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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

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BEFORE THE STATE OFFICE

FILING CLERK

OF

ADMINISTRATIVE HEARINGS

DIRECT TESTIMONY

OF

STEVE AND CATHY CICHOWSKI

February 24, 2021

704

**INDEX TO THE DIRECT TESTIMONY OF
STEVE AND CATHY CICHOWSKI**

I.	BACKGROUND	3
II.	PURPOSE OF TESTIMONY	4
III.	IMPACT OF THE TRANSMISSION LINE	6
IV.	DISTRIBUTION LINE BEHIND MY HOUSE.....	10
V.	CPS’S DEALINGS IN DEVELOPING ROUTES.....	12
VI.	ADDITIONAL LEGAL ARGUMENTS.....	20
VII.	CONCLUSION.....	23

LIST OF EXHIBITS

Exhibit SCC-1	Figure 2-2: Preliminary Segments Presented at Open House Meeting
Exhibit SCC-2	Photographs
Exhibit SCC-3	ASRHOA Position Paper

1 **DIRECT TESTIMONY OF STEVE AND CATHY CICHOWSKI**

2 **I. BACKGROUND**

3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Steve Cichowski.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. I am testifying on behalf of myself and my wife Cathy.

7 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE THE PUBLIC**
8 **UTILITY COMMISSION OF TEXAS (“COMMISSION”)?**

9 A. No, although I am simultaneously filing testimony on behalf of Anaqua Springs
10 Ranch Homeowners’ Association in my role as its president.

11 **Q. WHAT IS YOUR OCCUPATION?**

12 A. I am an attorney. I am also a Registered Professional Engineer (inactive). As an
13 engineer, I spent many years in the land development industry designing streets,
14 roads, and subdivisions for both the public and private sector. I am familiar with
15 the use of easements for the provision of public utilities and have submitted
16 numerous plans and specifications to City Public Service and the City of San
17 Antonio for approval of plats and subdivisions. As an attorney, I advanced my
18 knowledge of deeds, land records, and recorded instruments, including easements.
19 I have personal knowledge of all of the facts stated herein by virtue of my training,
20 education, and experience. Since living in Anaqua Springs I have been on the
21 Board of Directors for the Anaqua Springs Homeowners’ Association (“HOA”).
22 This required coordinating with public entities like the County and Emergency
23 District 8 with respect to public works projects and services. This was a regular
24 part of the business of the HOA, and such efforts were undertaken as part of that

1 business. Through that business I also have personal knowledge of the facts stated
2 herein.

3 **Q. HAVE YOU PREPARED ANY EXHIBITS IN CONNECTION WITH YOUR**
4 **TESTIMONY?**

5 A. I have prepared and sponsor the documents listed in the table of contents.

6 **Q. WERE THESE DOCUMENTS PREPARED BY YOU OR BY SOMEONE**
7 **UNDER YOUR DIRECT SUPERVISION?**

8 A. Yes.

9 **II. PURPOSE OF TESTIMONY**

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
11 **PROCEEDING?**

12 A. I want to express my opposition to the Routes presented to the Commission by CPS
13 that utilize or parallel the Toutant Beauregard right of way or parallel the southern
14 boundary of Anaqua Springs Ranch. I present evidence of the negative impact that
15 a transmission line directly adjacent to my property would have on my home and
16 property. At the end of my testimony, I discuss legal concerns I have about this
17 case.

18 In summary:

- 19 • Routes using any combination of segments 54, 20, 36, 38, 39, or 43
20 will have a significant negative economic and quality of life impact
21 on my personal property as well as Anaqua Springs as a whole.
- 22 • Any route utilizing Toutant Beauregard as compatible right of way
23 will erode if not destroy the aesthetics that contribute to the

1 desirability of living in any of the subdivisions along Toutant
2 Beauregard including Anaqua Springs Ranch. This affects me as
3 well as all of the residents living in Anaqua.

- 4 • Any route utilizing segment 36 would result in the destruction of the
5 entrance to Anaqua Springs as described in my testimony given on
6 behalf of the Anaqua Springs Homeowner's Association.
- 7 • Any route utilizing segment 43 would place powerlines within 300
8 feet of my home, destroying its unique natural beauty and subjecting
9 me to noise, health risks, and a significant loss of property value.
- 10 • CPS has not been candid with the Commission concerning the true
11 cost of the routes utilizing the above referenced segments in that it
12 has not addressed the two new bridges to be built by Bexar County
13 crossing proposed segments 20 and 36, it has not addressed the
14 natural gas main that runs along Toutant Beauregard under segment
15 20, and it has not addressed the water main that runs along Toutant
16 Beauregard under segment 20 and parts of 54. Mr. Anderson
17 addresses some of these matters in more detail in his testimony.
- 18 • During the open house process CPS showed the public potential
19 routes that differed from those finally submitted to the PUC,
20 preventing any meaningful participation in the process. These
21 changes were made without notice to the public and without holding
22 a second open house, which could have been held virtually. (See

1 Exhibit SCC-1 for the route map shown to the public at the Open
2 House for this project.)

3 **III. IMPACT OF THE TRANSMISSION LINE**

4 **Q. CAN YOU PLEASE DESCRIBE WHERE YOUR PROPERTY IS**
5 **LOCATED?**

6 A. My home is located on the southern boundary of the Anaqua Springs Ranch
7 neighborhood, close to the southwest corner. It is a 4.2 acre irregularly shaped tract
8 that shares a 680-foot rear (south) property line with Bexar Ranch. It is on the down
9 slope of a hill surrounded by acreage below the properties located to the north and
10 west. Looking south from our home, the hill continues with a downslope before
11 taking an uphill turn that continues briefly before the hill resumes its downward
12 trajectory. Because of the unique topography, no other home is visible from our
13 backyard, and our backyard is visible to no other home. The seclusion provided by
14 this site is absolutely unique and was a deciding factor in our decision to build our
15 dream home in this location. I have lived there with my wife since 2011. In CPS's
16 amended application filed on December 22, 2020, my home is referred to as
17 Habitable Structure No. 201.¹

¹ Amendment to CPS Application, Attachment 6, Sheet 11 of 17.

1 **Q. WHICH PROPOSED SEGMENTS OF THE TRANSMISSION LINE**
2 **IMPACT YOUR PROPERTY?**

3 A. Proposed Segment 43 runs just to the south of my property and abuts my property
4 line as currently submitted.² I also believe that any segments that utilize Toutant
5 Beauregard will impact my property and all properties in Anaqua Springs.

6 **Q. HOW IS YOUR PROPERTY IMPACTED?**

7 A. Anaqua Springs Ranch has been recognized in the development and real estate
8 industry as one of the region's most unique neighborhoods. Developed with
9 minimal impact to the environment and designed to offer privacy as well as
10 sweeping views of the hill country, it has a special appeal to people that want the
11 security and comfort of a neighborhood with the feeling that they are part of nature.
12 Because of the significant architectural restrictions and requirements to preserve
13 native flora and fauna, even the smaller lots in Anaqua have an acreage feel. It is
14 not just the homes, but the unique setting that makes Anaqua one of the most
15 desirable neighborhoods in the area. While this leads to increased development and
16 building cost, it results in increased aesthetics and higher per square foot property
17 values.

18 Any route utilizing segment 43 would be particularly damaging to me. My
19 home is situated on a lot surrounded by oaks and other native trees. As I stated
20 earlier, it was chosen by my wife and I specifically because of its unique location
21 providing seclusion and privacy, with no view of anything but woods and wildlife.

² There is a fifty-foot strip designated as future park that separates the southern lot line from the Anaqua Springs boundary.

1 Although slightly below average in size for the development, it has been appraised
2 as one the highest value properties in the neighborhood on a per square foot basis.
3 This is only because of the unique location, seclusion, and natural setting. Segment
4 43, as submitted, directly abuts my property. In addition, because there is a change
5 in the direction of segment 43 directly behind my home, there would have to be a
6 tower within 300 feet of my house. Putting a 130-foot tower and 138kV
7 transmission lines directly behind my house would destroy the unique character of
8 my homesite, destroy the serenity we worked and paid for, and eliminate the most
9 significant factor in why we choose that location. It would in turn negate the market
10 value established when there was no tower there or any indication that there ever
11 would be. The purchase of this property was not only to have been our dream home
12 in our dream location, it was also part of our retirement investment plan as a hedge
13 against an erratic market. Having witnessed the decline of both of our parents, the
14 need they had for constant care, and the subsequent expense, the sale of the property
15 is to be a major part of funding for our own care when the time comes that we can
16 no longer care for ourselves. I have researched the effect of transmission lines on
17 property values. A recent study in the Journal of Real Estate Research by College
18 of Charleston assistant professors Chris Mothorpe and David Wyman, found that
19 vacant lots adjacent to high-voltage transmission lines sell for 45% less than
20 equivalent lots not located near transmission lines. Non-adjacent lots still located
21 within 1,000 feet of transmission lines sell at a discount of 18%. Even more
22 conservative articles sponsored by the power industry concluded that transmission
23 lines resulted in significant price effects for certain types of developments. *See*

1 Chalmers, James, RESPONSE TO “ANOTHER VIEW OF HIGH VOLTAGE TRANSMISSION
2 LINES”, LETTER TO MSTI REVIEW PROJECT, MAY 2012. In our case, a loss like this
3 would be a devastating real cash loss to me and my wife; likely requiring that we
4 postpone retirement to make up for the loss.

5 Utilizing Toutant Beauregard for this project would defeat the existing
6 balance of what the market bears for cost versus aesthetics. It is an axiom in the
7 real estate industry that you cannot get someone to buy your house if you cannot
8 get them into your house. There are several developments in the Bexar County and
9 surrounding areas offering homes at or near the price point of the homes in Anaqua
10 that do not require you to travel along a tower shrouded road and cross under
11 transmission lines to enter. These developments are also not encumbered with an
12 entrance completely stripped of trees under an essentially sterile right of way.
13 There would be no incentive for a buyer to pay more for a home in Anaqua than for
14 a similar size home in one of the other developments that are free of the
15 transmission lines and the cleared right of way. Unfortunately, current Anaqua
16 residents have already paid for that difference and we (myself included) would have
17 to bear the loss for market readjustment.

18 **Q. DO YOU HAVE NEIGHBORS WHO ARE SIMILARLY IMPACTED?**

19 A. Yes. The neighbor two houses to the east of me is also within 300 feet of the
20 centerline. His home is listed as habitable structure number 134. Additionally,
21 there is a home directly adjacent to him to the east that is also within 300 feet of the
22 centerline of proposed segment 38. This home was not identified in CPS’s
23 Amended Application, and Anaqua Springs has notified CPS of the omission.

IV. DISTRIBUTION LINE BEHIND MY HOUSE

Q. HOW DOES CPS DESCRIBE SEGMENT 43 IN ITS APPLICATION?

A. CPS describes segment 43 as partially using compatible right-of-way, which based on its response to Jauer RFI 2-15, is the property line between Anaqua Springs Ranch and Bexar Ranch.

Q. DO YOU HAVE ANY COMMENTS REGARDING CPS ROUTING A TRANSMISSION LINE PARALLEL TO YOUR BACK PROPERTY LINE?

A. Yes. This is not the first time CPS has come close to or onto my property. In 2008 CPS constructed distribution lines along the rear boundary of Anaqua. Rather than stay within its easement, CPS's construction crew trespassed on my property by swinging wide out of CPS's easement. In so doing, CPS, without authority and without my permission, clear cut a portion of my property. CPS removed mature trees in order to bring their equipment up the property line. They did this without an easement and without asking my permission, which I would have refused. When I came to check on my property, I found a wide swath of trees and native vegetation destroyed and three large piles of bulldozed trees left on my property. This was devastating in as much as bulldozing trees in that location also scraps off the topsoil. This area will not reforest in my lifetime. This area, when seen now from an aerial view, may appear as a dirt road or a dirt patch. It was in fact heavily wooded prior to CPS's trespass and damage. CPS did not dispose of the trees and brush and instead left them on my property.

CPS has already taken my property without my consent. I do not believe they should be granted a CCN to come back to the same area and further impact

1 my property. I have already given up enough. I have included photographs of the
2 damage as Exhibit SCC-2 along with captions that describe them.

3 **Q. DID YOU CONTACT CPS ABOUT THEIR ACTIONS?**

4 A. Yes. This occurred over ten years ago, and my memory about these details is not
5 perfect, so I am testifying about my recollection of what occurred. After notifying
6 CPS of what had taken place, I was promised a response. None came. After
7 repeated contact, a representative was sent to my property to meet me and take
8 pictures. Initially CPS denied that the damaged area was on my property, however
9 survey stakes, still in the ground, clearly delineated the property lines. CPS next
10 stated that I needed to prepare damage estimates before it would consider
11 compensation. I paid to have a horticulturist value the lost trees and a site contractor
12 to give me an estimate for removing the large piles of bulldozed cedars and oaks.
13 One such oak was over 35 feet tall. Its loss was particularly painful because it was
14 a post oak which is rare in this rocky location. I submitted all of these estimates to
15 CPS and still no action was taken.

16 **Q. WERE YOU REQUIRED TO TAKE ANY LEGAL ACTION?**

17 A. After preparing estimates for the damages and meeting with CPS representatives, I
18 was repeatedly told that someone would contact me to discuss reparations. No one
19 ever did. CPS continued to send different inspectors to verify the damage. I finally
20 prepared a lawsuit and sent it to CPS's legal counsel.

21 **Q. HOW WAS THE ISSUE RESOLVED?**

22 A. Once CPS received a copy of the suit I was finally contacted by an attorney for
23 CPS. A monetary settlement was eventually negotiated.

1 **Q. DO YOU FEEL LIKE THE MONETARY SETTLEMENT WAS**
2 **SUFFICIENT TO MAKE YOU WHOLE?**

3 A. No. I was willing to settle the case for less than the total value of the damage to
4 avoid litigation over the damage and move on, but I did not feel it was adequate,
5 and I then spent a large sum of money to have the brush processed to avoid the fire
6 hazard from dry brush.

7 **Q. WHY DO YOU FEEL THE HISTORY OF YOUR PREVIOUS**
8 **INVOLVEMENT WITH CPS IS IMPORTANT IN THIS PROCEEDING?**

9 A. CPS has already significantly impacted my property once when they acted
10 carelessly. They should not be permitted to impact it again. I feel that CPS has not
11 been forthcoming about its careless mistake made at my expense. This is especially
12 troublesome in that CPS has already impacted the seclusion I previously described
13 by clearing a wooded area, *on my property*, that at least would have provided a
14 limited buffer between my home and the proposed segment 43. I think the
15 Commission should have all available facts, including my specific history with CPS
16 and how it involves Segment 43, in choosing a route.

17 **V. CPS'S DEALINGS IN DEVELOPING ROUTES**

18 **Q. ARE YOU FAMILIAR WITH ALL ROUTES AND SEGMENTS**
19 **PROPOSED BY CPS IN THIS PROCEEDING?**

20 A. Yes. Since becoming aware of the proposed project, I have been actively
21 participating in understanding and evaluating CPS's proposals.

1 **Q. HAVE YOU BEEN INVOLVED IN THIS PROJECT FROM THE**
 2 **BEGINNING?**

3 A. Yes. I attended the open house sponsored by CPS in 2019. Afterwards I met with
 4 other members of the community to discuss the impact of the proposed project on
 5 Anaqua Springs. We formulated an action plan which included meeting with CPS
 6 and other interested parties including local developers and other homeowners'
 7 associations. As part of this effort the Board of Anaqua Springs Homeowners
 8 Association developed a position paper to present to CPS. That paper, which is
 9 attached as an exhibit to my testimony on behalf of the Association, compared the
 10 economic effects of several of the various routes presented by CPS at its open
 11 house. Of all of the various proposed routes shown at the open house, one route
 12 appeared far superior to the others. On Exhibit SCC-3 (position paper), that route
 13 is described as beginning at proposed substation site one, then traveling east on
 14 segment 12 to segments 23, 28, 29, and 40 before terminating at the existing
 15 Ranchtown-Menger Creek transmission line. The impact of that line with respect
 16 to the number of habitable structures and estimated property values is found in the
 17 position paper previously referenced. Following our meeting with CPS we believed
 18 that CPS was in agreement with us that the route referenced was high on the list of
 19 routes that would best meet the applicable routing criteria.

20 **Q. HAVE YOU MET WITH OTHER LANDOWNERS IN THIS CASE?**

21 A. Yes. We have had ongoing discussions with Brad Jauer because his land borders
 22 Anaqua Springs, and he owns a home in the subdivision. We had meetings early
 23 on in this process with Mr. Dreiss, who was the developer of Anaqua Springs and

1 is developing Pecan Springs as the next subdivision to the west of Anaqua Springs.
2 He has intervened in this proceeding through Toutant Ranch.

3 **Q. PLEASE TELL US ABOUT THE MEETING WITH MR. DREISS AND THE**
4 **PECAN SPRINGS DEVELOPMENT TEAM.**

5 A. We met with them to discuss the impact of the proposed lines on those two
6 properties. It was the consensus of all present that any route utilizing Toutant
7 Beauregard was highly detrimental to both properties, and all would work to
8 discourage its selection.

9 Through discovery in this proceeding and as represented by CPS in its
10 Application, I determined that Toutant Ranch had begun negotiations with CPS in
11 October 2019 to donate right of way in exchange for control of any route location
12 that crossed Toutant Ranch's properties. I also learned that Toutant Ranch
13 purchased additional property to be able to donate the right of way to CPS to move
14 the routes so that they would impact fewer planned homes and the entrance to the
15 new development. I can understand why Toutant Ranch elected to donate right of
16 way. Because many of the routes would impact the property and it was not yet
17 developed, by donating right of way and asking for the route modification, Toutant
18 Ranch was able to better protect its financial interests. The same is not true of
19 established developments like Anaqua Springs. This is particularly so because
20 future development plans are not a routing criteria, whereas existing homes are.

21 However, what concerns me about the agreement between Toutant Ranch
22 and CPS is that CPS required as part that Toutant Ranch agree to not oppose the
23 lines on its property. CPS is a governmental entity that used its leverage and power

1 to silence the voice of one of the most influential landowners in this proceeding.
2 While this is an action that would not surprise me if it came from a truly private
3 party, this is a governmental actor using its power to eliminate the input and legal
4 action of a landowner impacted by this project.

5 As a result of the agreement between CPS and Toutant Ranch, I was unable
6 to have further productive discussions with Toutant Ranch, even though we should
7 share a common interest in the routes that would not impact our properties, impact
8 fewer habitable structures, and avoid an elementary school. At the time I did not
9 understand why communication ceased, but now I understand.

10 **Q. DID YOU HAVE ANY CONTACT WITH CPS AFTER THE OPEN HOUSE?**

11 A. Yes. Following our initial meetings, members of the board periodically checked
12 with CPS representatives for any relevant updates. We were not told of any
13 development which raised our concerns or led us to believe that CPS would submit
14 an application to the Public Utility Commission that deviated significantly from the
15 route map presented at its open house. We were wrong.

16 In July of 2020, I received notice from CPS of its application to the
17 Commission with respect to this project. After reviewing the documents and the
18 application I was alarmed to discover that the final route map submitted to the
19 Commission differed significantly from that presented at its open house. In
20 particular, segment 12 had been abandoned and a new substation, located on
21 Toutant Beauregard, had been added. I was also alarmed to read that CPS regarded
22 route Z (now Z1), which traveled directly along Toutant Beauregard, as the route
23 that best met the applicable standards. Based on this information we alerted the

1 community to mobilize a response. I also contacted CPS's attorneys to discuss the
2 changes that had been made to the route map shown the public at the open house.

3 **Q. DO YOU BELIEVE THAT CPS SHOULD HAVE CONDUCTED A MORE**
4 **THOROUGH INVESTIGATION INTO THE AVAILABILITY OF**
5 **SEGMENT 12?**

6 A. Yes. When I met with CPS after the filing of the Application, I left with the
7 impression that CPS abandoned segment 12 because it went through a conservation
8 easement owned by the Army and that CPS could not condemn the Army's interest.
9 I obtained a copy of the Conservation Easement and could find no interest owned
10 by the Army identified in the easement. In fact, the easement stated that the Army
11 had no interest other than a contingent interest to enforce the easement if the
12 landowner failed to do so. I contacted the Army's representatives to determine the
13 Army's position regarding a power line through the Conservation Easement. At
14 that time, I believed that the Army had an interest in the Conservation Easement
15 based on its purchase of golden checked warbler habitat credits from the landowner.

16 I was authorized by the Board of Directors to propose that the Army consent
17 to the condemnation of right of way in exchange for a donation by the HOA to the
18 Army of an equal amount of Golden Cheeked Warbler Credits to be purchased by
19 the HOA. After extensive communication with the Army's representative, I came
20 to understand that the Army took no position with respect to condemnation in the
21 Conservation Easement, deferring instead to the landowners and the actual owner
22 of the easement, The Nature Conservancy. Given that neither the landowners nor
23 The Nature Conservancy are exempt from condemnation proceedings, I shared my

1 information with CPS and suggested that segment 12 be revisited. However, CPS
2 stood by its position that the Army had the authority to prevent segment 12's
3 construction. Given the obvious advantages of utilizing segment 12, I could not
4 understand why CPS would not more fully research the Army's interest in the
5 Conservation Easement.

6 During the route adequacy hearing CPS offered a letter from the Army on
7 which it allegedly relied to form its opinion that the Army's consent was required
8 to condemn the property along segment 12. During that hearing I produced
9 correspondence from the Army's attorney stating that the letter was incorrect, and
10 that the Army deferred to the Landowners and the Nature Conservancy. This is just
11 another example of CPS not taking the time or acting diligently to research routes
12 for its Application.

13 **Q. ARE THERE OTHER AREAS WHERE YOU THINK CPS COULD HAVE**
14 **DONE A BETTER JOB IN DEVELOPING ITS APPLICATION?**

15 A. Yes. In addition to the above, CPS has not been diligent in preparing and presenting
16 its cost estimates to the Commission. This has resulted in making Route Z1 appear
17 more favorable than it should. CPS makes no mention of the existing water main
18 and natural gas main currently running down the north right of way of Toutant
19 Beauregard and its impact on construction cost. Nor does CPS consider any
20 increased cost or necessary right of way because of the two bridge projects slated
21 for Toutant Beauregard by Bexar County. See
22 <https://www.bexar.org/2719/Toutant-Beauregard-LWCs>. As a civil engineer I can
23 confirm that those projects will require built up approaches that will significantly

1 change elevations and topography within the existing right of way on Toutant
2 Beauregard and hence Route Z1.

3 **Q. DID CPS CAREFULLY CONSIDER YOUR INTERESTS IN PRESENTING**
4 **ITS CEN APPLICATION?**

5 A. No. I do not believe it gave fair consideration to my interest or the public at large.
6 I think that it opted for the path of least resistance and what may be the cheapest
7 route.³ It leveraged the interest of a landowner/developer that had property to
8 bargain with over the surrounding community as a whole. By requiring Toutant
9 Ranch to give up its right to protest routes in exchange for agreeing to accommodate
10 future development, CPS not only obtained free right of way, but it also prevented
11 a landowner represented by highly experienced counsel from voicing any
12 opposition to the routes that impact its property and thereby eliminated what was
13 possibly the loudest opposition to its northern routes.

14 CPS ignored the interests of the community in avoiding habitable structures,
15 avoiding the one public elementary school in the study area, and instead favored
16 the path of least resistance and cost over the families of the community.

17 CPS failed to fully explore the least invasive route option while investing
18 substantial effort in securing free right of way and silencing the opposition. This
19 was for the benefit of one to the detriment of many. I believe that the public trust
20 demanded that the segment 12 issue at least receive a thorough legal investigation,
21 especially when the Army itself said that the issue was up to the landowner.

³ Compare CPS Amended Application Attachment 3, Table 3, showing Route Z1 as the cheapest route with Table 1 showing Z1 as the second cheapest route.

1 Additionally, I believe the public trust should require that CPS notify
2 affected landowners if it proposes significant major changes before its application
3 is filed. Neither I nor any resident in Anaqua was given notice of the deletion of a
4 significant route option and the addition of a new substation site between the open
5 house and the filing of CPS Energy's application. We had no participation in a
6 decision that seriously impacted our community.

7 I also question CPS's decision to initially route segments 38 and 43 close to
8 established homes in Anaqua, and its ongoing unwillingness to consider modifying
9 those routes as proposed by Anaqua Springs and Jauer. There is undeveloped land
10 with no habitable structures to the south of Anaqua. Routing the line farther south
11 would lower the habitable structure count and move those segments away from
12 families and into areas where individuals could choose to build around the lines if
13 they wished. Instead, CPS has routed the lines close to existing homes favoring
14 future planned development over existing homes. There is no routing criterion that
15 includes avoiding undeveloped land, including land that has plans but has not yet
16 been developed. The routing criteria is to comply with the policy of prudent
17 avoidance, limiting the exposure of people to electromagnetic fields where
18 possible. Here, it is possible by simply moving segments 38 and 43 to the south.

19 Finally, I have to question CPS decision to cross Toutant Beauregard
20 several times with the proposed Route Z1 only to have it run directly over the
21 entrance of Anaqua Springs rather on the Barrera property across the street that is
22 undeveloped pasture and ranch land.

VI. ADDITIONAL LEGAL ARGUMENTS

Q. AS AN ATTORNEY, DO YOU OR HAVE YOU PRACTICED IN THE AREA OF ADMINISTRATIVE LAW?

A. I generally have not. This is my first hearing before the State Office of Administrative Hearings, and my practice is usually in district courts, not in front of administrative agencies.

Q. DO YOU HAVE LEGAL CONCERNS ABOUT THIS CASE THAT YOU UNDERSTAND ARE NOT GENERALLY RAISED IN ADMINISTRATIVE LAW PROCEEDINGS?

A. Yes. I believe that there is an argument that the equal protection clause of the Texas Constitution is implicated in this case. I understand that Administrative Law Judges generally do not address constitutional issues; however, because I believe the constitutional implications are important and could be raised in a court of law, I am including them in my testimony.

The equal protection clause of the Texas Constitution prohibits treating similarly situated citizens differently. One route presented at the open house utilized segment 12 that would have crossed land owned by private citizens that was burdened with a Conservation Easement owned by the Nature Conservancy. This route was characterized by segments 12, 23, 28, 29, and 40 on Exhibit SCC- 1. Despite this route being comparatively short, and affecting very few habitable structures, three by my calculation, it was ultimately not included in CPS Energy's Application. CPS's given reason was that the Army held an interest in the property and that it could not condemn the Army's interest. There is no dispute that the state

1 cannot condemn federal interests in land without the consent of the federal
2 government.

3 The question that I pursued was to determine what the federal interest was
4 to determine what CPS could not condemn. To make this determination, I reviewed
5 the Conservation Easement. There is no interest identified in the easement that is
6 owned by the Army. Neither do the Bexar County Deeds and Records reflect any
7 interest in the land held by the Army. On my own behalf and that of the HOA I
8 researched the history of the Easement, even going so far as to speak with the
9 Army's attorney about the proposed segment 12 and the Conservation Easement.
10 Based on that investigation, the Army's position is that the landowner, and not the
11 Army controlled the subject property. Rather than seek clarification of this, CPS
12 merely abandoned segment 12. Therefore, CPS, a governmental actor, has created
13 two classes of citizens; those subject to condemnation, and those who are not. The
14 law recognizes no such distinction in giving preferential treatment to similarly
15 situated persons.

16 Finally, I am concerned that CPS, which is a governmental actor and the
17 applicant in this process, has used its superior power of eminent domain to limit the
18 speech of a litigant. While it makes sense that CPS would seek donation of right
19 of way and that Toutant Ranch would like to determine where the routing would
20 go, it seems unconscionable that this same governmental actor would prevent
21 Toutant Ranch from arguing against the routes that cross its property.

1 **Q. IS THERE ANY OTHER LEGAL ARGUMENT THAT YOU BELIEVE THE**
 2 **ALJS AND THE COMMISSION SHOULD BE MADE AWARE OF?**

3 A. I also take issue and challenge the validity of the concept that a home must be within
 4 300 feet of a transmission line to be affected. This requirement was developed to
 5 reasonably limit who would have to be noticed as part of this (or any) application.
 6 It has never been judicially determined as an economic loss rule as far as I am
 7 aware. This notice requirement has somehow morphed into an assumption that a
 8 home must be within 300 feet of the centerline to be adversely affected. There is
 9 no support for this position, and it does not pass the *Robison* and *Gammil* test for
 10 methodology and reliability. Every home in Anaqua Springs Ranch is adversely
 11 affected by any route that utilizes Toutant Beauregard for right of way. Every home
 12 within sight of segments 26a, 37, 38, 39, or 43 will suffer loss of market value
 13 should any of those segments be utilized.

14 The application of the 300-foot rule as a metric to determining community
 15 impact also raises issues under the Texas Constitution. Unlike the United States
 16 Constitution, the Texas Constitution contains an “open courts” provision. Tex.
 17 Const. art. I., § 13; see also Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d
 18 440 (Tex. 1993). Allowing those persons whose homes are within 300 feet of the
 19 centerline of the right of way in this proceeding to be counted as impacted, but not
 20 giving voice to those whose homes have surely suffered damage but are outside the
 21 300-foot rule, denies those citizens redress in violation of Article I, Section 13.

VII. CONCLUSION

Q. WHICH ROUTES DO YOU SUPPORT?

A. I support Route W. ~~If Route W is not considered, I support Route R ONLY as it has been proposed to be modified by Anaqua Springs Ranch HOA's expert (Route R1 Modified).~~

Q. DO YOU HAVE ANY CLOSING REMARKS?

A. I ask that the Administrative Law Judges consider whether CPS has served the public trust in the manner that it has proceeded with this process. It appears that it has valued cost above other considerations, and leveraged landowners to agree not to contest routes.

CPS will say that the objections to any route that uses Toutant Beauregard is simply a case of Not In My Backyard. I ask that the ALJs recognize this tired old canard for what it is; a deflection from the real problem of a utility that did not do its due diligence in pursuit of the cheapest route. The available choices are so bad that I would request that the Application be denied, and CPS be ordered to start over. Understanding the remoteness of that possibility I ask that the ALJs reject any option that utilizes segments 54, 20, 36, 38, 39, or 43. ~~I request that Route W be considered the best among the remaining options, but will support a route that utilizes segments 26, 38, and 43 only as modified as requested by Anaqua Springs Ranch, Jauer, and their expert.~~

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.


STATE OF TEXAS §
 §
COUNTY OF BEXAR §

AFFIDAVIT OF STEVE CICHOWSKI

BEFORE ME, the undersigned authority, on this day personally appeared Steve Cichowski, who having been placed under oath by me did depose as follows:

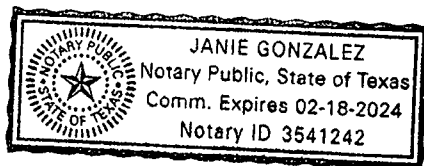
1. "My name is Steve Cichowski. I am of sound mind and capable of making this affidavit. The facts stated herein are true and correct based on my personal knowledge.
2. I have prepared the foregoing direct testimony on behalf of myself and my wife, and the information contained in this document is true and correct to the best of my knowledge."

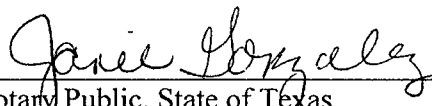
Further affiant sayeth not.



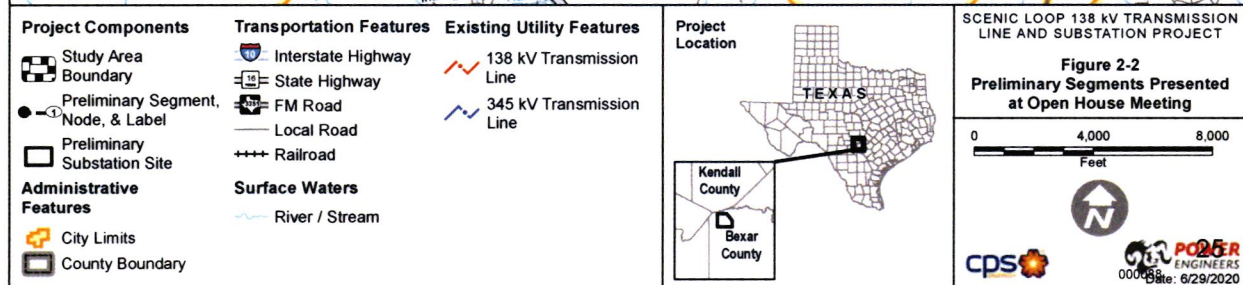
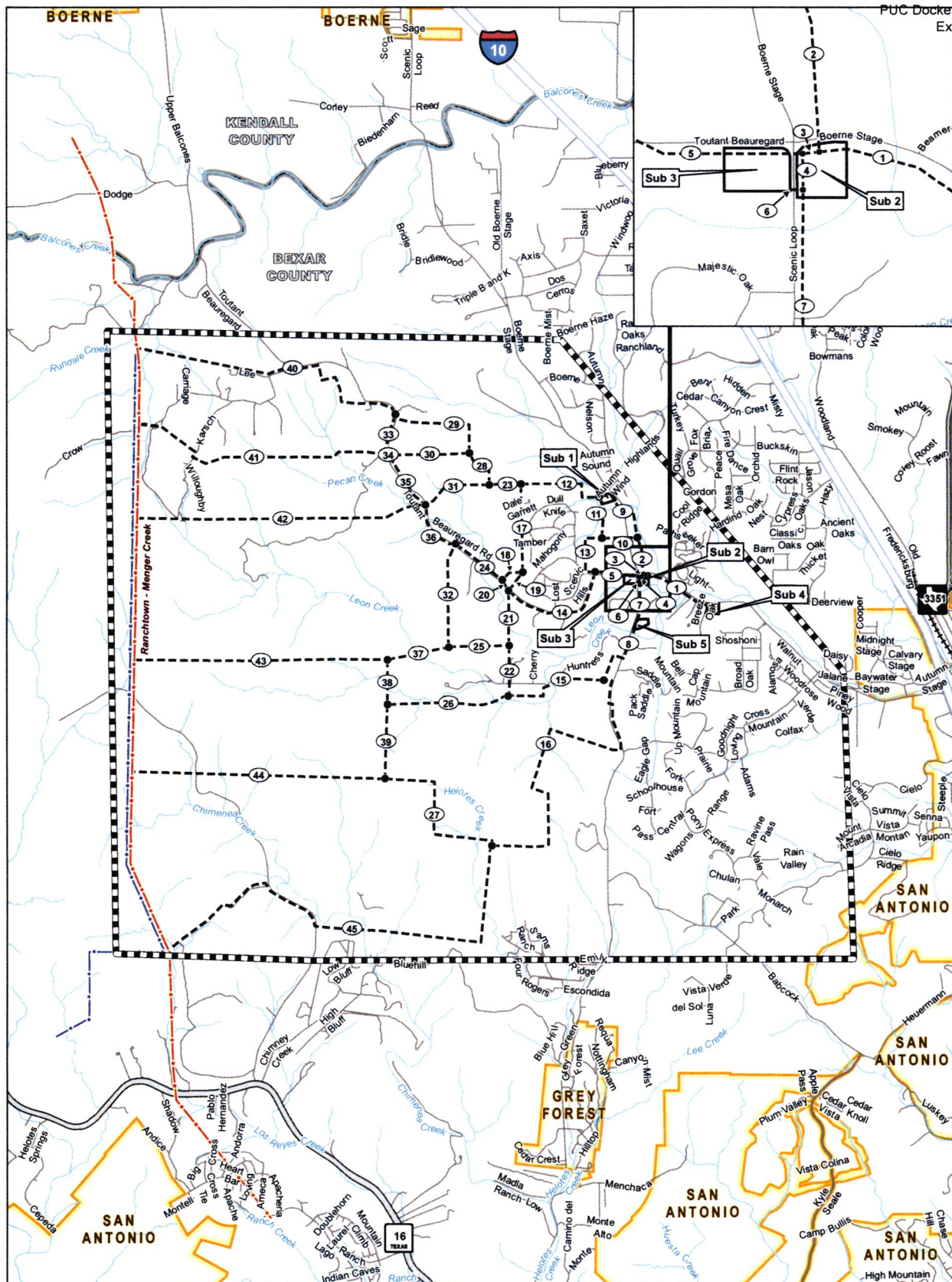
Steve Cichowski

24th SUBSCRIBED AND SWORN TO BEFORE ME by the said Steve Cichowski on this
day of February, 2021.





Notary Public, State of Texas
My commission expires: 2/18/2024





A partial view of one of three large piles of brush left on my property.



A bulldozed area of my property, not in CPS's easement



Example of one of many trees removed on my property and left in piles.



Looking to the east on the back of my property showing where CPS deviated from its easement into my property, clearcutting my land



Another of three large brush piles left on my property.



The end of the distribution line and another of the three large brush piles left on my property.



Large tree left on my property with Mrs. Cichowski who is 5'6" for scale.



One of the large brush piles on my property with Mrs. Cichowski for scale.



Looking west at the location where CPS deviated from its easement with Mrs. Cichowski for scale. Note that clearing of land does not follow centerline of distribution line.

ANAQUA SPRINGS POSITION PAPER
CPS PROPOSALS FOR A NEW SUBSTATION/ TRANSMISSION LINES - SCENIC LOOP/
BOERNE STAGE ROAD- ANAQUA SPRINGS HOA AND DEVELOPER INPUT
OCTOBER 29, 2019

ISSUE: CPS has identified the need for a new substation and 138kv transmission line to service the area West of the Boerne Stage Road and Scenic Loop corridor. Decisions must be made regarding location of the substation and best transmission line routing to the existing Menger Spring/ Creek transmission line.

BACKGROUND: In the last 15 years, growth of residential home development indicated in the "ISSUES" boundaries, above, has grown from a small developed area(about 150 homesites in Scenic Hills development) to now approximately 300. From that base of 150, there has been a tenfold increase (150-1500) in residential homesites now including the Canyons(500), Sundance Ranch (300), Anaqua Springs (220 with further annexing to 300), Pecan Springs Ranch, Pecan Springs Estates, and Pecan Creek(platted for 300 lots/homes), all contiguous to Anaqua Springs and owned by the same developer. In addition, a new grade school is now open, less than one mile from Anaqua Springs entrance(on Toutant Beauregard) a new middle school is platted and planned for construction contiguous to the grade school.

DISCUSSION/ANALYSIS:

- Site Selection
 - Substation Site #1(4.61 acres) is the most logical, out of higher traffic patterns. Avoids all intersection issues at Boerne Stage road and Scenic loop. It's also the best start for any Northern options. Offers the starting of the best route with the least impact on current residential construction.
 - Site 2/3 are at a major cross over intersection, and very close to a large restaurant complex. Also would have the highest probability of late night car wrecks and it's the most in your face visible to all traffic East/ West and North/South.
 - Site 4 would work but adds an unnecessary crossover of the same intersection, above.
 - Site 5 is a reasonable second alternative for a Southern route. It also offers a suitable route with a reduced impact on residential construction.
- Transmission line routes(assumes the start at substation site 1 as best possibility of everything workable)
 - Route 12/23/28/29/40
 - Least impact, by far, on current and projected residential/ School development.
 - Comparatively minimal tax revenue loss.
 - Value impact estimated to be \$12 million over an estimated 8 properties
 - Does not infringe on or go right thru schools
 - From site 1, shortest distance to connect, with best terrain to do so.
 - Route 12//23/30/41
 - Goes right next to grade school and directly thru the proposed site for building the middle school.
 - Impacts Pecan Spring Ranch, with 50 lots/ homes platted/ proposed, with an estimated property value of \$77 million
 - Borders other high value property in CPS proposed route 42
 - Route 12/23/31/42
 - Close to grade school and future middle school
 - Highest impact to residential homes/ construction
 - Affects the Northern boundary of Anaqua Springs Ranch with a current property value of \$350 Million and a build out value of of \$650 Million.

- Affects Pecan Springs and Estates valued at \$312 Million and 250 proposed lots/ homes and buildout of \$688 Million. The combined value of these two adjacent sister projects is \$1.2 Billion.
- Route 8/15/24/38/43
 - Would require starting at site 5, not optimal.
 - Would border all the Canyons(500 homesites) on the North side and impact property values of \$425 Million
 - Would border all of Anaqua Springs on South border. Would impact property values of \$350 Million existing and buildout of \$650 Million property value.
 - Very tough terrain, highest hills (on Anaqua Southern border)compared to any other route.

RECOMMENDATIONS:

- Start at site 1, with that substation option
 - Best choice from many standpoints(see discussion)
 - Use transmission Route 12/23/28/29/40 with possibility of minor variations. Clearly the best option from many standpoints, most importantly from a residential disruption, school, and value impact basis. (see rationale)
 - Remove routes 41, 42 and 43 as all are high residential, school, valuation and tax Revenue burdens.
- Use routes 44 and 45, and Site 5, as a second set, of Southern alternatives, with reduced Residential, value impact, and no school impact.

Signed ANAQUA SPRINGS HOA BOARD AND DEVELOPER