



Control Number: 51023



Item Number: 356

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**SOAH DOCKET NO. 473-21-0247
PUC DOCKET NO. 51023**



APPLICATION OF THE CITY OF SAN	§	BEFORE THE STATE OFFICE
ANTONIO TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF
AND NECESSITY FOR THE SCENIC	§	
LOOP 138-KV TRANSMISSION LINE	§	
IN BEXAR COUNTY	§	ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 1
PROJECT DESCRIPTION, JURISDICTION, NOTICE OF PREHEARING
CONFERENCE, DEADLINE FOR INTERVENTION, CAUTION TO INTERESTED
PARTIES, AND GENERAL PROCEDURAL REQUIREMENTS**

I. PROJECT DESCRIPTION

On July 22, 2020, the City of San Antonio, acting by and through the City Public Service Board (CPS Energy), filed an application with the Public Utility Commission of Texas (Commission) to amend its certificate of convenience and necessity (CCN) for a new “Scenic Loop 138-kV Transmission Line Project” (Project). The Project would entail CPS Energy’s design and construction of a new substation (the Scenic Loop substation) and a double-circuit 138-kilovolt (kV) transmission line connecting the new Scenic Loop substation to the electric grid from CPS Energy’s existing Ranchtown-to-Menger Creek 138-kV transmission line. The proposed Project is presented with 29 alternate routes ranging from approximately 4.6 miles to 6.9 miles in length. Depending on the route selected, the total estimated cost of the Project ranges from approximately \$24,846,018 to \$41,314,863 for the transmission facilities and \$9,774,880 to \$11,004,617 for the substation facilities.

II. JURISDICTION, DEADLINE FOR DECISION, NOTICE, AND SUFFICIENCY OF APPLICATION

On August 21, 2020, a Commission Administrative Law Judge (ALJ) found the application administratively complete and the notice sufficient.¹ Over 120 persons sought and were granted intervenor status by the Commission ALJ.² On September 29, 2020, the Commission issued an Order of Referral and Preliminary Order referring this case to the State Office of Administrative Hearings (SOAH); requesting the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary; and setting forth the issues to be addressed and issues not to be addressed in this proceeding.

The Commission has jurisdiction and authority over this matter pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code §§ 32.001, 37.053, 37.056, and 37.057, and 16 Texas Administrative Code § 25.101. SOAH has jurisdiction, pursuant to Texas Government Code § 2003.049 and PURA § 14.053, over all matters relating to the conduct of a hearing in this matter.

Under PURA § 37.057, the Commission must render a decision approving or denying an application for a CCN within one year of the date of filing a complete application. Therefore, the Commission must issue a decision on this application by **July 21, 2021**.

III. NOTICE OF PREHEARING CONFERENCE

A prehearing conference will be held before the undersigned ALJs beginning at **10 a.m. on October 22, 2020**. Due to the ongoing disruptive effects of the novel coronavirus (COVID-19), the ALJs will conduct the prehearing conference using the Zoom videoconferencing application.³

¹ Commission Order No. 5 (Aug. 21, 2020).

² Commission Order Nos 4 (Aug. 19, 2020), 7 (Aug. 25, 2020), 8 (Sept. 17, 2020), 9 (Sept. 28, 2020)

³ For more information about SOAH's adaptations to the COVID-19 situation, please see the most recent emergency order issued by SOAH's Chief Administrative Law Judge at <http://www.soah.texas.gov>. Parties should review this information and are encouraged to check SOAH's website frequently for updates.

To participate via Zoom, you will need: (1) a computer with a functional webcam and microphone (preferred method); or (2) any mobile or smart device, such as a cellphone, iPad, iPhone, or Android phone; and (3) to have the latest version of Zoom installed (free installation). More information on how to join a Zoom meeting is available here: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>.

You may access the prehearing conference by going to <https://soah-texas.zoomgov.com/> or the Zoom application on your mobile device, selecting “Join a Meeting,” and entering the following information when prompted:

Meeting ID: 160 401 1699
Passcode: TH4x7K

If you do not have access to a device that would allow videoconferencing capabilities, you may join by telephone by calling either number below and entering the following Meeting ID and passcode. Note that the passcode to join by telephone is different than the passcode to join via a computer or smart device.

(669) 254-5252
(646) 828-7666

Meeting ID: 160 401 1699
Passcode: 460584

If you experience technical difficulties with joining the prehearing conference, you may contact SOAH’s Docketing Division at (512) 475-4993.

During the prehearing conference, the ALJs will address the following matters:

- (1) Pending motions to intervene;
- (2) Any other motions or other preliminary matters related to the proceeding;
- (3) A procedural schedule, including the scheduling of the hearing on the merits;

- (4) Procedures to be followed before and during the hearing⁴; and
- (5) Any other matter that may assist in the disposition of this proceeding in a fair and efficient manner.

Where persons have similar interests, they are encouraged to designate a single representative or attorney to attend for the group.

The Applicant is encouraged to hold one or more informal technical conferences to disseminate information to the parties about the application and answer their questions, using methods that are appropriate given COVID-19, such as telephone or video conferences.

IV. GUIDELINES FOR DEVELOPING A PROPOSED PROCEDURAL SCHEDULE

The parties shall develop a proposed procedural schedule that ensures the ALJs will have at least 60 days to write and issue the proposal for decision after the record close date, which is the day the last post-hearing briefs or proposed findings of fact, conclusions of law, and ordering paragraphs are filed.

In addition, the parties must account for three weeks for exceptions and replies after the proposal for decision has been issued. The parties shall also endeavor to provide the Commission with enough time for two dates for open meetings to discuss the proposal for decision and seven calendar days after the last open meeting to issue an order. This can usually be achieved by allowing the Commission five weeks before the deadline for the Commission to issue an order.

The Applicant is **ORDERED** to develop and circulate to the parties a proposed procedural schedule that complies with these guidelines within 3 business days after the issuance of this order. The Applicant is further **ORDERED** to work with the parties towards an agreed schedule and to

⁴ For the benefit of unrepresented parties or others who might be unfamiliar with the prehearing and hearing processes, the ALJs have provided a written introductory explanation that is attached at the end of this order.

file a proposed procedural schedule by **October 20, 2020**, indicating the status of the parties' discussions of the schedule.

V. DEADLINE FOR INTERVENTION

Pursuant to Commission Order No. 2, the deadline for intervention was **September 8, 2020**. Because the deadline has passed, the ALJs will not grant motions to intervene filed after that date unless they meet the standard for late intervention in 16 Texas Administrative Code § 22.104(d).

VI. CAUTION TO INTERESTED PARTIES

In this proceeding, the Applicant has described 29 alternative routes that the proposed transmission line may ultimately follow. It is the duty of the ALJs and, ultimately, of the Commission, to choose the route that best meets the criteria described in the Commission's Preliminary Order. **Any proposed route, or any combination of properly noticed proposed links of routes, could be selected.** It is the duty of interested parties (such as landowners) to provide the decision-makers the information needed to reach a just and reasonable decision.

VII. GENERAL PROCEDURAL REQUIREMENTS

Except as modified by the Commission or SOAH in response to COVID-19, the Commission's procedural rules will govern the conduct of this case, and the parties are expected to comply with those rules. The Commission's procedural rules are available on its website at: <https://www.puc.texas.gov/agency/rulesnlaws/procrules/Procedural.aspx>.

A. Filing Documents

Due to COVID-19, the Commission is only accepting filings made online through the Commission's Interchange e-file system at <https://interchange.puc.texas.gov/filer>. When making

online filings for this case, use both the Commission's "control number" 51023 and SOAH's docket number of 473-21-0247. **All filings must contain both the SOAH and Commission docket numbers.**

For intervenors who may not be familiar with the Commission's processes, all filings in this case are available for viewing and downloading from the Commission's website at www.puc.texas.gov. Once there, click at the top under "Filings." Then click on "Filings Search," type in control number 51023, and press "enter." A list of documents filed in this docket will appear and you may access those documents by clicking on the document number.

B. Service of Filed Documents on All Parties

When a party files a document with the Commission, that party is also required to serve (i.e., provide a copy of that document to) every other party. **At this time, due to COVID-19, service must be accomplished by e-mail.**⁵ Any party to this proceeding who has not previously provided an e-mail address **SHALL, no later than 7 days after the date of this order**, file a notice informing the parties of the e-mail address to be used for service.

SOAH's orders must also be provided to, or served on, the parties. Parties will be served with SOAH's orders electronically at the e-mail address they provide.

Only one address per party will be included on the official service list maintained by SOAH, pursuant to 16 Texas Administrative Code § 22.74(b). Corrections to the service list should be directed to the ALJs' assistant, Virginia Gonzales, by email at virginia.gonzales@soah.texas.gov.

⁵ See *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020), available at: http://interchange.puc.texas.gov/Documents/50664_3_1055816.PDF; see also 16 Tex. Admin. Code § 22.74(c)

C. Motions and Responses to Motions and Other Pleadings

Unless otherwise specified, responses to any motion or other pleading shall be filed within **five working days** from receipt of the pleading to which the response is made. Such responsive pleadings shall state the date of receipt of the pleading to which a response is made. Failure to file a timely response will be considered acquiescence to the relief requested.

D. Discovery

Discovery shall be governed by the Commission's procedural rules at 16 Texas Administrative Code chapter 22, subchapter H. All discovery requests and responses shall be filed with the Commission in accordance with the Commission's procedural rules. Because of the availability of the documents on the PUC Interchange, requests to receive copies of discovery requests or responses from other parties will not be considered by the ALJs, and parties will be expected to access those documents through the PUC Interchange.

VIII. RESPONSIBILITY OF APPLICANT REGARDING SERVICE LIST

The Applicant must review the service list immediately upon receipt of this order to ensure that it is complete and accurate. If the service list is incomplete or inaccurate, the Applicant must file a statement immediately indicating which additions or corrections are needed. The Applicant must also review the service list prior to the filing of Commission Staff's direct testimony, and file a written list of all intervenors who did not file testimony or a statement of position. The Applicant (and any other party) may obtain the service list by requesting it from the ALJs' assistant at the email address listed above.

**IX. IMPORTANCE OF DEADLINE FOR FILING
POSITION STATEMENT OR PREFILED TESTIMONY**


Pursuant to 16 Texas Administrative Code § 22.124(a), during the course of this case, parties will be required to either file written testimony or a statement of position. **A request to**

intervene is not a statement of position. A statement of position clarifies a party's position but is not sworn-to, is not considered evidence, and is not subject to cross-examination. Prefiled direct testimony, on the other hand, is sworn-to, is evidence, and is subject to cross-examination. A due date for filing either a statement of position or testimony will be set in the procedural schedule, which will be published in a written order after the prehearing conference. **Any party that does not timely file either written testimony or a statement of position will be dismissed from this proceeding and prohibited from participating in the hearing on the merits and briefing in accordance with 16 Texas Administrative Code §§ 22.124 and 22.161.**

SIGNED October 2, 2020.



HOLLY VANDROVEC
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



ROBERT H. PEMBERTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

INFORMATION FOR UNREPRESENTED PARTIES

Overview of Contested Case Process

- This contested case hearing will proceed like a trial – with witnesses testifying under oath, subject to cross-examination.
- The administrative law judges (ALJs) preside over this hearing process. The ALJs work for the State Office of Administrative Hearings (SOAH). SOAH is a state agency that provides impartial judges to preside over contested case hearings. SOAH is separate from all other state agencies, including the Public Utility Commission of Texas (PUC or Commission).
- At the end of the hearing process, the ALJs will make a written recommendation about the transmission line route. This is called a Proposal for Decision (PFD).
- The final decision maker will be the three-member Commission
- The staff of the PUC (Staff) participates in the hearing as a party. Staff is distinct from the three-member Commission that will ultimately decide this case.

Prehearing Conference

- At the prehearing conference, the judges will rule on any outstanding motions and set the schedule for prehearing activities and the hearing itself.

The Prehearing Phase

- Two primary things happen before hearing: (1) discovery, and (2) filing of direct testimony and/or position statements. Deadlines for these activities will be established either at the prehearing or shortly thereafter by an order from the ALJs.
- Discovery is the formalized exchange of information among parties.
- Unlike some trials in district court, every witness's direct testimony in this case will be in written form and filed prior to the hearing. At the hearing, each witness will take the stand and be sworn in, and the witness's direct testimony will be admitted if it complies with the rules of evidence. The witness will then be subject to cross-examination by the parties. (Sometimes, parties will waive cross-examination of a witness.)
- *Every party in this case must file either **testimony** or a **statement of position** according to the schedule that will be established.* Parties failing to do so will be dismissed and not allowed to participate further.
- **Testimony** is evidence and includes assertions of fact (for example, about the location of property, the history and use of property, etc.). A **position statement** is argument, not evidence. There will be no cross-examination at the hearing of a party who has only filed a position statement. Assertions of fact in a position statement cannot be considered by the ALJs unless they are in some other document or testimony admitted in evidence. A party filing a position statement may ask questions of testifying witnesses.

The Hearing

- The hearing will be convened in Austin or via Zoom videoconferencing and could last several days.
- All witnesses who prefiled testimony must appear at the hearing unless all parties waive cross examination.

- Prefiled testimony will be admitted (subject to objections based on the rules of evidence), and witnesses will be cross-examined. Testimony not admitted because the witness failed to appear will be treated as a statement of position.

The Post-Hearing Phase

- After the hearing, parties will file written closing arguments (briefs) according to the deadlines that will be established in the schedule.
- The ALJs will issue the PFD recommending an outcome, including a route for the transmission line if the application is granted.
- The ALJs' analysis will be based on the facts (established through evidence introduced in the hearing) and the applicable law (involving a consideration of factors such as community values, number of habitable structures, recreational and park areas, historical and aesthetic values, environmental integrity, and use of compatible rights of way).
- The preferred route carries no special weight in the analysis. Any route consisting of identified links may be recommended and approved.
- Parties who disagree with the ALJs' proposal will be able to file written objections (exceptions) to the PFD.
- The Commission will make a decision at a meeting open to the public. The Commission can adopt or reject the ALJs' proposal. If the Commission rejects the ALJs' proposal, it will likely choose another route.
- The deadline for Commission action in this case is July 21, 2021.

Filing and Serving Documents in the Case

- Whenever any party formally **files** any document in this case (such as a motion, request for discovery, response to discovery, testimony, or statement of position), it must file the document with the PUC.
- Filings at the Commission shall occur by 3:00 p.m. on the date in question unless otherwise specified.
- The procedures regarding **filing** are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper numbers of legible copies are presented to the PUC filing clerk for filing. All pleadings must contain both the SOAH and PUC Docket numbers to allow for efficient processing (See the top of the first page of this information sheet.) As mentioned in Order No. 1, the parties should monitor the Commission website for changes in the filing procedures related to the COVID-19 outbreak.
- At the same time a party **files** a motion, testimony, or a statement of position with the PUC, the party must also **serve** all other parties in the case by sending them a copy of the document. The service list, setting out each party and the party's address (and e-mail address, if available), is attached to Order No. 1.
- Discovery requests and responses must be **filed** with the PUC, but only have to be **served** on the party to whom the request or response is directed.
- The PUC maintains an on-line document interchange that is a convenient way of keeping track of documents filed in a case. All PUC filings are available for viewing and downloading from the Commission's website at <http://interchange.puc.texas.gov/>. Once there, type in the control number 51023 and press "enter." A list of documents filed in this docket will appear and you may access those documents by clicking on the document number, provided that the document number is underlined and in blue font.

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STYLE/CASE: CITY OF SAN ANTONIO ACTING BY & THROUGH CPS
ENERGY
SOAH DOCKET NUMBER: 473-21-0247
REFERRING AGENCY CASE: 51023

**STATE OFFICE OF ADMINISTRATIVE
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ADMINISTRATIVE LAW JUDGE

ALJ HOLLY VANDROVEC

REPRESENTATIVE / ADDRESS

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