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PUBLIC UTILITY COMMISSION
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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

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**INTERVENOR STEVE AND CATHERINE CICHOWSKI'S RESPONSE TO STAFF'S
STATEMENT OF POSITION ON ROUTE ADEQUACY**

Intervenors Steve and Catherine Cichowski submit this Response to Staff's Statement of Position on Route Adequacy and for good cause would show as follows:

I. RESPONSE

With all due to respect to Staff's thoughtful consideration, the Staff 's analysis completely misses the gravamen of the Joint Motion filed by Anaqua and Jauer, eviscerates the burden of proof as applied to CPS, and reaches two conclusions that cannot co-exist within the facts and circumstances of this case. The Joint Movants do not argue which of the limited choice of routes should be selected, but that the options are unreasonably limited and lack "a reasoned justification demonstrating (sic) a reasonable basis for presenting a limited number of alternatives." Within that context Staff concludes that "CPS adequately explained the rationale for why it chose to remove Segment 12 from the application ...". Left unaddressed by Staff's conclusion is whether CPS's rationale constitutes a "reasoned justification". CPS's only stated reason for abandoning Segment 12 was its conclusion that the Army had a property interest in the Conservation Easement

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that prevented CPS from condemning said property.¹ Yet it offered no legal support for its conclusion that said property interest existed. The only evidence provided by CPS is a copy of the Conservation Easement.

Easements are creatures of contract and must be read as such. The Conservation Easement clearly and concisely sets out the only interest afforded to the Army under its terms. Those interest are specifically limited to *contingent* rights which are in turn further limited. (See Cichowski Objections and Response, Exhibit 2, Recitals G., paras. 7.8, 15.) These contingent rights are not rights in the property itself or in actual ownership of the easement. CPS offered no legal support that a contingent right to enforce an easement bestows any justiciable interest in the Army absent an event triggering the condition. Since no such event has occurred, even if such were the law, as of now, the Army holds no property interest in the easement.

CPS's rationale is based on something that it has not proven exists. Yet Staff concludes that this forms a reasoned justification for eliminating Segment 12 from consideration. Under this analysis, any reason is good enough reason. This not only misapplies the burden of proof in this challenge, it eliminates it completely.

Finally, Staff apparently concludes that questioning whether it was reasonable to include Segment 12, or any northern routes other than Toutant Beauregard among the potential routes offered, is not the proper subject of a route adequacy challenge. If not here, then where? One cannot argue that specifically excluding an extremely viable route based on an unsupported reason constitute a reasoned analysis, and also conclude that the failure is better addressed in the main case.

¹ Although CPS also stated it relied on a letter from the Army, it is now clear that letter is of no force and effect. See Cichowski Intervenors Reply and Objections to CPS Energy's Response to Statements on Route Adequacy

Segment 12 and any northern routes other than Toutant Beauregard live or die with this challenge. Since they have been intentionally omitted from CPS's Application, there is no other forum to determine whether, given these facts and circumstance, CPS has demonstrated a reasoned justification for excluding any reasonable northern routes other than Toutant Beauregard Road.

II. INCORPORATION and CONCLUSION

Intervenors incorporate herein for all purposes their previously filed Reply and Objections to CPS Energy's Response to Statements on Route Adequacy, Cleveland's Statement of Route Adequacy and Request for Route Adequacy Hearing, and the Anaqua and Jauer Joint Motion Challenging Route Adequacy. For the reasons stated herein and the incorporated Statements and Motions, Intervenors respectfully request that the Joint Motion Challenging Route Adequacy be granted

Respectfully submitted,

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INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed with the Commission and served on all other parties via the PUC Interchange on this 8th day of December 2020, pursuant to SOAH Order No. 3 issued in this docket.

_____/S/_____
Steve Cichowski