

CAUSE NO. 25-18363

VICTOR HOLLENDER, BRUCE	§	IN THE DISTRICT COURT
NEITZKE, ESTHER SCHNEIDER,	§	
and SARAH RIVAS	§	
	§	
V.	§	GILLESPIE COUNTY, TEXAS
	§	
	§	
ROGERS DRAW ENERGY	§	
STORAGE, LLC, B&CWR, INC., d/b/a	§	
CACTUS CONSTRUCTION	§	216 <sup>th</sup> JUDICIAL DISTRICT

**DEFENDANT B&CWR, INC.'S REPLY TO**  
**INTERVENOR GILLESPIE COUNTY'S RESPONSE TO**  
**DEFENDANT'S RULE 91a MOTION TO DISMISS**

Defendant B&CWR, Inc. ("Cactus") files this Reply to Intervenor Gillespie County's Response to Defendant's Rule 91a Motion to Dismiss and would respectfully show the Court as follows:

1. Cactus incorporates its 91a Motion and Reply to Plaintiffs' Response into the Motion as if fully set forth herein.

**I. Intervenor's Response is Untimely**

2. Texas Rule of Civil Procedure 91a.4. is unambiguous and mandatory:

**Time for Response.** Any response to the motion must be filed no later than 7 days before the date of the hearing.

Intervenor's Response was filed November 26, 2025, 6 days before the December 2, 2025 hearing. Intervenor's untimely response cannot be considered.

**II. Intervenor's Claims are not Directed at Cactus**

3. Were the Court to consider Intervenor's Response, it, like the Petition in Intervention, concerns the acts and/or omissions of Peregrine, not Cactus.<sup>1</sup> Intervenor's response (and the basis for its claims in its Petition in Intervention) concern the construction and, ultimately, the operation of the BESS. Intervenor details its various safety concerns, all of which relate to BESS operations:

- Proximity to Harper ISD campus;
- Harper's lack of a municipal water supply and its effect on fire protection capabilities; and
- Runoff and water contamination.<sup>2</sup>

All of these concerns relate to something Cactus is not going to do and, more importantly for 91a consideration, that there is not even an allegation that Cactus is going to do: operate a BESS. There is no basis in law for Intervenor's claims against Cactus.

4. For the reasons stated in this Reply and in Cactus's 91a Motion, Intervenor's claims against Cactus should be dismissed.

Respectfully submitted,



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<sup>1</sup> Cactus is not agreeing with or adopting Intervenor's theories—it takes no position on that—but is pointing out that the complaints do not concern Cactus's acts or omissions.

<sup>2</sup> See Intervenor's Response to 91a Motion at p. 3.

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CONSTRUCTION

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served in accordance with the Texas Rules of Civil Procedure via CM/ECF or e-mail on December 1, 2025, to all Counsel of Record.



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GREGORY A. SCRIVENER

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Michael Suchosky on behalf of William Ford

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Filing Description: Cactus Constructions Reply to Intervenors Response to

Rule 91a Motion to Dismiss

Status as of 12/1/2025 5:13 PM CST

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