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SOAH DOCKET NO. 473-21-0247
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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

MOTION IN SUPPORT OF REFERRAL OF CERTIFIED ISSUES REGARDING AN AGREEMENT BETWEEN A UTILITY APPLICANT AND AN IMPACTED LANDOWNER REQUIRING THE SUPPORT OF CERTAIN ROUTES

Brad Jauer and BVJ Properties, LLC (“Jauer”) file this motion in support of the Motion for Referral of Certified Issues filed by Steve Cichowski, wherein the following issues are requested to 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?

By way of support, Jauer offers the following:

- 1. In 2011, the Texas Legislature amended PURA § 37.053(c) to prohibit designation of a preferred route for a proposed transmission line facility.¹ Nevertheless, this is effectively what CPS Energy has attempted to do in the present case by accepting a donation of right-of-way from Toutant Ranch, Ltd., Pinson Interested LTD LLP, and Crighton Development Co. (collectively

¹ Acts 2011, 82nd Leg., R.S., Ch. 949 (H.B. 971), Sec. 1, eff. June 17, 2011.

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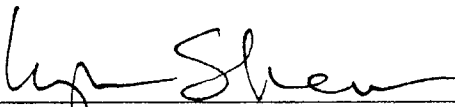
“Toutant Ranch”) on the one hand, and then, on the other hand, requiring them and all legal entities owned or controlled by them to “support the Commission routing the line down”² the modified segments on the donated right-of-way.

2. While PURA § 37.053(d) stipulates that the “preferred route” prohibition does not “prevent a public utility from expressing a route preference,” the foregoing “support” that CPS Energy requires of Toutant Ranch goes way beyond an expression of preference.

3. In that regard, the effect of this agreement has been that Toutant Ranch is precluded from supporting other routes not listed in its agreement with CPS Energy, including a route with one of the lowest habitable structure counts, that would impact Toutant Ranch’s properties less than the routes it must support, and for which a similar donation of right-of-way might be possible to eliminate direct impacts on other landowners and lessen the route’s cost to be one of the lowest under consideration.

4. This cannot be consistent with the intent of the Texas Legislature when it eliminated the “preferred route” provision from PURA, and the agreement provision in question should be void as a matter of public policy.

Respectfully submitted,

By: 

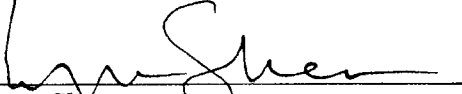
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² emphasis added.

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 16th day of March 2021, pursuant to SOAH Order No. 3 issued in this docket.


Lynn Sherman