



Control Number: 51023



Item Number: 624

Addendum StartPage: 0

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

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PUBLIC UTILITY COMMISSION
FILING CLERK

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 §

MOTION FOR REFERRAL OF CERTIFIED ISSUES

Steve Cichowski files this Motion for Referral of Certified Issues and would request that the following issues be certified to the Commission:

1. Should an agreement in a CCN case between the utility applicant and a landowner, requiring the landowner to support certain routes, be void or voidable as a matter of public policy.

If so, then should paragraph 5 in the agreement between CPS and Toutant Ranch LTD be void as a matter of public policy, allowing Toutant Ranch to advocate for other routes and donate other right of way?

2. Should an agreement in a CCN case between the utility applicant and an affected landowner, preventing the affected landowner from fully exercising his right to participate in the contested case hearing, be void or voidable as a matter of public policy?

If so, then should paragraph 5 in the agreement between CPS and Toutant Ranch LTD be void as a matter of public policy, allowing Toutant Ranch to advocate for other routes and donate other right of way?

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I. BACKGROUND

1. CPS Energy has filed an Application and an Amended Application in this matter. As an Applicant, and particularly as a governmental entity charged with the public trust, including but not limited to providing safe and reliable power to individuals and businesses within its certificated area, it is required to behave in the public interest. In this CCN case, CPS has entered into an agreement (The Agreement) with a landowner to reroute lines on that landowner's property. In exchange for the agreement to reroute the lines, the landowner has agreed to donate the right of way to CPS. These types of modifications and agreements between utilities and landowners are contemplated in the Commission's Preliminary Order which asks whether landowners have made adequate contributions to offset any additional costs associated with the accommodations.

2. However, CPS has gone one step further and has prohibited the landowner, Toutant Ranch, LTD, from taking any position in this case other than supporting the routes across its property. A copy of the contract is attached as Exhibit 1. Paragraph 5 of that agreement states that "developers 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 noted 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."

3. This term of the agreement fundamentally alters CPS's position in this case, which should be a disinterested applicant arguing that any route can be constructed but taking no side in the determination of which route beyond filing the application with an analysis of what the "best meets" route is. CPS has now required one landowner to take a certain

position – advocating for a route that is against its own best interests in order to receive preferential treatment from the government-owned utility.

II. SUMMARY OF COMMISSION’S POSITION ON ROUTE “PREFERENCE”

4. For some time, the Commission has worked to ensure robust landowner participation and comprehensive landowner notice in CCN proceedings. Prior to the current requirement of the utility presenting the route that “best meets” the applicable routing criteria, 16 Tex. Admin. Code § 22.52 originally referred to a “preferred route.” The Commission was concerned that identification of a route as preferred might be misinterpreted or misunderstood by landowners.¹

5. The Commission’s CCN Application form now requires the utility to “State which route the applicant believes best addresses the requirements of PURA and P.U.C. Substantive Rules.” Although it no longer requires the applicant to choose a “preferred” route, the implication remains that the selected one is the better route. The Commissioners recognized this fact in the open meeting on July 12, 2020, where they noted that the term “preferred” is no longer used, but “best meets PURA” still is, and that perhaps they should look at not even having the applicant choose a “best addresses” route. They further noted that even “best” can be misleading.

6 The goal is for all impacted landowners to know that the line may be routed on their property, even if they are not on the best meets route. CPS has stopped this policy in its tracks. By limiting Toutant Ranch’s participation in this docket, preventing them from taking any position other than supporting the segments on its property, one of which is

¹ See, e.g. *Electric Utility CCN Rulemaking and Form Changes*, Project No. 25515, Proposal for Publication of Amendment to § 22.52 As Approved at the July 11, 2002 Open Meeting, July 15, 2002.

part of the best meets route, the other landowners are no longer on an even playing field because one landowner is now required to support CPS's best meets route or one very close to that route. While a landowner could always agree to the route for reasons other than being coerced by the utility, that is not the case in this docket.

III. IN CONTRAVENTION OF THE COMMISSION'S POLICY AND IN DEROGATION OF THE PUBLIC TRUST, CPS IS ACTIVELY PROMOTING ITS PREFERRED ROUTE

7. The testimony of Tom Dreiss sets out fully the position that Toutant Ranch and its business partners found themselves in when they first approached CPS about reaching an agreement on amending its application. (Docket No. 557). After investing millions of dollars to plan, plat, and install infrastructure on their land, CPS submitted an Application containing a route segment that completely bisected the planned project and zigzagged in such a way as to significantly reduce the marketability of each lot in the planned development. According to Dreiss, sales were stymied, and he and his partners risked catastrophic losses based on the uncertainty of which route would be selected.

8. Faced with potential disaster, the developers approached CPS about modifying the route segments located on their property to mitigate the damage and allow lot sales to continue. This was not an arm's length transaction. It pitted a group of landowners faced with financial ruin against a public entity with unlimited resources and virtually unchecked authority. The net result was a modification that removed the route segment bisecting the Toutant Ranch project in favor of a route that followed the northern boundary of its development before eventually turning south to connect to the existing Ranchtown-Menger Creek transmission line. This was formalized by a written agreement between Toutant Ranch, et. al. and CPS Energy. (Exhibit 1)

9. The agreement came at a cost. Toutant Ranch's witness Tom Dreiss notes in his testimony that the agreement required it to donate to CPS all of the right of way involving the modification *in addition to the 2059 feet of right of way* it had already agreed to donate to avoid a route that had been presented by CPS at a 2019 open house. (Dreiss testimony and Exhibit 1). Moreover, it was required to discount by 20% the cost for any additional non donated right of way taken by CPS. The agreement even requires Toutant Ranch, et al to *waive any claim for remainder damages to its property*. For a development already platted and on the ground at the time CPS first gave notice of this project, these damages potentially top seven figures. Finally, the agreement required that the affected parties not only absorb the financial losses described above, but *actively support the segments on their property (46 Modified et al) to the exclusion of alternative routes*. Most of these segments are part of Route Z1 (formerly Route Z). The *only* way to reach any of these segments is from a route segment located on Toutant Beauregard and also part of Route Z1. Coincidentally, Route Z1 (formerly Route Z) was identified by CPS in its original Application as the Route that "best addresses the requirements of PURA ...". Coincidentally, it is also the only Route in which an interested party agreed to donate 2,059 feet of right of way. The agreement's concession that "(d)evelopers reserve their right to argue that the Commission should reach Segment 46 Modified by following a path that includes Segment 41" is no concession at all, but further evidence of CPS interest in a single Route. The only way to reach Segment 41 requires utilizing Segment 54, also on Toutant Beauregard and also a part of Route Z1. Even more telling is that the utilization of Segment 41 would eliminate the donation of 2059 feet of donated right of way but still require the use of Segment 54, again both on Toutant Beauregard. Since this would make absolutely no sense, CPS has limited Toutant Ranch, et al to the right to argue for a route

that will *never* be chosen and even if it was, would still originate on Toutant Beauregard Road. Its preference is clear. It is working to actively eliminate any viable option that does not utilize Toutant Beauregard Road. To date, CPS, far from a neutral observer, has been diligent in its efforts to make that observation hold true.

10. To be clear, the agreement does not require Toutant Ranch to act unopposed or disinterested about the lines on its land, it requires Toutant Ranch to **support** the route. The ramifications of this agreement are severe. Under the agreement, Toutant Ranch would not be able to participate in a mediation with a position other than supporting the route on its property. Toutant Ranch would not be able to align with its neighbors in opposition to routes they have in common. This agreement impedes the process, is contrary to public policy and should not be enforceable.

11. Compare CPS Energy's involvement in the Agreement at issue to its reaction to Intervenor Anaqua Springs Ranch HOA's efforts to modify CPS's Application to reinstate a Route shown at the "Open House" but dropped, without notice, from its Application to the PUC. The Route Map shown the public at the open house, included as Exhibit 2, contained a potential Route that completely avoided Toutant Beauregard, and its many habitable structures. It began at proposed substation site 1 and consisted of segments 12, 23, 28, 29, and 40. When CPS submitted its Application, Segment 12 was missing, and Substation Site 1 had been relocated. In addition, a new substation site, located directly on Toutant Beauregard and right in the middle of a subdivision, had been added. Concerned that these changes had eliminated *any* northern route that did not involve Toutant Beauregard, the Board of the Anaqua Springs Ranch Homeowner's' Association contacted CPS to determine why the change had been made. I represented the HOA as its President in the discussions that followed. Based on those discussions, the HOA came

to understand that Segment 12 had been abandoned because it went through a Conservation Easement allegedly owned by the Army and the Army was not willing to allow the easement. CPS abandoned that segment, and consequently that Route, based on the belief that because the Army had an apparent ownership interest in the Conservation Easement, CPS would be unable to condemn the necessary right of way.²

12. Armed with this information I attempted to arrange a meeting with the Army's representative to see if it would reconsider its position in exchange for being reimbursed for any loss of its interest in the Conservation Easement. Attached as Exhibit 3 is a true and correct copy of e-mails exchanged in that regard. Exhibit 3 contains my e-mail to the Army setting forth what we understood the issues to be and requesting a meeting, a brief e-mail from Wendy Harvel, the ASRHOA attorney forwarding that e-mail to CPS's legal counsel, and CPS's response. Relevant to this motion is CPS Energy's strong response to any suggestion that it preferred one route to another. Notably:

"... CPS Energy does not have a recommended, preferred, best, or even a singular "proposed" route....".

"... CPS supports all 29 of the routes in the application as proposed...".

13. Despite the fact that the initial e-mail to the Army stated the situation as I understood it, I followed up with the Army to address the concerns raised by CPS. Exhibit 4 contains the follow-up e-mail to the Army in which CPS was copied, and CPS Energy's response. Again CPS reiterated its lack of preference for any route:

" ... CPS Energy never makes a recommendation.."

² These events are set forth in more detail in the Route Adequacy Challenge filed by ASRHOA and Jauer, the personal testimony of Steve Cichowski, Intervenor's Steve and Catherine Cichowski's Objections and Reply/Response to CPS Energy's Response to Statements on Route Adequacy and the testimony of Steve Cichowski filed on behalf of Anaqua Springs Ranch Homeowners Association. It is a matter of record that the Army does not own the Conservation Easement.

“ ... CPS ... has determined that all of the filed routes are viable...”

“.. CPS Energy did identify a route that it believes best meets the statutes and regulations. ... It is not, however, a route that CPS Energy recommends to the Commission above any other route proposed in the application.”

14. Contrast this “neutral third-party” approach to the HOA’s efforts, to the terms of the agreement between the Toutant Ranch parties and CPS. If CPS truly prefers no route, why the need to prohibit the Toutant Ranch group from advocating for routes that do not affect its property? Or to restrict them from taking any action that would make any alternative to Route Z more attractive to the Commission? In fact, although CPS is not openly making any recommendation of one route over another, it is instead silencing the opposition to any route other than its preferred one.

IV. COERCIVE AGREEMENTS THWART THE COMMISSION’S EFFORTS AND ARE AGAINST PUBLIC POLICY.

15. The utility should not be strong-arming landowners to take a particular position in a case after the landowner has contributed financially by donating right of way to a utility for a route modification. This type of agreement puts other similarly-located landowners at a disadvantaged because they are then not only challenging the utility’s routing but also the coerced support of other landowners. Additionally, CPS is using this agreement to limit Toutant Ranch LTD’s participation beyond supporting certain routes. Upon information and belief, CPS continues to leverage Toutant Ranch, LTD by accusing Toutant Ranch LTD of breaching the Agreement through its lack of opposition to Anaqua Springs HOA’s proposed modification on Segments 38 and 43. On behalf of Intervenor

Anaqua Springs Ranch HOA I have personally attempted to contact the Toutant Ranch parties to discuss promoting alternative routes beneficial to it and to ASRHOA. These efforts have been rebuffed on the basis that any participation by Toutant Ranch in this proceeding, other than to fully support a route that CPS obviously is promoting, will be seen by CPS as a breach of the agreement between those parties. The implied threat to Toutant Ranch is not even thinly veiled. Back our (CPS') preferred route or suffer the consequences. CPS has leveraged a potential catastrophic financial loss on the part of the Toutant Ranch group into an agreement for limiting its loss in exchange for coerced silence. It is exactly the type of situation the Commission sought to avoid by eliminating the preferred route question from the Application. It is the opposite result anticipated by the legislature when it authorized the Commission to develop rules guaranteeing any affected landowner the right to be heard.

16. The agreement is against public policy. It is in the nature of a contract of adhesion in which one party is in a significantly superior bargaining position to the other. An agreement is unenforceable on grounds of public policy if the interest in its enforcement is outweighed by a public policy against its enforcement. *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653 (Tex. 2008). This rule has been applied to exculpatory agreements exempting public utilities for negligence in the performance of their duty of public service. *Crowell v. Housing Authority of Dallas*, 485 S.W.2d 887889 (Tex. 1973). The utilities duty to the public in performing its service has been found to outweigh its right to contract away an individual's common law rights. *Id.*

17. In these proceedings, the legislature, and the Commission acting under its authority, have proscribed detailed rules allowing the full participation of any affected landowner as a matter of right. The agreement at issue silences one affected group and

forces them to accept the lesser of two evils in exchange for giving up its right to participate and be compensated. This is in clear contravention of the legislative intent to allow full participation by landowners before their property is taken by force. It would be incongruous indeed if public policy required these proceedings, yet allowed the right to participate to be waived by a landowner under the duress of the very proceeding he was guaranteed. See e.g. Melody Home Mfg. Co. v. Barnes, 741 S.W.2d 349, 355 (Tex. 1987)(against public policy for warranty created by legislature to be waived by contract).

18. The agreement results in a waiver of a constitutional right without due process or compensation. Both the Texas and United States Constitutions prohibit the taking of property without due process and just compensation. This would ordinarily come in the form of a condemnation proceeding in which the affected party would seek damages for the right of way lost as well as remainder damages to the rest of the adjacent property. Here, the Toutant Ranch parties were forced to surrender their right for remainder damages to prevent a complete loss of their entire project. The loss of any constitutional right should be examined carefully. Here Toutant Ranch *et al* gave up their right to be compensated for the taking of their property for what? A rerouting of a proposed line, still on their property, that they get to pay for.

V. THE AGREEMENT AT ISSUE ADVERSELY AFFECTS OTHER INTERVENORS

19. The Agreement adversely affects other intervenors and interferes with the purpose of this proceeding. By limiting Toutant Ranch's participation, other intervenors are being denied full and fair participation in this proceeding. The interest of the Toutant Ranch parties should be aligned with several other adjoining Intervenor. However, because they are prevented from discussing any route option other than one that utilizes Toutant

Beauregard, all intervenors are in opposition. This prevents meaningful negotiations and discourages settlement. The number of competing factions could be severely reduced if Toutant Ranch, et al were able to participate in negotiations. Therefore this Agreement is not only against public policy, it has a significantly and deleteriously impacted the Movant and other Intervenor while complicating and extending this proceeding.

19. Permitting these types of agreements opens up the CCN process to back-room dealings, and if the utility can strong-arm a landowner into supporting disadvantageous routes, then a landowner could certainly attempt to strong-arm a utility into taking a different position in the case.

20. These types of agreements should be void or voidable as a matter of public policy. Therefore, because this agreement touches on an issue of policy of importance to the outcome of this case, I respectfully request that the ALJs certify the issues to the Commission to make a determination on Commission policy and public policy grounds that paragraph 5 of the agreement between CPS and Toutant Ranch are void as a matter of public policy.

Respectfully submitted,

By: *Steve Cichowski*

Steve and Catherine Cichowski
Steve Cichowski TBN # 00793507
24914 Miranda Ridge
(210) 225-2300
(210) (fax)
steve@cichowskilaw.com

INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed with the Commission and served on all other parties via the PUC Interchange on this ___9th_ day of March 2021, pursuant to SOAH Order No. 3 issued in this docket.

Steve Cichowski

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).

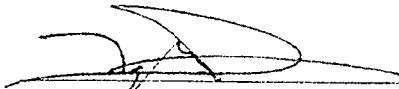
⁴ The magnitude of any associated ROW donation will be determined after CPS develops cost estimates for the new and modified segments described in this agreement.

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.

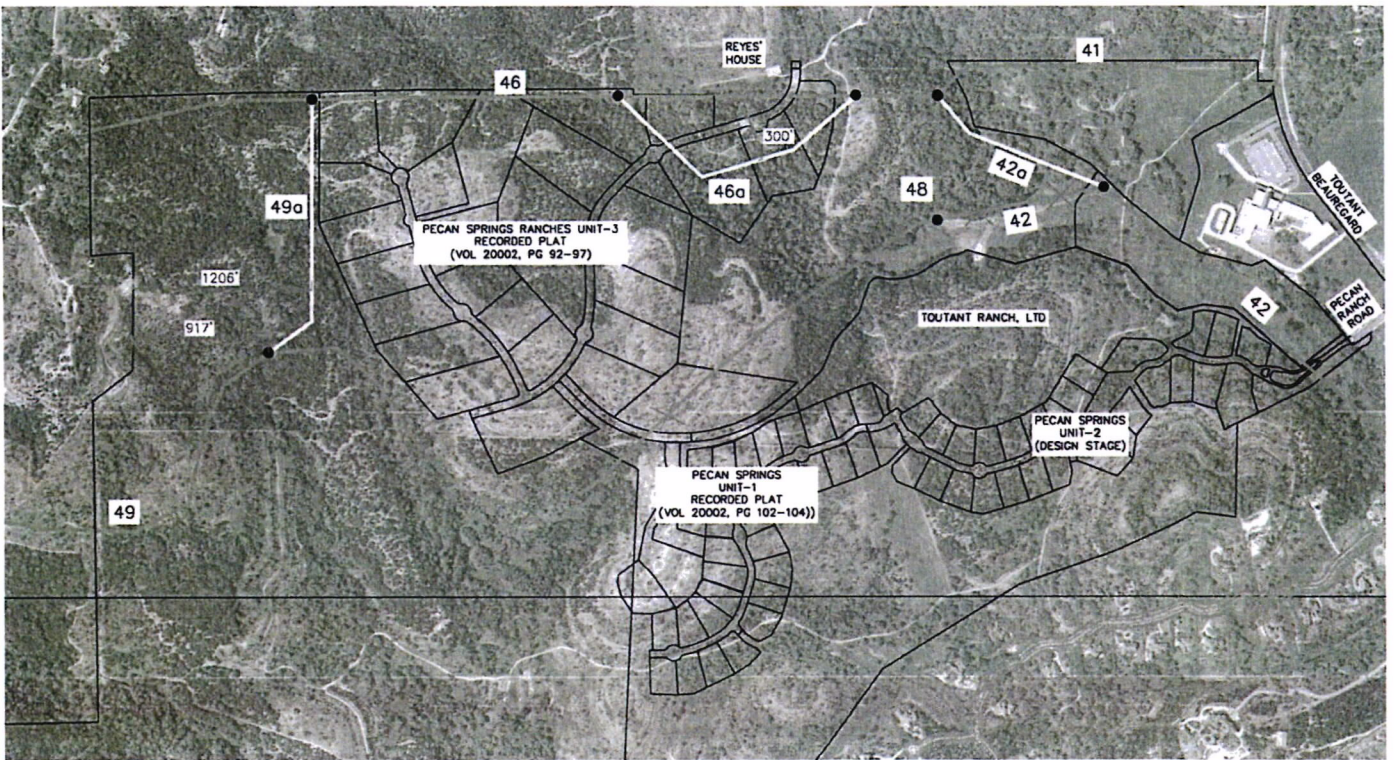
Signed this 23rd day of November, 2020.

 (Sign)

Taylor Dreiss (Print)
For Developers

 (Sign)

PAUL BARHAM (Print)
For CPS Energy



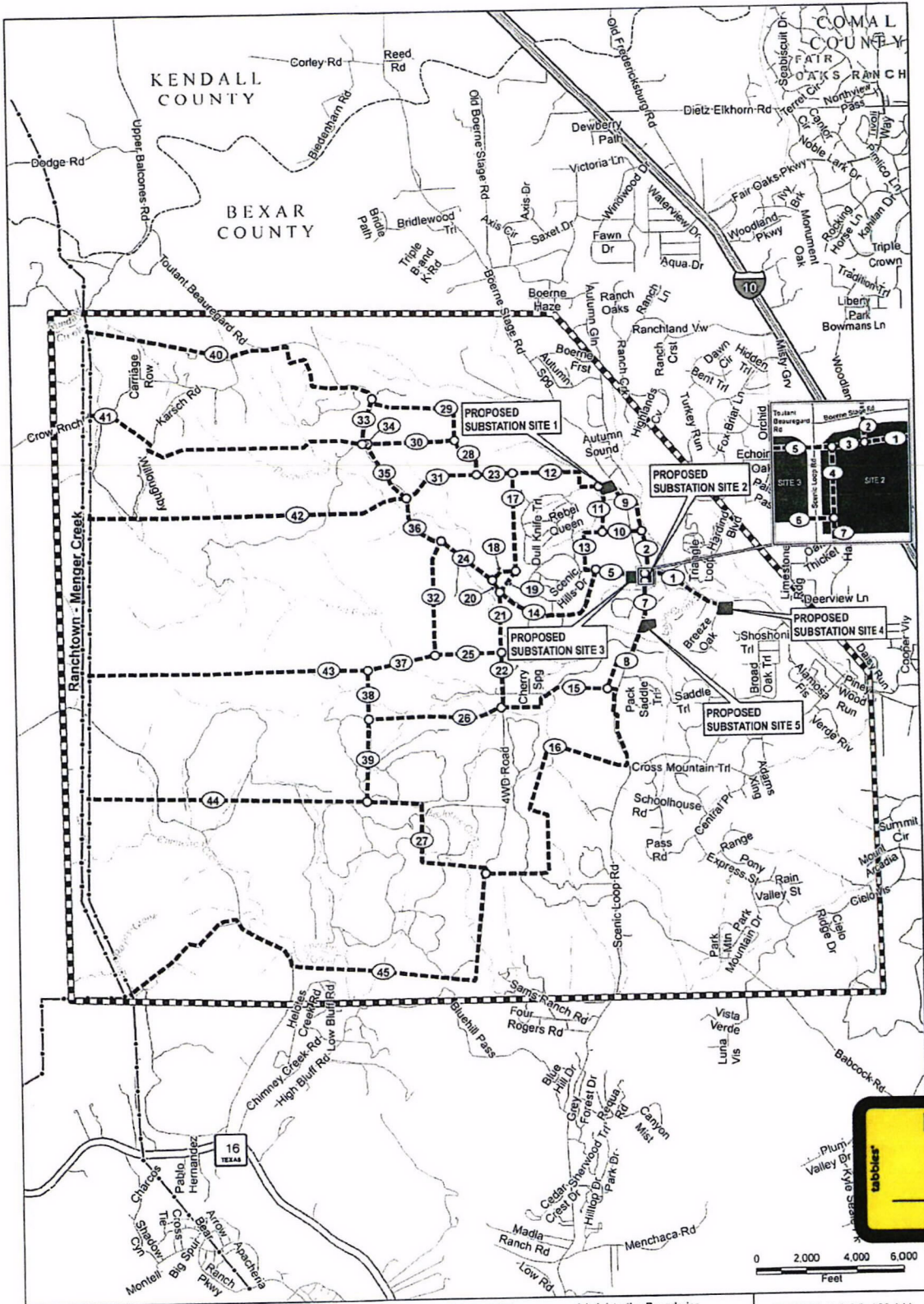
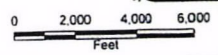


EXHIBIT
2



Project Components		Existing Utilities	Administrative Boundaries
Study Area Boundary	Existing Transmission Line	City Limits	County Boundary
Preliminary Substation Site	Transportation	Surface Waters	River / Stream
Preliminary Segment and Node	Interstate Highway	State Highway	Local Road

SCENIC LOOP 133 KV TRANSMISSION LINE AND SUBSTATION PROJECT
PRELIMINARY ALTERNATIVE SEGMENTS & SUBSTATION SITES

1 inch = 3,757 feet

Steve Cichowski

From: Wendy Harvel <wharvel@cpsenergy.com>
Sent: Wednesday, September 30, 2020 3:48 PM
To: steve@cichowskilaw.com
Subject: Fwd: [Non-DoD Source] Meeting with Engineer Trevino - CPS Project and Conservation easement and GCW habitat credits [IMAN-JWDOCS.FID4061346]

Begin forwarded message:

From: "Rasmussen, Kirk" <kirk.rasmussen@cpsenergy.com>
Date: September 30, 2020 at 11:16:31 AM CDT
To: Wendy Harvel <wharvel@cpsenergy.com>, "Bennett, Craig" <craig.bennett@cpsenergy.com>
Cc: "Giles, Kipling D." <kipling.giles@cpsenergy.com>
Subject: RE: [Non-DoD Source] Meeting with Engineer Trevino - CPS Project and Conservation easement and GCW habitat credits [IMAN-JWDOCS.FID4061346]

Wendy,

As you know, it is highly inappropriate at this stage of the process for Steve to make some of the statements that were attributed to CPS Energy in his email, particularly paragraph #3. We need you or Steve to make a clarification with the Army by the end of the day in writing, or we will need to contact them directly.

Location of the Segment – First, as you are aware, there are certain factors regarding the cemetery burial location in the southeast corner of the conservation easement property that we cannot cross. It is not correct that we will be willing to move it to the property line if it would require crossing of a burial site. We do not know where that site is located and until we can locate the exact location and dimension of the site, CPS Energy cannot agree to any specific location that might cross that site. Second, routing alternatives that we may have been willing to discuss with the Army at the preliminary routing stage that will significantly directly affect non-noticed landowners in the current proceeding may not be something CPS Energy will accept at this stage. We are willing to entertain discussions with the Army about what would be acceptable, but please note that location of the segment immediately adjacent to the southern conservation easement property line will result in several new directly affected property owners with habitable structures within 300 feet of that segment.

Construction Techniques – CPS Energy's primary focus in designing and constructing the proposed transmission line will be the safe and reliable operation of the facilities. While we have discussed being willing to work with the Army on location and construction design and techniques, at this time we cannot assert that we can construct without clearing ("with only the wires crossing the easement"), only that we can work with the Army on location and construction design to minimize to the greatest extent possible any clearing or impact to habitat. The best that we can state is that CPS Energy is cautiously hopeful that we can design the facilities in an environmentally sensitive manner consistent with the intent and purposes of the conservation easement.



Route Preference – As you know, CPS Energy does not have a recommended, preferred, best, or even a singular “proposed” route in this proceeding, including the route identified in the application as best meeting the statutory and regulatory criteria in response to application question 17. Any statement about the detrimental effects of a “recommended” route or Route Z as CPS Energy’s “proposed route” is simply false. As is clearly stated in CPS Energy’s application and will be stated further in CPS Energy’s direct testimony, CPS Energy supports all 29 of the routes included in the application as proposed for the project (and other routes that can be created by a combination of the existing segments), many of which do not use any of the segments near Anaqua Springs Ranch. Further, CPS Energy has made no statements indicating that inclusion of a segment across the conservation easement would make any route that includes that segment a “first choice” or any other manner of preferred route. What we have said is that a route with that segment included would be a “good route” that would likely score favorably under several of the applicable criteria of the Commission compared to other routes. In addition, because we have not yet identified or evaluated any routes with a segment across the existing conservation easement and have performed no calculations or measurements of any of the applicable criteria, we cannot make any specific statements about how such routes will objectively measure. For example, please note that if the segment could be identified in a location adjacent to the southern conservation easement property line, it would be within 300 feet of several habitable structures in the neighborhood to the south, some potentially very close.

Finally, in an effort to work with the community regarding this project, CPS Energy is willing to be at the meeting and part of discussions with the Army and Anaqua Springs Ranch. It would be inappropriate to suggest that CPS Energy is “backing” this effort.

Please let me know by the end of the day how you would like to address these issues with the Army. As stated above, any such communication will need to be in writing and include us.

Kirk Rasmussen
512-968-4566

From: Wendy Harvel < >
Sent: Wednesday, September 30, 2020 7:39 AM
To: Rasmussen, Kirk < >; Bennett, Craig < >
steve@cichowskilaw.com
Subject: Fwd: [Non-DoD Source] Meeting with Engineer Trevino - CPS Project and Conservation easement and GCW habitat credits

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Kirk and Craig,
Here is the latest correspondence I have regarding next week’s meeting. Thanks.
Wendy

Begin forwarded message:

From: Steve Cichowski <steve@cichowskilaw.com>
Date: September 29, 2020 at 8:23:01 PM CDT
To: "JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS"
< >
Cc: Kristina Stroud <Kristina_Marques@yahoocom>, Bill Couch < >, Jim Middleton < >, Greg Brigham < >

<gbrigham

Wendy Harvel <wendy.harvel@

>

Subject: RE: [Non-DoD Source] Meeting with Engineer Trevino - CPS Project and Conservation easement and GCW habitat credits

Reply-To: <steve@cichowskilaw.com>

Ms. Jackson,

The brief version of what we would like to discuss is set forth in the attached letter which I previously sent by regular mail. Essentially, CPS is going to build a 134kv transmission line beginning from a location close to the Scenic Loop and Boerne Stage intersection and running west to connect with the existing Ranchtown - Menger Creek line. One of the early routes had a small segment that went through a Conservation Easement on property known as the old Maverick Ranch. The Army had purchased that easement for the Nature Conservancy in exchange for Golden Cheek Warbler habitat credits it needed for its own purposes. Mr. Trevino is intimately familiar with that history so I will not belabor it here. The Army objected to that segment because it would cause the Army to lose GCW credits equivalent to the area of the necessary easement. With this objection, and the fact that CPS did not think it could condemn an interest owned by the Army, CPS abandoned that segment, and instead proposed a route that goes through or adjacent to the most heavily populated and built out region in the area. Instead of a route that affected an estimated \$12 million in property value, the favored route now affects an approximate **\$1.2 billion** in property value and passes within 300 feet of an existing elementary school.

Because of the extremely detrimental effect of the now recommended route, we are requesting that the Army reconsider its position given certain conditions and commitments, to wit:

1. The Anaqua Springs Ranch Homeowners Association (ASRHOA) along with other affected property owners will provide, at no cost to the Army, replacement GCW habitat credits. We have already identified suitable property as *well as GCW credits already banked that can be purchased and traded with no delay.*
2. An equivalent amount of Conservancy Easement will be dedicated to the Nature Conservancy to keep its inventory in balance.

3. We have met with CPS and it is willing to place the segment in question back into the mix and work with our Association and the Army to negate any impact to the Army. This includes moving the line to run adjacent to a boundary line, nondisruptive construction techniques, or even moving the route to a location where only the wires cross the easement and nothing else. In fact, the route we are trying to push for remains CPS first choice.

The topics we wish to cover would be:

1. The detrimental economic and societal cost of the loss of the segment in question
2. What we propose and how we propose to accomplish it.
3. What we have accomplished so far.
4. CPS's willingness to participate in this and what commitments the Army may require from CPS.
5. What the Army or Air Force would require to remove its objections to the former segment.
6. How we can satisfy all of its requirements.
7. The possibility of doing something that works for the interest of the affected people, CPS, and the Army/Air Force.

The following people would like to participate. Please send them an invite;

Kristina Stroud – Board Member.

kristina_marques¹

Jim Middleton - Board Member.

Bill Couch - Board Member.

Greg Brigham Board

Member.

Wendy Harvel - Ms. Harvel is representing us before the Public Utilities Commission.

CPS Representative – to be determined

As I stated above, CPS is willing to be present to confirm that they back this effort and answer any question the Army may have. They can provide an administrative person, an engineer, or an attorney, depending on what kind of questions Mr. Trevino may have for them. Please let me know if he anticipates any particular line of question he might have and I will identify the appropriate person to attend.

Please note, although Ms. Harvel is representing us (ASRHOA) before the PUC, the meeting we have requested is not a “lawyers” meeting, but a nuts and bolts “what will it take” type of meeting. I am appearing in my capacity as Board Member and president of ASRHOA.

Steve Cichowski
Cichowski Law Firm, P.C.
Board Certified - Personal Injury Trial Law
Texas Board of Legal Specialization
10500 Heritage Blvd., Suite 102
San Antonio, Texas 78216
210-223-5299 direct
210-870-1521 fax

Steve Cichowski

From: Rasmussen, Kirk
Sent: Friday, October 2, 2020 10:58 AM
To: steve@cichowskilaw.com; 'JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS'
Subject: RE: CPS Scenic Loop Project and GCW Habitat Credits - Corrections to previous e-mails [IMAN-JWDOCS.FID4061346]

Thank you Steve for clarifying those points. It is important to CPS Energy that written communications about its positions regarding this project are accurately stated and not left to implication. Thus, as a further clarification that is very important to CPS Energy, in any application to the Public Utility Commission of Texas (PUC) for a new transmission line project, CPS Energy never makes a "recommendation" for a particular route in the application and it has not made such a recommendation in this proceeding either. CPS Energy filed 29 routes in its application to the PUC, many of which do not cross or implicate the homes in Anaqua Springs Ranch. CPS Energy is willing to construct any of the 29 routes and has determined that all of the filed routes are viable and comply with the applicable statutes and regulations. In response to one question in the application, CPS Energy did identify a route that it believes best meets the statutes and regulations. That route does cross the front of Anaqua Springs Ranch. It is not, however, a route that CPS Energy recommends to the Commission above any other route proposed in the application. It is extremely common in these proceedings that the PUC does not approve the route that the utility identifies as best meeting the applicable criteria. Further, CPS Energy does not "prefer" to, but rather is required to present the Commission with an adequate number of geographically diverse routes. It is the position of CPS Energy that the current 29 routes presented to the Commission do provide adequate geographic diversity. Finally, it would be fair to state that, if the military is open to re-evaluating its previous position, CPS Energy is willing to engage in a dialogue with the parties to determine if there is an alternative that would be acceptable. It is premature for CPS Energy to determine what it would or would not oppose with respect to potential routing at this time.

Kirk Rasmussen
512-968-4566

From: Steve Cichowski <steve@cichowskilaw.com>
Sent: Thursday, October 1, 2020 11:13 AM
To: 'JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS' <
Cc: Rasmussen, Kirk <
Subject: CPS Scenic Loop Project and GCW Habitat Credits - Corrections to previous e-mails

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In my previous summary of the issues that I sent to you, there were some inaccuracies that have been pointed out to me by CPS. To avoid any misunderstanding, I need to correct those.

In my summary, I used the term "prefer" to reference the route we are trying to have reconsidered. CPS does not prefer a particular route over another. It must remain neutral as part of its public trust, although it does make a "recommendation" based upon available objective and subjective criteria. It prefers a reasonably adequate number of alternative routes to present to the Public Utility Commission for selection, one of which originally included the now excluded Segment 12. CPS does not oppose re-adding that Segment for the Commission's consideration if the Army's needs can be satisfied.



Also, while CPS is willing to work with the Army and landowners on non-disruptive construction techniques, it cannot commit to any specifics without the more detailed information it would obtain by a ground survey; something it has not done. This would be an ongoing process. I thought this would be implicit in the overall discussion and apologize if it was presented as anything else.

In the same vein, the ability to shift the location of Segment 12 is constrained by external factors and may be limited. For instance if shifting the route south put it squarely in a cemetery, this would not be possible. There are other constraints such as timing and notice requirements that may also limit what can be done. CPS has indicated that it is willing to consider alternatives *within these constraints*. Again I thought these considerations would be implicit in any conversation we would have and apologize if presented otherwise.

Thank-you.

Steve Cichowski
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