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

**INITIAL POST-HEARING BRIEF OF INTERVENORS
LISA CHANDLER, CLINTON R. CHANDLER,
AND
CHIP AND PAMELA PUTNAM**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Intervenors Lisa Chandler, Clinton R. Chandler, and Chip and Pamela Putnam (Chandlers and Putnams) timely file this Initial Post-Hearing Brief under SOAH Order No. 8 and respectfully show:

SUMMARY OF ARGUMENT

The Chandlers and Putnams oppose any route that includes Segment 40. No party advocated a route that includes Segment 40. The Administrative Law Judges (ALJs) should not recommend, and the Commission should not approve, any route that includes Segment 40.

The ALJs should recommend one of the routes that were the focus of the hearing on the merits. CPS Energy Exhibit 16 shows those focus routes: Routes P, R1, W, Z1, Z2, AA1, AA2, and DD. The Chandlers' and Putnams' expert witness concluded Route AA2 best addresses the requirements of PURA and the PUCT Substantive Rules.

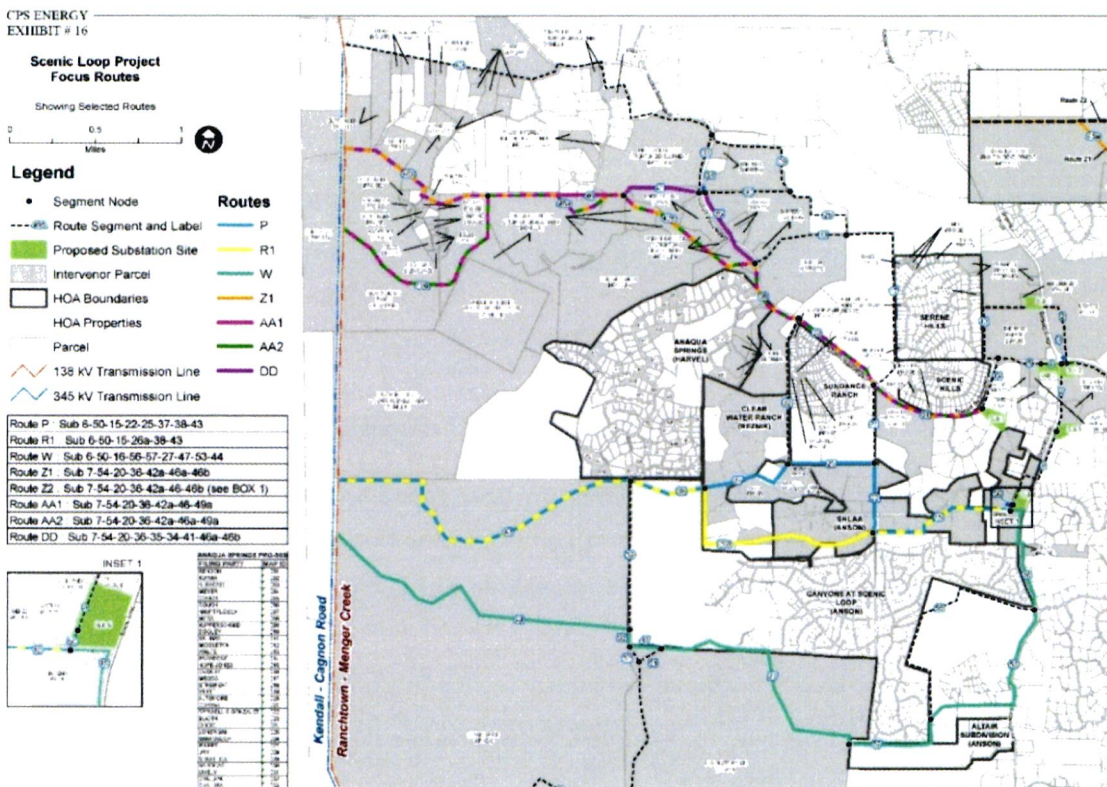
I. Introduction

Lisa Chandler, Clinton R. Chandler, and Chip and Pamela Putnam are landowner intervenors whose properties may be affected by the transmission line proposed in this

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case.¹ The hearing on the merits centered on eight focus routes that do not include Segment 40, which will most affect the Chandlers and Putnams.

The Chandlers' and Putnams' expert witness, Brian Andrews, identified and recommended Route AA2, the green route on the focus routes map.² Mr. Andrews testified Route AA2 best balances the routing factors. It is the fourth least expensive route, having an estimated cost of \$39.05 million. Route AA2 has a moderate number of habitable structures within 300 feet, with 30, and has moderate impact on modeled Golden-cheeked warbler habitat.



¹ Chandlers and Putnams Ex. 1, Andrews Direct at 6:5-14. Lisa Chandler's residence is located 128 feet from Segment 40. Clinton R. Chandler owns tract A-145, which contains two habitable structures, identified on the maps as numbers 3 and 4. Habitable structure 3 is 141 feet from Segment 40 and habitable structure 4 is 194 feet from Segment 40. Chip and Pamela Putnam own tracts A-144 and A-168, which contain habitable structures numbers 1 and 2. Habitable structure 1 is 267 feet from Segment 40; habitable structure 2 is 220 feet from Segment 40.

² CPS Energy Ex. 16.

II. Jurisdiction and notice

Jurisdiction and notice of the application are uncontested issues. The Commission has jurisdiction over this proceeding under PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, and 37.056. The Commission issued its Order of Referral and Preliminary Order referring this docket to SOAH and requested assignment of an ALJ to conduct a hearing and issue a Proposal for Decision (PFD).³ SOAH has jurisdiction to conduct a hearing on the merits and to issue a PFD under PURA § 14.053 and TEX. GOV'T CODE §§ 2003.021 and 2003.049.

CPS Energy hosted one open house meeting for the proposed Project.⁴ CPS Energy provided notice at the time of filing to owners of directly affected land, neighboring utilities, county and municipal authorities, the Office of Public Utility Counsel, independent school districts, state and federal officials, and to Texas Parks and Wildlife Department (TPWD). CPS Energy also provided notice of the application by publication in newspapers having general circulation in the counties where the CCN amendment is being requested.⁵

PUC Order No. 5 approved the sufficiency of the CPS Energy application and the applicant's text and provision of notice.⁶ CPS Energy complied with the notice requirements of PURA § 37.054 and 16 TAC § 22.52(a)(1)-(4).

III. Preliminary Order issues

The Commission's Order of Referral and Preliminary Order included a list of issues about the CPS Energy application, need, the best route, TPWD's recommendations, and other issues.⁷ Although there was a route adequacy challenge,

³ Order of Referral and Preliminary Order (Sep. 29, 2020).

⁴ CPS Energy Ex. 1, Application at 14.

⁵ *Id.* at 19-20.

⁶ PUC Order No. 5 - Finding Application and Notice Sufficient and Establishing Procedural Schedule at 1 (Aug. 21, 2020).

⁷ Order of Referral and Preliminary Order.

the ALJs denied the challenge.⁸ No party challenged the need for the Project. Testimony presented and the hearing on the merits focused on eight focus routes.

A. Application and route adequacy (Issue No. 1)

The original CPS Energy application contained 29 geographically diverse routes.⁹ Staff recommended¹⁰ and PUC Order No. 5 found the application sufficient and materially complete.¹¹ CPS Energy witness Meaux testified the routes in the application provide geographic diversity¹² and an adequate number of alternative routes to conduct a proper evaluation.¹³

Anaqua Springs Homeowners' Association, Brad Jauer, BVJ Properties, LLC, and Patrick Cleveland challenged the adequacy of CPS Energy's application. The ALJs denied the route adequacy challenge and found CPS Energy proved its application proposed an adequate number of reasonably differentiated alternative routes for the ALJs and the Commission to conduct a proper evaluation.¹⁴ CPS Energy satisfied Issue No. 1.

B. Need for the Project (Issue No. 2)

Both the application, in the CPS Energy response to Question Nos. 14 and 15,¹⁵ and the direct testimony of CPS Energy witness Tamez¹⁶ show the need for the Project under PURA § 37.056(a) considering the factors set out in PURA § 37.056(c).

⁸ SOAH Order No. 5 - Denying Challenge to Route Adequacy; Extending Deadline to File Amendments; Ordering Parties to Confer Regarding Procedural Schedule; and Denying Motion to Strike. (Dec. 11, 2020).

⁹ Order of Referral at 2.

¹⁰ Commission Staff's Recommendation on Application, Notice, and Proposed Procedural Schedule at 1. (Aug. 20, 2020).

¹¹ PUC Order No. 5 - Finding Application and Notice Sufficient and Establishing Procedural Schedules at 1. (Aug. 21, 2020).

¹² CPS Energy Ex. 2, Meaux Direct at 9:2-7.

¹³ *Id.* at 20:11-19.

¹⁴ SOAH Order No. 5.

¹⁵ CPS Energy Ex. 1, Application at 10-27.

¹⁶ CPS Energy Ex. 10, Tamez Direct at 5:19-8:12.

Commission Staff witness Poole concluded there is a need for the Project¹⁷ and the Project is the best option for the needs in the Project area.¹⁸

The need for the proposed Project is uncontested. CPS Energy satisfied Issue No. 2.

C. Alternatives to the Project (Issue No. 3)

In CPS Energy's response to Question No. 15 in the application¹⁹ and in Mr. Tamez's direct testimony²⁰ CPS Energy stated it considered distribution and distributed distribution alternatives. Based on the analysis conducted, none of the options considered provide the same reliability, capacity, and long-term system advantages as the Project at a comparable cost.²¹ CPS Energy satisfied Issue No. 3.

D. Route selection (Issue No. 4)

No party urges approval of a route including Segment 40, which affects the Chandlers' and Putnams' properties. CPS Energy recommended Route Z1 as the route best addressing PURA and PUCT Substantive Rules.²² The Chandlers' and Putnams' expert witness recommended Route AA2.²³ Save Huntress Lane Area Association's expert witness recommended the Commission approve either Route AA1 or Z1.²⁴ Anaqua Springs Ranch's and Jauer's expert witness recommended Route W.²⁵ Bexar Ranch's expert witness recommended Route Z1.²⁶ The San Antonio Rose Palace's

¹⁷ Staff Ex. 1, Poole Direct at 15.

¹⁸ *Id.* at 15.

¹⁹ CPS Energy Ex. 1, Application at 19-27.

²⁰ CPS Energy Ex. 10, Tamez Direct at 11:2-3.

²¹ *Id.* at 11:5-7.

²² CPS Energy Ex. 1, Application at 29. Ms. Meaux confirmed at the hearing CPS Energy recommends amended Route Z1 as the route that best meets the Commission's routing criteria.

²³ Chandlers and Putnams Ex. 1, Andrews Direct at 7:10-11.

²⁴ SHLAA Ex. 2, Hughes Direct at 26; SHLAA Ex. 4, Hughes Cross-Rebuttal at 14:12-15.

²⁵ Anaqua Springs/Jauer Ex. 25, Anderson Direct at 7:20-21.

²⁶ Bexar Ranch Ex. 6, Turnbough Rebuttal at 22:5-7.

expert witness recommended Route R1.²⁷ Commission Staff's witness recommended Route P.²⁸ TPWD recommended Route DD.²⁹

After Mr. Andrews considered all the Commission's factors, he presented an evaluation of 32 routes based on comparing the relative performance of each route regarding (1) habitable structure counts, (2) estimated total cost, (3) paralleling of existing right-of-way (ROW) (roads, railways, canals, etc.), (4) paralleling of all compatible ROW (including apparent property boundaries), (5) length across upland woodlands/brushlands, (6) length across areas of high archeological site potential, and (7) area of ROW across Golden-cheeked warbler modeled habitat designated as 3-Moderate High or 4-High Quality.³⁰

Mr. Andrews' first observation was there is no single route with relatively superior performance in all seven factors on his Exhibit BCA-2.³¹ Route BB, however, has relatively superior performance in six of the factors in Exhibit BCA-2.³² His second observation was five routes (Zl, AA1, AA2, DD, and EE) have an estimated cost under \$40 million.³³ His third observation was three routes (Routes P, Ql, and Rl) have relatively low numbers of habitable structures within 300 feet of the route centerline (12, 6, and 7, respectively).³⁴

Mr. Andrews concluded the Commission should not approve Routes BB,³⁵ P, Ql, or Rl.³⁶ The remaining routes, Routes Zl, AA1, AA2, DD, and EE, are similar routes that

²⁷ Rose Palace Ex. 1, Buntz Direct at 19-20.

²⁸ Staff Ex. 1, Poole Direct at 12:6-8.

²⁹ *Id.* at 32:4-5.

³⁰ Chandlers and Putnams Ex. 1, Andrews Direct at 22:3-9.

³¹ *Id.* at 23:5-6.

³² *Id.* at 23:6-7.

³³ *Id.* at 23:12.

³⁴ *Id.* at 23:17-19.

³⁵ *Id.* at 24:1-11. The estimated cost of Route BB is \$4.5 million or 12 percent more expensive than the least expensive route (Route AA1) and only improves upon the number of habitable structures by six, relative to the route CPS Energy identified as the "best meets" route. Route BB has 24 habitable structures versus Route Zl, which has 30. Route BB has 25.08 acres across modeled habitat of the Golden-cheeked warbler. Route BB is the second worst performing route for the Golden-cheeked warbler factor. Commission Staff's recommended route, Route P, is the worst performing route for this factor.

³⁶ *Id.* at 27:1-2. These routes have relatively superior performance in the number of habitable structures within 300 feet, with 12, 6, and 7, respectively. Route Ql has an estimated cost of \$45.9 million or 20 percent more expensive than the least expensive route. Routes P and Rl have relatively superior

all use Substation Site 7 and tie into the existing transmission line using either Segment 46b or 49a. The five routes on this short list include these segments:³⁷

Route ZI 54-20-36-42a-46a-46b

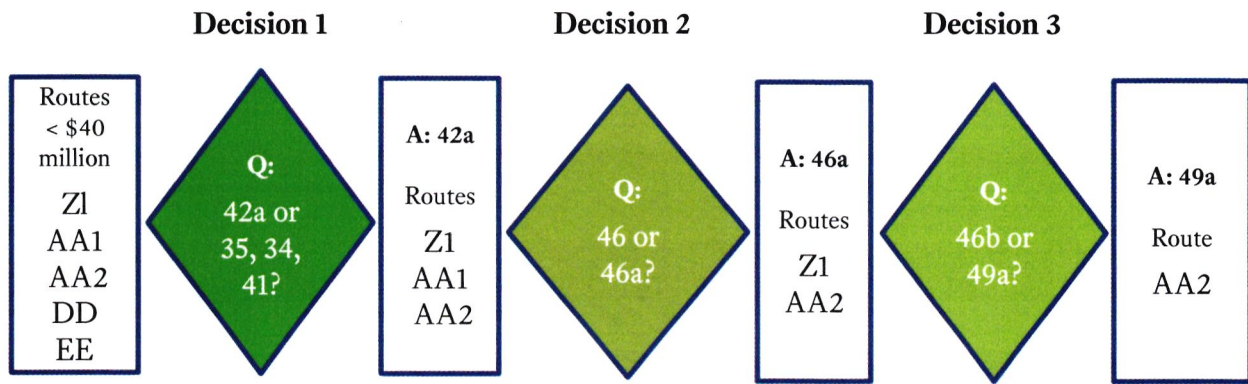
Route AA1 54-20-36-42a-46-49a

Route AA2 54-20-36-42a-46a-49a

Route DD 54-20-36-35-34-41-46a-46b

Route EE 54-20-36-35-34-41-46a-49a

Besides having cost estimates of below \$40 million,³⁸ these five routes have relatively superior or relatively moderate performance in all routing factors in Exhibit BCA-2 with no relatively poor performing factors. All five routes have 30 or 31 habitable structures within 300 feet of the route centerline. With estimated costs ranging from \$38.29 million to \$39.76 million, these are the five least costly routes.³⁹ Mr. Andrews concluded three decisions must be made to select the best route.



performance regarding cost, with Route P having an estimated total cost of \$43.41 million and Route RI having an estimated cost of \$43.52 million. The costs of these two routes are approximately \$5.2 million or 14 percent more expensive than the least expensive route. Mr. Andrews believes a 20 percent or even a 14 percent increase to the cost of a proposed route cannot be justified in this proceeding.

³⁷ *Id.* at 27:15-20.

³⁸ *Id.* at 28:1-3. These cost estimates do not reflect the 20 percent discount on ROW acquisition costs that Toutant Ranch, Ltd., Pinson Interests Ltd. LLP, and Crighton Development Co. (collectively Developers) agreed to on Segments 42a, 46a, and 49a, nor do they reflect the fact Developers agreed their proposed segment modifications would not result in any net increase relative to the original segments and Developers would donate more ROW to ensure the modifications cause no increased cost. *Id.* at 7:13-19.

³⁹ *Id.* at 28:4-5.

Decision 1: Should the Project use Segment 42a or Segments 35, 34, and 41?

Expert witness Brian Andrews concluded the Project should use Segment 42a.

First, a portion of ROW along Segment 42a would be donated to CPS Energy if the PUCT approves a route that uses that segment. This will reduce ROW acquisition costs of the Project and reduce the probability of a condemnation action.⁴⁰

Second, Segment 42a would avoid a habitable structure within 300 feet of Segment 35.⁴¹

Last, Segment 42a avoids property belonging to the Northside Independent School District and a proposed middle school to be built on Segment 41.⁴² Of the five proposed routes Mr. Andrews identified as the best route options, only Routes ZI, AA1, and AA2 use Segment 42a.⁴³

Decision 2: Should the Project use Segment 46 or 46a? Mr. Andrews concluded the Project should use Segment 46a.

These segments have the same start and end points. They differ in that Segment 46a has a jog in it that avoids a habitable structure 174 feet from Segment 46. CPS Energy's Application Amendment introduced Segment 46a, which moved Segment 46 further away from the habitable structure. The developers who own property Segment 46a affects proposed this segment.⁴⁴ Although this modification adds length and turning structures to avoid a habitable structure, it should not result in any in any increased cost.⁴⁵ Of proposed Routes ZI, AA1, and AA2 remaining from Decision 1, only Routes ZI and AA2 use Segment 46a.⁴⁶

Decision 3: Should the Project use Segment 46b or 49a? Mr. Andrews concluded the Project should use Segment 49a.

Segments 46b and 49a have few differences in their routing factors. The elevations of the segments stand out as a way to differentiate these two segments.⁴⁷

⁴⁰ *Id.* at 29:7-10.

⁴¹ *Id.* at 29:10-11.

⁴² *Id.* at 29:11-13.

⁴³ *Id.* at 29:14-16.

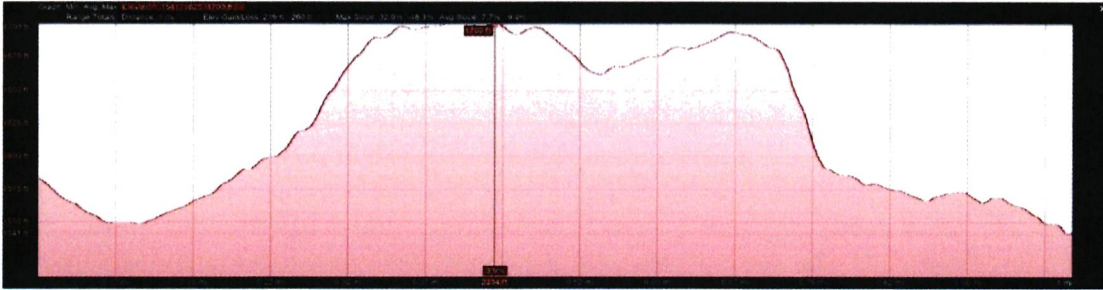
⁴⁴ *Id.* at 29:18-23.

⁴⁵ *Id.* at 30:4-5.

⁴⁶ *Id.* at 30:1-2.

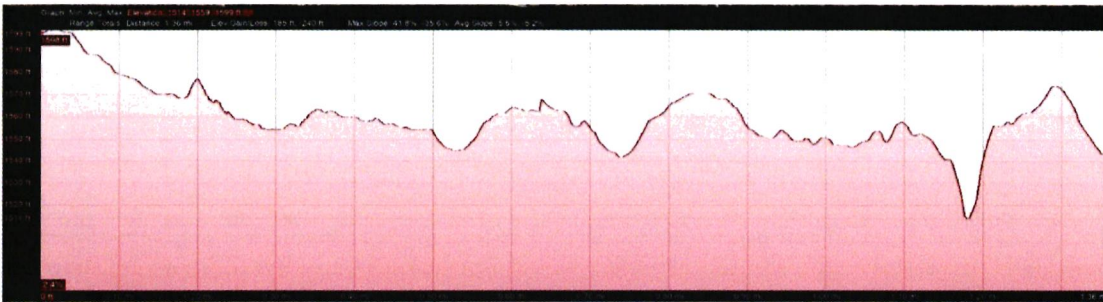
⁴⁷ *Id.* at 31:4-6.

Elevation Profile of Segment 46b⁴⁸



Segment 46b has elevation ranging from 1,541 feet to 1,700 feet, with an average elevation of 1,625 feet. In one 380-foot section of the segment, the elevation changes from 1,588 feet to 1,685 feet. In another section, the elevation is near 1,700 feet for approximately 760 feet. 1,700 feet is nearly the highest elevation in the study area.⁴⁹

Elevation Profile of Segment 49a⁵⁰



The elevation of Segment 49a has a small range from 1,514 to 1,599 feet with an average elevation of 1,560 feet. The routing of Segment 49a avoids the higher elevations of Segment 46b and has no abrupt changes in elevation.⁵¹ Mr. Andrews expects placing the transmission line at lower elevations would reduce visibility of the line.

The alignment of Segment 46b also would cause Habitable Structure 16 to have at least three transmission line *towers* within 400 feet of the residence.⁵² The owner of the habitable structure, Raul Figueroa, participated in the hearing and questioned witnesses about the proximity of Segment 49b to his residence.

⁴⁸ *Id.* at 43 (BCA-3).

⁴⁹ *Id.* at 31:10-14.

⁵⁰ *Id.* at 44 (BCA-3).

⁵¹ *Id.* at 31:15-17.

⁵² *Id.* at 31:18-23. (Emphasis added.)

Given there are no habitable structures on Segment 49a, and it is at lower elevations, Mr. Andrews concluded the Project should use Segment 49a instead of Segment 46b.⁵³ Of proposed Routes Z1 and AA2 remaining from Decision 2, only Route AA2 uses Segment 49a.⁵⁴

Using Mr. Andrews' decision matrix leads to the conclusion Route AA2 best meets the Commission's routing criteria. Only Route AA2 uses all three of these segments (Segments 42a, 46a, and 49a). Mr. Andrews' testimony recommended approval of Route AA2 and addressed why Route AA2 is better than six of the other focus routes.⁵⁵

E. Alternative routes that would have a less negative impact on landowners (Issue No. 5)

Not addressed.

F. Landowner preferences, contributions, and accommodations (Issue No. 6)

Toutant Ranch, Ltd., Pinson Interests Ltd. LLP, and Crighton Development Co. (collectively Developers) proposed the alignments of Segments 42a, 46a, and 49a in locations where Developers will accept the transmission line on land they own. Developers agreed to donate ROW to ensure the modifications cause no increased cost and their proposed segment modifications would not result in any net increase relative to the original segments.⁵⁶ Developers also agreed to a 20 percent discount on ROW acquisition costs on Segments 42a, 46a, and 49a. This concession on the ROW acquisition cost will reduce the cost of Route AA2 below the \$39.05 million CPS Energy has estimated by approximately \$105,000. The concession of no net increase should further reduce the final cost of Route AA2 and other routes that use Segments 42a, 46a, and 49a.

⁵³ *Id.* at 31:24-32:1.

⁵⁴ *Id.* at 32:1.

⁵⁵ One of the other two routes, Route Z2, was not a proposed route when Mr. Andrews developed his direct testimony. He did not include Route W in the nine routes he discussed in his direct testimony.

⁵⁶ Developers proposed the alignments of Segments 42a, 46a, and 49a in locations where Developers will accept the transmission line on land they own.

G. TPWD's recommendation and comments (Issue No. 7)

TPWD's recommendation to the Commission states, "Route DD appears to be the route that causes the least adverse impacts to natural resources."⁵⁷ TPWD recommends the PUC select a route that would minimize adverse impacts to natural resources.⁵⁸ Commission Staff witness John Poole concluded the concerns TPWD discussed in its recommendations are sufficiently addressed by the mitigation measures discussed in his testimony.⁵⁹

H. Other issues (Issue No. 8)

The Commission included the issue of timely construction of the Project in the preliminary order.⁶⁰ The Commission asked if the seven-year limit discussed in the order should be changed. Staff witness Poole testified "CPS Energy has not described any special circumstances that would merit an extension."⁶¹ The limit should not be extended.

IV. Conclusion

No party contested the need for the proposed Project or advocated that the Commission should deny the CPS Energy CCN application. No party advocated for a route using Segment 40; the ALJs should not recommend, and the Commission should not approve, a route utilizing Segment 40. The Commission should approve one of the focus routes. The Chandlers' and Putnams' expert witness recommended Route AA2 as the best alternative route.

RELIEF SOUGHT

Lisa Chandler, Clinton R. Chandler, and Chip and Pamela Putnam request the ALJs recommend, and the Commission approve, Route AA2 or one of the other focus routes that do not include Segment 40.

⁵⁷ *Id.* at 59.

⁵⁸ *Id.*

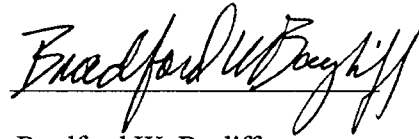
⁵⁹ *Id.* at 12:10-13.

⁶⁰ Order of Referral and Preliminary Order at 5.

⁶¹ Staff Ex. 1, Poole Direct at 33:19-20.

CERTIFICATE OF SERVICE

I certify this document was filed electronically and with the Commission's Central Records office for service under the Commission's rules and the Orders in this proceeding.

A handwritten signature in black ink, reading "Bradford W. Bayliff". The signature is written in a cursive style with a horizontal line underneath the name.

Bradford W. Bayliff