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THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS

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In re 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 Project  
in Bexar County, Texas

Docket Number: 51023

SOAH Docket No. 473-21-0247

RESPONSE TO CPS ENERGY'S  
RESPONSE TO STEVE CICHOWSKI'S  
MOTION FOR REFERRAL OF CERTIFIED  
ISSUES

I, Patrick Cleveland, file this response to CPS Energy's Response to Steve Cichowski's Motion for Referral of Certified Issues (hereinafter CPS Energy's Response) regarding the following issues that are requested to be certified to the Commission:

a. 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?

b. 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?

1. I pray that the answers to these questions should be in the affirmative as explained in Steve Cichowski's Motion for Referral of Certified Issues (Filing No. 624) and Motions in Support filed by Brad Jauer and BVJ Properties, LLC (Filing No. 649) and The San Antonio Rose Palace, Inc. and Strait Promotions (Filing No. 650).

PATRICK CLEVELAND: RESPONSE TO CPS ENERGY'S RESPONSE TO STEVE CICHOWSKI'S MOTION FOR REFERRAL OF CERTIFIED ISSUES - 1

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1 2. In CPS Energy's Response, CPS Energy states that "[t]here is a long line of precedent from  
2 the Commission and the courts supporting settlement agreements that require parties to support a  
3 route . . . ." CPS Energy's Response at 3.

4 3. However, CPS Energy cites to only two cases in support of this statement. *Id.* (See Footnote  
5 3).

6  
7 4. In addition, the two cases cited relate to agreement on a final settlement route, which by  
8 definition, would be assumed to be supported by those who made it.

9 5. The situations cited by CPS Energy above that involve multiple parties agreeing to a final  
10 settlement route after lengthy litigation appears to be different than a contract with one party  
11 involving one route or part of a route, which requires that party to support it, regardless of any  
12 other route settlement by other parties.

13 6. In the former, there is probably no coercion, as multiple parties are simply coming to an  
14 agreement over one favored route. In the latter, there is the real possibility of coercion, as the  
15 utility company is requiring one party to support the route or part of the route that is located on  
16 the party's property, regardless of whether another route better complies with PURA § 37.056 or  
17 16 Tex. Admin. § 25.10 and regardless of support by other parties to other routes.

18 7. It's also important to note that CPS Energy could've proposed the segments around Pecan  
19 Springs Development in the first place (which would've complied with 16 Tex. Admin. § 25.101  
20 by following property lines), instead of proposing the route through the middle of a property that  
21 it knew or should've known was a planned development.

22 8. It should also be noted that in its response, CPS Energy cites to no case where a utility  
23 company created a contract with one party and in that contract, required the party to support the  
24 proposed segment or route that was on the party's property before any proposed route  
25 settlements between the intervenors had been made or an administrative selection of a route had  
26 been made.

1 9. As justification for its actions, CPS Energy stated in its Response that it “did not want to  
2 make modifications to accommodate Toutant only to have the landowner later complain and  
3 oppose the modifications.” CPS Energy’s Response at 1. But if that was the case, CPS Energy  
4 could’ve simply required the landowner to not oppose the modifications, rather than requiring  
5 the landowner to actively support the modifications above any other proposed segments or  
6 routes.

7 WHEREFORE, for the above reasons, I, Patrick Cleveland, respectfully submit this  
8 Response to CPS Energy’s Response to Steve Cichowski’s Motion for Referral of Certified  
9 Issues and ask that the questions described herein be certified to the Commission.

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11  
12 Respectfully submitted this 18th day of March 2021.

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14 /Patrick Cleveland/

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CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on March 18, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

*/Patrick Cleveland/*

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Patrick Cleveland