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PUBLIC UTILITY COMMISSION
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APPLICATION OF THE CITY OF SAN	§	BEFORE THE STATE OFFICE
ANTONIO ACTING BY AND THROUGH	§	
THE CITY PUBLIC SERVICE BOARD	§	
(CPS ENERGY) TO AMEND ITS	§	OF
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY FOR THE PROPOSED	§	
SCENIC LOOP 138-KV TRANSMISSION	§	ADMINISTRATIVE HEARINGS
LINE	§	

JOINT MOTION TO STRIKE, OR IN THE ALTERNATIVE, RESPONSE TO CPS ENERGY'S LATE FILED PLEADING

Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") and Brad Jauer/ BVJ Properties, LLC ("Jauer") (collectively, "Joint Parties") file this Joint Response to CPS Energy's Brief on Scope of Route Adequacy Hearing.

I. CPS ENERGY'S FILING IS LATE AND SHOULD BE STRICKEN

The Administrative Law Judges (ALJs) established a procedural schedule in this case based primarily on the parties' agreement regarding deadlines. The Joint Parties timely filed their request for a route adequacy hearing, which included a brief statement on the burden of proof in route adequacy hearings. CPS Energy timely filed its response on December 3, 2020, a full week before the route adequacy hearing was set to convene. In the afternoon of December 9, 2020, less than two hours before the Public Utility Commission of Texas ("Commission") filing deadline, the day before the route adequacy hearing, CPS Energy filed what it has styled a "Prehearing Brief on Scope of Route Adequacy Hearing." Given CPS Energy's response deadline in this case of December 3, 2020, the fact that the parties have had limited time to prepare for the route adequacy hearing, and were busy preparing witnesses and preparing for cross-examination the day before the hearing, this untimely filing was late, not in compliance with the ALJs' procedural schedule, and unfairly prejudicial. For those reasons, the Joint Parties move to strike CPS's late-filed pleading.

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However, because the Joint Parties are filing this motion to strike the morning of the hearing, they also submit the following response.

II. BURDEN OF PRODUCTION

CPS agrees that it has the ultimate burden of proof in showing that it has provided a sufficient number of reasonably differentiated routes. Once it has done so, CPS argues the burden of production shifts to the parties challenging the application. CPS then cites to a SOAH order indicating that an application may not be found inadequate by “mere assertion” and that it requires evidence. In that case, the ALJ found the applicant did not need to put on witnesses in its direct case at the route adequacy hearing because the initial evaluation could be made on the application itself. What CPS does not disclose about the cited case is that the ALJ determined the applicant had specifically refuted each assertion of the intervenors by referring to its application.¹ These are not the facts here.

The Joint Parties have not “merely asserted” but have pointed directly to information in the Application and elsewhere which provides evidence that the routes provided in the Application are not sufficiently geographically diverse. They are also not reasonably differentiated because when CPS removed Segment 12 prior to filing the Application, it removed all northern routes that did not parallel Toutant Beauregard. Now all northern routes utilize Segment 54, and all northern routes parallel Toutant Beauregard for some portion of their length. Additionally, CPS predicated its selection of the transmission tie based on the location of the northern substation (substation 1) rather than comparing the distance of the different substations to the different transmission lines under consideration. Moreover, CPS arbitrarily shifted its substation siting area to the north of the stated “ideal location” at the intersection of Scenic Loop and Toutant Beauregard. This reduced the area within which a substation could be sited to the south of that intersection by as much as

¹ CPS Brief at 1, citing *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 Not 10 at 3 (June 28, 2007).

one-third and, as a result, thereby reduced the number of southern substations, and southern routes. The foregoing issues were taken directly from CPS's Application and information provided in discovery, and they became even more problematic after CPS eliminated Segment 12 and the northernmost corridor through lightly populated areas. Nevertheless, CPS did not address these issues to mitigate the elimination of the major routing corridor by providing another reasonable, geographically diverse routing corridor in its place, which could have produced an adequate application.

III. THE APPLICATION VS. THE ROUTES

CPS argues that "the basic intent of any preliminary hearing is to ensure the adequacy of the application, not the adequacy of the proposed routes." CPS does not cite the full statement from the Commission in this quote. The full quote is: "A preliminary hearing is not, however, intended to be open-ended; rather, the basic intent of any preliminary hearing is to ensure the adequacy of the application, not the adequacy of the proposed routes. On the other hand, the preliminary hearing must provide a meaningful review of whether the application will ultimately provide an adequate range of choices to the ALJ and to the Commission for the proposed transmission solutions to the perceived need for additional service."² In the same order, the Commission goes on to say that an adequate number is not simply a counting exercise.³

CPS goes on to argue that certain SOAH ALJs denied a request for a route adequacy hearing in a case similar to this one. CPS again omits a significant fact from the case it cites, which is that the parties requesting the route adequacy hearing in that case wanted to require the utility to consider running an entire route underground, which would have added unreasonable increased cost, and the landowners did not directly challenge whether the application contained an

² *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 8 at 5 (October 31, 2006)

³ *Id* at 5.

adequate number of reasonably differentiated routes.⁴ Therefore, the facts are distinguishable from this case where parties have not requested that a line be run underground, and have directly challenged whether the application contains an adequate number of reasonably differentiated routes.

IV. THE JOINT PARTIES ARE NOT ASKING FOR ALTERNATIVE PROJECTS OR DIFFERENT STUDY AREAS

CPS argues that the Joint Parties have proposed that CPS connect to a different transmission line. The Joint Parties have, generally, not made specific suggestions. The responsibility to present adequate reasonably differentiated routes is not that of the Joint Parties but is the responsibility of CPS. Nevertheless, the Joint Parties have suggested some potential alternatives. However, the Joint Parties have not suggested an alternative *project*. The scope of the route adequacy challenge has been directed at this project. As Attachment 13 to its Application, CPS provided a “Scenic Loop Substation Analysis Report.” This report purports to make the determination that routing the transmission line from a substation to the Ranchtown transmission line is a better alternative than routing it to the La Sierra line. As outlined in the Joint Parties’ Request for a Route Adequacy Hearing, the analysis is flawed. However, there is analysis in the application that shows routing to the La Sierra line was evaluated. That is not the same as proposing an alternative transmission project, like the one outlined from Docket No. 33978, as asserted in CPS’s brief. In that case, one party suggested that a 345 kV transmission line might be built in the future as part of the CREZ projects. That party opined that routing to the (non-existent) transmission line should be considered.⁵ CPS equates this position to the Joint Parties’ position that CPS did not properly analyze the possibility of tying into the La Sierra transmission line. That

⁴ *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*, Docket No. 46429, Order No. 6 at 4 (Mar. 20, 2017).

⁵ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 345-kV Transmission Line in Caldwell, Guadalupe, Hays, Travis, and Williamson Counties, Texas*, Docket No. 33978, Hutto Citizens Group Statement on Route Adequacy at 6 (July 23, 2007).

comparison is faulty. Here, Joint Parties are not suggesting that CPS consider connecting to a non-existent line. Rather, Joint Parties are arguing that the analysis that is in CPS's application was incomplete and insufficient to eliminate a tie into the La Sierra transmission line, and that summarily rejecting that interconnection, taken together with the other issues Joint Parties raise, resulted in an insufficient Application.

V. THE JOINT PARTIES HAVE NOT ARGUED THAT COMPLIANCE WITH ROUTING CRITERIA IS PART OF A ROUTE ADEQUACY HEARING

CPS asserts that whether it properly investigated the facts and circumstances surrounding the available routing options is not properly adjudicated in a route adequacy hearing. This discussion in the Joint Parties' Request for a Route Adequacy Hearing was a statement regarding the analysis that CPS is required to do under the Wood County case where the Commission stated that it:

instituted this initial review of application adequacy to ensure that the routes proposed in an application are the result of a reasoned process that considered engineering principles, statutory and regulatory factors, and Commission policy. When properly carried out, questions of why other routes were not considered do not have to be asked in the hearing on the merits, or after issuance of a PFD. Such questions are problematic at these late dates in the certification process due to landowner-notice requirements, the significant expenditure of resources up to that point, and the significant delays in needed transmission that could result if the certification process has to be restarted.⁶

VI. CONCLUSION

Joint Parties urge that the ALJs strike CPS's late filed brief. However, Joint Parties are simultaneously filing a response in the event the ALJs decide not to strike the brief. In conclusion, the Joint Parties would note the following:

- The route adequacy hearing is designed so that these issues can be brought up early and not at the conclusion of the case when it is too late;

⁶ *Wood County*, Docket No. 32070, Order on Appeal of Order No. 8 at 6.

- This is not a critical project. There is time for CPS to conduct a proper evaluation and provide an adequate application;
- While there is some moderate expense associated with granting this route adequacy request because CPS would be required to spend additional money to develop adequate routing alternatives, there is little harm in asking CPS to develop adequate routes. Doing so would prevent delays, problems with unnecessary expenditures, and landowner notice issues.

Finally, to reiterate the issue of who holds the burden of proof in a route adequacy hearing, the Joint Parties point the ALJs again to the Wood County Order, which states, “the Commission notes that it is the applicant that has the burden to prove not only that there is a need for a proposed transmission project and the appropriate routing, but also that it has filed an adequate application. It is not Commission Staff’s or any intervenor’s obligation to prove that an application is not adequate.”⁷

⁷ *Id.* at 6.

Respectfully submitted,

By: 

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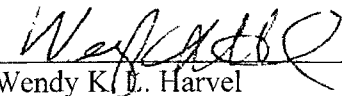
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CERTIFICATE OF SERVICE

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 10th day of December 2020, pursuant to SOAH Order No. 3 issued in this docket.


Wendy K. L. Harvel