



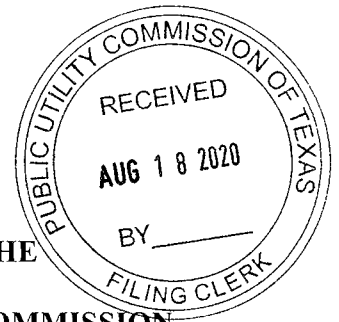
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PUC DOCKET NO. 51023



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

BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

CPS ENERGY'S RESPONSE TO SAVE HUNTRESS LANE AREA ASSOCIATION'S MOTION TO INTERVENE

COMES NOW the City of San Antonio, acting by and through the City Public Service Board (CPS Energy) and files this response to the motion to intervene filed by the Save Huntress Lane Area Association (SHLAA).

On August 11, 2020, SHLAA filed a motion to intervene in this docket. In the motion, SHLAA makes the following statement:

SHLAA is made up of over 30 individual landowners who reside in close vicinity to several of the proposed routes and/or have routes crossing their properties. Exhibit A hereto is a list of those individual landowners. In addition, the Canyons Property Owners Association is a member of SHLAA, and it represents the interests of over 700 landowners in the Canyons at Scenic Loop subdivision, whose properties are also in close vicinity to several of the proposed routes and/or have routes crossing their properties. Except for those members who intervene separately, the association is authorized to represent the interest of its members in this matter. (emphasis added)

CPS Energy has some uncertainty regarding this statement. To the extent that SHLAA in its motion is merely indicating it is generally representing interests common to its members, then CPS Energy understands this assertion to be consistent with an association's ability to participate in these types of proceedings and has no objection to such participation, nor does CPS Energy seek any additional proof from SHLAA of authorization for representation. It is the usual role of an association to represent the common interests of its members, but to do so as a separate legal entity and not as a formally designated and authorized representative of other parties.¹

¹ This is not merely a distinction without a difference. If parties appear through an authorized representative, they have separate individualized standing and rights to participate and appeal any decision. Thus, whether SHLAA is appearing solely in its own name as opposed to as a formal authorized representative of more than 700 landowners is the difference between an appearance by one party or an appearance by more than 700 separate parties.

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CPS Energy has conferred with SHLAA's counsel and believes the parties are in agreement with the nature of SHLAA's representation, and it is consistent with the understanding noted above. However, if SHLAA were purporting to act as the formal authorized representative of more than 700 individual landowners, with such landowners retaining individual rights as parties separate from SHLAA, then CPS Energy would object to such, absent a showing pursuant to 16 Tex. Admin. Code § 22.101(a)² of proof of authorization from each individual landowner claimed to be represented individually.

SHLAA's motion notes that it is "an unincorporated nonprofit association under Ch. 252 of the Tex. Bus. Org. Code." Under that chapter, the association is separate and distinct from its members for purposes of legal proceedings. For example, that chapter explicitly states:

- A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort. (Tex. Bus. Org. Code § 252.006(a));
- A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered as a member by the nonprofit association (Tex. Bus. Org. Code § 252.008).

Thus, it is very clear that the members of such an association are legally separate and distinct from the association itself. The statute does allow an association to institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, but only "in its name."³ Similarly, the statute allows an association to assert a claim "in its name" on behalf of members under certain circumstances.⁴ But, in so doing, the association is not serving as an authorized representative of the members, but rather is prosecuting a derivative claim in its own name only.

Accordingly, CPS Energy does not oppose SHLAA being admitted as a single party, in its own right, representing the interests of its members. To the extent that SHLAA intends anything other than this, CPS Energy reserves its right to object to such representation.

² That rule recognizes a party's right to be represented by an authorized representative but states that "[t]he presiding officer may require a representative to submit proof of his or her authority to appear on behalf of another person."

³ Tex. Bus. Org. Code § 252.007(a).

⁴ Tex. Bus. Org. Code § 252.007(b).

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/ Kirk Rasmussen

Kirk D. Rasmussen