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

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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 §

**ANAQUA SPRING HOMEOWNERS' ASSOCIATION AND STEVE AND CATHERINE
CICHOWSKI'S APPEAL OF A PORTION OF SOAH ORDER NO. 9
AND REQUEST FOR EXPEDITED RELIEF**

COMES NOW, Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") files this Appeal of a Portion of SOAH Order No. 9 under 16 Tex. Admin. Code ("TAC") § 22.123.¹ Anaqua Springs HOA is joined by its President, Steve Cichowski and his wife, who also are directly impacted landowners referenced in the request for certification of issues.

In this appeal of interim orders, Appellant respectfully requests the Public Utility Commission of Texas ("Commission") overrule the Administrative Law Judges' ("ALJs") decisions to decline to certify issues to the Commission and to deny Anaqua Springs HOA's Motion to Compel CPS to respond to discovery.

The ALJs denied the request to certify issues based on "precedent" and a slippery slope argument. As discussed in the pleadings filed at SOAH and as further outlined below, the cases cited are not on point and deal with different fact scenarios. Furthermore, there is no statute, substantive or procedural rule that prevents a party from presenting route modifications. A blanket restriction dictating the scope of landowner participation in a CCN hearing absent a rule is

¹ Brad Jauer and BVJ Properties, LLC ("Jauer"), the San Antonio Rose Palace, Inc. ("Rose Palace"), and Strait Promotions, Inc. ("Strait Promotions") joined Anaqua Springs HOA in filing the request for the certified issues addressed in SOAH Order No. 9 to which this appeal applies. However, to emphasize and not confuse the fact that the issues presented essentially involve *directly impacted* parties, Jauer, Rose Palace and Strait Promotions have elected to submit a separate pleading in support of this appeal, rather than add their names to it. Moreover, they are not directly involved in the discovery dispute.

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improper ad hoc rulemaking. Because there is no statute, no substantive or procedural rule, no applicable precedent, and no clear policy on the issue presented in this case, the Commission should overturn the ALJs denial of certification and overturn the ALJs denial of the motion to compel.

I. OVERVIEW

In the “Joint Motion for Referral of Certified Issues and Request for Expedited Ruling” attached as Exhibit A, Anaqua Springs HOA requested certification of three issues to the Commission, which the ALJs denied in SOAH Order No 9. Those issues are:

- 1. Whether Route R1 Modified and the modifications that it contains, as presented in the testimony of Mark Anderson and other witnesses for the Anaqua Springs Homeowners’ Association and the Jauer parties, can be included in the record and considered by the ALJs and the Commission absent an amendment of the CCN application.**
- 2. Whether unanimous consent of all landowners who are impacted by the Route R1 Modified modification is required to approve Route R1 Modified when those landowners are already noticed and actively participating in this docket.**
- 3. If the answer to either certified issue no. 1 or 2 is no, then whether CPS should be ordered to amend its application to include Route R1 Modified.**

Relatedly, in its “Motion to Compel CPS to Respond to Anaqua Springs 3rd RFI” attached as Exhibit B, Anaqua Springs HOA then moved to compel discovery it had propounded on CPS regarding Route R1 Modified, but which CPS had failed to provide. This motion also was denied by the ALJs in SOAH Order No. 9² A copy of SOAH Order No. 9, is attached as Exhibit C.

To avoid delaying these proceedings any more than necessary, and in light of cross-rebuttal testimony being due under the scheduling order within a week on March 22, 2021, Anaqua Springs HOA requests an expedited ruling.

² Presumably based on their denial of the requested certification of issues, the ALJs also sustained objections to testimony regarding Route R1 Modified. However, because evidentiary rulings are not subject to appeal, that portion of the SOAH Order No. 9 is not appealed in this motion.

II. BACKGROUND

A. Summary of Route R1 Modified

In its prefiled direct testimony, Anaqua Springs HOA's expert Mark Anderson³ recommended a route very similar to Route R1 in the Application. That route was designated Route R1 Modified, and it is the same as Route R1 except that two interconnected segments of the route are relocated farther away from three habitable structures currently impacted by Route R1 (*i.e.*, within 300 feet) without impacting any other homes, and with the added benefit of a reduction in cost, in Mr. Anderson's expert opinion.

Route R1 Modified impacts no new landowners and would simply adjust the location of the line away from impacted homes and into open, undeveloped land. Importantly for the narrow fact scenario set forth in this case, all impacted landowners are participating as intervenors in this case, and each of them is represented by legal counsel.⁴ Moreover, the impacted landowners who oppose Route R1 Modified have provided no specific reason for their opposition, other than that they do not want a transmission line impacting their property at all.

There have already been modifications in this case. Segment 26 was moved onto a completely different set of landowners because one landowner built a house directly under the centerline. Construction on that house started around February 25, 2020, after the open house, and CPS moved the line onto different landowners without providing additional notice to the newly impacted landowners.⁵ CPS determined it was not necessary to provide them with notice that the line would now cross their properties because those landowners had already received notice when the line was originally sited on the adjacent property across the fence.

³ Mr. Anderson is the expert retained jointly by Anaqua Springs HOA and Jauer.

⁴ Bexar Ranch, LP, Save Huntress Lane Area Association ("SHLAA"), and Clearwater Ranch POA (collectively, "Bexar Ranch et al.").

⁵ One landowner who had purchased property between the time the application was filed, and the time of the amendment waived notice.

CPS also amended its application to accommodate modifications proposed by developer landowners who wanted lines moved on their property. In fact, CPS eliminated segments originally sited on that property, removing them entirely from consideration.

Anaqua Springs HOA is asking only for equal treatment: that its proposed modification, which addresses direct impacts on two or three of its homeowners, be considered in addition to the other routes in existence.

B. The Commission cannot dictate the scope of landowner participation absent a properly promulgated rule.

The Administrative Procedures Act (“APA”) defines a “rule” as:

“Rule”:

- (A) means a state agency statement of general applicability that:
 - i. implements, interprets, or prescribes law or policy; or
 - ii. describes the procedure or practice requirements of a state agency;
- (B) includes the amendment or repeal of a prior rule; and
- (C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.⁶

An agency statement that has a binding effect on private parties is considered to be a rule.⁷

Limiting the scope of landowner participation in a case—namely dictating that an impacted landowner may not propose a modification during the hearing without obtaining consent from every other impacted landowner, or dictating that an impacted landowner may only propose a new route using existing segments, has such a binding effect on private parties (and prevents them from fully participating in a case). A rule not properly promulgated under the mandatory APA procedures is invalid⁸, and a decision based on an invalid rule must be reversed and remanded if

⁶ Tex. Gov’t Code § 2001.003(6).

⁷ *Slay v Texas Comm’n on Envtl. Quality*, 351 S.W.3d 532, 546 (Tex. App. –Austin 2011, pet. denied).

⁸ *El Paso Hosp Dist v Texas Health & Human Servs.*, 247 S.W. 709, 714 (Tex. 2008).

substantial rights of the appellant are prejudiced by the agency's decision.⁹ For this reason alone, the Commission should overturn the ALJs' denial of the request to certify these issues.

Bexar Ranch et al. challenged the request to certify issues arguing that Anaqua Springs cannot propose a modification to a route without obtaining consent of all impacted landowners based on Commission policy. But, again, the Commission has not promulgated a rule addressing whether the consent of all landowners impacted by a modification is required when each impacted landowner has received notice, no new landowners are impacted, all landowners have intervened and are represented by legal counsel, and when the modification is proposed by an impacted landowner through expert testimony at the time expert testimony is filed. Both PURA and the PUC's Substantive Rules are silent on the issue, except to the extent that they suggest that landowner consent is not required.¹⁰

The Commission's substantive rules address the need for consent with respect to transmission line CCNs in only very limited circumstances when a utility engages in routine activities that do not require CCNs. Those routine activities are specifically enumerated in the rule and include:

- modification of an existing line,
- replacement of structures,
- installation of an additional circuit under 230kV,
- relocation of an existing transmission facility when requested or to avoid encroachments, and

⁹ *Texas State Bd of Pharm v Witcher*, 447 S.W.3d 520, 527 (Tex. App.—Austin 2014, pet. denied) (citing Tex. Gov't Code § 2001.174(2)).

¹⁰ See *infra* discussion of Substantive Rule 22.52(a)(3)(A) and the "Landowners and Transmission Line Cases at the PUC" brochure attached as Exhibit D, which the Commission created and expressly requires be "included as part of the formal notice process" for transmission line CCN applications.

- relocation of an existing transmission facility due to governmental requirements.¹¹

In addition, the Commission has expressed in final orders that modifications to *approved* lines must have landowner consent.¹²

However, there is no Commission rule and or stated policy regarding the issue that has arisen in this case. There is no provision in PURA or the Commission's rules that prohibits the presentation of evidence of a route modification, whether pertaining only to impacted active participants or not. If the Commission wants to enact rules relating to the need for landowner consent in this situation, it has the authority (if not the obligation) to do so. It has not done so. Absent such a rule, the Commission cannot impose a policy that has a binding effect on private parties and limits their rights.

These certified issues provide the Commission with the opportunity to not only avoid a challenge to ad hoc rulemaking but also to clearly set the policy for this particular fact scenario and avoid a repeat of the dilemma faced in Docket No. 49523 where after the route was selected, in a motion for rehearing, a party proposed a modification to move the line away from homes.¹³

C. CPS's inconsistent involvement.

For several months, Anaqua Springs HOA and Jauer attempted to work with CPS without success to arrive at a route that would have a less negative impact to Anaqua Springs homeowners. With the help of an expert on transmission line routing, Anaqua Springs HOA and Jauer were able to propose a modification to a route that reduces the number of habitable structures and costs.

CPS indicated in its opposition to referral of the certified issues that the ALJs could evaluate Route R1 Modified with the information provided in Mr. Anderson's testimony and that

¹¹ 16 TAC §25.101(b)(1)(B)(5).

¹² *E.g., Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Mountain Home 138-kV Transmission Line Project in Gillespie, Kerr, and Kimble Counties, Texas*, Docket No. 49523, Final Order (Jul. 6, 2020).

¹³ Docket No. 49523, Creek House Ranch, LLC's Motion for Rehearing at 3 (Jul. 27, 2020).

the Commission could address any legal issues at the open meeting. Then, CPS refused to produce discovery on Route R1 Modified to assist with that evaluation. The ALJs then struck all testimony regarding Route R1 Modified. And CPS has filed objections to all testimony regarding Route R1 Modified as being irrelevant.

III. BASIS FOR APPEAL

SOAH Order No. 9 denying the certification of issues is improper because issues may be certified to the Commission regarding the Commission's interpretation of its rules and statutes, as well as questions of policy, when they need to be established or clarified as to a substantive or procedural issue of significance to the proceeding.¹⁴ The issues presented should be established or clarified in this case, because the particular procedural and factual scenario presented has not been brought to the Commission previously. The current status of the case amounts to ad hoc rulemaking and subject to appeal and remand.

This transmission line project may impact some of the homes on the southern border of Anaqua Springs. Segments 38 and 43 are the aforementioned interconnected segments of Route R1 sought to be moved by Route R1 Modified. Segments 38 and 43 are both within 300 feet of at least three homes in Anaqua Springs HOA.¹⁵ In contrast, Segments 38 and 43 are not within 300 feet of any homes in Bexar Ranch, SHLAA, or Clearwater Ranch POA.¹⁶ Thus, if the line is built along those segments, homes in Anaqua Springs will be impacted, while homes in Bexar Ranch, SHLAA, and Clearwater will not be. Yet, without having the option to consider Anaqua Springs HOA's proposed modification, the ALJs, and ultimately the Commission are unable to mitigate the impacts on those homes. As a result, one class of impacted property owners (crossed

¹⁴ 16 TAC §§ 22.127(b)(1) & (3).

¹⁵ There may be a third home within 300 feet, but Anaqua Springs HOA is currently unaware of the exact distance from that home to Segment 38.

¹⁶ Exhibit E shows Segments 38 and 43 as filed in the Amended Application with habitable structures numbered.

landowners) is favored over another class (homeowners within 300 feet of the line), when the Commission's rules provide no justification for favoring one over the other. In fact, this is contrary to the mandate of PURA § 37.056(c) that requires certificates be granted on a nondiscriminatory basis.

To the extent any rules address this scenario, the Commission's rules and publications anticipate that such a route modification may occur. The Commission-issued brochure "Landowners and Transmission Line Cases at the PUC," which is attached as Exhibit D and is required by Substantive Rule 22.52(a)(3)(A) to be included with the formal landowner notice¹⁷, states in its first paragraph that its purpose is "to provide landowners with information about proposed new transmission lines and the *Public Utility Commission's* ("PUC" or "Commission") *process for evaluating these proposals*" (*emphasis added*). With respect to the issue at hand, it expressly states: "*In addition to the routes proposed by the applicant in its application, the possibility exists that additional routes may be developed, during the course of a CCN case, that could affect property in a different manner than the original routes proposed by the applicant.*"

In fact, this very scenario occurred in this case prior to the development of Route R1 Modified, and, ironically (or perhaps not), it involved landowners within two of the three groups that opposed the request for certification of issues that is the subject of this appeal (*i.e.*, SHLAA and Clearwater Ranch POA)¹⁸ even though their fact situation involved a lack of consent, as well. Segment 26, which is another segment of Route R1, was moved from The Canyons of Scenic Loop

¹⁷ 16 TAC § 22.52(a)(3)(A) ("The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission."). *See also* "Landowners and Transmission Line Cases at the PUC" brochure attached as Exhibit D at Page 2, Paragraph 3 where the Commission expressly provides that it "is being included as part of the formal notice process."

¹⁸ SHLAA and Clearwater Ranch POA, together with Bexar Ranch LP, jointly filed a "Response to Joint Motion for Referral of[f] Certified Issues and Request for Expedited Ruling" in which they opposed Anaqua Springs HOA's request for such a referral. SHLAA, Clearwater Ranch and Bexar Ranch LP also jointly filed multiple motions to strike testimony of Anaqua Springs HOA and other parties to the extent they referenced "Route R-1 Modified."

subdivision (“The Canyons”), which is a member of SHLAA, onto adjacent landowners in the Clearwater Ranch subdivision and became Segment 26a because a home was constructed within The Canyons *directly under* the proposed location of Segment 26 after the public meeting and the filing of the Application and issuance of notice. When that occurred, CPS decided that, rather than condemn the house, it would move Segment 26 into Clearwater Ranch and onto different landowners. *Notably, those landowners did not file consents to the modification, and they have opposed it in their testimony.*

There was no requirement for CPS to move the line. CPS could have condemned the property built under the path of Segment 26, but chose not to do so. Instead, CPS moved the segment onto other landowners, without their consent and against their stated positions, in direct contravention of the positions taken by CPS, Clearwater Ranch, SHLAA and Bexar Ranch, LP relative to Anaqua Springs HOA’s request for certification of issues that is the subject of this appeal.¹⁹ It is wholly inappropriate and duplicitous for SHLAA and Clearwater Ranch, supported by Bexar Ranch, LP, to ignore their own involvement in a modification without landowner consent, yet oppose Anaqua Springs HOA’s request for certification of the underlying issue and move to prevent Anaqua Springs HOA from presenting evidence of a similar modification.

If all the parties at issue are noticed and participating, particularly with legal counsel (as in the present case), they have the opportunity to propound discovery, conduct cross-examination and brief the issues so the best possible route possible can be selected. That is the objective to the route selection process. The Commission has not addressed this particular fact scenario in any rule or policy, and it has not been addressed in PURA. Therefore, it is appropriate for certification.

¹⁹ Relative to the relocation of Segment 26 from The Canyons onto Clearwater Ranch landowners as Segment 26a, CPS also elected *not to re-notice* the Clearwater Ranch landowners because they had been noticed previously, even though the line was now impacting their property differently (i.e., crossing their property rather than being adjacent to it).

IV. COMMISSION PRECEDENT HAS NOT ADDRESSED THIS ISSUE

In support of their conclusion that Commission precedent prevents new or modified segments from being created, the ALJs cited to the Order on Rehearing in Docket No. 48095. The body of Commission precedent on this issue, including Docket No. 49523, is not as clear-cut as indicated in the ALJs' order. Most of these cases involve modifications requested after the ALJs made a route recommendation or after the Commission selected a route.²⁰ None of these cases involve the fact scenario presented here. Anaqua Springs, Jauer, Rose Palace, and Strait Promotions detailed and distinguished the applicable precedent in their Reply to Oppositions to Joint Request for Certified Issues, which is filed as Item No. 609 on the PUC Interchange. Rather than burden the record with an entire recounting of those arguments, Anaqua Springs HOA includes those arguments by reference. Additionally, Anaqua Springs HOA would specifically draw the attention of the Commission to Docket No. 49523.

This is not an issue of route adequacy. The ALJs determined that there were an adequate number of reasonably differentiated routes. This is expert testimony supporting Route R1 Modified, which is Route R1 with a modification that moves the line away from impacted homes and into open land, which was expressed by the Commission in the open meeting in the Mountain Home case as an important policy concern. The proposed modification is expert-driven and reduces the impact to homeowners while also reducing cost. Thus, it gives the ALJs and the Commission the option to consider the modification in addition to, not in lieu of, Route R1.

A. Proposing a modification prevents the scenario encountered in Docket No. 49523

Docket No. 49523 is the most recent case where the Commission was presented with a transmission line running close to homes when there was open land on the other side of the transmission line. In that case, one segment crossed one landowner (Vorpahl Ranch), and also

²⁰ Docket No. 49523, Creek House Ranch, LLC's Motion for Rehearing (Jul. 27, 2020).

impacted a neighboring landowner (Creek House Ranch) that was not crossed by the line but had habitable structures within 300 feet of the line.²¹ Unlike this case, Creek House Ranch only proposed a modification in its motion for rehearing after the final order.²² At the open meeting, the Commissioners expressed concern that the line had been routed so closely to habitable structures on Creek House Ranch when there was a vast expanse of land out to the west without habitable structures on the Vorpahl Ranch property, but there was no modification that had been proposed and evaluated at the hearing. The Chair commented that she would consider returning the case if it were not a reliability project and if the landowners had not already spent significant sums of money on attorneys. All Commissioners noted that there were two bad solutions due to the proximity of the habitable structures on Creek House Ranch. The Chair also noted that if Vorpahl Ranch was unwilling to discuss moving the line, the Commission could only encourage them to work to move the line away from homes. The final order included an ordering paragraph directing the LCRA to work with the parties to try to move the line away from the homes.

In this case, Anaqua Springs has attempted to prevent the exact scenario that occurred in Docket No. 49523. Anaqua Springs HOA has presented the testimony of a routing expert who proposes a route to avoid habitable structures by routing a line onto open land, and it also reduces cost. The testimony was timely filed. As such, it provides an opportunity for all parties to consider the proposed modification and to argue in favor of or against it based on the applicable statutory criteria. The evidence can be put in front of the ALJs for evaluation and provide the option for the Commission once the proposal for decision is issued. This way, the ALJs and the Commission will not find themselves in a similar situation to Docket No. 49523 if a route is approved that uses Segments 38 and 43 where their hands are tied even though the route can move onto open land

²¹ *Id.*

²² *Id.*

and away from homes. Instead, there will be a choice to use Segments 38 and 43 or to use Segments 38a and 43a, along with all other routes. As with any routing choice, there will be benefits and disadvantages to both. And parties are free to present evidence about the benefits and disadvantages. Here, Anaqua Springs HOA seeks to provide the parties that opportunity to evaluate one additional route.

B. The other cited dockets are distinguishable.

The ALJs cited Docket No. 48095 in their order denying the request to certify the issues. In dicta on the first page of that order, it states that a finding of fact is deleted because the parties did not obtain consent from all affected landowners. That issue was moot because a different route was consented, and the issue of consent is not included in the ordering paragraphs. It is, therefore, dicta related to a moot issue in the case. There is no basis given in the order for that determination, and it is not found in the Commission's rules. The only authority cited in Docket No. 48095 regarding landowner consent is from a memorandum in the case that cites Docket No. 37530. The facts were different in Docket No. 37530 because it involved a modification after the hearing was concluded and the route was approved. In this case, there has not yet been a hearing so there is time for the route to be evaluated.

None of these dockets addressed the situation here. A new route, proposed by an expert, at a time when all parties have the opportunity to rebut the route, ask discovery on it, and otherwise evaluate it. It is not a post-hearing or post-final order "modification." Rather it is a different proposal made at a time when all parties can address it.

C. The slippery slope argument should be rejected.

The ALJs also adopted the slippery slope argument proposed by Bexar Ranch et al. that if such modifications were permitted, there could be a "theoretically infinite number of new segments for consideration in every CCN . . . in contrast to the ordered analysis to determine the

best route” (emphasis deleted).²³ First, and foremost, there is no Commission rule that prevents landowner-proposed modifications. This issue is discussed above. If the Commission is concerned that allowing landowner proposed modifications would create unworkable cases, then it is the Commission’s responsibility to implement a rulemaking to prevent that from happening. Preventing it, absent a rule or a clearly stated policy, would amount to ad hoc rulemaking and be invalid. It also would violate principles of due process.

Furthermore, the slippery slope argument overlooks the reality of the situation presented in the present case, which is limited to the parties who are impacted, and each of them is actively participating in the case and represented by counsel. It is a legitimate dispute between landowners recognized as being legally impacted by the same set of circumstances, not some unimpacted party trying to modify a route on another non-adjacent, distant landowner. The present limited fact situation will not produce the type of slippery slope that is feared. In addition, the argument assumes that if the Commission permits impacted landowners to present expert testimony on a route modification, then future CCN cases will erupt in chaos because then many landowners will attempt modifications. That has not historically occurred, and there is no indication it would occur in the future. Furthermore, the type of modification proposed in this case is done through expert testimony, evaluating all routes and not particular segments. The landowners who own property where the modification would occur are represented and are fully participating in this docket. The analysis of the route, not the segments, led to the conclusion that the route as a whole could be improved if a modification were made to distance it from homes. It is not a request to move a line onto an unimpacted or uncrossed landowner. That has already happened in this case with the movement of 26a. Anaqua Springs HOA is asking simply that the route be evaluated and considered. CPS or any other party can put on evidence that Route R1 Modified is inferior to

²³ SOAH Order No. 9 at 1.

Route R1 or other routes, and the ALJs can make those factual determinations. Again, this would prevent the situation that occurred in Docket 49523.

V. CONCLUSION

For these reasons, Anaqua Springs HOA and Steve Cichowski respectfully request that the Commission overturn the portions of SOAH Order No. 9 that denied referral of the certified issues and denied the motion to compel. The ALJs and the Commission should have the ability to consider a route that reduces the impact on habitable structures when other impacted landowners are participating, represented by counsel, and when the proposed new route is presented through expert testimony during the hearing process. This is fundamentally different than a route modification proposed after a route is selected by the Commission. Addressing these issues now will prevent the situation that occurred in Docket No. 49523 where the Commission was unaware of the routing challenges until the open meeting.

Respectfully submitted,

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INTERVENORS

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 18th day of March 2021, pursuant to SOAH Order No. 3 issued in this docket.

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

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APPLICATION OF THE CITY OF SAN	§	BEFORE THE STATE OFFICE
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(CPS ENERGY) TO AMEND ITS	§	OF
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SCENIC LOOP 138-KV TRANSMISSION	§	ADMINISTRATIVE HEARINGS
LINE	§	

JOINT MOTION FOR REFERRAL OF CERTIFIED ISSUES AND REQUEST FOR EXPEDITED RULING

COMES NOW, Anaqua Springs Homeowners' Association ("Anaqua Springs HOA"), Brad Jauer and BVJ Properties, LLC ("Jauer"), The San Antonio Rose Palace, Inc. ("Rose Palace"), Strait Promotions, Inc. ("Strait Promotions") (collectively "Joint Parties") and file this Motion for Referral of Certified Issues. Pursuant to 16 Tex. Admin. Code § 22.127(b)(3), issues appropriate for certification include whether Commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

The Joint Parties respectfully request that the ALJs expeditiously certify to the Public Utility Commission of Texas the following issues that are of both substantive and procedural significance to this proceeding:

1. **Whether Route R1 Modified and the modifications that it contains, as presented in the testimony of Mark Anderson and other witnesses for the Anaqua Springs Homeowners' Association and the Jauer parties, can be included in the record and considered by the ALJs and the Commission absent an amendment of the CCN application.**
2. **Whether unanimous consent of all landowners who are impacted by the Route R1 Modified modification is required to approve Route R1 Modified when those landowners are already noticed and actively participating in this docket.**
3. **If the answer to either certified issue no. 1 or 2 is no, then whether CPS should be ordered to amend its application to include Route R1 Modified.**

I. BACKGROUND

On July 22, 2020, the City of San Antonio acting by and through the City Public Service Board (“CPS Energy”) filed an application in this proceeding to amend its certificate of convenience and necessity (“CCN”) in order to authorize construction of a proposed 138 kV transmission line in Bexar County, Texas. On December 22, 2020, CPS Energy filed an Amended Application, moving one route to the east onto different landowners, due to the construction of a home in the proposed right-of-way after the community Open House and the filing of the Application. In making that modification, CPS did not re-notice the landowners impacted by the route change, all but one of whom had previously received notice and had been participating in this case. CPS did receive a waiver of notice from the one landowner who had purchased property between the time CPS filed its Application and the time CPS filed its Amended Application.

Two-thirds (2/3) of the routes in this case, including CPS’s “best meets” route, are sited along the same road, impacting a high number of habitable structures. From the beginning of this case, several parties have desired to find a route that, if not agreeable to all parties, would at least narrow the issues for consideration for the Administrative Law Judges. Several intervenors have agreed to a proposed modification that would impact the least number of habitable structures of all routes and impact no new landowners and no new habitable structures. As a result, the proposed modification would not require new notice under 16 Tex. Admin. Code §22.52(a)(2), as demonstrated by CPS not issuing new notice when it rerouted Segment 26/26a onto the properties of different landowners who were noticed and actively participating in the case. Anaqua Springs HOA and its homeowners, which have property within 300 feet of the centerline of Segments 38 and 43, along with Brad Jauer and Rose Palace, have developed a proposed modification along Segments 26a, 38, and 43 that would be agreeable to them and to a number of other intervenors. Anaqua Springs HOA has approached CPS Energy to seek an agreement to consider the proposed

modification, but CPS has not agreed to modify the segments or amend its application. Anaqua Springs HOA also propounded discovery in an attempt to present specific routing criteria for Route R1 Modified, but CPS did not provide the information in its response. The land where the modifications would occur is owned by two parties who are represented by legal counsel and are actively participating in this docket—Save Huntress Lane Area Association (“SHLAA”) and Bexar Ranch.

The proposed modification is unlikely to increase the cost of the segments and route proposed to be modified. In fact, Mr. Anderson testifies that the modification will be less expensive. Moreover, the proposed modification would distance the line from an existing subdivision; it would reduce the number of habitable structures by three on any route using the proposed modification; it would not impact new landowners or any new habitable structures; and it is a modification that is agreed to or unopposed by the following parties:

Anaqua Springs HOA

Brad Jauer and BVJ Properties, LLC

Rose Palace and Strait Promotions

Charlene Jean Alvarado Living Trust

Steve Cichowski

Lauren Pankratz

Sunil Dwivedi

Raul Figueroa

Toutant Ranch, Ltd. and ASR Parks, LLC (“unopposed”)

The Barrera Family

Primarily Primates, Inc.

The Gutierrez Family

II. THESE ISSUES ARE APPROPRIATE FOR CERTIFICATION TO THE COMMISSION

Whether a proposed modification made to a filed route may be considered by the Administrative Law Judges and ultimately the Commission, without a formal amendment to a CCN Application and/or the consent of noticed, actively participating landowners impacted by the modifications, is a matter of Commission policy. The Joint Parties intend to present evidence that Route R1 Modified is the route that best meets the applicable routing criteria. If the ALJs and ultimately the Commission were not to agree with the Joint Parties, and the modified route is not included in the application, then CPS is at risk of having its application denied. A denial would result in landowners who have already invested significant time and expense into this docket being forced back into litigation, a scenario that the Joint Parties, and presumably CPS, seek to avoid.

CPS may argue that this case has already been delayed due to the Amendment made to reroute Segment 26/26a, and that now granting the certified issues would only serve to further delay the proceeding. To minimize the delay, the Joint Parties respectfully request that the ALJs refer these certified issues to the Commission expeditiously. Because no additional landowner notice is needed, there should not be a notice delay. While there may be some discovery on the modification, if CPS provides the data for the modification and the affected routes, then there may not be significant discovery or delay. The Joint Parties would note that discovery on CPS Energy's direct case ended on February 12, 2021, and very few intervenors served discovery on CPS Energy. Specifically, the parties who filed a motion to strike testimony related to Route R1 Modified (Bexar Ranch, SHLAA, and Clearwater Ranch) did not serve discovery on CPS Energy.

III. NOTICE AND ROUTE MODIFICATIONS

Consistent with the Commission's requirements for notice, CPS Energy sent individual notice to impacted landowners. A sample notice letter is included as Attachment 7 to the

Environmental Assessment and includes the Commission-issued brochure: “Landowners and Transmission Line Cases at the PUC.” Page 3 of that brochure under the section titled “Application to Obtain or Amend a CCN” states “In addition to the routes proposed by the applicant in its application, the possibility exists that additional routes may be developed, during the course of a CCN case, that could affect property in a different manner than the original routes proposed by the applicant.” Thus, the Commission’s brochure anticipates that there may be changes to routes impacting property in a different manner than the original routes. And this scenario has occurred in this case already. Segment 26 became Segment 26a because a home was constructed directly under Segment 26, necessitating a move of the Segment onto land that previously would have been unencumbered by the transmission line. However, because the line originally ran within 300 feet of the newly-impacted properties, they had already been noticed, and CPS did not provide additional notice to them. But these landowners did not consent to the modification moving the line onto their properties. Similarly, Route R1 Modified changes the impact to previously-noticed, participating landowners, but it does not route the line over landowners who were not previously burdened with the line. Thus, the impact to these landowners, who are already burdened, would not be as significant as to the landowners who are now burdened by 26a, whereas prior to the amendment, they were adjacent but not crossed. For these reasons, the Joint Parties assert that the ALJs and the Commission should be able to consider Route R1 Modified without requiring a CCN application amendment, without requiring additional notice to the previously-noticed landowners, and without requiring consent of those landowners.

The Commission’s procedural rule on landowner notice also anticipates that routes may be modified. Before final approval of any modification in a route, a utility must provide notice to the landowner only if that landowner has not been noticed.¹ There is no legal requirement for the

¹ 16 TAC § 22.52(a)(3)(C).

utility to obtain landowner consent prior to a modification. CPS has applied this rule with its Segment 26a modification. It did not notice the landowners because they had already been provided notice under 16 TAC § 22.52. CPS could have kept Segment 26 in its original configuration and condemned the house that was built under it (now labeled Habitable Structure 198) if Segment 26 were approved. However, CPS modified Segment 26 without landowner consent and without notice to landowners who are now crossed by 26a instead of adjacent to 26, all because one house in a subdivision included in the SHLAA intervenor group was built directly under the proposed segment. The Joint Parties' proposed modification keeps the line on the property of the noticed, participating landowners and simply moves it farther south on the same properties, lowering the habitable structure count by three (3).

IV. COMMISSION PRECEDENT

Understandably there has been concern about modifications proposed on routes where landowners do not give consent. However, as the Commission's own pamphlet and notice requirements indicate, and as CPS Energy's practice demonstrates, so long as an intervenor has notice of the proceeding, and is participating in the case, there is no due process concern about notice of a modification when that modification occurs during the proceeding and prior to construction. At this point in the proceeding, Route R1 Modified could be included without any harm to any party in this case. The hearing is set in May; all parties have been made aware of the proposed modification through pre-filed testimony, and there are no newly impacted landowners. Route R1 Modified reduces the number of habitable structures, will reduce the cost of the as-filed Route R1, and does not impact any new landowners.

The Commission has adopted route modifications in prior cases without requiring affirmative consent from previously noticed landowners.² And in this case, Anaqua Springs HOA is proposing a modification in its direct testimony well before the hearing and long before the line is constructed. If affirmative consent is required from previously-noticed landowners for all modifications, it could thwart the Commission's obligation to route the line "to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise."³

In Docket No. 48095, the Commission's Order on Rehearing suggests that previously noticed landowners must provide affirmative consent before the line can be moved to a different location on their property. The Order (prior to the Order on Rehearing) cited Docket No. 37530 as authority for that proposition. However, Docket No. 37530 addressed the utility's ability to move a line during construction, after approval of a final route, and did not address the Commission's ability to address and adopt modifications that are proposed and fully litigated at the hearing on routing. Due to ambiguity on the precise issue presented in this proceeding, this matter is appropriate for the Commission to consider as certified issues. Additionally, parties opposed to the modification have filed a motion to strike testimony related to the modification.

The Commission has a statutory obligation to mitigate the impact of the project on the affected community and landowners by adopting reasonable modifications.⁴ This obligation is reflected in the Commission's preliminary order, which asks: "Are there alternative routes or facilities configurations that would have a less negative impact on landowners?"⁵ There is no

² See, e.g. *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 and 24, Ordering Paragraph 2 (Jan 24, 2011) (adopting a modification that would shift a proposed line "as far south as safely and reliably possible using above ground construction while still affecting only noticed landowners").

³ See 16 Tex. Admin. Code §25.101(b)(3)(B).

⁴ See PURA §37.056(c); 16 TAC § 25.101(b)(3)(B).

⁵ Docket No. 51023, Order of Referral and Preliminary Order at 4.

dispute that all affected landowners must be given notice of the routing in this case, but there is no requirement in PURA or the Commission's rules to obtain affirmative consent from previously noticed landowners if the final route impacts their property in a different way. As discussed above, this is consistent with the Commission-authored brochure titled "Landowners and Transmission Line Cases at the PUC," which must be included with the notice.⁶

V. POLICY

For policy reasons, the Commission should also permit modifications such as the Route R1 Modification proposed in this case. There 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. The contested case process provides opportunities for the landowner to conduct discovery on the proposed modification, to review expert testimony, and to present the landowner's own evidence regarding the modification. Throughout most CCN proceedings, few landowners ever consent to the location of the line. Preventing consideration of a proposed modification without consent of all the landowners, when new landowners are not impacted, does not permit the utility to reconsider or revisit its routing options, even if the utility is unopposed to the modification or believes it might be a better route. Not permitting consideration of reasonable routing modifications supported by evidence ties the utility's hands, unnecessarily limits landowner participation in the hearings to a limited number of utility-proposed routes, thereby foreclosing the option to suggest reasonable alternatives, and places the utility at greater risk of having the application denied.

⁶ 16 TAC §22.52(a)(3)(A).

VI. CONCLUSION

For these reasons, the Joint Parties respectfully request that the ALJs expeditiously certify these issues to the Commission and that the Commission ultimately find that the type of modification proposed by the Joint Parties in Route R1 Modified should be considered in this case, without unanimous landowner consent or an amendment to the application.

Respectfully submitted,

By: Wendy Harvel (with permission)

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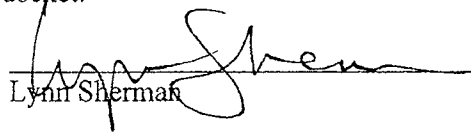
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**ATTORNEYS FOR THE SAN ANTONIO
ROSE PALACE, INC. AND
STRAIT PROMOTIONS, INC.**

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 24th day of February 2021, pursuant to SOAH Order No. 3 issued in this docket.


Lynn Sherman

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

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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 §
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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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.

589

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,

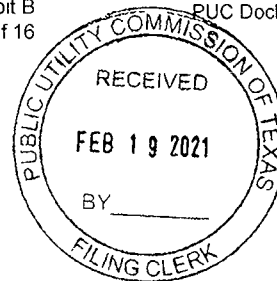
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**ATTORNEYS FOR ANAQUA SPRINGS
HOMEOWNERS' ASSOCIATION**

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



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

**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 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

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

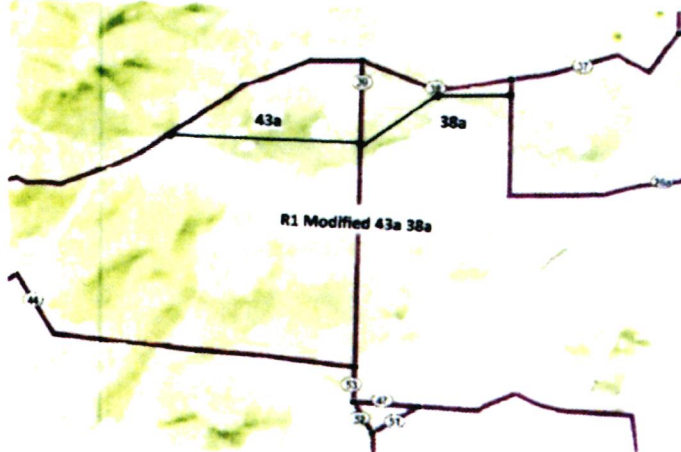
**APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
SAN ANTONIO TO AMEND ITS §
CERTIFICATE OF CONVENIENCE § OF
AND NECESSITY FOR THE §
SCENIC LOOP 138-KV TRANSMISSION § ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY §**

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

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.

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

**APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
SAN ANTONIO TO AMEND ITS §
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SCENIC LOOP 138-KV TRANSMISSION § ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY §**

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

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.

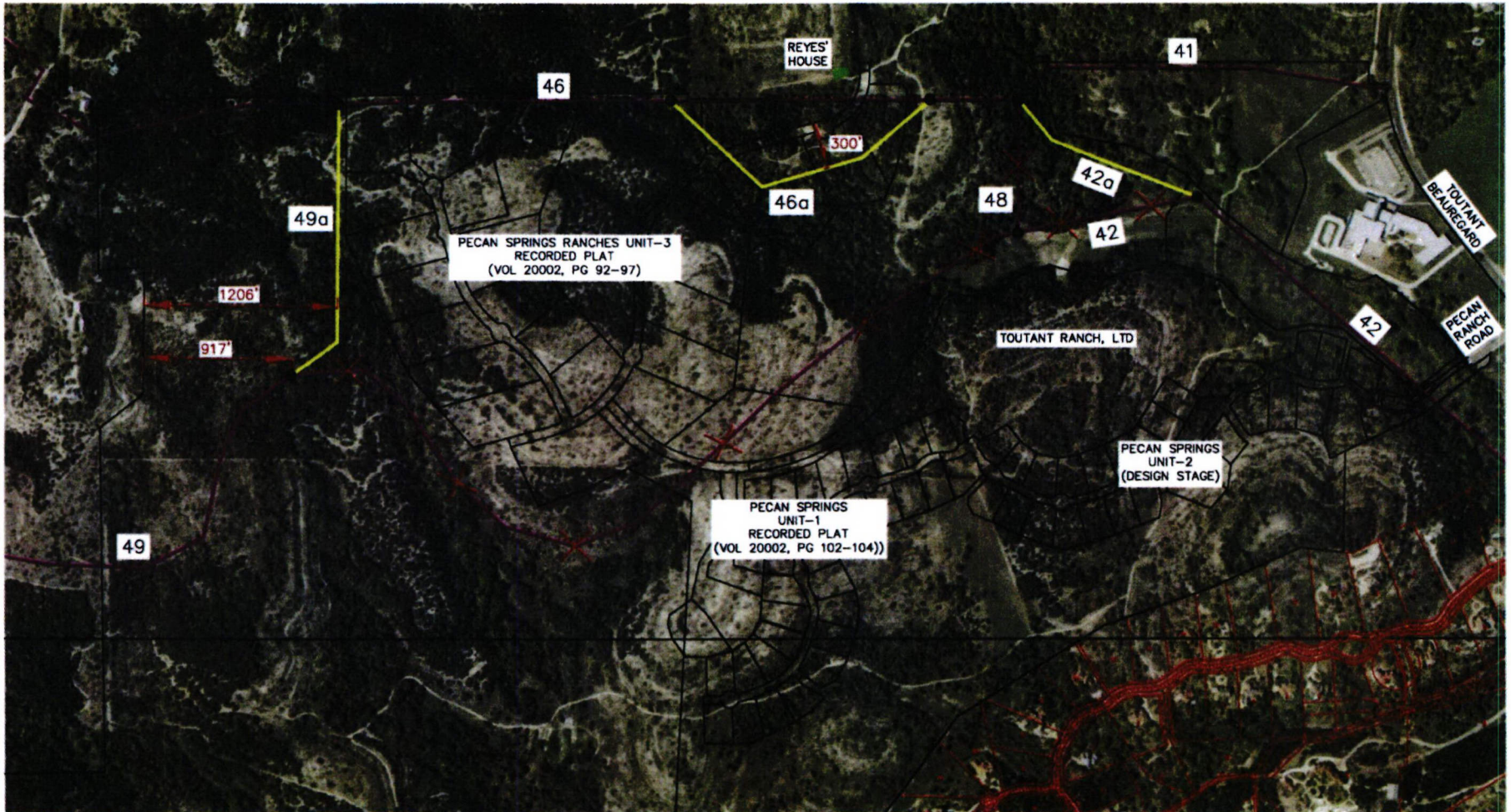
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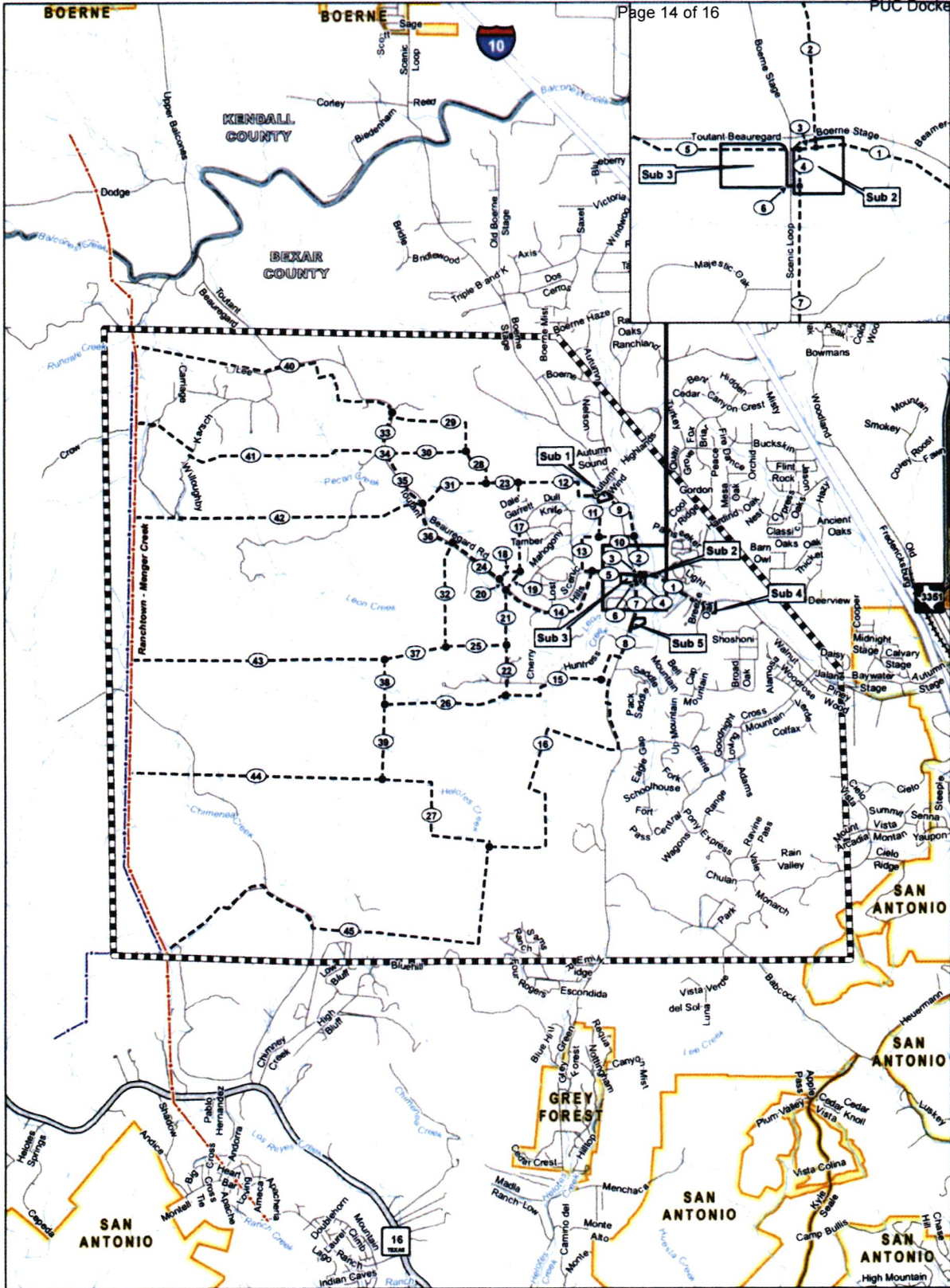
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TAYLOR DREISS (Print)
For Developers

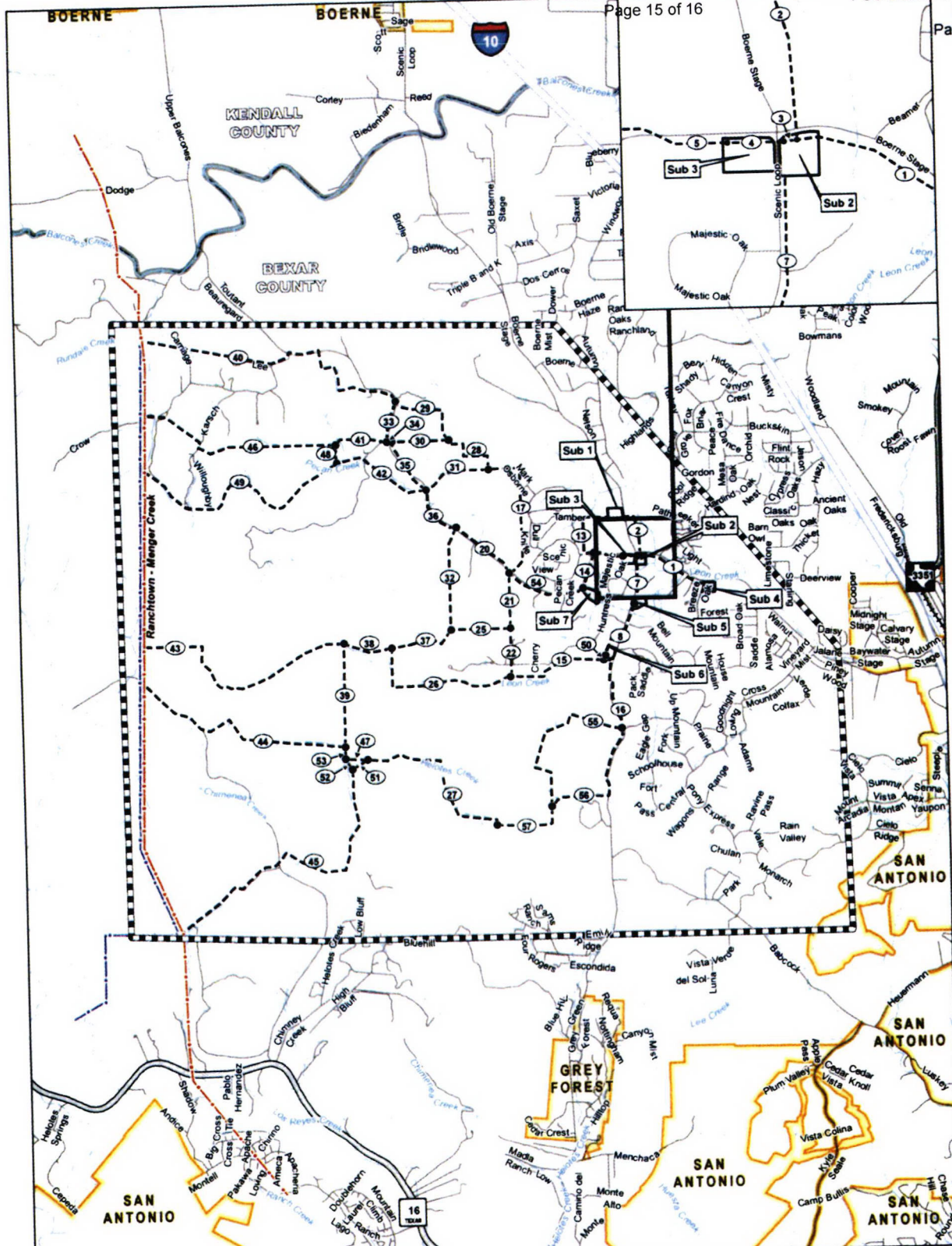
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PAUL BARHAM (Print)
For CPS Energy



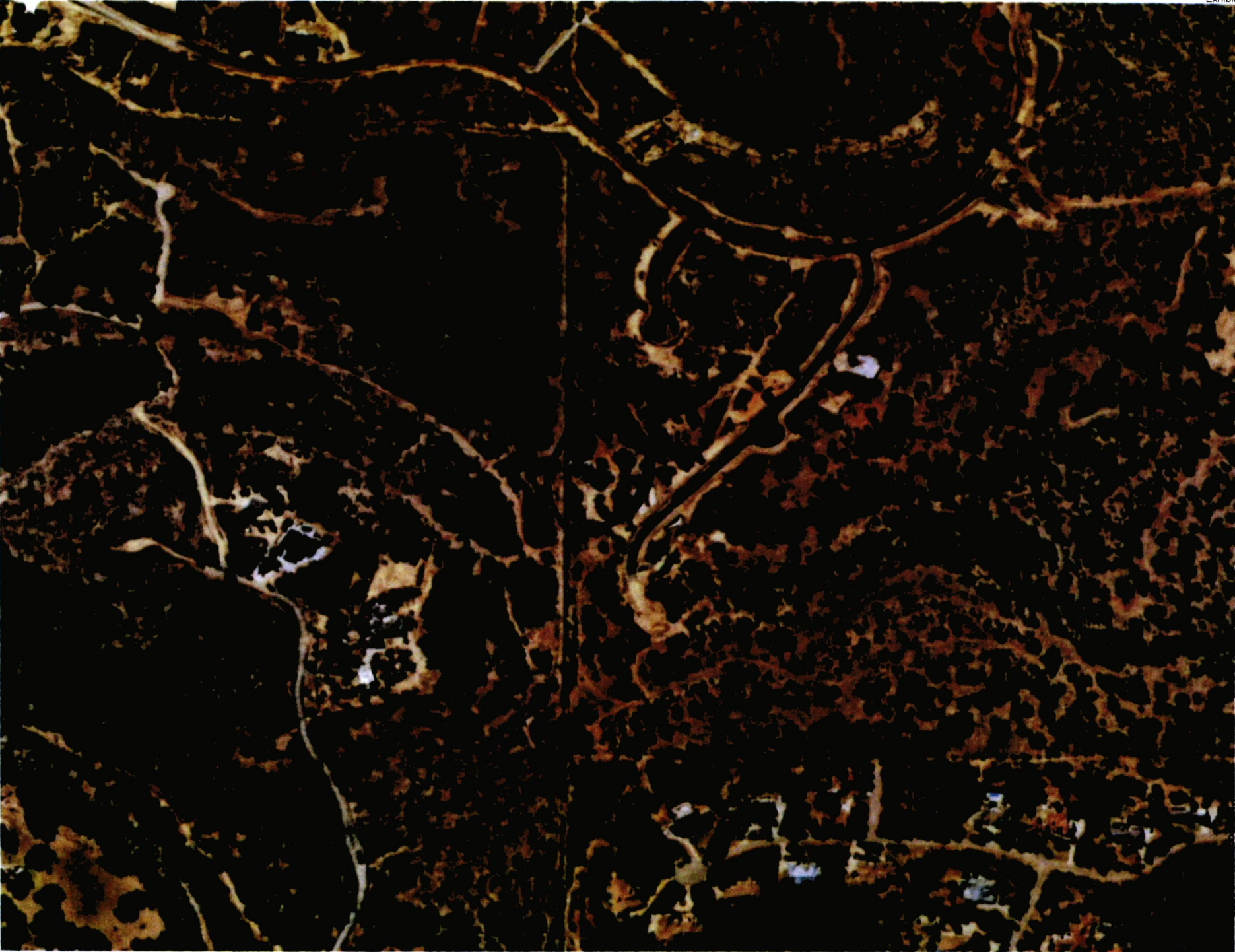


Project Components	Transportation Features	Existing Utility Features	Project Location	SCENIC LOOP 138 kV TRANSMISSION LINE AND SUBSTATION PROJECT Figure 2-2 Preliminary Segments Presented at Open House Meeting
<ul style="list-style-type: none"> Study Area Boundary Preliminary Segment, Node, & Label Preliminary Substation Site 	<ul style="list-style-type: none"> Interstate Highway State Highway FM Road Local Road Railroad 	<ul style="list-style-type: none"> 138 kV Transmission Line 345 kV Transmission Line 		



Project Components	Transportation Features	Existing Utility Features	Project Location	SCENIC LOOP 138 kV TRANSMISSION LINE AND SUBSTATION PROJECT Figure 2-3 Resulting Primary Alternative Segments Following the Open House Meeting
<ul style="list-style-type: none"> Study Area Boundary Primary Segment, Node, & Label Proposed Substation Site Administrative Features <ul style="list-style-type: none"> City Limits County Boundary 	<ul style="list-style-type: none"> Interstate Highway State Highway FM Road Local Road Railroad Surface Waters <ul style="list-style-type: none"> River / Stream 	<ul style="list-style-type: none"> 138 kV Transmission Line 345 kV Transmission Line 		

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

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PUBLIC UTILITY COMMISSION

APPLICATION OF THE CITY OF SAN ANTONIO TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE SCENIC LOOP 138-KV TRANSMISSION LINE IN BEXAR COUNTY §
§
§
§
§
§
BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 9
ADDRESSING “ROUTE R-1 MODIFIED” ISSUES

Now pending are several contested motions presenting a common underlying dispute over whether a proposed “Route R-1 Modified,” championed principally by Anaqua Springs Homeowners’ Association and the two Jauer parties, can properly be considered in this proceeding. Route R-1 Modified would include two proposed “modified” segments, “38a” and “43a,” that CPS Energy has not included in its application and to which the landowners on whose property the segments would be located (Save Huntress Lane Association and Clearwater Ranch POA, with respect to 38a; and Bexar Ranch, L.P., with respect to 43a) have objected.

Having considered the various competing filings and the governing law, the Administrative Law Judges (ALJs)¹ have concluded that while they can certainly consider new *routes*—comprised of segments either included in the application or to which affected landowners have consented—Commission precedent is clear that the ALJs cannot devise new or modified *segments* not included in the application and opposed by affected landowners.² Were it otherwise, intervenors, seeking to advance their respective perceived (and often competing) self-interests, could interject a theoretically infinite number of new segments for consideration in every CCN transmission-line case, in contrast to the ordered analysis to determine the best *route*—comprised of combinations of the limited number of segments noticed in the application or consented to by landowners—

¹ Due to scheduling conflicts, ALJ Pemberton is unable to continue presiding in this case. ALJ Pratibha J. Shenoy has been assigned to co-preside.

² See 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).

Let 2

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

SOAH ORDER NO. 9

PAGE 2

contemplated by Commission rules and the Commission's Order of Referral and Preliminary Order.³

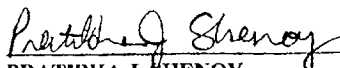
From this conclusion, these rulings follow:

- (1) The "Joint Motion for Referral of Certified Issues and Request for Expedited Ruling," filed by Anaqua Springs Homeowners' Association, the Jauer parties, The San Antonio Rose Palace, Inc., and Strait Promotions, Inc., is **DENIED**.
- (2) The objections to and motions to strike testimony from various witnesses about the proposed "Route R-1 Modified," filed by Bexar Ranch, Save Huntress Lane, and Clearwater Ranch, are **SUSTAINED** and said testimony is **STRUCK**.
- (3) Anaqua Spring Homeowners' Association's motion to compel CPS Energy to respond further to its third request for information is **DENIED**.

SIGNED March 8, 2021.



HOLLY VANDROVEC
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

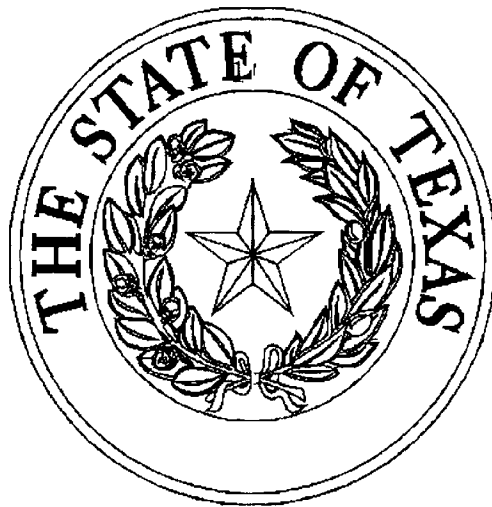


PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

³ 16 Tex. Admin. Code § 22.52(b)(7); Order of Referral and Preliminary Order at 4, Issue No. 5 (Sep. 29, 2020).

Landowners and Transmission Line Cases at the PUC

Public Utility Commission of Texas



1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7260
www.puc.state.tx.us

Effective: June 1, 2011

Purpose of This Brochure

This brochure is intended to provide landowners with information about proposed new transmission lines and the Public Utility Commission's ("PUC" or "Commission") process for evaluating these proposals. At the end of the brochure is a list of sources for additional information.

The following topics are covered in this brochure:

- How the PUC evaluates whether a new transmission line should be built,
- How you can participate in the PUC's evaluation of a line, and
- How utilities acquire the right to build a transmission line on private property.

You are receiving the enclosed formal notice because one or more of the routes for a proposed transmission line may require an easement or other property interest across your property, or the centerline of the proposed project may come within 300 feet of a house or other habitable structure on your property. This distance is expanded to 500 feet if the proposed line is greater than 230 kilovolts (kV). For this reason, your property is considered **directly affected land**. This brochure is being included as part of the formal notice process.

If you have questions about the proposed routes for a transmission line, you may contact the applicant. The applicant also has a more detailed map of the proposed routes for the transmission line and nearby habitable structures. The applicant may help you understand the routing of the project and the application approval process in a transmission line case but cannot provide legal advice or represent you. *The applicant cannot predict which route may or may not be approved by the PUC. The PUC decides which route to use for the transmission line, and the applicant is not obligated to keep you informed of the PUC's proceedings. The only way to fully participate in the PUC's decision on where to locate the transmission line is to intervene, which is discussed below.*

The PUC is sensitive to the impact that transmission lines have on private property. At the same time, transmission lines deliver electricity to millions of homes and businesses in Texas, and new lines are sometimes needed so that customers can obtain reliable, economical power.

The PUC's job is to decide whether a transmission line application should be approved and on which route the line should be constructed. The PUC values input from landowners and encourages you to participate in this process by intervening in the docket.

PUC Transmission Line Case

Texas law provides that most utilities must file an application with the PUC to obtain or amend a Certificate of Convenience and Necessity (CCN) in order to build a new transmission line in Texas. The law requires the PUC to consider a number of factors in deciding whether to approve a proposed new transmission line.

The PUC may approve an application to obtain or amend a CCN for a transmission line after considering the following factors:

- Adequacy of existing service;
- Need for additional service;
- The effect of approving the application on the applicant and any utility serving the proximate area;
- Whether the route utilizes existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
Whether the route parallels existing compatible rights-of-way;
Whether the route parallels property lines or other natural or cultural features;
Whether the route conforms with the policy of prudent avoidance (which is defined as the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort); and
Other factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in the area.

If the PUC decides an application should be approved, it will grant to the applicant a CCN or CCN amendment to allow for the construction and operation of the new transmission line.

Application to Obtain or Amend a CCN:

An application to obtain or amend a CCN describes the proposed line and includes a statement from the applicant describing the need for the line and the impact of building it. In addition to the routes proposed by the applicant in its application, the possibility exists that additional routes may be developed, during the course of a CCN case, that could affect property in a different manner than the original routes proposed by the applicant.

The PUC conducts a case to evaluate the impact of the proposed line and to decide which route should be approved. Landowners who would be affected by a new line can:

- informally file a protest, or
- formally participate in the case as an intervenor.

Filing a Protest (informal comments):

If you do not wish to intervene and participate in a hearing in a CCN case, you may file **comments**. An individual or business or a group who files only comments for or against any aspect of the transmission line application is considered a “protestor.”

Protestors make a written or verbal statement in support of or in opposition to the utility’s application and give information to the PUC staff that they believe supports their position.

Protestors are **not** parties to the case, however, and do not have the right to:

- Obtain facts about the case from other parties;
- Receive notice of a hearing, or copies of testimony and other documents that are filed in the case;
- Receive notice of the time and place for negotiations;
- File testimony and/or cross-examine witnesses;
- Submit evidence at the hearing; or
- Appeal P.U.C. decisions to the courts.

If you want to make comments, you may either send written comments stating your position, or you may make a statement on the first day of the hearing. If you have not intervened, however, you will not be able to participate as a party in the hearing. Only parties may submit evidence and ***the PUC must base its decision on the evidence.***

Intervening in a Case:

To become an intervenor, you must file a statement with the PUC, no later than the date specified in the notice letter sent to you with this brochure, requesting intervenor status (also referred to as a party). This statement should describe how the proposed transmission line would affect your property. Typically, intervention is granted only to directly affected landowners. However, any landowner may request to intervene and obtain a ruling on his or her specific fact situation and concerns. A sample form for intervention and the filing address are attached to this brochure, and may be used to make your filing. A letter requesting intervention may also be used in lieu of the sample form for intervention.

If you decide to intervene and become a party in a case, you will be required to follow certain procedural rules:

- You are required to timely respond to requests for information from other parties who seek information.
- If you file testimony, you must appear at a hearing to be cross-examined.
- If you file testimony or any letters or other documents in the case, you must send copies of the documents to every party in the case and you must file multiple copies with the PUC.

If you intend to participate at the hearing and you do not file testimony, you must at least file a statement of position, which is a document that describes your position in the case.

Failure to comply with these procedural rules may serve as grounds for you to be dismissed as an intervenor in the case.

If you wish to participate in the proceedings it is very important to attend any prehearing conferences.

Intervenors may represent themselves or have an attorney to represent them in a CCN case. If you intervene in a case, you may want an attorney to help you understand the PUC’s procedures and the laws and rules that the PUC applies in deciding whether to approve a transmission line. The PUC encourages landowners to intervene and become parties.

Stages of a CCN Case:

If there are persons who intervene in the case and oppose the approval of the line, the PUC may refer the case to an administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH) to conduct a hearing, or the Commission may elect to conduct a hearing itself. The hearing is a formal proceeding, much like a trial, in which testimony is presented. In the event the case is referred to SOAH, the ALJ makes a recommendation to the PUC on whether the application should be approved and where and how the line should be routed.

There are several stages of a CCN case:

- The ALJ holds a prehearing conference (usually in Austin) to set a schedule for the case.
- Parties to the case have the opportunity to conduct discovery; that is, obtain facts about the case from other parties.
- A hearing is held (usually in Austin), and parties have an opportunity to cross-examine the witnesses.
- Parties file written testimony before the date of the hearing. Parties that do not file written testimony or statements of position by the deadline established by the ALJ may not be allowed to participate in the hearing on the merits. Parties may file written briefs concerning the evidence presented at the hearing, but are not required to do so. In deciding where to locate the transmission line and other issues presented by the application, the ALJ and Commission rely on factual information submitted as evidence at the hearing by the parties in the case. In order to submit factual information as evidence (other than through cross-examination of other parties' witnesses), a party must have intervened in the docket and filed written testimony on or before the deadline set by the ALJ. The ALJ makes a recommendation, called a **proposal for decision**, to the Commission regarding the case. Parties who disagree with the ALJ's recommendation may file exceptions. The Commissioners discuss the case and decide whether to approve the application. The Commission may approve the ALJ's recommendation, approve it with specified changes, send the case back to the ALJ for further consideration, or deny the application. The written decision rendered by the Commission is called a **final order**. Parties who believe that the Commission's decision is in error may file motions for rehearing, asking the Commission to reconsider the decision. After the Commission rule on the motion for rehearing, parties have the right to appeal the decision to district court in Travis County.

Right to Use Private Property

The Commission is responsible for deciding whether to approve a CCN application for a proposed transmission line. If a transmission line route is approved that impacts your property, the electric utility must obtain the right from you to enter your property and to build, operate, and maintain the transmission line. This right is typically called an easement.

Utilities may buy easements through a negotiated agreement, but they also have the power of eminent domain (condemnation) under Texas law. Local courts, not the PUC, decide issues concerning easements for rights-of-way. The PUC does not determine the value of property.

The PUC final order in a transmission case normally requires a utility to take certain steps to minimize the impact of the new transmission line on landowners' property and on the environment. For example, the order normally requires steps to minimize the possibility of erosion during construction and maintenance activities.

HOW TO OBTAIN MORE INFORMATION

The PUC's online filings interchange on the PUC website provides free access to documents that are filed with the Commission in Central Records. The docket number, also called a control number on the PUC website, of a case is a key piece of information used in locating documents in the case. You may access the Interchange by visiting the PUC's website home page at www.puc.state.tx.us and navigate the website as follows:

- - ■ Select "Filings."
 - Select "Filings Search."
 - Select "Filings Search."
 - Enter 5-digit Control (Docket) Number. *No other information is necessary.*
 - Select "Search." *All of the filings in the docket will appear in order of date filed*
 - Scroll down to select desired filing.
 - Click on a blue "Item" number at left.
 - Click on a "Download" icon at left.

Documents may also be purchased from and filed in Central Records. For more information on how to purchase or file documents, call Central Records at the PUC at 512-936-7180.

PUC Substantive Rule 25.101, Certification Criteria, addresses transmission line CCNs and is available on the PUC's website, or you may obtain copies of PUC rules from Central Records.

Always include the docket number on all filings with the PUC. You can find the docket number on the enclosed formal notice. Send documents to the PUC at the following address.

Public Utility Commission of Texas
Central Records
Attn: Filing Clerk
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

The information contained within this brochure is not intended to provide a comprehensive guide to landowner rights and responsibilities in transmission line cases at the PUC. This brochure should neither be regarded as legal advice nor should it be a substitute for the PUC's rules. However, if you have questions about the process in transmission line cases, you may call the PUC's Legal Division at 512-936-7260. The PUC's Legal Division may help you understand the process in a transmission line case but cannot provide legal advice or represent you in a case. You may choose to hire an attorney to decide whether to intervene in a transmission line case, and an attorney may represent you if you choose to intervene.

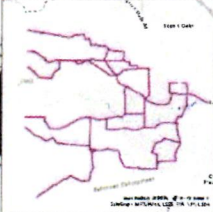
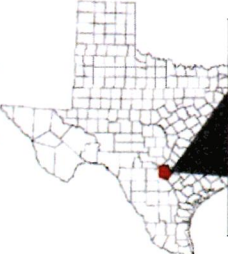
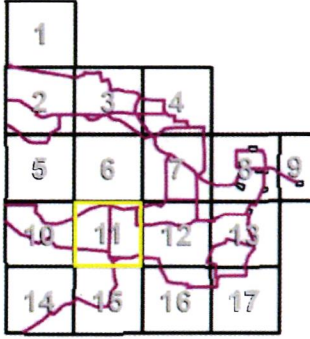
Communicating with Decision-Makers

Do not contact the ALJ or the Commissioners by telephone or email. They are not allowed to discuss pending cases with you. They may make their recommendations and decisions only by relying on the evidence, written pleadings, and arguments that are presented in the case.



CPS Energy is the nation's largest municipally owned energy utility providing both natural gas and electric service. We serve more than 840,750 electric customers and 352,985 natural gas customers in and around San Antonio, the nation's seventh largest city. This map has been produced by CPS Energy for its own use. Accordingly, certain information, features or details may have been emphasized over others or may have been left out. CPS Energy does not warrant the accuracy of this map, either as to scale, accuracy or completeness.

Prepared by Refined Land Services.
 07.08.2020
 Rev. 12.21.2020



LEGEND

- SEGMENTS
- HABITABLE STRUCTURES
- SUBSTATION
- PROJECT NODE
- PARCEL BOUNDARIES
- ~ LANDHOOKS

Scenic Loop
 138kv Electric Transmission Project
 Location of Directly Affected Parcels and Habitable Structures

0 0.08 0.15 Miles

N