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APPLICATION OF THE CITY OF SAN ANTONIO ACTING BY AND THROUGH THE CITY PUBLIC SERVICE BOARD (CPS ENERGY) TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED SCENIC LOOP 138-KV TRANSMISSION LINE	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

INITIAL POST-HEARING BRIEF OF BRAD JAUER AND BVJ PROPERTIES, L.L.C

Respectfully submitted,

Lynn Sherman
State Bar No. 18243630
P.O. Box 5605
Austin, Texas 78763
(512) 431-6515
lsherman@h2otx.com

Miguel A. Huerta
State Bar No. 00787733
Law Office of Miguel A. Huerta, PLLC
7500 Rialto Blvd., Ste. 250
Austin, TX 78735
(512) 502-5544
miguel@mhuertalaw.com

ATTORNEYS FOR BRAD JAUER & BVJ PROPERTIES, L.L.C.

DATE: MARCH 21, 2021

TABLE OF CONTENTS

I. INTRODUCTION

Brad Jauer and BVJ Properties. L.L.C. ("Jauer") co-own Property ID C-014 and Property ID C029. That property is located on the south side of Toutant Beauregard Road between the Anaqua Springs and Sundance Ranch subdivisions. Segment 32 would run along the east side of the property for approximately 570 yards, and Segment 36 would run along the front of the property along Toutant Beauregard for approximately 225 yards.

The segments that run along Toutant Beauregard Road are rife with issues: they have the highest habitable structure counts – 3 times higher than the middle routes; they run through a heavily congested segment of constrained right-of-way– Segment 54; they run close to the only school in the study area; they are in or along a Historic Corridor and run by two historic sites; they interfere with a public safety communications network installation; the substation is located on property that is increasingly vulnerable to a peak flood event; and their cost estimates are unsubstantiated, unreliable and appear to be higher than presented.

For these reasons, Jauer opposes any route that uses the Toutant Beauregard segments. A far better option is Route P, which Staff has put forward as the route that best meets the routing criteria. Jauer agrees. In the alternative, Route R1 (which is similar to Route P) also meets the routing criteria much better route than the routes that use Toutant Beauregard.

II. JURISDICTION AND NOTICE

Jauer does not contest jurisdiction or notice, except as to the consistency of notice to landowners adjacent to the substations added after the only Open House, specifically the lack of notice given to some of the landowners adjacent to Substation Site 7, as addressed in Section IV.A.1.a below.

III. ERRORS AND DUE PROCESS

The substantive issues in transmission line cases present both the parties and the ALJs a difficult task weighing and evaluating competing routing criteria. But this undertaking is made even more difficult by certain procedural issues in this docket. For example, although there are a

total of 31 routes presented by CPS,[1] in actuality, those routes present only three corridors running from the east to the west.[2] Of those 31 routes, over 1/3 use two segments: Segments 54 and 20.[3] Of the 31 routes on the cost calculation spreadsheet, almost 2/3 of them use Segment 54.[4] Although the ALJs concluded that CPS' application proposed an adequate number of reasonably differentiated routes in order for the ALJs and the Commission to conduct a proper evaluation, there remain a limited number of options for crossing the study area, and they are limited to three distinct corridors (north, middle and south).

A. Lack of Timely, Accurate, Reliable Information

In deciding which routes best meet the routing criteria, it is important to have accurate data for the various criterion. However, the data in this docket has not been as forthcoming and reliable as is typical in most transmission line cases and, notably, the lacking and/or changing data has often pertained to the northern routes along Toutant Beauregard.[5]

For example, one of the significant issues in any transmission line case is the number of habitable structures on each segment, which is used to determine the habitable structures on each route. As stated by CPS Witness Meaux, CPS had to change the habitable structure count throughout the proceeding,[6] and it did so several times.[7] Cost is another significant issue, and as will be explained below, questions remain regarding whether CPS used the correct unit costs and right-of-way widths, particularly along Toutant Beauregard, in making its cost calculations. Moreover, there are several examples of infrastructure and other issues along Toutant Beauregard that uniquely originate with or otherwise involve CPS, but about which CPS was not initially forthcoming or remains evasive or uncertain, including the following:

i) A CPS-owned natural gas pipeline along Toutant Beauregard that CPS did not initially disclose in discovery;[8]

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[1] Tr. p. 158, ll. 23 – 25.
[2] Tr. p. 148, ll. 16 – 25.
[3] CPS Energy Exhibit No. 6, Application Amendment, Figure 4-1: Amended Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes.
[4] Jauer Exhibit No. 27, Sheet 2.
[5] Admittedly, this is CPS's first case before the PUC. *See* Tr. p. 324. ll. 3-9. However, while that may explain the former issue, it does not explain the latter.
[6] Tr. p. 374, ll. 12 – 18.
[7] *See e.g.,* Tr. p. 378 ll. 19 – 25; Jauer Exhibit No. 8, RFI 2-17; Jauer Exhibit No. 16, Anaqua Springs RFI 2-35.
[8] Tr. p. 382, ll. 16 – 21; Jauer Exhibit No. 8, RFI 2-16; Jauer Exhibit No. 9.

ii) CPS's post-discovery errata (filed less than a week before the hearing after responding differently to numerous discovery requests) altering its position that the transmission line right-of-way should be assumed to be 100 feet for the entire study area and acknowledging, for the first time, that road right-of-way will be used along Toutant Beauregard;[9]

iii) The location and specifics (or lack thereof) regarding the pole/angle structure in the Toutant Beauregard road right-of-way depicted in the aforementioned errata that is aside the entrance of Serene and Scenic Hills, and the location of other utility infrastructure in the vicinity;[10]

iv) Confirmation and specifics (or lack thereof) regarding 4 sets of distribution circuits that CPS purportedly intends to bring out of Substation Site 7 (two circuits on either side of Toutant Beauregard going west, and two circuits on either side going east), according to a document produced by CPS during discovery;[11] and

v) The specifics and availability (or lack thereof) regarding easements purportedly existing out the rear of Substation Site 7 and associated with its suitability, according to a document produced by CPS during discovery.[12]

The need for good, accurate data extends to other elements of the case, as well. Communication Tower No. 501 on Toutant Beauregard contains two microwave antennas operated by the Alamo Area Regional Radio System (AARRS), which includes the City of San Antonio and CPS Energy.[13] AARRS is a network of 28 interconnected tower sites and related communications facilities that provide wireless connectivity to police, fire and other public agencies within the region,[14] and including the Leon Creek/Toutant Beauregard flood warning system as well.[15] Despite its importance, the tower's distance from Segment 20 was not included

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[9] CPS Energy Exhibit No. 14, *CPS Energy's Errata to the Rebuttal Testimony of Scott D. Lyssy*, P.E, filed April 26, 2021. *See also* Jauer Exhibit No. 10, Jauer Exhibit No. 12 and Jauer Exhibit No. 17 (i.e., *discovery response prompted by CPS's Errata*).

[10] Tr. p. 845, l. 12 – p. 846, l. 8; p. 850, l. 5 – 851, l. 11; CPS Energy Exhibit No. 14, *Rebuttal Testimony of Scott D. Lyssy*, P.E. #103637 (*which includes his errata*), Exhibit SDL-3R: Right of Way Proposed for Segment 54.

[11] Tr. p. 848, l. 18 – p. 850, l. 4. *See also* Jauer Exhibit No. 15, Anaqua Springs RFI 1-16, "Attachment AS 1-16 Notes" p. 28/29 (Bates Stamp 000004).

[12] Tr. p. 416, l. 22 – p. 420, l. 16. *See also* Jauer Exhibit No. 15, Anaqua Springs RFI 1-16, "Attachment AS 1-16 Notes" p. 106/107 (Bates Stamp 000004).

[13] Jauer Exhibit No. 2, *Direct Testimony of Carl Huber*, p. 5, ll. 6-11.

[14] Id.

[15] Tr. p. 919, l. 19 – p. 922, l. 3; Tr. p. 923, l. 22 – p. 924, l. 12.

in either Table 4-3 or CPS Energy's Application Amendment even though the tower is well within the threshold distance of 2,000 feet of Segment 20[16] for it to be included.

Each of these instances drives home an inescapable truth: not much confidence may be placed on the accuracy and reliability of data presented by CPS on important matters in this proceeding, and yet, it is on that data that the routing decision must be made.

B. Due Process Issues.

In addition to the above, this case also raised concerns related to due process.

The first such concern is the Toutant Ranch agreement with CPS. The agreement seems to constrain a party that offers to donate right-of-way to protect certain interests from fully participating in the case by requiring it to support certain segments, even when those segments are detrimental to other interests of that party.[17] Such a constraint on a party's ability to fully and fairly advocate for itself impacts the other parties' ability to fully and fairly develop the facts of the case. Not only does such a constraint impact all parties' due process rights, but it also runs contrary to the neutral position that is expected of the utility in these cases. Similarly, it also creates a situation where a utility may be unduly influenced in selecting a "best meets" route to include those that involve discounted segments.

The second concern is that notice for Substation Site 7 was not equivalent to the notice for all the other substations. CPS Witness Marin admitted that not all landowners adjacent to proposed Substation Site 7 received notice,[18] even though similarly situated properties around other proposed substation sites were provided notice.[19] When one of the landowners adjacent to Substation Site 7 sought intervention, the landowner was denied the right to participate in the hearing.[20]

C. Associational Representation Has Complicated This Case and Impaired the Development of Issues.

This docket also illustrates the difficulties and impediments that can result from associational representation, especially when an association is created to establish single party status for geographically disparate interests that collectively occupy the entire center of the study

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[16]Id. at p. 4, ll. 15 – 20 and p. 5, l. 6 – p. 6, l. 11, Exhibit Huber-3, Exhibit Huber-4, Exhibit Huber-7 and Exhibit Huber-8.
[17] Tr. p. 881, ll. 5 – 10.
[18] Tr. p. 345, ll. 14 – 16, p. 346, ll. 10 – 13.
[19] Tr. p. 343, ll. 1 – 24; p. 402, l. 5 – p. 404, l. 3.
[20] Tr. p. 249, ll. 7 – 14.

area, as in the present case. Save Huntress Lane Area Association is such an association. It includes over 30 individual landowners clustered together in the northern portion of the study area's center; the Canyons Property Owners Association, which occupies the central portion of the center; and the Altair Subdivision Property Owners' Association, which is an odd appendage on the southeastern edge of the center.[21] The 30 individual landowners are directly impacted only by some of the *middle* routes.[22] The members of the Altair Subdivision Property Owners' Association are directly impacted only by some of the *southern* routes.[23] And, the members of the Canyons Property Owners Association are not directly impacted by *any* routes[24] (with one *possible*, *minor* exception).[25]

Anaqua Springs HOA has fully briefed this issue, and Brad Jauer and BVJ Properties, LLC (the "Jauer Parties") adopt and incorporate by reference herein the arguments made by Anaqua Springs HOA.

In addition, one particular issue related to the positions taken by SHLAA vis-à-vis its associational representation involved the Jauer Parties directly. In their First RFIs to SHLAA, the Jauer Parties asked the following in RFI 1-14: "Admit or deny that there is an agricultural tax exemption on Tract ID F-021. Please provide any and all documents relating to an agricultural exemption on Tract ID F-021." Notably, Tract ID F-021 is the northern-most parcel in The Canyons subdivision. However, in its supplemental response and after admitting the existence of the agricultural exemption, SHLAA took the position that it wasn't necessary for SHLAA to produce responsive documents, because SHLAA "does not have direct and ready possession of this specific information" and "such information is not necessary for Canyon's conduct of its property owners' association matters."[26]

IV. EVALUATION OF PROPOSED ROUTES

A. Routing Criteria under PURA § 37.056(c)(4)

1. Community Values

a. Habitable Structures Was the First Priority of the Community at Open Meetings

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[21] CPS Energy Exhibit No. 18, *Intervenor Map*.
[22] Id.
[23] Id.
[24] Tr. p. 700, l. 11 – p. 701, l. 23
[25] Tr. p. 701, ll. 9–23.
[26] Jauer Exhibit No. 19, Supplemental Response to RFI 1-14.

There was only one Open House in the transmission line project, despite the fact that CPS's *Routing/Substation Siting General Process Manual* (hereinafter "CPS's Siting Manual") calls for at least one additional public meeting "to review revised routes".[27] During and shortly after the Open House, 186 questionnaires were completed by members of the community. The community ranked "impact to residences" as the most important factor by a 10-to-1 margin over the next ranked factor, followed by "visibility of structures" and "proximity to schools, places of worship and cemeteries"[28] Substation Sites 6 and 7 were added after the Open House, and Toutant Beauregard came to be used in two-thirds of the northern routes. However, after these significant revisions were made, the community was never afforded the opportunity to the attend a second Open House as called for in CPS's Siting Manual,[29] and the revisions were not even highlighted in the landowner packet sent out by CPS after the Application was filed.[30] Moreover, unlike the landowners adjacent to Substation Site 6, many of the landowners adjacent to Substation Site 7, including Scott Luedke,[31] were not provided notice that it was now a substation site under consideration.[32]

b. Avoiding Habitable Structures is a Goal Stated in the CPS Siting Manual

A cursory review of the evidence in almost any transmission line case will reveal that a great deal of time is spent in these cases discussing the number of habitable structures impacted by each segment and route. Even the CPS Siting Manual lists the avoidance of habitable structures as the first consideration in routing CPS transmission lines:

> "Preliminary alternative transmission line routes/substation sites will be developed, considering:
>
> A. Environmental/land use constraints, avoidance/exclusion areas, and opportunity areas.
>
> 1. Transmission lines

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[27] Jauer Exhibit No. 16, Attachment AS 2-28, Sec. 7 (*entitled* "Additional Public Meetings"), pp. 8–9 (Bates Stamp 079-80).
[28] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, p. 16, l. 15 – p. 17, l. 1. See also, Application, Attachment 1, "Scenic Loop 138 kV Transmission Line and Substation Project Environmental Assessment and Alternative Route Analysis - July 2020," Section 6.0 & Table 6-1, Pages 6-2 to 6-3 (Bates Stamp 000189-90).
[29] Id.
[30] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, p. 22, l. 11 – p. 23, l. 3.
[31] Tr., p. 254, l. 25 – p. 255, l. 3.
[32] Tr., p. 343, ll. 401 – 404; Tr. p. 344, l. 21 – 345, l. 20.

a. Existing residential areas and subdivisions will be avoided when possible. Habitable structures will be avoided wherever feasible."[33]

This fact is particularly important in the present case, because this proceeding is unique in that it is brought by a unit of municipal government: "the City of San Antonio, acting by and through the City Public Service Board (CPS Energy)." According to CPS's Siting Manual (a document developed by a unit of municipal governmental), existing residential areas and subdivisions will be avoided when possible, and habitable structures will be avoided wherever feasible. This is not only guidance for transmission line planning, but it also is a statement of the community values regarding the importance of existing residential areas and subdivisions.

c. Routes That Use Toutant Beauregard Have the Highest Habitable Structure Count

In this docket, it is possible to avoid existing residential areas and subdivisions. However, selecting a route that uses Segment 54 will not accomplish that goal. In fact, Segment 54 – a single segment along Toutant Beauregard – has more habitable structures within 300 feet of the transmission line than the entire length of each of the three middle corridor routes under primary consideration: Route P, Route R1, and Route Q1.[34] And, despite this, two-thirds of all the routes proposed by CPS use Segment 54, and Segment 54 is included in all but one of the northern corridor routes.[35]

Segment 54 wraps around the front door of Serene and Scenic Hills Estates subdivisions, literally passing through the front yards of several residents,[36] across the subdivisions' entrance off Toutant Beauregard, and now with an angle structure proposed within the road right-of-way of the curve in and out of that entrance.[37] If Segment 17 is used in addition to Segment 54, 38 homes in Serene and Scenic Hills Estates and 50 percent of the entire neighborhood would be directly affected.[38] Serene and Scenic Hills Estates are an existing neighborhood that has been in place for nearly 50 years.[39] It is made up of lots that are smaller than those in other neighborhoods in the study area, and its residents tend to be blue collar workers with many

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[33] Jauer Exhibit No. 16, Attachment AS 2-28, p. 4 (Bates Stamp 075).
[34] Tr. p. 407, ll. 21 – 25; Tr. p. 408, ll. 9 – 17.
[35] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, p. 19, ll. 6 – 7.
[36] Tr. p. 408, l. 20 – p. 410, l. 9.
[37] CPS Energy Exhibit No. 14, Exhibit SDL-3R: Right of Way Proposed for Segment 54.
[38] Tr. p. 978, ll. 16 – 17.
[39] Tr. p. 977, ll. 10 – 11.

military veterans.[40] As Witness Reyna wryly pointed out, they don't have a guard at their gate – because they "don't even have a gate."[41]

Next door to Serene and Scenic Hills Estates and also along Toutant Beauregard, there is a new subdivision being developed named "Scenic Crest." It is located directly within the path of Segment 20, which connects to Segment 54. The first phase of Scenic Crest will include 41 homes – none of which are accounted for in the CPS habitable structure count.[42] When asked about these new homes, CPS Witness Marin stated that CPS would not be adding these home to the habitable structure list;[43] however, those that are currently under construction are something "for the Commission to look at and evaluate as part of testimony and information submitted to them."[44] Ultimately, Scenic Crest is expected to include 393 homes,[45] and it also would be impacted by Segment 17.

d. The Community Considers Schools Valuable, and the Only Schools are on Toutant Beauregard.

The community questionnaires completed at or shortly after the Open House ranked the transmission line's proximity to schools as the third most important factor behind proximity to habitable structures and visibility of the lines.[46] There is only one school property in the study area. It was bought, designed and funded by Northside Independent School District ("NISD") to accommodate both Sara McAndrew Elementary School, which exists today and is designed to house 640 students,[47] and a forthcoming middle school.[48] There are four segments that run close to Sara McAndrew Elementary School and the middle school location:

- Segment 35 runs within 214 feet of the elementary school;
- Segments 34 and 41 cross the middle school location to the north; and, most notably,

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[40] Tr. p. 977, ll. 12 – 13.
[41] Tr. p. 977, ll. 18 – 19.
[42] Arbuckle Exhibit No. 1, *Direct Testimony of Joan Arbuckle*, p. 4, and Exhibit A.
[43] Tr. p. 555, ll. 9 – 13.
[44] Id., ll. 7 – 9.
[45] Brittany Sykes Exhibit No. 1, *Direct Testimony and Exhibits of Brittany Sykes*, Exhibit A ("Scenic Crest Master Develop Plan").
[46] AS/Jauer Exhibit No. 25, Revised Direct Testimony of Mark Anderson, p. 16, l. 15 – p. 17, l. 1. See also, Application, Attachment 1, "Scenic Loop 138 kV Transmission Line and Substation Project Environmental Assessment and Alternative Route Analysis - July 2020," Section 6.0 & Table 6-1, Pages 6-2 to 6-3 (Bates Stamp 000189-90).
[47] NISD Exhibit No. 1, *Direct Testimony and Exhibits of Jacob Villareal*, p. 5, l. 21.
[48] Id. at p. 4, l. 20 – p. 6, l. 17 and p. 10, l. 1-13.

- Segment 42a runs within:
  - "approximately 150 feet" of the school property,[49]
  - "approximately 280 feet" of the elementary school's sports and recreation areas,[50]
  - even closer to the school's water treatment plant,[51] and
  - near or directly over the school's wastewater drain field.[52]

There are 15 routes (about half of all routes considered) that incorporate at least one of the four segments in close proximity to the school property, including CPS's "Best Meets" route – Route Z1, which uses Segment 42a that runs directly alongside the elementary school as described above.[53]

2. Historical Values

Texas Government Code section 442.024 establishes the Scenic Loop Road–Boerne Stage Road–Toutant Beauregard Road Historic Corridor. That statute states that the third leg of the Historic Corridor begins at the intersection of the Scenic Loop Road, the Boerne Stage Road, and the Toutant Beauregard Road and continues west on Toutant Beauregard Road to the Kendall County line.[54] This third leg of the Historic Corridor runs directly along Segments 4, 5, 14, 54, 20, 36, and 35.

Significantly, this is the first Historic Corridor designated by the Texas Legislature, as the statute designating the Route 66 Historic Corridor (the only other Historic Corridor in Texas) was not enacted until 2015[55] – four years after the Scenic Loop Road–Boerne Stage Road–Toutant Beauregard Road Historic Corridor.[56] Notably, this historic corridor is an important part of the local community values as evidenced by the resolution passed by Bexar County

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[49] Id. at p. 9, ll. 6 – 8.
[50] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, p. 28, ll. 15 – 19; Exhibit MDA-24, and related footnote 25.
[51] NISD Exhibit No. 1, p. 9, ll. 2– 4.
[52] Id.
[53] Id. at p. 30, ll. 1 – 10.
[54] Tex. Gov't Code § 442.024.
[55] Tex. Gov't Code § 442.024, Added by Acts 2015, 84th Leg., R.S., Ch. 284 (H.B. 978), Sec. 1, eff. September 1, 2015.
[56] Tex. Gov't Code § 442.030, Added by Acts 2011, 82nd Leg., R.S., Ch. 1137 (H.B. 1499), Sec. 1, eff. September 1, 2011.

Commissioner Court supporting passage of H.B. 1499 that established the corridor and was codified as Texas Government Code section 442.024.[57]

In addition to Segments 4, 5, 14, 54, 20, 36, and 35 running exactly along the first of only two Historic Corridors designated by the Texas Legislature, there are other historic features on those Toutant Beauregard segments, as well. For example, according to CPS witness Meaux, the approximate boundaries of the Heidemann Ranch, *a National Register of Historical Places site*, are represented on Figures 2-4 Amended and 4-1 Amended in Attachment 2 of the Application Amendment by the outline of the blue hatching. That blue hatching can be seen across the street from Segment 36 on Toutant Beauregard Road.[58] At the hearing, Ms. Meaux agreed that preservation of rural vernacular structures within the Heidemann Ranch dating from the mid-19th to mid-20th centuries represent a high degree of historical integrity.[59] Not only is the Heidemann Ranch Complex (established early 1800) listed on the National Registry of Historic Farms and Ranches, it also is the location of the Heidemann Family Cemetery (established pre 1840) which is a Historic Cemetery registered with the Texas Historical Commission.[60]

The R.L. White Ranch District is also within the study area on Segment 43. However, unlike the Scenic Loop Road–Boerne Stage Road–Toutant Beauregard Road Historic Corridor, along which the proposed transmission line will run for about 1.75 miles,[61] the R.L. White Ranch District is crossed by the proposed transmission line only by "a few feet" according to Ms. Meaux.[62] Moreover, the proposed transmission line along the Scenic Loop Road–Boerne Stage Road–Toutant Beauregard Road Historic Corridor will also run along the entire side of the Heidemann Ranch Complex and the Heidemann Family Cemetery. To the extent Segment 43 enters the White Ranch, it does so for a very short distance that is entirely within the right-of-way of an already existing transmission line with which Segment 43 will interconnect.[63]

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[57] Jauer Exhibit No. 5.
[58] Jauer Exhibit No.16, RFI 2-33, 2-34.
[59] Tr. p. 326, l. 16 – 25.
[60] Barrera Exhibit No. 1, *Direct Testimony of Roy R. Barrera*, Sr., p. 1.
[61] See, Jauer Exhibit No. 26, the total of linear feet of Segments 54, 20, and 36 is 9,229 linear feet which when divided by 5,260 feet in a mile results in the length being 1.7479 or 1.75 mile.
[62] Tr. p. 332, ll. 10 – 12.
[63] Tr. p. 332, l. 6 – p. 334, l. 4.

B. Routing Criteria under 16 TAC § 25.101(b)(3)(B)

1. Engineering Constraints

a. Location of Substation Site 7 Is Vulnerable, and a Threat to The Environment.

Substation Site 7 is vulnerable to flooding due to its location immediately adjacent to flood-prone Leon Creek,[64] and this vulnerability will only worsen as development continues upstream in the Leon Creek watershed. Notably, with respect to the routes primarily under consideration by the parties, flood vulnerability is an issue only as to the routes that terminate at Substation Site 7, because the other routes primarily considered terminate at Substation Site 6, which has *no* watercourse anywhere in its vicinity. In fact, out of all the proposed substations, Substation Site 6 is the most remote from any watercourse.[65]

The property on which Substation Site 7 is located is identified as Lot 19 on the plat for the West Brook Two subdivision.[66] The plat shows not only the property, but also the 100-year flood line of 1250 feet above mean sea level.[67] The fact that a substantial portion of Substation Site 7 is below the 100-year flood line directly contravenes CPS's Siting Manual,[68] which prohibits locating a substation "in existing defined flood hazard areas" and requires a location "sufficiently above existing flood levels so that future development will not cause the flood plain to encroach upon the substation."[69] This set of requirements should preclude Substation Site 7 from being considered, because it violates the first requirement, and it is likely to violate the second in light of the development that is prompting this Scenic Loop project, as pointed out by Mr. Anderson.[70] And, notably, the new development that is on the way, including 393 homes in the Scenic Crest development,[71] 280 homes in Pecan Springs, and the roads, parking lots and

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[64] CPS Energy Exhibit No. 6, *Application Amendment,* Figure 4-1: Amended Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes."
[65] Id.
[66] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, Exhibit MDA-18.
[67] Id., p. 24, l. 16 – 23 and Exhibits MDA-18 & MDA-19.
[68] Jauer Exhibit No. 16, Attachment AS 2-28, Sec. 4.A.2.d(1), p. 6 (Bates Stamp 077).
[69] AS/Jauer Exhibit No. 25, Exhibit MDA-3, Sec. 4.A.2.d(1) at p. 6. *See also* AS/Jauer Exhibit No. 25, p. 25, l. 6 – 16; Jauer Exhibit No. 25, p. 7; Tr. p. 424, ll. 5 – 17.
[70] Id., at p. 25, l. 12 – 14.
[71] Brittany Sykes Exhibit No. 1, *Direct Testimony and Exhibits of Brittany Sykes*, Exhibit A ("Scenic Crest Master Develop Plan").

other structures that come with them,[72] are *all upstream from Substation Site 7.*

Mr. Anderson is not alone in his concern about flooding along Leon Creek and the ever-increasing flood risk resulting from ongoing development in the area. Following a major flood in May of 2013 that created a peak flood elevation in Leon Creek of more than 12 feet above flood stage just downstream of Substation Site 7, the San Antonio River Authority ("SARA") invited the US Army Corps of Engineers to partner in further study of flooding and increased flood risk in the Leon Creek watershed.[73] In the study's "Introduction," the following important facts are acknowledged:

- "South Central Texas, including the Leon Creek watershed, is one of the most flood prone areas of the United States." [74]
- "Of the 13 storms recorded worldwide for the greatest depth of precipitation in a single event, two occurred along the Balcones escarpment in the vicinity of the study area."[75]
- "In sharp contrast, this same watershed can experience periods of low or almost nonexistent flow in certain areas, resulting in degradation of the channel and its environs."[76]

As a result, the threat of future floods that exceed current flood stage estimates is real along Leon Creek, and the fact that it might have periods of almost nonexistent flow is not dispositive of anything relative the "flash flood alley" it can become within hours.[77] "The flood risk along Leon Creek is generally associated with infrequent, high-intensity rainfall events that result in extremely rapid but relatively short-duration flood peaks associated with high velocity stream flows."[78] In the future, the Corps of Engineers/SARA study concludes that "urbanization is expected to contribute to the potential for flooding[79] . . . increasing impervious cover and making

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[72] Tr. p. 874, ll. 12 – 23.
[73] Jauer Exhibit No. 3, *Leon Creek Watershed, Texas Interim Feasibility Report and Integrated Environmental Assessment*, Final Report Version, April 2014, U.S. Army Corps of Engineers Fort Worth District (Study Partner: San Antonio River Authority).
[74] Id. at p. 2, "Study Need" (citation omitted).
[75] Id. at p. 8, "Flood History."
[76] Id. at p. 9.
[77] Id. ("The hydrograph [of the 2013 flood] in Figure 3-1 [of the Report] shows that Leon Creek rose from within-bank levels to its peak flood stage in approximately six hours, tapering off somewhat more slowly but returning to within-bank conditions in less than 24 hours.")
[78] Id., at p. ES-1, "Executive Summary."
[79] Id., at p. 39, "Flooding."

the watershed 'flashier' in terms of water discharging into creeks."[80] SARA estimates that impervious cover related to Leon Creek will increase 45%.[81]

As the threat of flash floods increases, so does the possibility for flood levels well above previously established flood stages, as occurred on Leon Creek in 2013 when the peak flood elevation was more than 12 feet above flood stage downstream of Substation Site 7.[82] The Corps of Engineers stated that "Urbanization can compound the natural tendency of Central Texas streams to produce damaging floods with greater frequency than do comparable basins elsewhere."[83] As part of their study, the Corps of Engineers and SARA conducted hydrologic and hydraulic analyses[84] that were used, in part, to determine the flows and corresponding water surface elevations for the 100-year flood (i.e., 1% AEP) for each stream reach listed in Table 2-7 of the report.[85] Substation Site 7 is located on Leon Creek 7,[86] where the study estimates that the water surface level for a 100-year flood event would be 23.43 feet.[87] If the that water surface level (i.e., depth) is added to Mr. Lyssy's estimate of Substation Site 7's lowest point of elevation along Leon Creek, which is 1234 feet above mean sea level (amsl),[88] the 100-year flood level on Substation Site 7 would be 1257.43 feet amsl, which is 7.43 feet higher than the 1250 feet amsl reflected on the West Brook Two subdivision plat for Substation Site 7 (i.e., Lot 19).[89]

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[80] Id., "Geology, Soils, and Topography."
[81] Id., at pp. B-32 & B-33.
[82] Id. at p. 8, "Flood History."
[83] Id. at p. 39, "Land Use and Urbanization."
[84] Id., at pp. 16–17, "Hydrology and Hydraulics" & Appendix G.1 "Hydrologic and Hydraulic Analyses." *Notably, contrary to Mr. Lyssy's unsubstantiated assertions and obfuscations regarding hydraulics and hydrology at Tr. p. 645, l. 25 – p. 651, l. 13, the Corps of Engineers and SARA used both hydraulics and hydrology to the derive the flows and the corresponding water surface elevations for the different stream "reaches" during a 100-year flood (i.e., 1% AEP) and other "Annual Exceedance Probability" flood events.* Id., pp. 16-17, 41 & G.1-3-G.1-68.
[85] Id., at p. 41–42 & Table 2-7, "Existing Flow and Water Surface Elevation at the 1% AEP By Economic Reach." The same information is contained in Table G.1-49, "Depth of Flooding by Event by Reach." *See* Id., at pp. 608 & 613 of 719.
[86] Tr. p. 433, l. 8 – 436, l. 4.
[87] Jauer Exhibit No. 3, p. 41 – 42 & Table 2-7,
[88] Tr. p. 644, l. 23 – 646, l. 11. *See also* Jauer Exhibit No. 14, RFI Response 5-1.
[89] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, Exhibits MDA-18 & MDA-19.

When trying to determine whether a substation site, like Substation Site 7, is vulnerable to flooding, Mr. Lyssy generally states that "the most accurate data you can get . . . is real world data . . . real historical data."[90] However, it appears the only real world, historical data that he will rely upon is from the Federal Emergency Management Agency ("FEMA"), specifically its Federal Insurance Rate Maps ("FIRM").[91] In fact, Mr. Lyssy invitingly suggests that "everybody can go look at the flood maps. They are out there ... it's the Flood Insurance Rate Map is what it's called. It's FIRM. You know, I can - - I'll give you the numbers if y'all want to go check it out."[92] However, when one does just that and goes directly to the source of the Flood Insurance Rate Maps (i.e., FEMA)[93] to check out the FIRM that pertains to Substation Site 7 (i.e., Map Number 48029C009F), one discovers that it is, in fact, "historical," as well as outdated. The current FIRM for Leon Creek in the area where it is adjacent to Substation Site 7 was finalized over 10 years ago on September 29, 2010.[94] And, despite the fact that Leon Creek exceeded its flood stage in 2013, the same FIRM, dated "September 29, 2010" in the bottom right-hand corner, remains in effect today.[95] Moreover, none of the location-specific amendments and revisions that have been granted in the interim pertain to Substation Site 7, which can be confirmed by searching the Federal Register, as has been done by the first undersigned counsel, and/or by reviewing the links on the FEMA website.[96] As a result, the Corps of Engineers/SARA study (completed in 2014) is the most up to date data that we have,[97] and, as demonstrated above, it is wholly consistent with the site-specific 100-year flood line reflected on the Substation Site 7 plat.[98]

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[90] Tr. p. 657, ll. 6 – 8
[91] Tr. p. 657, l. 10 to 658, l. 7.
[92] Tr. p. 658, ll. 2-7.
[93] *See* https://msc.fema.gov/portal/home (enter the following address for Substation Site 7 in the "search" bar: "725047 Toutant Beauregard Rd, San Antonio"; click on "Map Image: Download FIRM Panel"; open the TIF file; *note date in bottom right-hand corner of the FIRM*).
[94] 75 Fed. Reg. 59989 (Sept. 29, 2010).
[95] *See* https://msc.fema.gov/portal/home (enter the following address for Substation Site 7 in the "search" bar: "725047 Toutant Beauregard Rd, San Antonio"; click on "Map Image: Download FIRM Panel"; open the TIF file; *note date in bottom right-hand corner of the FIRM*).
[96] Id. *See also* 75 Fed. Reg. 59989 (Sept. 29, 2010).
[97] Jauer Exhibit No. 3, Cover page.
[98] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, p. 24, l. 16 – 23 and Exhibits MDA-18 & MDA-19.

In an attempt to reduce damage from flooding in the Leon Creek study area, the Corps of Engineers/SARA study evaluated both structural measures (e.g. widening or improving creek beds)[99] and non-structural alternatives (e.g., SARA's flood warning system linked to the City and County Emergency Operations Center(s) which utilize the microwave dishes installed on Communications Tower 501 and are referenced below on p. 20).[100] According to the Corps of Engineers/SARA study, "Evaluation of nonstructural alternatives focused primarily on removal of susceptible properties from the floodplain (floodplain evacuation)."[101] Given the elevation of Substation Site 7's 100-year flood line, the similar elevation calculated above based on its stream segment 100-year flood elevation from the Corps/SARA study, and the fact that the Corps Engineers is evaluating how to remove susceptible structures from the floodplain, it is unwise to place a substation on Substation Site 7 in contravention to CPS's Siting Manual.[102] CPS already eliminated two other potential substation sites due to flood vulnerabilities.[103] The same determination should be made for Substation Site 7.

Just as Leon Creek is a threat to Substation7, Substation 7 is a threat to Leon Creek and the landowners who live along it. This is because transformers, such as those in a substation, are filled with oil. In the event of a transformer failure, the oil inside the transformer can spill, and it is necessary to contain the spill, which requires a relatively flat site.[104] The proposed site for Substation 7 has an elevation change of 25 feet from its high point to the low point, and slopes toward Leon Creek.[105] Any spills at the substation will quickly and inevitably make their way to Leon Creek with the existing topography.[106]

One other issue related to Substation Site 7 and its vulnerability to flooding is the layout of the substation that Mr. Lyssy provides in Exhibit SDL-1R to his Rebuttal Testimony.[107] When it is compared to the 100-year flood line set forth on the plat map for Substation Site 7 and

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[99] Id. at p. 53, et seq.
[100] Id. at p. 83, "Nonstructural Alternatives."
[101] Id.
[102] CPS's Siting Manual, Jauer Exhibit No. 16, Attachment AS 2-28, Sec. 4.A.2.d(1), p. 6 (Bates Stamp 077).
[103] Jauer Exhibit No. 15, RFI 1-10.
[104] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, p. 25, ll. 19 – 20.
[105] Id., and p. 26., ll. 2 – 5, and Exhibits MDA-18 and MDA-19.
[106] Id., and p. 26., ll. 2 – 5, and Exhibits MDA-18 and MDA-19.
[107] CPS Energy Exhibit No. 14, Exhibit SDL-1R.

the West Brook Two subdivision and reflected on Exhibit MDA-19 of Mark Anderson's Direct Testimony,[108] it is clear that the substation layout extends below the 100-year flood line, which, again, has been validated by the results of the Corps of Engineers/SARA study.

b. Segment 54 and Toutant Beauregard Are Congested

Segment 54 runs along Toutant Beauregard Road, an undivided two-lane road that has become a main thoroughfare in the area. One of the concerns presented by running the transmission line along Segment 54 is the vehicular traffic on the roadway. As more people use the road, the need for road expansion increases. When asked about the need for roadway expansion, CPS Witness Lyssy equivocated regarding Segment 54 and suggested that it might be impacted by the widening of the roadway, whereas he doesn't believe "the rest" will be impact. In this regard, Mr. Lyssy testified as follows:

> "We did plan for the poles to be outside of the right-of-way in most cases . . . And for segment, I believe it's the one that does - - Segment 54, it may or may not . . . be impacted by any kind of widening, but the rest . . . along Toutant I can't see it being impacted by any kind of widening in the future because . . . the poles are outside the right-of-way enough . . . .".[109]

Taken together, Mr. Lyssy's testimony is significant in two respects. First, he equivocates by stating that road expansion "most likely" won't impact the poles and that CPS plans for the poles to be outside of the right-of-way *in most cases*. And second, he suggests that road widening might impact Segment 54.

Each of these equivocations and points is even more important in light of the fact that Mr. Lyssy admitted later in the hearing that CPS proposes using the road right-of-way along certain points of Toutant Beauregard. [110] His earlier statements that roadway expansions most likely would not impact the poles does not cover situations where the poles are in the road right-of-way. Similarly, the opportunity for vehicles coming into contact with the structures are greatly enhanced when they are in the road right-of-way.[111]

In one specific instance, Mr. Lyssy confirmed that an angle structure in the road right-of-way would be necessary to accomplish the change in the angle of Segment 54 addressed in Mr.

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[108] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson*, Exhibits MDA-18 & MDA-19.
[109] Tr. 591, l. 17 to 592, l. 3.
[110] Tr. 832, ll. 11 – 16.
[111] *See* AS/Jauer Exhibit No. 25, Revised Direct Testimony of Mark Anderson, p. 21, ll. 1-8

Lyssy's testimony errata at Habitable Structure 88 and near the entrance to Serene and Scenic Hills Estates off Toutant Beauregard.[112]

The fact that CPS is proposing to use the road right-of-way at certain points along Toutant Beauregard also raises another concern. Lyssy testified that if a tower were to fall, it would be in the road right-of-way.[113] Similarly, Segment 54 is proposed to be built very close to homes. This is particularly true on its eastern portion along the north side of Toutant Beauregard. For example, Habitable Structure No. 81 along this portion is only 82 feet from the centerline (See, Exhibit MDA - 9), which means the habitable structure is within the fall risk as well. Furthermore, the transmission line as mapped by CPS crosses Toutant Beauregard multiple times,[114] increasing the potential for any fall to be within the road right-of-way.

There are also other utilities running along Toutant Beauregard. There is a CPS-owned 6 to 8 inch gas distribution pipeline that CPS did not initially know about running along Toutant Beauregard.[115] When asked about water or gas pipelines in the vicinity of the above-referenced structure in the road right-of-way near Habitable Structure 88, Mr. Lyssy stated "Yes, I believe there is gas, and there is water."[116] This raises the possibility that the maintenance, repair, and operation, of the transmission line and other utilities may be hindered by the proximity of one to the other.

It is incredible that CPS does not address the engineering constraints (i.e., congestion with existing infrastructure) that requires the addition of 10 additional circuits from proposed Substation Site 7:

- 4 circuits extending out the front of Substation Site 7 and across Toutant Beauregard toward the limited Serene and Scenic Hills right-of-way, with 2 circuits then turning to the west on the north side of Toutant Beauregard, and 2 circuits turning to the east;
- 4 other circuits also extending out the narrow front of Substation Site 7, with 2 circuits turning to the west on the south side of Toutant Beauregard (where they ultimately will encounter Segment 54 after it crosses from the road), and 2 circuits turning to the east; and

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[112] Tr. 397, ll. 9 – 14; CPS Energy Exhibit No. 14, Rebuttal of Scott D. Lyssy, P.E. with errata, Exhibit SDL-3R, p. 8.
[113] Tr. 832, ll. 5 – 9.
[114] Tr. 223, ll. 3 – 9.
[115] Tr. p. 382, ll. 16 – 21; Jauer Exhibit No. 8, RFI 2-8.
[116] Tr. 850, ll. 7 – 8.

- 2 circuits extending out the back of Substation Site 7, "where CPS has access to existing easements" ***and "underground construction" is possible at an estimated cost of $2,920,200.***[117]

All of his will add additional congestion and potentially substantial costs to an increasingly burdened contingency fund.

It is also incredible that CPS is relying on an "existing" distribution right-of-way on the backside of Substation Site 7 (seemingly to further alleviate the congestion on Toutant Beauregard) but they have no knowledge of its size or whether it is in a flood plain (which certainly appears to be the case) or whether it has existing distribution lines already in it.[118] This back door may in fact be illusory and unavailable and could very likely add to the congestion along Toutant Beauregard and to the ultimate cost of the project, both as to the cost of addressing the congestion and as to any revisions to Substation Site 7 that are required.

Given the nature of Toutant Beauregard Road, the possible impact to CPS's transmission line by future roadway expansion and the presence of other utilities running along the roadway, Segment 54 is not well suited to be used as a transmission line corridor.

c. Routes that use Segments 20, 32, or 36 will interfere with public safety communications.

Mr. Carl G. Huber is the Manager of the General Partner of CellTex Site Service, Ltd. ("CellTex"), which owns and operates the FCC-registered Communications Tower No. 501.[119] Mr. Huber testified that this tower is used by the Alamo Area Regional Radio System ("AARRS") trunked radio system, which the City of San Antonio, Bexar County, CPS Energy, and other agencies utilize to provide wireless connectivity to police, fire and other public safety users.[120] AARRS is a network of 28 interconnected tower sites and related communications facilities that provide wireless connectivity to police, fire and other public agencies within the region,[121] and including the Leon Creek/Toutant Beauregard flood warning system as well.[122]

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[117] Tr. p. 848, l. 18 – p. 850, l. 4. *See also* Jauer Exhibit No. 15, Anaqua Springs RFI 1-16, "Attachment AS 1-16 Notes" p. 106/107 (Bates 000004). Tr. p. 416, l. 22 – p. 420, l. 16. *See also* Jauer Exhibit 15, Anaqua Springs RFI 1-16, "Attachment AS 1-16 Notes" p. 28/29 (Bates 000004).

[118] Tr. p. 418, l. 8 – p. 420, l. 15.

[119] Jauer Exhibit No. 2, *Direct Testimony of Carl Huber*, p. 4, ll. 3 – 5.

[120] Id., at p. 5, ll. 6 – 12, see also, Exhibit Huber-7.

[121] Id.

[122] Tr. p. 919, l. 19 – p. 922, l. 3; Tr. p. 923, l. 22 – p. 924, l. 12.

Because of the importance of these communications facilities to the public safety, the City of San Antonio has leased two spaces on the tower for two redundant microwave antennae.[123]

Microwave communications are limited to "line of sight" transmissions that can be impacted by tall obstructions, such as electric transmission lines.[124] Both of the public safety communications antennae on Communications Tower No. 501 will be at a height and an azimuth (the number of degrees from north or the "bearing" on which a microwave antenna will transmit) that will cause the microwave signals to be blocked by either the angle structure where Segments 20 and 36 meet[125] or the transmission lines on Segment 32.[126] As a result, any route that uses Segments 20, 36 or 32 will cause degradation of the public safety communications in the area.[127] The *only* evidence CPS has provided on this issue is a statement from Mr. Marin that CPS has operated transmission lines "in close proximity to, or collocated with, communications facilities, including ... microwave facilities."[128] However, Mr. Marin's response shows a complete lack of understanding and appreciation for the issue. The issue is not proximity or even co-location, the issue is *line-of-site* obstruction. A microwave antenna can be in close proximity to a transmission line or even co-located on it, so long as its line-of-sight is not obstructed. In the present case, however, the evidence is otherwise, and no information to the contrary has been provided by CPS.

In addition, if a route that uses Segment 32 is used, there is an additional hazard created by the lines with respect to getting to the communications tower for maintenance and repair. In order to work on the tower, communications companies need to access the property with large cranes. As Mr. Huber testified, the hard right-angle turn that is required for a crane to enter and exit the property from Toutant Beauregard would be extremely hazardous under or in proximity to an electric transmission line, and going up and down the steep grade of the service road with a crane would likely be impossible under Segment 32.[129]

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[123] Id.
[124] Jauer Exhibit No. 2, *Direct Testimony of Carl Huber*, at p. 5, l. 20 – p. 6, l. 2.
[125] Id. at p. 6, ll. 4 – 6.
[126] Id. at p. 6, l. 2 – 11.
[127] Id. at ll. 10 – 15 and p. 5, ll. 6 – 12, see also, Exhibit Huber-7.
[128] CPS Energy Exhibit No. 12, *Rebuttal Testimony of Adam Marin*, p. 8, ll. 11-12.
[129] Id. at p. 6, l. 21 – p. 8, l. 2.

2. Cost

Like the habitable structure counts, the cost of each route is often given significant consideration when selecting a route for a proposed transmission line. Unfortunately, like the habitable structure counts in this proceeding, which kept shifting and changing, the cost estimates for each route, particularly those along Toutant Beauregard, have not been reliable, either.

At the onset, it should be noted that CPS did not present a single witness who could explain the basis for CPS's cost estimates. In fact, Mr. Lyssy, who populated CPS's cost tables, admitted that he based them on estimates provided by other people[130] (some of whom were two steps removed[131] and none of whom were presented as witnesses), and he does not know whether the information that he was given differentiates between the cost of developed lots vs. the cost of rural land.[132] As a result, there was no way to cross examine a CPS witness on key factors related to the right-of-way cost estimates that CPS set forth in the Application, particularly as to whether their unit costs were based on the value of developed lots or rural land. This issue is of particular importance to the routes that run along Toutant Beauregard, since much of the land traversed by Segment 20 is now under active development into the Scenic Crest subdivision, which CPS acknowledges is something "for the Commission to look at and evaluate."[133] However, when asked whether the right-of-way acquisition cost for Segment 20 was predicated on it being undeveloped land, Mr. Lyssy testified, "I'm not sure. I don't have the answer to that."[134] Without this information, it is impossible to determine whether the right-of-way cost for Segment 20 is too low now that Scenic Crest is under development. The same issue applies to another segment along Toutant Beauregard -- Segment 36, which runs along property purchased by its current owner, Brad Jauer, from the developer of Anaqua Springs, as part of a 70-acre tract that was slated for a 60+ home development.[135] Mr. Jauer purchased it from the developer to prevent development and to ensure conservation. The price of this land was significant and is included in his testimony. Without knowing whether CPS's right-of-way costs for Segments 20

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[130] Tr. p. 492, ll. 15-22; Tr. p. 505, ll. 18 – 22.
[131] Tr. p. 505, ll. 18 – 22.
[132] Tr. p. 492, ll. 21 – 22.
[133] Tr. p. 555, ll. 7 – 9.
[134] Tr. p. 455, ll. 18 – 19.
[135] Jauer Exhibit No. 1, *Revised Direct Testimony of Brad Jauer*, p. 3, ll. 13-20.

and 36 were predicated on rural or developed land values, it is impossible to determine whether CPS's right-of-way acquisition costs for them are too low, given the actual facts of the case.

Another issue that bears on the route costs, particularly those along Toutant Beauregard, is CPS's assumptions regarding the right-of-way widths used to estimate right-of-way acquisition costs. As late as April 7, 2021 in Mr. Lyssy's rebuttal testimony, CPS claimed;

> As stated in response to Question 6 of the Application, ***the right of way proposed for the Project is 100 feet. All measurements*** included in the Application, including within the Environmental Assessment that is Attachment 1 to the Application, ***are based on a right of way width of 100 feet***" *(emphasis added)*.[136]

However, a week prior to the hearing on the merits, Mr. Lyssy's rebuttal testimony was amended to state that "**most**" rather than "**all**" measurements are based on a right of way width of 100 feet[137] and to acknowledge that "for approximately 1,300 feet along Segment 54, less than 100 feet of right of way is proposed. . . ."[138] But even these changes are wholly contrary to the right-of-way widths reflected in the tables CPS used to estimate right-of-way costs for each proposed transmission line segment, which have been a part of the case at least since CPS filed its Amended Application on December 22, 2020. As demonstrated during the cross-examination of Mr. Lyssy, these tables indicate that CPS has actually been assuming something altogether different for Segments 54, 36 and 20, which are the segments on Toutant Beauregard that are used by Route Z1 (CPS's "best meets" route). According to these tables, which can be found in Jauer Exhibit No. 26 and were used by CPS to determine the right-of-way acquisition costs for each individual segment:[139]

- Segment 54 is comprised ***exclusively of 75-foot right-of-way*** – 3,612 linear feet of it, which is *almost 3 times the 1,300 feet of "less than 100 feet of right of way"* Mr. Lyssy claimed in his errata filed a week before the hearing;[140]

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[136] Rebuttal Testimony of Scott Lyssy, p. 6, ll. 13 – 16.
[137] Errata to Rebuttal Testimony of Scott Lyssy, p. 5, l. 14. *See also* CPS Energy Exhibit No. 14, *Rebuttal Testimony of Scott D. Lyssy, P.E. (w/ Errata)*, p. 9, l. 14.
[138] Errata to Rebuttal Testimony of Scott Lyssy, p. 5, ll. 18 – 19. *See also* CPS Energy Exhibit No. 14, *Rebuttal Testimony of Scott D. Lyssy, P.E. (w/ Errata)*, p. 9, ll. 18 – 19.
[139] Tr. p. 857, ll. 21 – 24.
[140] Tr. p. 853, l. 10 – p. 855, l. 12; Jauer Exhibit No. 26, "*Scenic Loop CE Spreadsheet Final 12-18-2020-1" from the Amended Application's "Cost Documents" files*, Sheet 1.

- Segment 36 is comprised ***exclusively of 75-foot right-of-way*** – again, contrary to the "most"-is-100-feet representation in Mr. Lyssy's errata;[141] and
- While only 18% of Segment 20 is 75-foot right-of-way, rather than 100-foot, that ratio is likely to change dramatically now that Scenic Crest is under active development.[142]

In light of all the uncertain, unsubstantiated, inconsistent and irreconcilable information that CPS has provided about right-of-way and the cost along Toutant Beauregard, it is impossible to determine with any degree of certainty either the extent or the cost of the right-of-way needed for the Toutant Beauregard segments (i.e., Segments 54, 36 and 20).

There is a myriad of costs that are unique to the Toutant Beauregard routes that should have been in the included in the Toutant Beauregard cost estimates but were not. For example, because of other infrastructure in the right-of-way along Toutant Beauregard, more engineering and design will be needed to avoid interference with the other infrastructure. These costs are not factored into the cost estimate for Segment 54.

Similarly, angle and turning structures are more expensive than non-turning structures, but CPS does not factor those into in the cost estimates, instead using a flat rate multiplied by the length of the line – and Segment 54 has a lot of road crossings. Ms. Meaux testified that Segment 54 had four or five road crossings across Toutant Beauregard.[143] Mr. Lyssy confirmed that turning structures are usually larger and more expensive than non-turning structures.[144] If the roadway on Toutant Beauregard is going to be widened as expected, particularly along Segment 54, the transmission line will need to move, resulting in other increased costs. And finally, Mr. Lyssy stated that the cost for Segment 42a, which is a component of Route Z1, would have been higher but for the donated right-of-way addressed in the Toutant Ranch agreement.[145]

In addition to those additional costs associated with using Toutant Beauregard, the use of Substation 7 will also increase costs. The following factors will increase the cost for Substation 7 but are not accounted for by CPS:

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[141] Tr. p. 856, l. 21 – p. 857, l. 9; Jauer Exhibit No. 26.
[142] Jauer Exhibit No. 26.
[143] Tr. p. 223, ll. 3 – 9.
[144] Tr. p. 598, l. 23 – p. 599, l. 3; Jauer Exhibit No. 14, RFI 5-12; Jauer Exhibit No. 15, RFI 1-7.
[145] Tr. 487, ll. 3 – 11.

- Substation 6 only has a 20-foot elevation difference[146] Substation 7 has a 54-foot elevation difference.[147] The 54-foot elevation difference will require a significant amount of fill material to level. As Mark Anderson pointed out, CPS may claim that it can engineer around the issue of having a substation adjacent to a flood plain on a parcel that is steeply sloping towards the Leon Creek watershed, but doing so will add to the projected cost of any route using that substation.
- Costs for flood mitigation are not included in the estimated costs for Substation Site 7. For example, the cost of materials (which would include the dirt necessary to level Substation Site 7) is identical for all substation sites in CPS's estimates.
- The Corps of Engineers report states that the City of San Antonio and Bexar County both have a "no rise" ordinance which requires that the increased runoff resulting from the proposed development will not produce a significant adverse impact to other properties to a point 2,000 feet downstream.[148]

3. Moderation of Impact on Affected Community and Landowners

As Mr. Brad Jauer testified, the Jauers have purchased over 90 acres to preserve the land from development.[149] There is currently a distribution line on the Jauer property, but it should be kept in mind that transmission lines are much larger structures that can be twice the size of distribution lines.[150] These conservation efforts will be frustrated by the construction of the transmission line. While the Jauers understand that they are fortunate to be able to set aside land for conservation, they also urge the ALJs and Commission to give heavy consideration to the input of landowners who have intervened to protect their homes. Segment 54 will place the transmission line across the front yard of homes less than 1 acre. Another group of such homes are being added on the southern end of Segment 17 near Toutant Beauregard.[151] As pointed out by one Witness, many of the homes on Segment 17 impacts 23 homes on 25 one-acre properties

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[146] Jauer Exhibit No. 14, RFI 5-4.
[147] Id., RFI 5-1.
[148] Jauer Exhibit No. 3, pg. 41.
[149] Jauer Exhibit No. 1, *Direct Testimony of Brad Jauer*, p. 4, ll. 1 – 4.
[150] Tr. p. 328, l. 24 – p. 329, l. 9.
[151] Arbuckle Exhibit No. 1, *Direct Testimony of Joan Arbuckle*, p. 4, and Exhibit A.

that have been established homes and properties for many years in the Serene and Scenic Hills subdivision.[152]

IV. PRELIMINARY ORDER ISSUES

A. Preliminary Order Issue No. 4

Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?

For the reasons stated above, and summarized below, Brad Jauer and BVJ Properties, L.L.C urge the ALJs and the Commission to find that the Routes that use the Toutant Beauregard segments are not the best alternatives after weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B). Instead, Route P, the Route chosen by Commission Staff as the route that best meets the routing criteria after consideration of the factors set forth in PURA, s. Because Route R1 is very similar to Route P, Jauer also supports Route R1. Neither Route P nor Route R1 have a high number of habitable structures, they don't impact schools, historical sites, or public safety infrastructure points. Furthermore, both of those routes begin at Substation Site 6, which is not at risk of flooding, is relatively flat, and does not have any nearby landowners that unsuccessfully sought intervention. Finally, Jauer does not object to Route W.

B. Preliminary Order Issue No. 5

Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?

The segments using Toutant Beauregard Road (Segments 54, 20, 36, and 35) should not be used for the proposed transmission line. It has more habitable structures on Segment 54 alone than some routes, and more habitable structures are currently under construction. The only school in the study area is located on one of the Toutant Beauregard segments (Segment 35). There is a public safety radio installation, again the only one of its kind in the study area, that will be impacted by two of the Toutant Beauregard segments (Segments 20 and 36). The only evidence on this matter is from Mr. Huber; it is uncontroverted that using these segments will negatively impact the public safety. The Toutant Beauregard segments

[152] Id., p. 4.

run along the Toutant Beauregard right-of-way, which means they would be in a Historic Corridor, the first to be designated as such by the Texas Legislature and the Texas Historical Commission. Toutant Beauregard Segment 36 would also run along the Heidemann Ranch Complex, which is listed on the National Registry of Historic Farms and Ranches and the Heidemann Family Cemetery which is a Historic Cemetery registered with the Texas Historical Commission. Toutant Beauregard is already congested with other infrastructure including a gas pipeline owned and operated by CPS. And finally, Toutant Beauregard is a well-travelled but narrow road with turns and curves. Because the proposed transmission line will be along, and in some cases in or across the Toutant Beauregard roadway, there is a risk that vehicles may collide with the structures or that the lines may fall in or across the roadway.

Separate and apart from the problems plaguing the Toutant Beauregard segments, are the issues with Substation Site 7, which is not well suited for use as a substation site. This is important because eight of the routes that use the Toutant Beauregard segments begin at Substation Site 7 (Routes X1, Y, Z1, AA1, BB, CC, DD, and EE), including CPS' "best meets" route, Route Z1. As discussed above, Substation Site 7 presents a risk of flooding. As the area continues to be built out and urbanization increases, the impervious cover associated with this construction increases (streets, homes, driveways, accessory structures, paved patios, etc.). The Leon Creek Watershed, already susceptible to flooding and flash flooding, will become even more so due to the loss of pervious cover and faster run off. With a 50+ foot change in elevation sloping towards Leon Creek, Substation Site 7 poses a threat the environment and ecology of the region more so than the other proposed substation sites.

The only possible reason to use the Toutant Beauregard segments, including Route Z1, is the purported cost savings. There are two concerns with this. First, this thinking would value money over people, who are represented as habitable structure counts, and the will of the community as expressed in the community questionnaires. It also elevates money over historical significance recognized by the Texas Legislature, the Texas Historical Commission, and the Bexar County Commissioners Court and public safety by compromising the Alamo Area Regional Radio System – which is used by CPS Energy. Money should not be valued more than people, the values of the community, historical

significance or public safety. The difference in cost between Z1 and other, better-suited routes does not justify the extent of harm done by Z1.

The second concern is that the cost difference between the routes may not be what it is claimed to be. To begin with, the cost estimates are not an apples-to-apples comparison. CPS witness Lyssy admitted that the cost of Z1 would be different if the donated right of way and discounts were not factored in. Additionally, CPS has not presented any justification or even a rationale behind its square foot valuation. At the hearing CPS Lyssy made it clear that he simply plugged the values he was given into the formula without consideration to the fact that raw and platted land were being valued at the same price. CPS did not present any witnesses that could explain the base values used in its cost estimates. As a result, CPS has not provided evidence to prove that the base values it used for its cost estimates are accurate. But even if the basis for those cost estimates were accurate, there are issues that should be considered in determining whether the estimated cost Route Z1 is accurate. For example, Route Z1 uses the Toutant Beauregard segments and as stated before, Toutant Beauregard is already congested with prior utility installations. This utility congestion will lead to higher engineering costs. There are also road crossings on Toutant Beauregard to avoid certain facilities which will require angle structures, thus increasing the costs of the Toutant Beauregard segments. Route Z1 begins at Substation 7, which will require additional funds for leveling the ground to keep floodwaters out and spills in, which are not calculated in the cost estimates as the substation site estimate was identical for all substations.

V. CONCLUSION

For the reasons stated above, Brad Jauer and BVJ Properties, L.L.C urge the ALJs to find that the Routes that use the Toutant Beauregard segments are not the best alternatives for the proposed transmission lines. Instead, the route chosen by Commission Staff –Route P – should be selected as the route that best meets the routing criteria. Because Route R1 is very similar to Route P, Jauer also supports Route R1. Neither Route P nor Route R1 have a high number of habitable structures, they don't impact schools, historical sites, or public safety infrastructure points. Furthermore, both of those routes begin at Substation Site 6, which is not at risk of flooding, is relatively flat, and does not have any nearby landowners that unsuccessfully sought intervention. Finally, Jauer does not object to Route W.

Respectfully submitted,

By: /S/

Lynn Sherman
State Bar No. 18243630
P.O. Box 5605
Austin, Texas 78763
(512) 431-6515
lsherman@h2otx.com

Miguel A. Huerta
State Bar No. 00787733
Law Office of Miguel A. Huerta, PLLC
7500 Rialto Blvd., Ste. 250
Austin, TX 78735
(512) 502-5544
miguel@mhuertalaw.com

ATTORNEYS FOR BRAD JAUER & BVJ PROPERTIES, L.L.C.

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 21st day of May 2021, pursuant to SOAH Order No. 3 issued in this docket.

/S/
Lynn Sherman