE AREA ASSOCIATION'S
RESPONSE TO THE ROSE PALACE OBJECTIONS
TO AND MOTIONS TO STRIKE CROSS-REBUTTAL TESTIMONY**

Save Huntress Lane Area Association (“SHLAA”), an intervenor, submits this timely response to the objections by San Antonio Rose Palace, Inc. and its affiliate Strait Promotions, Inc. (collectively, “Rose Palace”).

The Rose Palace objections are set forth in italicized text, and the SHLAA response is set forth in bold text. As the responses below show, those objections are without merit and should be overruled, and the associated motions to strike denied.

Harold L. Hughes Page 7, lines 17-23; Page 8 lines 1-3. Mischaracterizes the evidence. Speculation. Facts not in evidence. Mr. Hughes alleges that Mr. Buntz's testimony is conflicting with that of another party's but fails to identify any incorrect statements or conclusions contained in Mr. Buntz's testimony.

RESPONSE: Mr. Hughes, as an expert witness on routing, first sets forth in summary fashion the separate descriptions of Toutant Beauregard Road provided by Mr. Anderson for Anaqua Springs HOA and by Mr. Buntz on behalf of Rose Palace, which they respectively utilize to both say Toutant Beauregard Road should not be used for the transmission line route. He then points out the inconsistency between their descriptions as to the nature or state of that road area. He then offers his expert opinion that each of those witnesses' inconsistent descriptions undermines the other's ability to opine on the suitability of a transmission line paralleling that road.

There is no mischaracterization of the evidence. Mr. Hughes does utilize a recounting of the other two witnesses' testimony in summary fashion rather than directly quoting all of it at length. Summarization is allowed, and utilized, in testimony.

There is no speculation about facts. The only thing Mr. Hughes does is recount in summary fashion the other witnesses' differing descriptions of the nature or state of that road area, and then provides an expert opinion about how the inconsistency undermines the other expert witnesses' ability to opine about using the road for a transmission line route.

Mr. Hughes does not provide any additional facts not in evidence, he instead recounts in summary fashion the other witnesses' differing descriptions of the nature or state of that road area, and then provides an expert opinion about how the inconsistency undermines the other expert witnesses' ability to opine about using the road for a transmission line route.

Although Rose Palace asserts that the answer is a mischaracterization of evidence, speculation, and a statement of facts not in evidence, Rose Palace simply wants to argue with Mr. Hughes about his expert testimony including the resulting lack of credibility of the testimonies of Mr. Anderson and Mr. Buntz about the suitability of using Toutant Beauregard Road for a transmission line. Rose Palace may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Rose Palace's disagreement with it, the appropriate weight.

Harold L. Hughes, Page 10, lines 5-9 ("Therefore...Road") and lines 12-13 (Therefore...rural") Not rebuttal testimony. Relevance. No foundation. Mr. Hughes lays no foundation for the statement that "Scenic Loop Road has as much or more historical significance than does Toutant Beauregard." Further, Mr. Hughes provides no basis for his characterization of the study area.

RESPONSE: The first portion of the objected-to-testimony concerns facts that even Mr. Buntz's testimony brought forth about Scenic Loop Road also being historic, and recognized by the State of Texas as historic prior to any similar recognition of Toutant Beauregard Road. The second portion of the objected-to-testimony concerns facts based on Mr. Hughes' direct observation during his visit to the study area and Toutant Beauregard Road in particular.

The testimony is expressly stated to be in direct response to Mr. Buntz's testimony. Therefore it is by definition rebuttal testimony to other intervenor testimony.

The testimony is relevant, since it is in direct response to Mr. Butnz's testimony about the historic corridor information and in direct response to Mr. Butnz's testimony about the "rural" portions of the area.

The testimony has a foundation: the testimony of Mr. Buntz itself regarding the historic corridor information, as Mr. Hughes recounted in his testimony, and his personal visit to the study area and Toutant Beauregard Road in particular, as Mr. Hughes recounted in his testimony.

Harold L. Hughes, Page 10, lines 10-13. Speculative. Relevance. Mischaracterizes the evidence. Mr. Buntz' direct testimony describes direct and [indirect] impacts to cultural resources.

RESPONSE: The portion of the objected-to-testimony concerns facts based on Mr. Hughes' direct observation during his visit to the study area and Toutant Beauregard Road in particular.

The testimony is relevant, since it is in direct response to Mr. Buntz's testimony about the historic corridor information and in direct response to Mr. Buntz's testimony about the "rural" portions of the area.

The testimony is not speculative, since it recounts facts Mr. Hughes observed during his site visit, and then offers his expert opinion based upon those facts.

The testimony does not mischaracterize Mr. Buntz's testimony. This is because Mr. Buntz in his direct testimony characterizes the portion of Toutant Beauregard Road within the study area as "rural" (see Buntz Direct Testimony pp. 10, 11, and 14).

Although Rose Palace asserts that the testimony is a mischaracterization of evidence, speculation, and not relevant, Rose Palace simply wants to argue with Mr. Hughes about his expert testimony in response to the direct testimony of Mr. Buntz. Rose Palace may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Rose Palace's disagreement with it, the appropriate weight.

Harold L. Hughes, Page 10, lines 18-21. Mischaracterizes the evidence. Speculative. Mr. Buntz's direct testimony describes direct and indirect impacts.

RESPONSE: The testimony is not speculative. Mr. Hughes describes the fact that Mr. Buntz made sweeping general conclusions regarding the extent of the CPS Energy environmental assessment of cultural resources, rather than explicitly describing direct or indirect impacts to such resources from constructing a transmission line along Toutant Beauregard Road. A comparison of Mr. Hughes' testimony and Mr. Buntz's testimony (at pp. 5-6, and 8-15) shows that Mr. Hughes was accurate in his description of Mr. Buntz's testimony.

Mr. Hughes' testimony cannot be speculation since it is a description solely of Mr. Buntz's testimony, rather than of any other facts. It is in direct response to what Mr. Buntz said about cultural resources, and therefore is relevant.

Although Rose Palace asserts that the testimony is a mischaracterization of evidence and speculation, Rose Palace simply wants to argue with Mr. Hughes about his expert

testimony regarding the views of Mr. Buntz about the extent of the CPS Energy assessment. Rose Palace's disagreement with Mr. Hughes does not itself constitute proof that there is any mischaracterized testimony. Rose Palace may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Rose Palace's disagreement with it, the appropriate weight.

Grimes et al., Page 12-13, last answer on page 12 and carryover answer on page 13. Not rebuttal testimony, but improper additional direct testimony.

RESPONSE: The SHLAA cross rebuttal testimony is in direct response to the Rose Palace direct testimony. Rose Palace opposes the use of Toutant Beauregard Road for "historic corridor" reasons. The SHLAA cross-rebuttal testimony sets forth which segments and routes affect Rose Palace, so as to further respond to the Rose Palace testimony. It also includes information that the "historical" area includes Scenic Loop Road where Substation Site 6 is proposed to be located.

Grimes et al. Page 13, answer to first question. Not rebuttal testimony, but improper additional direct testimony.

RESPONSE: The SHLAA cross rebuttal testimony is in direct response to the Rose Palace direct testimony. The SHLAA cross-rebuttal testimony indicates what is the stated primary concern of Mr. Buntz on behalf of his client the Rose Palace, so as to further respond to the Rose Palace testimony.

Grimes et al., Page 14, answer to first question. Speculative. Assumes facts not in evidence. Ms. Grimes provides no basis to conclude that the Rose palace is not "historic in nature" in her opinion.

RESPONSE: The SHLAA cross-rebuttal is not speculative, because it is based on Mr. Buntz's own testimony in which he said the Rose Palace was not a "historic site" *per se*, on personal visits by SHLAA members to the Rose Palace itself, and on the information in the CPS Energy application as amended regarding the location of Substation Site 7 compared to the location of the Rose Palace sports arena. It assumes no facts not in evidence, since it is based on Mr. Buntz's own testimony in which he said the Rose Palace was not a "historic site" *per se*, on personal visits by SHLAA members to the Rose Palace itself as described in the SHLAA direct testimony, and on the information in the CPS Energy application as amended regarding the location of Substation Site 7 compared to the location of the Rose Palace sports arena. The witnesses, as their cross-rebuttal testimony indicates, are testifying based on personal knowledge, and as their direct testimony indicates, they live in the area and are

personally familiar with the area. They offer a purely factual observation about the sporting arena based thereon.

Grimes et al., Page 14, answer to fourth question. Mischaracterizes the evidence. Ms. Grimes mischaracterizes Mr. Buntz's testimony regarding the historic marker and Mr. Buntz's testimony discusses the importance of the intersection to the historic corridor.

RESPONSE: The objected-to-answer does not mischaracterize any evidence of Mr. Buntz. It is based directly upon and recounts for rebuttal purposes Mr. Buntz's own specific direct testimony and his own specific direct testimony exhibits. The objected-to-answer then explains how that testimony of Mr. Buntz is inconsistent with not only his own testimony and exhibits, but also with other factual information. Therefore, it does not mischaracterize any evidence, it instead sets forth what the erroneous evidence is and shows why it is erroneous.

Grimes et al. Page 15, third paragraph. Speculative Facts not in evidence.

RESPONSE: The objected-to-paragraph does not speculate or assume facts not in evidence. It is instead based directly upon Mr. Buntz's own direct testimony exhibit showing that Substation Site 6 on Scenic Loop Road is part of the historic corridor. The objected-to-answer then explains how the testimony of Mr. Buntz insisting on not using Substation Site 7 because it is on Toutant Beauregard Road, part of the historic corridor, is inconsistent with his proposing to use Substation Site 6, also part of the historic corridor. That inconsistency is a fact, based directly on the conflicts within Mr. Buntz's own testimony, not an assumption regarding facts outside of his testimony.

Grimes et al., Page 15, "Indeed, as the first marker photograph below indicates, the only Historic corridor original portions that still exist are along Scenic Loop Road." Facts not in evidence. Speculative. There is no basis for this conclusion. Mr. Buntz's testimony discusses the extent and breadth to this historic corridor.

RESPONSE: The SHLAA cross-rebuttal testimony's photograph shows the roadside marker which indicates that the only Historic corridor original portions that still exist are along Scenic Loop Road. The photograph was authenticated in that SHLAA testimony. Once the hearing on the merits occurs, the pre-filed SHLAA cross-rebuttal with the authenticated photograph will be offered into evidence. Given the photograph of what the roadside marker says, there is no speculation about what it says. The basis for the cross-rebuttal testimony's conclusion is the authenticated photograph. Mr. Buntz's testimony may discuss the historic corridor, but the SHLAA rebuttal testimony points out his out-of-context emphasis on Toutant

Beauregard Road and other errors based in part on that authenticated photograph of the actual marker.

Grimes et al., Page 15 "This means that the original portions of what became today's Toutant Beauregard Road no longer exist." Facts not in evidence. Speculative.

RESPONSE: The authenticated photograph of the roadside historical marker shows that it says original portions of the historic corridor still exist along Scenic Loop Road. The roadside marker does not say original portions of the historic corridor still exist along Toutant Beauregard Road. The SHLAA cross-rebuttal testimony is based directly on what the roadside marker itself says, as shown in the authenticated photograph of the marker.

Although Rose Palace asserts that the testimony assumes facts not in evidence and is speculation, Rose Palace simply wants to argue with the SHLAA witnesses about what the roadside marker says. Rose Palace may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Rose Palace's disagreement with it, the appropriate weight.

Grimes et al Page 15, fifth paragraph. Hearsay. Speculative.

RESPONSE: The SHLAA cross-rebuttal testimony first recounts that Mr. Buntz's exhibits show no other roadside historical markers. It then indicates that SHLAA members, who have lived and driven in the area for years, were not aware that there was anything officially historic about the area beyond the one roadside marker.

The testimony which is based on what is shown (and not shown) in Mr. Buntz's own exhibits by definition is not hearsay and by definition is not speculative.

The testimony about what SHLAA members know (or not know) is not inadmissible hearsay. It is testimony about the reputation (or lack thereof) in the community concerning general historical events important to that community. Tex. R. Evid. 802(2).

Grimes et al., Page 18, "The Rose Palace, located far away from Segment 36, does not have authority to object to routing a line along Segment 36 based on someone else's historic property aspects." Not rebuttal testimony. Speculative. Mischaracterization of testimony. No legal basis.

RESPONSE: The sentence states that, unlike the Barrera interests who are the landowners on which the particular historic district Mr. Buntz identified is located, the Rose Palace, located far away from Segment 36, does not have authority to object to routing a line along Segment 36 based on someone else's property having an historic aspect.

The SHLAA cross-rebuttal testimony is in direct response to the Rose Palace testimony of Mr. Buntz who argues that the historic district on someone else's property far away from his client's property should be a reason not to route the transmission line on Toutant Beauregard Road. It is therefore proper rebuttal to other intervenor testimony.

The SHLAA cross-rebuttal testimony is not speculative. It is a factual observation: Mr. Buntz's direct testimony states it is on behalf of Rose Palace and its affiliated ranch; nothing in his direct testimony indicates he has authority to speak for anyone else, much less for the Barrera interests. In addition, Rose Palace's intervention in this case was made solely on its own behalf (including its affiliated ranch), not on anyone else's.

The SHLAA cross-rebuttal testimony does not mischaracterize Mr. Buntz's testimony. Mr. Buntz has identified an historic district on the Barrera interests' property along Segment 36, and argues that the historic district should be a reason not to route the transmission line on Toutant Beauregard Road, even though it is on someone else's property far away from his client's property on Segment 4. The SHLAA testimony accurately states Mr. Buntz's position, albeit in a manner that makes clear why it should be given no weight.

The SHLAA cross-rebuttal testimony has a "legal basis" (whatever that is supposed to mean). This is because: Mr. Buntz's direct testimony states it is on behalf of Rose Palace and its affiliated ranch; nothing in his direct testimony indicates he has authority to speak for anyone else, much less for the Barrera interests. In addition, Rose Palace's intervention in this case was made solely on its own behalf (including its affiliated ranch), not on anyone else's.

WHEREFORE, PREMISES CONSIDERED, it is respectfully requested that the Rose Palace objections to SHLAA's cross-rebuttal testimony be overruled, and the associated motions to strike denied.

Respectfully submitted,

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Certificate of Service: I certify I served the foregoing under SOAH Order No. 3 on Apr. 5, 2021.

/s/ Thomas K Anson

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