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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 RESPONSE TO MOTION FOR REFERRAL OF CERTIFIED ISSUES

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 for referral of certified issues filed by a group of intervenors to this proceeding. As set out below, CPS Energy opposes the referral of certified issues to the Commission and believes such is unnecessary. Such a request should not be permitted to delay this proceeding. The matters raised by these intervenors can be addressed through the contested case hearing process and in the Proposal for Decision (PFD) to be issued by the Administrative Law Judges (ALJs) in this case. That is the manner in which these issues should be addressed, and the motion for referral of certified issues should be denied.

I. BACKGROUND

The application in this case was filed more than seven months ago. Under Tex. Util. Code § 37.057, the Commission was required to rule on the application by July 2021. However, consistent with the procedural schedule agreed to the by the parties and ordered by the ALJs, numerous parties, including Anaqua Springs Homeowners’ Association (Anaqua Springs HOA), and Brad Jauer and BVJ Properties (collectively “Jauer”), made route adequacy challenges and requested modifications to routes. On December 9, 2020, a route adequacy hearing was conducted. As a result of the route adequacy filings, CPS Energy agreed to make modifications to the application to include revised routes. Some modifications required amendment of the application, so CPS Energy filed an amended application on December 22, 2020, and agreed to a 2-month extension of the one-year deadline for this case.

During the route adequacy proceedings, Anaqua Springs HOA and Jauer raised concerns regarding Segments 38 and 43 (among others) but never asked for the specific modifications to those segments that they now seek, despite the fact that they raised numerous other routing issues

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and were aware that CPS Energy had agreed to modifications to other segments and was going to file an amended application to include such modifications.

Instead, more than two months later, Anaqua Springs HOA and Jauer filed testimony arguing that additional route modifications should be made, to segments 38 and 43, and now ask the ALJs to delay this proceeding further and certify issues to the Commission regarding these proposed modifications. Such should not be permitted and this case should not be delayed further. CPS Energy is not willing to grant an extension of the one-year deadline any further under these circumstances, and the ALJs should simply address the legal issues raised by Anaqua Springs HOA and Jauer (and the other intervenors joining them) in the contested case hearing and PFD. The Commission can then decide the legal issues raised by these parties when it considers the PFD in this case.

Perhaps most importantly, the modifications that Anaqua Springs HOA and Jauer seek are not on property they own, but instead are on property of other landowners who are actively participating in this docket, and those landowners strongly oppose the modifications. Essentially, Anaqua Springs HOA and Jauer seek to move Segments 38 and 43 further away from their properties, and push them more interior on the properties of adjacent landowners, when those landowners do not wish to have the segments pushed further interior on their properties. Despite what they may allege, it is clear that the principal justification for such modification is that Anaqua Springs HOA simply wants the line further away from Anaqua Springs landowner properties. This is an issue that should have been raised in route adequacy and it should not be used now to delay this case further.

II. DISCUSSION

The moving parties seek to certify three issues to the Commission: (1) whether Route RI Modified and the modifications that it contains, as presented in the testimony of Mark Anderson and other witnesses for Anaqua Springs HOA and Jauer, can be included in the record and considered by the ALJs and the Commission absent an amendment of the certificate of convenience and necessity (CCN) application; (2) whether unanimous consent of all landowners who are impacted by the Route RI Modified modification is required to approve Route RI Modified when those landowners are already noticed and actively participating in this docket;

and (3) if the answer to either of the first two issues is no, then whether CPS Energy should be ordered to amend its application to include Route R1 Modified.¹

The first issue is simply an evidentiary issue the ALJs are expected to rule upon.² CPS Energy believes the ALJs can admit the evidence, without determining its relevance or deciding the ultimate issue of whether amendment of the application is necessary, take briefing from the parties in closing arguments, and can address the issue in the PFD at the end of the case, if necessary. CPS Energy disagrees with Anaqua Springs and Jauer's assertions regarding the benefits of proposed Segment R1 Modified, and does not believe that it would necessarily be a more favorable route than many other routes in this case. Accordingly, after the contested case hearing, both the ALJs and the Commission may not have any interest in approving Route R1 Modified, even if such were a viable route. If so, then certifying issues to the Commission now would have been a pointless exercise that wasted all parties' time and delayed this case without cause.

The second proposed issue is simply a legal question the Commission can determine at the time it considers the PFD in this case. If the Commission approves CPS Energy's application for a CCN amendment on any route other than Route R1 Modified, this issue is irrelevant and moot. If the Commission determines that Route R1 Modified is superior to all of the 31 routes (plus numerous other routes that can be created from segments included in CPS Energy's application for CCN amendment), and it finds that unanimous consent of landowners directly affected by segments not included in CPS Energy's application is not needed, then it can either proceed with issuing a final order, can give the parties an opportunity to reach agreement, or it can remand for further proceedings, if necessary.

The third proposed issue is simply whether CPS Energy should be ordered to amend its application to include Route R1 Modified. This, however, is a very clear route adequacy issue that should have been raised by Anaqua Springs and Jauer when they raised their numerous other route adequacy challenges and a hearing was held. It would be improper and prejudicial to every other party in this proceeding to allow Anaqua Springs HOA and Jauer to have a second bite at

¹ *Joint Motion for Referral of Certified Issues and Request for Expedited Ruling*, at 1.

² The Commission's rules make it clear that evidentiary rulings are the province of the presiding officer and the Commission's appeal rules allow appeals for any ruling that prejudices a party, except for evidentiary rulings—recognizing the Commission defers those rulings to the presiding officer(s). See 16 Tex. Admin. Code §22.123(a)(1). Thus, it is not appropriate to certify a purely evidentiary question to the Commission.

the apple, when they never even raised these specific modifications at the proper time during the route adequacy proceedings or prior to CPS Energy’s amendment of its application. Further, as framed by the moving parties, this issue is contingent upon a “no” answer to the other two issues. Therefore, this issue is not appropriate standing alone.

These issues raised by Anaqua Springs HOA and Jauer are not novel issues. In fact, the Commission’s order of referral specifically identifies the following issue to be addressed in this case: “Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?”³ Therefore, the Commission recognizes the possibility of alternative configurations that parties may propose and has directed the administrative law judges to address this issue in the PFD. While such alternative proposals should ordinarily be offered during the route adequacy proceedings, the point is clear: this is an issue raised and addressed by the Commission in every transmission line case. These are not novel issues warranting certification to the Commission.

Anaqua Springs HOA and Jauer assert that “[t]here should not be a blanket prohibition against modifying or adjusting routes simply because an active, participating landowner did not consent to a modification proposed during the contested case process.”⁴ CPS Energy agrees. And, in fact, there is no such blanket prohibition—rather, there is a clear process that actually allows for such: the route adequacy process. During the route adequacy process, the parties can argue for the inclusion of additional routes and segments. However, at no time in that process did Anaqua Springs HOA or Jauer propose the specific modifications to segments 38 and 43 that they now seek. Thus, there is no need for Commission direction in this case—we already have Commission direction on the process. This case should proceed to hearing, and any discussion of Route R1 Modified, as proposed by Anaqua Springs HOA and Jauer, can be addressed through the hearing process and closing written arguments. The Commission can then address these issues, if such is even needed, when it considers the PFD in this docket.

III. CONCLUSION

CPS Energy requests that the Joint Motion for Referral of Certified Issues be denied. This case should continue to hearing under the revised procedural schedule that CPS Energy

³ Order of Referral and Preliminary Order, at 4, Issue No. 5 (Sep. 29, 2020).

⁴ *Joint Motion for Referral of Certified Issues and Request for Expedited Ruling*, at 8.

submitted, which will allow the hearing to proceed as currently scheduled and will not require any changes to post-hearing dates or deadlines.

Respectfully submitted,

/s/ Craig R. Bennett

Kirk D. Rasmussen
State Bar No. 24013374
Craig R. Bennett
State Bar No. 00793325
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
(512) 691-4427 (fax)
Email: kasmussen@jw.com
Email: cbennett@jw.com

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 No. 3.

/s/ Craig R. Bennett

Craig R. Bennett