



Control Number: 51023



Item Number: 597

Addendum StartPage: 0

RECEIVED

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

2021 MAR -1 AM 10:10

PUBLIC UTILITY COMMISSION

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

**BEXAR RANCH, L.P, SAVE HUNTRESS LANE AREA ASSOCIATION, AND  
CLEARWATER RANCH POA'S RESPONSE TO JOINT MOTION FOR REFERRAL  
OR CERTIFIED ISSUES AND REQUEST FOR EXPEDITED RULING**

COME NOW, Intervenors, Bexar Ranch, L.P., Save Huntress Lane Area Association, and Clearwater Ranch POA (together "Respondents"), and file this, their Response to Anaqua Springs Homeowner's Association, Brad Jauer and BVJ Properties, LLC, The San Antonio Rose Palace, Inc., and Strait Promotions, Inc.'s (collectively "Joint Parties") Joint Motion for Referral of Certified Issues and Request for Expedited Ruling (the "Motion"). Respondents request denial of the Motion as Commission policy clearly does not allow intervenors to propose modifications to segments not consented to by the affected intervenor landowner, and in support, thereof Respondents respectfully show the following:

***1. The Joint Parties' Modifications to Segments in their RI-Modified Route has No Basis in Statute or Rule.***

Modifications to segments in a transmission line routing case occur (1) through amendments to the application done so by the utility, or (2) by the consent of the landowner

597

affected by such modification and the utility. This is illustrated in this case, as there have been two such amendments.<sup>1</sup>

What the Joint Parties are requesting here is something entirely different.

Here, the Joint Parties seek to modify Segments 43 and 38 (which they have named 43a and 38a), but these “segments” do not cross their property. These “segments” also do not cross the property of any other intervenors they have listed as “agreed” or “unopposed” to this modification. Notably, none of the Respondents (whose properties **are affected** by this Motion and these “segments”) have consented.

When an electric utility submits an application for a certificate of convenience and necessity for a transmission line project, it provides a number of routes (and discrete segments that make up those routes) to allow the Commission to select a route that best meets PURA § 37.056 and the routing criteria in 16 TAC § 25.101(b)(3)(B). In its application, the utility includes a Routing Study performed by engineers and detailed Routing Maps.<sup>2</sup> After much study and gathering of data, the utility submits the application it believes will satisfy the statutory requirements and give all parties the opportunity to advocate for the best meets route (comprised of the segments included in their application). At times, the utility will need to amend its application to adjust segments or route; however, this is ultimately the decision of the utility.

Any modification of a segment must follow the same notice requirements for affected landowners and intervention in the proceedings.<sup>3</sup>

---

<sup>1</sup> See CPS Energy’s Response to Statement on Route Adequacy and Request for Approval of Agreed Amendments to CPS Energy’s Application by Toutant Ranch, LTD., ASR Parks, LLC, Pinson Interests LTD, LLP and Crighton Development Co. (Nov. 24, 2020); and *see* Amendment to CPS Energy’s Application (Dec. 22,2020).

<sup>2</sup> See Standard Application for Certificate of Convenience and Necessity for a Proposed Transmission Line (Effective June 8, 2017).

<sup>3</sup> See *generally* 16 TAC § 22.52; and *see* 16 TAC §25.101(b)(3)(B).

Once again, this is how applicant CPS Energy has operated. The two amendments to date in these proceedings have followed the applicable statute and rule.

**2. *The Joint Parties' Modifications Have No Basis in PUC Precedents.***

The Commission has never approved a modification to a segment proposed by an intervenor when the modification was not on the proposing intervenor's own property. In fact, in Docket No. 48095, when confronted with that very proposition by an intervenor, the Commission expressly "reject[ed] the proposal for decisions' recommended modification to link F1 (option 2) because the parties have not obtained landowner consent from all affected landowners."<sup>4</sup>

The Joint Parties have identified only one case in which the Commission modified a segment not proposed by the utility or the landowner affected by the segment.<sup>5</sup> Coincidentally, this is the same case (Docket 38354) that the intervenor tried to rely on in Docket 48095, noted above, which the Commission found unpersuasive. The circumstances of the modification in Docket 38354 are unique to that application and completely distinguishable from the Joint Parties position in this case.

Namely, in Docket No. 38354, the Commission modified route MK63 by moving link (or segment) Y11 further south. There, the Commission found that the "Kimble County Airport presents a significant engineering constraint when routing to the south" and therefore ordered that "LCRA shall, in the vicinity immediately south of the Kimball County Airport, move link Y11 as far south as safely and reliably possible using overhead construction while still affecting only noticed landowners. This

---

<sup>4</sup> *Application of Oncor Electric Delivery Company, LLC to Amend a Certificate of Convenience and Necessity for a 345-Kv Transmission Line In Crane, Ector, Loving, Reeves, Ward, And Winkler Counties*, Docket No. 48095, Final Order at 1 (Sept. 17 2018), Order on Rehearing at 1 (Nov. 8, 2018).

<sup>5</sup> *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed McCamey D to Kendall To Gillespie 345-Kv CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties*, Docket No. 38354, Order at 2 (Jan. 24, 2011).

modification to Y11 shall not affect LCRA's ability to safely and reliably operate the line, nor shall it affect the safe use of the Kimball County Airport."<sup>6</sup>

Therefore, in Docket 38354, the Commission sought to ensure safety and FAA compliance, while leaving some discretion to the utility. Neither the utility nor an intervenor requested this modification. Therefore, this case does not stand for the proposition that an intervenor can modify the path of a segment when it is not on their property (absent consent of the other landowner). Furthermore, Docket No. 38354 did not involve a broad set of segment modifications proposed by one intervenor group regarding the land of another intervenor group solely to make the proposing group's preferred route more palatable.

Given the foregoing, there is no basis in law to permit Joint Parties to create new segments for use on other (and non-consenting) intervenors' properties.

***3. The Basis for the Joint Parties' Modifications Have Been Rejected by PUC Precedents.***

The Commission has recently rejected this same kind of argument raised by the Joint Parties here. In Docket No. 49523, an intervenor, Creek House Ranch, preferred not to see a segment that would run on its neighbor's property but close to Creek House Ranch. Specifically, Creek House Ranch proposed that segment Z3, which ran 58 feet from its residential structure, but on the adjoining property owner's land, be moved further away from its house and further into the adjoining property owner's land. While the Commission was sympathetic to Creek House's position and encouraged the parties to cooperate and come to some sort of agreement, ultimately, the Commission would not modify a segment without the consent of the affected landowner.<sup>7</sup>

---

<sup>6</sup> *Id.* at 22.

<sup>7</sup> See *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Mountain Home 138-kV Transmission Line in Gillespie, Kerr, and Kimble Counties*, Docket No. 49523, Order at 1 (July 6, 2020).

Typically, modifications to segments come at the behest of a landowner wanting to diminish the impact of a transmission line on their property. As such, the Commission has approved modified segments, all of which were consented to by the affected landowner, in the following Commission docket numbers: 39982, 48629, 48668, 49347, 49715, 37778, 45158, 45170, 46750, 45601, and 42729.

Once again, given the foregoing, there is no basis in law or precedent to permit Joint Parties to create new segments for use on other intervenors' properties.

***4. The Joint Parties' Reliance on a Landowner Brochure is Misplaced.***

Under the "Notice" procedural requirements in 16 TAC § 22.52(a)(7), the utility must include the following language in its communications of their intent to secure a certificate of convenience and necessity: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas." Nothing in that statement says, or even implies, that any route or route segments may be modified in ways that are not part of the application's route and segment set. Instead, the required language puts people on notice that segment combinations that are included in the application can be used to create routes not otherwise proposed.

In this case, CPS Energy included such language on the first page of a 24-page packet of information, bolded and underlined for emphasis.<sup>8</sup> Following this cover letter, CPS included a description of the Primary Alternative Routes, the Segments contained in those routes, and a "detailed routing map" that satisfied the requirement to "clearly and conspicuously illustrate the

---

<sup>8</sup> See Attachment 7 to *Application of the City of San Antonio to Amend its Certificate of Convenience of Necessity for the Scenic Loop 138-kV Transmission Line in Bexar County* (July 22, 2020).

location of the area for which the certificate is being requested including all the alternative locations of the proposed routes.”<sup>9</sup>

Therefore, while the Joint Parties attempt to rely on the Commission-issued brochure as controlling legal precedence for the Administrative Law Judges to follow for notice requirements, respectfully, the Texas Administrative Code is what dictates the ability to engage in segment modifications. Furthermore, the required notice language does not invite unilateral intervenor modifications of segments on other landowners’ property.

***5. Allowing Intervenors to Propose Modifications to Segments Not on Their Affected Property Creates Bad Public Policy.***

Allowing any intervenor to suggest modifications to segments that are not identified, not evaluated, not studied, not included in the Application, and not consented to by the affected landowner will open a Pandora’s Box of problems for the Commission.

The segments proposed in a CCN Application serve as a common language for all parties to evaluate against the requirements of PURA and the TAC. The utility collects the same information and data for all segments, including an extensive Environmental Assessment, to allow for qualitative comparisons between routes. If a party were able to unilaterally propose modifications to segments on other landowners’ property, then there would be nothing to prevent *every intervenor* from redrawing all the segments to their advantage.

At what point would this end?

What the Joint Parties are proposing would lead to an even more complicated, expensive, and lengthy contested case process. Contrary to what the Joint Parties argue, not allowing modification to segments does not tie the utility’s hands in any way. If there is a modification that

---

<sup>9</sup> See 16 TAC § 22.52(a)(1)(C).

the utility believes provides a better route and it is supported by evidence, then it has the power to amend its application. In fact, that is what CPS Energy has done in these proceedings, well before the deadlines for intervenor direct testimony (and with its own supplemental direct testimony for its amendments).

Similarly, if an intervenor believes there are not enough “reasonable alternatives”, then it has the power to challenge the route adequacy. In fact, that is what several of the Joint Parties did in December of 2020, yet they made no mention of these modified routes it now wants to place on the Respondents’ properties.

Again, it is one thing for an intervenor to mix and match **utility-proposed segments** into a new route, it is quite another for an intervenor to propose new segments that the utility has not proposed. Here, numerous parties have followed the rules, leading to new routes such as AA2.<sup>10</sup> Joint Parties have not followed the rules.

***6. The Joint Parties actions prejudice the Respondents and unnecessarily delay proceedings further.***

The actions of the Joint Parties are highly prejudicial.

In addition to the Joint Parties having no basis in law or PUC precedent to support their position, the proposed modifications bisect and negatively impact the Respondents’ properties. Specifically, “segments” 38a and 43a further bisect Respondents’ properties. These proposed modifications to the segments, and the Joint Parties’ motion, severely prejudice the Respondents not just on the merits of the case, but through cost and delay.

Furthermore, the Respondents have already borne the expense of the prior route adequacy challenged raised by some of the Joint Parties back in December. During that proceeding, those

---

<sup>10</sup> For example, in this case, the Direct Testimony of Mr. Brian Andrews on behalf of Lisa Chandler, Clinton R. Chandler, and Chip and Pamela Putnam developed a new proposed route, AA2, in which he substituted one utility-proposed segment for part of another utility-proposed segment.



members of the Joint Parties failed to raise or propose these new segments (and its associated new route) which now they seek to raise, even though they challenged the number and location of routes and substation sites the utility had proposed. Indeed, their chief route adequacy witness, Mr. Mark Anderson, is the very same witness proffering the proposed “segments” 38a and 43a. This route adequacy challenge was ruled upon, adversely to Anaqua Springs and Brad Jauer. They could have taken an interim order appeal from that ruling but chose not to do so.

The deadline to file intervenor direct testimony has also passed. Intervenor direct testimony serves to address the routes the utility proposed, based upon the data and other information about the routes provided by the utility. Those routes did not include the new segments (and associated new route) the movants now seek to raise at this later stage in the case. Joint Parties know full well that these modified “segments” and the modified “route” were not included in the application. Shortly before the intervenor direct testimony deadline, Anaqua Springs HOA submitted a Request for Information to CPS on the modified segments (and associated new route) which Mr. Anderson proposed in his direct testimony.

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

Anaquas 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.

As shown, CPS Energy responded that it had no information to produce because it had not studied it, given that it was not a route that the utility had proposed.

Now, Intervenor who focused on what the utility proposed are prejudiced by having a potential route arise in direct testimony that can only be addressed in the short time available for cross-rebuttal testimony and so with one-hand tied behind their back due to the lack of any specific data and other information from the utility on the route which Mr. Anderson proposes in his direct

testimony. Joint Parties' approach is in stark contrast to what other intervenors and their experts do, which is develop new routes composed of the segments the utility has studied and then included in the application.

Certifying this issue for review would only further delay these proceedings – proceedings that have already been previously delayed by the prior activities of Anaqua Springs Homeowner's Association and Brad Jauer and BVJ Properties, LLC. The Joint Parties claim that there would be no significant delay if its motion is granted and Mr. Anderson's modified segments be included in the case. To the contrary, the case would essentially need to start over. The utility would have to study the new Mr. Anderson segments and route. Other intervenors should be given the fair option to propose their own new unstudied segments and unstudied routes under the Joint Parties' new "rules." Then intervenors would have to re-analyze the full set of routes redrawn by various intervenors. Utility and intervenor direct testimony, intervenor cross-rebuttal, discovery responses, etc., would all need to be supplemented, well-past their current deadlines, with no time to prepare for the hearing on the merits. This would undoubtedly lead to a continuation of the case, and presumably a significant continuation of it.

The routing, construction, and completion of this transmission line not only affects the utility's efforts to build a transmission line, but it affects the residents and businesses in the area that rely on electricity. This transmission line will provide needed improved reliability of the electric service in the area. This kind of procedural delay will delay service reliability improvements in the area -- something now more keenly of concern considering the Texas winter storm events in mid-February.

## CONCLUSION AND PRAYER

The Joint Parties have opted to try to burden the properties of their neighbors to the south, properties that are already fighting significantly longer stretches of potential electric transmission lines that would bisect the hearts of their properties. All because they cannot bear the thought of an electric transmission line along Toutant-Beauregard Road, a road that is already encumbered with electric distribution lines to support the significant residential and business development expanding around it.

The Commission's position on the modification of segments is clear – the affected landowner must give consent to modifications like those proposed here for any such modifications to be considered for routing decision purposes. To be clear, Intervenors, Bexar Ranch, L.P., Save Huntress Lane Area Association, and Clearwater Ranch POA do not consent to these modifications proposed by the Joint Parties today (or any variation that surfaces later). For these reasons, the Respondents respectfully request that the Administrative Law Judges deny Joint Parties' Motion for Referral of Certified Issues in full, and they pray for such other and further relief, in both law and equity, to which they are justly entitled.

Respectfully Submitted,

BRAUN & GRESHAM, PLLC

P.O. Box 1148 (Mailing)  
Dripping Springs, Texas 78620  
14101 Hwy. 290 W., Bldg. 1100 (Physical)  
Austin, Texas 78737  
512-894-5426 (telephone)  
512-894-3405 (fax)

/s/ Patrick L. Reznik  
Patrick L. Reznik  
State Bar No. 16806780  
[preznik@braungresham.com](mailto:preznik@braungresham.com)  
Carly Barton

State Bar No. 24086063  
[cbarton@braungresham.com](mailto:cbarton@braungresham.com)

**ATTORNEYS FOR CLEARWATER  
RANCH POA**

/s/Thomas K. Anson

Thomas K. Anson (SBN 01268200)  
512-499-3608/512-536-5718 (fax)  
[TAnson@clarkhill.com](mailto:TAnson@clarkhill.com)  
Clark Hill Strasburger  
720 Brazos St. Suite 700, Austin TX 78701

**ATTORNEY FOR SHLAA**

SPIVEY VALENCIANO, PLLC  
McAllister Plaza – Suite 130  
9601 McAllister Freeway  
San Antonio, Texas 78216  
Telephone: (210) 787-4654  
Facsimile: (210) 201-8178

By: /s/ Soledad M. Valenciano

James K. Spivey  
[jkspivey@svtxlaw.com](mailto:jkspivey@svtxlaw.com)  
State Bar No. 00794680  
Soledad M. Valenciano  
State Bar No. 24056463  
[svalenciano@svtxlaw.com](mailto:svalenciano@svtxlaw.com)

**ATTORNEYS FOR BEXAR RANCH,  
L.P.**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on March 1, 2021 in accordance with Public Utility Commission Procedural Rule 22.74.

/s/Patrick L. Reznik  
Patrick L. Reznik