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

**CPS ENERGY'S PREHEARING BRIEF  
ON SCOPE OF ROUTE ADEQUACY HEARING**

COMES NOW the City of San Antonio, acting by and through the City Public Service Board (CPS Energy) and files this prehearing brief regarding the scope of the route adequacy hearing. This brief lays out the appropriate legal framework for the route adequacy hearing and addresses some incorrect assertions made by other parties regarding this framework.

**A. A Facially Sufficient Application Shifts the Burden of Production to Intervenors.**

First, it is important to note that, although CPS Energy retains the overall burden of proof, if the Application contains a facially sufficient number of reasonably differentiated routes, then the burden of production shifts to the challenging parties. As Judge Travis Vickery noted:

The ALJ does not read the Commission's Order in *Wood County* to mean that an application may be found inadequate by mere assertion. Therefore, the Movants bear a burden of production of facts to support their claims, whether by direct examination of their own witnesses or cross-examination of [Applicant's] witnesses.<sup>1</sup>

In that case, Judge Vickery found the applicant was not required to put on witnesses in its direct case at the route adequacy hearing, as the initial evaluation of adequacy could be made on the application itself. A similar finding was later made by Judge Steve Arnold, who stated:

Commission precedent also states that a CCN applicant is required to show only that it has proposed an adequate number of reasonably differentiated routes in its application for the ALJ and the Commission to conduct a proper evaluation. . . . An applicant may make this *prima facie* showing through its application and the routes contained in the application. An applicant is not required to disprove the viability of every conceivable routing permutation developed by other parties. . . . Once an applicant makes a *prima*

<sup>1</sup> *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Johnson and Hood Counties, Texas*, Docket No. 33800, Order No. 10: Regarding Burden of Proof at 3 (Jun. 28, 2007).

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facie showing of the adequacy of its application, the burden then shifts to the other parties to present evidence showing the inadequacy of the application or the routes presented.<sup>2</sup>

In this case, CPS Energy has presented 29 different routes, connecting seven alternative substation sites to six different tie-in points with the existing Ranchtown to Menger Creek 138-kV transmission line, with the northernmost tie-in point being nearly six miles north of the southernmost tie-in point. As PUC Staff notes, this represents an adequate number of reasonably-differentiated routes on its face. Therefore, the burden of production has shifted to the Intervenor to produce evidence demonstrating some clear inadequacy in the number and diversity of the routes in the Application.

**B. The Focus of the Route Adequacy Hearing is on the Application, Not the Routes.**

The Commission stated in *Wood County* that “the basic intent of any preliminary hearing is to ensure the adequacy of the application, not the adequacy of the proposed routes.”<sup>3</sup> In fact, ALJs have frequently not even granted route adequacy hearings in situations where intervenors are challenging the features of some of the routes. In a case very closely on point with this case, Judges Vickery and Kerrie Qualtrough denied a request for a route adequacy hearing, stating:

In response to [intervenor’s] challenges to its proposed routes, [applicant] notes that the Route Study prepared by Cox-McLain Environmental, Inc., includes 25 alternate routes, using four alternate interconnect points, and six alternate substation sites. Although the City claims that the 25 proposed routes lie in only one route corridor, [applicant] points out that the routing map clearly reveals there are actually three route corridors. . . . Reviewing the routing map, the ALJs agree with [applicant] that there are three routing corridors although they are all near the Tollway. As explained by [applicant], the dominant feature of the study area is the Tollway. Extensive growth in the study area and adjacent cities results in significant routing constraints and, therefore, limited routing corridors in the study area. The ALJs find that [applicant] has provided a reasoned justification for the tightness of the routing corridors, due to the congested nature of the study area and CoServ’s voltage reduction criteria limit of a 6.25 circuit mile length.<sup>4</sup>

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<sup>2</sup> *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Riley-Krum West 345-kV CREZ Transmission Line (Formerly Oklaunion to West Krum) in Archer, Clay, Cooke, Denton, Jack, Montague, Wichita, Wilbarger, and Wise Counties, Texas*, PUC Docket No. 38140, SOAH Order No. 9 at 3–4 (Jul. 19, 2010) (emphasis added)

<sup>3</sup> *Application of Wood County Electric Cooperative, Inc for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, Docket No. 32070, Order on Appeal of Order No. 8 at 6 (Nov. 1, 2006).

<sup>4</sup> *Application of Brazos Electric Power Cooperative, Inc to Amend its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Collin County, Texas*, Docket No. 46429, Order No. 6: Denying Requests for Route Adequacy Hearing and Canceling Hearing at 5 (Mar 20, 2017).

Based on this, the judges did not even hold a route adequacy hearing, finding the justifications offered by applicant were sufficient to demonstrate the application was adequate.

**C. Alternative Projects or Different Study Areas are Not Route Adequacy Challenges.**

In Docket No. 33978, some intervenors proposed an additional route that would connect to a different transmission line than that proposed in the application. Judge Lilo Pomerleau concluded this was a different project and, therefore, was not properly considered in a route adequacy hearing:

[Intervenors] propose an alternative route, which [applicant] argues is an alternative transmission project, consisting of a 345 kilovolt (kV) line between Kendall Switching Station (near Comfort, Texas) and the Killeen Switching Station (near Killeen and Fort Hood). [Applicant] contends that a route adequacy hearing does not encompass alternative transmission line projects. The ALJ agrees. This issue may be addressed at the full hearing.<sup>5</sup>

Similarly, in Docket No. 44547, Judge Steve Arnold canceled a route adequacy hearing when he found that the challenges raised by Intervenors did not merit a hearing. The challenges made by the intervenors were that the applicant should have expanded the study area and that “some route segments tend to be close together such that geographic diversity is not achieved.”<sup>6</sup> Judge Arnold found that the presence of different routing corridors obviated concerns that some routes in one corridor were too close together (“[Applicant] has created geographic routing corridors. The closeness of some route segments may be a result of the routing constraints in the study area.”), and he found that cost, length, and engineering concerns were sufficient reasons to keep a smaller study area. Based on the information in the application addressing these issues, he canceled the route adequacy hearing.

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<sup>5</sup> *Application of LCRA Transmission Services to Amend its Certificate of Convenience and Necessity for a Proposed 345-kV Transmission Line in Caldwell, Guadalupe, Hays, Travis, and Williamson Counties, Texas*, Docket No. 33978, Order No. 12: Regarding Hearing on Route Adequacy at 2 (Aug. 15, 2017).

<sup>6</sup> *Application of Centerpoint Energy Houston Electric, LLC, to Amend a Certificate of Convenience and Necessity for a Proposed 345-kV Transmission Line Within Grimes, Harris, and Waller Counties*, Docket No. 44547, SOAH Order No. 5 at 7 (Jun. 19, 2016).

**D. Compliance with the Commission’s Routing Criteria is NOT Part of a Route Adequacy Hearing.**

In their request for a route adequacy hearing, Anaqua Springs Homeowners’ Association (Anaqua Springs HOA) and Brad Jauer/BVJ Properties (Jauer) make the surprising assertion, without any supporting authority, that “whether CPS properly followed the prescribed process and investigated the facts and circumstances surrounding the available routing options, and then made any necessary adjustments is properly adjudicated in a route adequacy hearing.”<sup>7</sup> Similarly, Patrick Cleveland asserts that CPS Energy did not properly consider the Commission’s routing criteria when evaluating routes. These contentions by these intervenors are not relevant to a route adequacy hearing, as reflected by past ALJ orders on the scope of route adequacy hearings. For example, in Docket No. 33800, Judge Vickery pointed out that “[Intervenors] also claim that [Applicant] failed to consider the Commission’s routing guidelines.” He then went on to state that “this is not an issue to be addressed in a route adequacy hearing.”<sup>8</sup> Accordingly, consideration of routing criteria is simply not relevant for determining whether an adequate number of routes have been presented.

**II. CONCLUSION**

CPS Energy’s Application contains an adequate number of reasonably differentiated routes for the ALJs and the Commission to conduct a proper evaluation. The intervenors bear the burden of producing evidence sufficient to demonstrate the application does not contain an adequate number of reasonably differentiated routes. Consideration of compliance with routing criteria, connections to alternative transmission lines, scrutiny of some routes (such as proximity to schools or the fact that they use a similar segment), or scrutiny of the study area chosen are not relevant issues for a route adequacy hearing.

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<sup>7</sup> *Application of the City of San Antonio to Amend its Certificate of Convenience and Necessity for the Scenic Loop 138-kV Transmission Line in Bexar County*, Docket No. 51023, Joint Motion Challenging Route Adequacy and Request for Route Adequacy Hearing at 7 (Nov. 24, 2020).

<sup>8</sup> *Application of Brazos Electric Power Cooperative, Inc to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Johnson and Hood Counties, Texas*, Docket No. 33800, Order No. 9: Confirming Hearing on Route Adequacy at 2 (Jun. 26, 2007).

Respectfully submitted,

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**ATTORNEYS FOR CPS ENERGY**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record on this date via the Commission's Interchange in accordance with the Commission's order in Docket No. 50664 suspending PUC Procedural Rule 22.74.

/s/ Craig R. Bennett

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