

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 th 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.¹ 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.²

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,



WILLIAM H. FORD
State Bar No. 07246700
Direct Line: (210) 731-6306
bill.ford@fordmurray.com
GREGORY A. SCRIVENER
State Bar No. 24013480
Direct Line: (210) 731-6342

¹ 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.

² See Intervenor's Response to 91a Motion at p. 3.

Email: greg.scrivener@fordmurray.com
KENNEDY HATFIELD ASEL
State Bar No. 24121663
Direct Line: (210) 731-6486
Email: hatfieldasel@fordmurray.com
FORD MURRAY, PLLC
10001 Reunion Place, Suite 640
San Antonio, Texas 78216
(210) 731-6400 Main
(210) 731-6401 Facsimile
ATTORNEYS FOR DEFENDANT,
B&CWR, INC., d/b/a CACTUS
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.



GREGORY A. SCRIVENER

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael Suchosky on behalf of William Ford

Bar No. 7246700

michael.suchosky@fordmurray.com

Envelope ID: 108563886

Filing Code Description: Reply

Filing Description: Cactus Constructions Reply to Intervenors Response to Rule 91a Motion to Dismiss

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

Associated Case Party: B&CWR, Inc., d/b/a Cactus Construction

Name	BarNumber	Email	TimestampSubmitted	Status
Gregory A.Scrivener		greg.scrivener@fordmurray.com	12/1/2025 1:55:19 PM	SENT
Kennedy HatfieldAsel		hatfieldasel@fordmurray.com	12/1/2025 1:55:19 PM	SENT
Michael Suchosky		michael.suchosky@fordmurray.com	12/1/2025 1:55:19 PM	SENT
William H.Ford		bill.ford@fordmurray.com	12/1/2025 1:55:19 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jeremiah Anderson	24040432	jjanderson@mcguirewoods.com	12/1/2025 1:55:19 PM	SENT
Alfred Huebinger	24065460	jhuebinger@mcguirewoods.com	12/1/2025 1:55:19 PM	SENT
Michelle Joyner		mjoyner@scottdoug.com	12/1/2025 1:55:19 PM	SENT
Jennifer Juneau		jjuneau@scottdoug.com	12/1/2025 1:55:19 PM	SENT
Anthony Arguijo		aarguijo@scottdoug.com	12/1/2025 1:55:19 PM	SENT
Ross Sutherland		rsutherland@scottdoug.com	12/1/2025 1:55:19 PM	SENT
Shelby Hart-Armstrong		sharmstrong@scottdoug.com	12/1/2025 1:55:19 PM	SENT
Jessi Abramson		jabramson@scottdoug.com	12/1/2025 1:55:19 PM	SENT
Carla Matheson		cmatheson@scottdoug.com	12/1/2025 1:55:19 PM	SENT

Associated Case Party: Victor Hollender

Name	BarNumber	Email	TimestampSubmitted	Status
Richard Mosty	14594800	rmosty@mostylaw.com	12/1/2025 1:55:19 PM	SENT
Charles Mosty	24041532	cdmosty@mostylaw.com	12/1/2025 1:55:19 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael Suchosky on behalf of William Ford

Bar No. 7246700

michael.suchosky@fordmurray.com

Envelope ID: 108563886

Filing Code Description: Reply

Filing Description: Cactus Constructions Reply to Intervenor's Response to Rule 91a Motion to Dismiss

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

Associated Case Party: Gillespie County, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Raggio		rraggio@toase.com	12/1/2025 1:55:19 PM	SENT
Rebecca Meek		rmeek@toase.com	12/1/2025 1:55:19 PM	SENT
Sara Neel		sneel@gillespiecounty.gov	12/1/2025 1:55:19 PM	SENT

Associated Case Party: Rogers Draw Energy Storage, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Nikki Sims		nsims@mcguirewoods.com	12/1/2025 1:55:19 PM	SENT