



Control Number: 51023



Item Number: 589

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

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 §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

2021 FEB 26 PM 1:34
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**MOTION TO COMPEL CPS TO RESPOND TO ANAQUA SPRINGS
HOMEOWNERS' ASSOCIATION'S THIRD REQUEST FOR INFORMATION**

Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") files this Motion to Compel the City of San Antonio, acting by and through the City Public Service Board ("CPS Energy") to respond to Anaqua Springs HOA's Third Request for Information ("Third RFIs"). CPS Energy filed its response, which is attached as Exhibit 1, on February 19, 2021; therefore, this Motion to Compel is timely filed.

I. BACKGROUND

Anaqua Springs HOA's third RFIs seek information from CPS Energy regarding proposed modifications to Route R1 ("Route R1 Modified"). Importantly, CPS Energy filed no objections to the RFIs. Rather, CPS Energy indicated that it does not have and "is therefore unable to provide" responsive information. CPS Energy further indicated that it could not estimate the cost of Route R1 Modified without evaluating all relevant facts.

II. ARGUMENT

First and foremost, CPS Energy has not objected to the RFIs. Therefore, any argument from CPS Energy about the requests being irrelevant or any other legal objections are waived.

Secondly, CPS Energy indicates it is "unable to provide" responsive information; however, CPS Energy has demonstrated that it *can* provide such information in other contexts, particularly when it benefits CPS's "best meets" route.

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When Toutant Ranch was negotiating with CPS Energy to reroute the western section of CPS's "best meets" route on Toutant Ranch's property, CPS was able to provide precise calculations regarding the estimated costs of the modifications. The calculations were so precise that they anticipated a cost difference between using Segment 46 and 49 of \$57,133. In the event the Commission selects a route that uses the higher cost, CPS required Toutant to donate additional right-of-way to cover the \$57,133 cost differential.¹

Specific to the area of Route R1 Modified, itself, CPS Energy has evaluated it and the routing of the segments in question (i.e., Segments 43 and 38) quite extensively. A comparison of Figure 2-2 to Figure 2-3 in the Environmental Assessment² shows the following:

- Segment 43 was rerouted from a straight line to the curved path it now takes;
- Segments 38/39 were pushed to the west and renamed 39, and
- Segment 37 was shifted south, and an angle was added resulting in the new segment 38 being drawn in a "V" shape.

The Environmental Assessment ("EA") addresses the reasons for some these modifications. The EA notes that Segment 39 was shifted to the west to parallel a property boundary. For Segment 43, the EA notes that it was shifted south due to "engineering constraints." The EA does not address why an angle was added on the new Segment 38 (old 37).³ Nevertheless, it is clear from the review CPS performed that it has evaluated the terrain around the modifications on Segments 38 and 43.

Moreover, CPS has demonstrated that it has up-to-date information available to do the evaluation that it claims it is unable to provide. Prior to the start of the route adequacy hearing, CPS Energy announced that it was going to move Segment 26 to the east because of a new house

¹ Exhibit 2 at paragraph 7.

² Exhibit 3 Figures 2-2 and 2-3 from the Environmental Assessment.

³ EA at 6-6 through 6-7 (Bates 000193-94).

built under the proposed location of Segment 26. CPS Energy showed the location of Segment 26a at the route adequacy hearing as a tentative, but likely location where Segment 26 would be moved. Despite that house not being visible on Google Earth, CPS Energy knew about it because of surveillance photos.⁴ In other words, CPS Energy has continuously monitored the study area and the location of its proposed lines. It is in the best position to be able to provide this information.

Similarly, early in this case, Anaqua Springs approached CPS and asked whether it would be possible to construct a substation at a location surrounded by the conservation easement, the northern boundary of Serene Hills, and Segment 17. In response to Anaqua Springs RFI 1-16, CPS produced detailed information regarding the difficulties of locating a substation at that site. Thus, CPS Energy, although saying it is “unable to provide” information regarding data relevant to Route R1 Modified, is clearly *able* to provide that information. It is simply choosing not to, even when it has no objection to the RFIs.

III. CONCLUSION

CPS has not objected to Anaqua Springs’ third RFIs and should be ordered to produce the information. Anaqua Springs would note that Route R1 Modified is supported or unopposed by numerous intervenors.⁵ CPS did not object to the RFIs and should be ordered to provide the information. For these reasons, Anaqua Springs HOA respectfully requests that the ALJs grant this Motion to Compel.

⁴ Exhibit 4 (aerial photograph of new structure).

⁵ See, e.g. Joint Motion for Referral of Certified Issues and Request for Expedited Ruling, filed February 24, 2021.

Respectfully submitted,

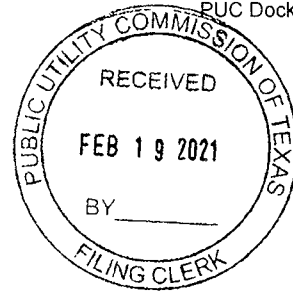
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**ATTORNEYS FOR ANAQUA SPRINGS
HOMEOWNERS' ASSOCIATION**

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 26th day of February 2021, pursuant to SOAH Order No. 3 issued in this docket.

Wendy K. L. Harvel
Wendy K. L. Harvel



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**CPS ENERGY'S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS'
ASSOCIATION'S THIRD REQUEST FOR INFORMATION**

COMES NOW the City of San Antonio, acting by and through the City Public Service Board (CPS Energy) and files this Response to the Third Request for Information (RFI) of Anaqua Springs Homeowners' Association (Anaqua Springs HOA). This Response is timely filed. CPS Energy agrees and stipulates that all parties may treat these responses as if the answers were filed under oath.

Respectfully submitted,

/s/ Kirk D. Rasmussen

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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 SOAH Order 3 in this proceeding.

/s/ Kirk D. Rasmussen

Kirk D. Rasmussen

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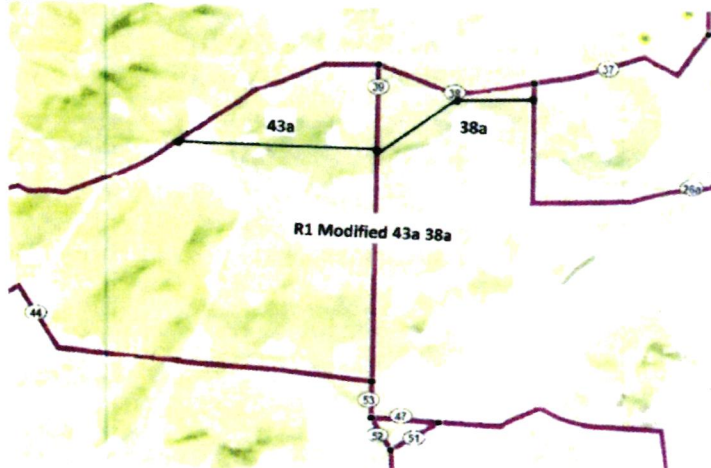
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**CPS ENERGY’S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS’
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Anaqua Springs Question No. 3-1:

Please provide the cost, length, and habitable structure count on a modified Route R1 as follows: Substation 6, Segments 50, 15, 26a, 38 modified and renamed to 38a, and 43a, with modifications as shown on the attached exhibit.

Exhibit:



Response No. 3-1:

“Modified and renamed” segments “43a” and “38a” as shown on the exhibit are not segments included in CPS Energy’s Application or Amended Application in this proceeding. CPS Energy has not identified, evaluated, or compiled data associated with these “modified” and “renamed” segments. Accordingly, CPS Energy does not have, and is therefore unable to provide, information responsive to this request.

Prepared By: Lisa B. Meaux
Sponsored By: Lisa B. Meaux

Title: Project Manager, POWER Engineers, Inc.
Title: Project Manager, POWER Engineers, Inc.

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**CPS ENERGY'S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS'
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Anaqua Springs Question No. 3-2:

If your response to the prior RFI is that you have not evaluated this route and have no or incomplete data to provide, do you have any reason to believe that it would be any more expensive than Route R, of which it appears to be a mirror image? And if so, please explain.

Response No. 3-2:

Route R was amended in CPS Energy's Application Amendment on December 22, 2020, to become Route R1. This response presumes the question is with respect to Route R1.

CPS Energy cannot state whether a modification of Route R1 using "modified and renamed" segments "43a" and "38a" would be reasonably estimated to cost more or less than Route R1. A number of factors, including, but not limited to distance interior away from the property line, geographic relief, vegetation cover, and golden-cheeked warbler habitat could increase or decrease the estimated cost of a potential routing segment in this area.

Prepared By: Scott D. Lyssy
Sponsored By: Scott D. Lyssy

Title: Manager Civil Engineering
Title: Manager Civil Engineering

Agreement Regarding Agreed Route Modifications and Amendment to Application

CPS Scenic Loop CCN, Docket No. 51023

Parties:

- CPS Energy
- Toutant Ranch, Ltd., Pinson Interests LTD LLP, and Crighton Development Co. (collectively, "Developers")

Background:

- Developers are in the process of developing residential communities in the northwestern portion of the study area, including along proposed Segments 42, 46, 48, and 49. The presence of multiple potential transmission line paths across Developers' property has severely impacted Developers' business such that Developers believe they need relief before litigation will conclude in Docket No. 51023.
- Developers have asked CPS Energy to amend its Application to eliminate one of the four potential transmission line paths that impact Developers' properties. In exchange, Developers are willing to accept the transmission line on their properties, donate additional ROW as necessary to minimize the impact of their requested modifications, and compromise on the proposed condemnation value of any ROW that is not donated pursuant to this or a prior agreement. The proposed modifications will only impact properties that Developers own or control through various development agreements.

Terms:

- 1) **Prior Agreements:** Developers will honor all prior agreements with CPS Energy, independently of the terms of this agreement, specifically with respect to Developers agreement to donate approximately 2,059 feet of ROW on Segment 42 in the location previously agreed upon.
- 2) **Route Adequacy Proposal:** Developers will present a route adequacy proposal on November 24, 2020 requesting CPS Energy be ordered to amend its application in the manner shown on Exhibit A.
 - a) **It is the parties' intention that the changes shown on Exhibit A will only directly impact land owned by one of the Developers. All ROW for new segments or modifications will fall on land owned by one of the Developers, and the centerline of the new segments or modifications will not pass within 300 feet of any habitable structure.**
 - b) The modifications depicted on Exhibit A are as follows:
 - i) **Segment 49a:** Segment 49a will connect Segment 46 to Segment 49. Segment 49a will originate at the northeastern corner of Developers' Tract B-004, and all associated ROW for Segment 49a will be contained within Tract B-004. Segment 49a will head south from Segment 46 to Segment 49, and will include a single angle

at the southern end to match the existing curve of Segment 49 as Segment 49 heads to the west.¹

- ii) **Partial Removal of Segment 49:** Segment 49 to the east the interconnection with new Segment 49a will be removed. The western portion of Segment 49 will remain as proposed.
 - iii) **Creation of Alternative Segment 46a:** Two angles will be incorporated into Segment 46 to create alternative Segment 46a on Developers' Tracts B-005 and B-007 such that the centerline of Segment 46a will stay at least 300 feet from the boundary of Tract B-013 (the "Reyes Tract") and well over 300 feet from Habitable Structure 15 (the "Reyes Home").
 - iv) **Creation of Segment 42a:** A new Segment 42a will be created to connect the existing node of Segments 41, 46, and 48 directly to existing Segment 42 on Tract B-041 before Segment 42 turns from the northwest to the west. This new segment will travel as straight as possible while retaining all ROW on Developers' property and staying at least 300 feet from any habitable structure.
 - v) **Elimination of Segment 48:** Segment 48, which would be unnecessary following the addition of Segment 42a and the partial removal of Segment 49 will be removed.
- 3) **CPS Energy Agreement to Route Adequacy Proposal:** CPS Energy will file a pleading following the filing of Developers' route adequacy proposal acknowledging the proposal and expressing support and agreement with the changes proposed. CPS Energy agrees, following issuance of an order from the ALJs requiring the proposed adjustments, to amend its Application in Docket No. 51023 to incorporate the modifications depicted on Exhibit A.
- 4) **Staff Non-Opposition:** CPS Energy's agreement to file in support of the Developers' route adequacy proposal is contingent on Staff expressing support for the proposal, or at a minimum agreeing not to oppose the proposal.
- 5) **Agreement to Support Routing Options:** Developers² agree to support the Commission routing the line down either Segment 46 Modified (full length) or Segments 46 Modified (partial)-49a-49 (western portion), but do not commit to a position regarding the remainder of the route to the south or east of the eastern node of Segment 46. Developers reserve their right to argue that the Commission should reach Segment 46 Modified by following a path that includes Segment 41.
- 6) **No Net Cost Increase:** Developers agree to donate additional ROW as necessary to offset any net cost increase that results from Developers' requested modifications. The parties agree that the "net cost increase" will be calculated as follows:
- a) If the Commission uses Segment 42a-46 Modified (full length):
 - i) The cost of Segment 42a minus the cost of proposed Segments 42 and 48; plus

¹ At its closest point, the centerline of Segment 49a will be approximately 917 feet from the western boundary of Tract B-004.

² As well as all other legal entities owned or controlled by Developers.

- ii) The cost of Segment 46 Modified (full length) minus the cost of proposed Segment 46.
 - b) If the Commission uses Segments 42a-46 Modified (partial)-49a-49:
 - i) The cost of Segment 42a minus the cost of proposed Segment 42; plus
 - ii) The cost of Segment 46 Modified (full length) minus the cost of proposed Segment 46;³ plus
 - iii) The cost of Segment 49a and the portion of Segment 49 to the west of the interconnection with Segment 49, minus the cost of proposed Segment 49.
 - c) If the Commission uses Segment 41-46 Modified (full length):
 - i) The cost of Segment 46 Modified (full length) minus the cost of proposed Segment 46.
- 7) **Maintain Existing Cost Differentials:** Developers agree to donate additional ROW as necessary to maintain the existing cost differential between routes that use Segment 46 and Segment 49.⁴ There are two possible scenarios:
- a) **Scenario 1:** The Commission selects a route that uses a variation of Segment 42.
 - i) In the current Application, starting at the node of Segment 36 and Segment 42, using Segments 42-48-46 costs \$57,133 less than using Segments 42-49.⁵
 - ii) If the Commission selects a route that uses a variation of Segment 42, Developers commit to donating additional ROW as necessary to make the estimated cost of using Segments 42a-46 Modified (full length) \$57,133 less than the estimated cost of using Segments 42a-46 Modified (partial)-49a-49.
 - b) **Scenario 2:** The Commission selects a route that uses Segment 41.
 - i) If the Commission selects a route that uses Segment 41, Developers commit to donate additional ROW as necessary to make the estimated cost of using Segments 41-46 Modified (full length) \$57,133 less than the estimated cost of using Segments 41-46 Modified (partial length)-49a-49.
- 8) **ROW Acquisition:** If the Commission selects a route that uses any of the modified segments shown on Attachment A, Developers agree to provide all necessary ROW across Developers' property (including any necessary access easements) that has not been donated pursuant to this (or an earlier) agreement to CPS Energy without resorting to a contested condemnation process. Developers will agree to provide all necessary, non-donated ROW across Developers' property to CPS Energy at the lower value of (1) \$0.40 per square foot, which is a 20% discount off of CPS Energy's assumed cost of ROW along the segments that impact Developers' property; or (2) the value of the ROW along the segments that impact Developers' property pursuant to an independent appraisal for the property right by an one or more appraisers agreed to by

³ This captures the cost of avoiding the Reyes Tract on 46 Modified (partial).

⁴ The magnitude of any associated ROW donation will be determined after CPS develops cost estimates for the new and modified segments described in this agreement.

⁵ This is the difference between CPS's cost estimates for proposed Route Z (Sub 7-54-20-36-42-48-46) and Proposed Route AA (Sub 7-54-20-36-42-49). See Application Attachment 3.

the parties. Additionally, Developers will not seek any recovery for damages to the remainder value of any tracts that are impacted by the transmission line, including where Segment 46 Modified crosses Developers' Pecan Springs Ranch, Unit 3 development on Tract B-005.

- 9) CPS agrees that, consistent with the Commission's final order, if a route is approved by the Commission that includes Segment 42a, CPS Energy will work with Developers to make minor route deviations to Segment 42/42a as appropriate to minimize impacts to Developers' activities in the area.

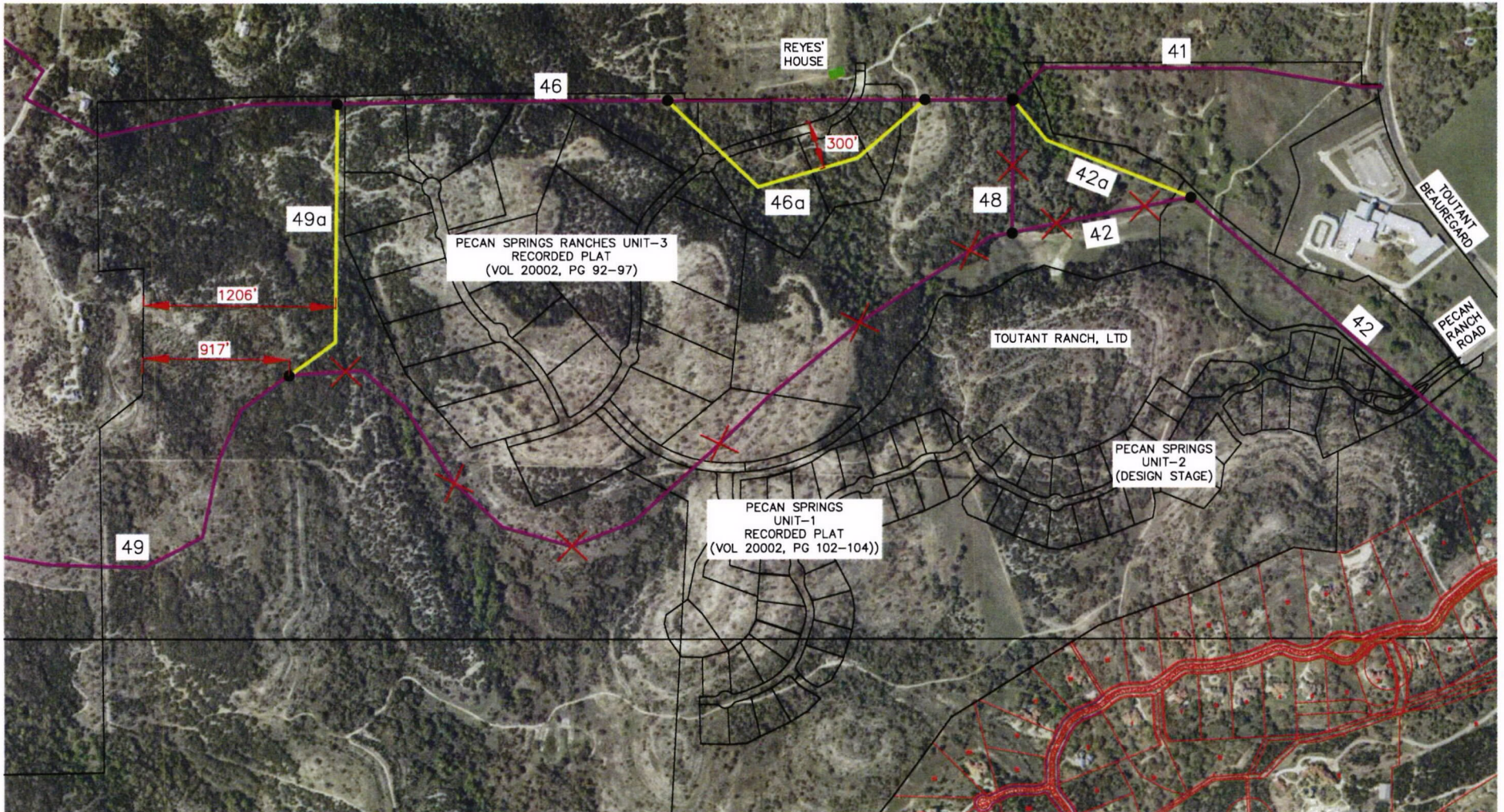
Signed this 23rd day of November, 2020.

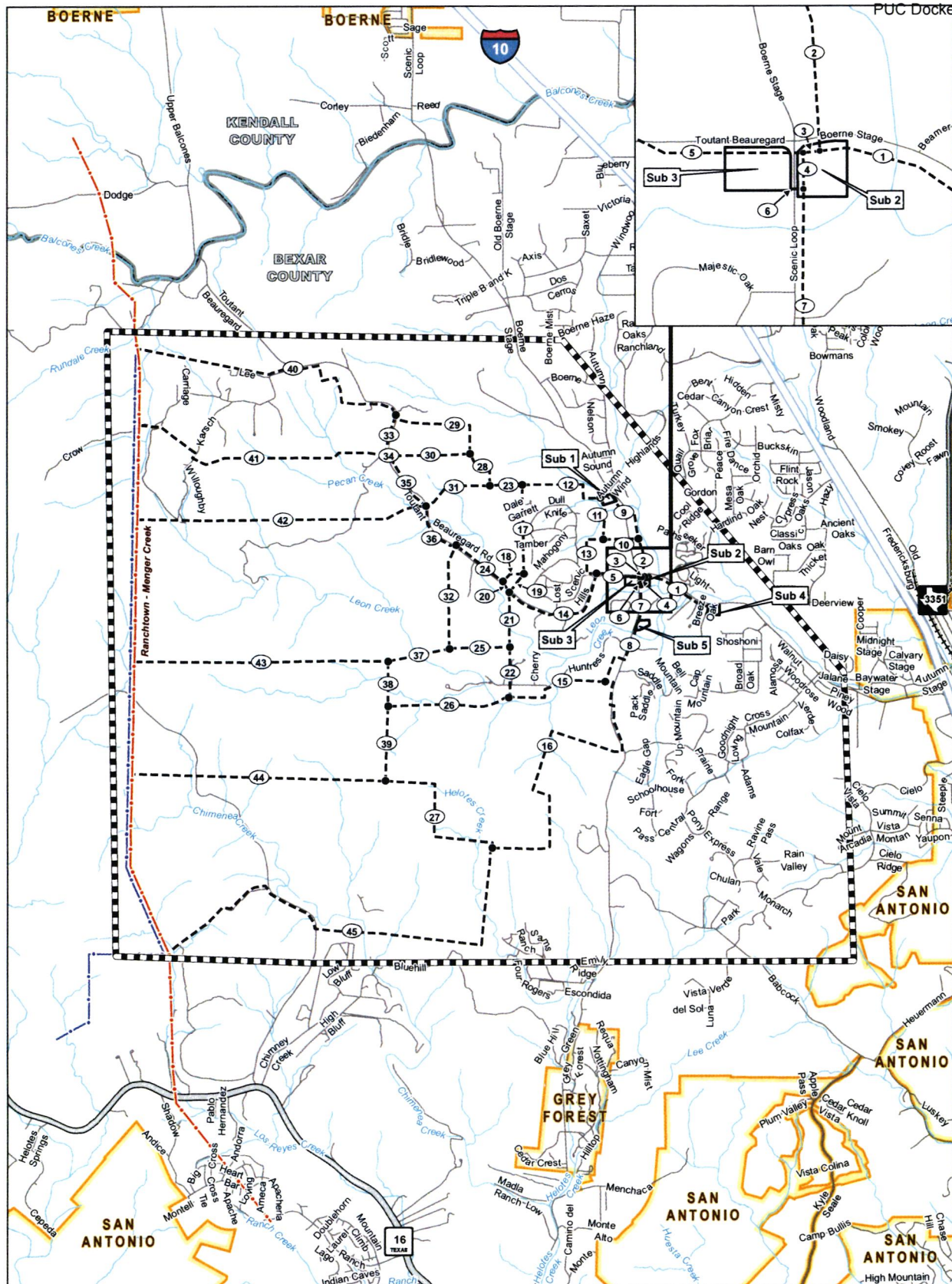
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TAYLOR DREISS (Print)
For Developers

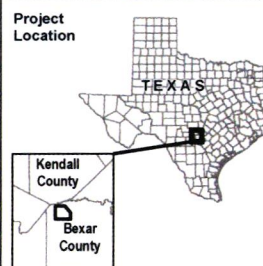
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PAUL BARHAM (Print)
For CPS Energy





Project Components	Transportation Features	Existing Utility Features
Study Area Boundary	Interstate Highway	138 kV Transmission Line
Preliminary Segment, Node, & Label	State Highway	345 kV Transmission Line
Preliminary Substation Site	FM Road	
Administrative Features	Local Road	
City Limits	Railroad	
County Boundary	Surface Waters	
	River / Stream	



SCENIC LOOP 138 kV TRANSMISSION LINE AND SUBSTATION PROJECT

Figure 2-2
Preliminary Segments Presented at Open House Meeting

