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THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS

In re Application of the City of San Antonio,
Acting By and Through the City Public Service
Board (CPS Energy) To Amend its Certificate
of Convenience and Necessity for the Proposed
Scenic Loop 138-kV Transmission Line Project
in Bexar County, Texas

Docket Number: 51023
SOAH Docket No. 473-21-0247
INITIAL BRIEF OF PATRICK
CLEVELAND

I, Patrick Cleveland, do hereby file this initial brief in the above captioned case.

I. Introduction

For many reasons, any route that uses Segment 49a would be one of the worst possible routes in the study area. These routes include G1, J1, AA1, AA2 and EE. Although one of those routes, AA1, purports to be the least costly, it is only slightly more costly than more desirable routes that better comply with PURA § 37.056 and 16 Tex. Admin. Code § 25.101 and have less habitable structures within 300 feet of the transmission line. For some of the same reasons, routes that include Segment 46b are also undesirable. These routes include DD and Z1, amongst others.

On the other hand, Routes P, Q1, U1 and R1 should be considered the most favorable with respect to PURA § 35.056 and 16 Tex. Admin. Code § 25.101.

II. High Country Ranch HOA Land (HCR) is a Recreational Area

HCR was formed in 1977 when Vernon Willoughby purchased a portion of the Crow-Karsch Ranch. See PC Exhibits 21-1 through 21-4 (Covenants and Restrictions attached to the warranty deed). The 300 acres described in these Covenants and Restrictions is a common area shared for recreational purposes by the owners of the 15 property lots associated with HCR. See PC Exhibit 28 (Direct Testimony of Patrick Cleveland). There are six blinds and eight feeders on HCR used for the purpose of viewing wildlife and/or hunting. *Id.* Members are allowed to

1 use any of the blinds on a first come, first serve basis, at all times of the year. *Id.* A check-in
2 map is present at the head of the trail leading to the recreation area and users are required to raise
3 a red flag and denote on the map where they will be located, so as not to interfere with other
4 members enjoying the land. See PC Exhibit 6 (Photo of check-in station). Harvest data of game
5 and non-game animals and birds are collected in a log book located at the check-in station. See
6 PC Exhibit 28, para. 6 (Direct Testimony of Patrick Cleveland). Members are required to
7 document the age, sex and antler development of any white-tail deer harvested, as well as the age
8 and sex of game birds. *Id.* In addition, members record the types and numbers of nongame
9 species, whether identified during a hunt or otherwise. *Id.*

10 Although the use of HCR is not open to the public, membership in HCR is open to the
11 public in that anyone can purchase one of the 15 lots when sold by an existing member. This has
12 happened more frequently than one may think, as none of the 15 lots at HCR are owned by the
13 original purchasers. *Id.* at para. 18. Some of the lots have been sold to new owners/members as
14 many as three times. *Id.*

15 Question 26 on CPS Energy’s CCN Application states, “*For each route, list all parks and*
16 *recreational areas owned by a governmental body or an organized group, club, or church and*
17 *located within 1,000 feet of the center line of the route.*” This is a very clear question which
18 requires only that the property be a recreational area and owned by an organized group.

19 HCR is a bona fide recreational area because it is owned by an organized group, the High
20 Country Ranch HOA, and its primary purpose is for recreation by members of the association.

21 CPS Energy’s expert, Ms. Lisa Meaux, refused to admit that HCR is a recreational area
22 with respect to the CCN Application question but she could not articulate any reason why it
23 wasn’t. Her only rational was that the “inclusion of private recreational areas would introduce a
24 degree of subjectivity extremely difficult to quantify and assess”. See CPS Energy Exhibit 15
25 (Rebuttal Testimony of Lisa B. Meaux). Yet there is no mention of the word “private” or “open
26 to the public” within the question. In fact, the inclusion of the words “church” and “club”
27 presupposes that recreational areas can be privately owned and not open to the public. Even
28 more inexplicable, Ms. Meaux cited to previous cases in her direct testimony where she had
found privately owned HOA common areas, like greenbelts, pools, and parks, to be recreational

1 areas with respect to the CCN Application. See CPS Energy Exhibit 2, Page 4 (Direct
2 Testimony of Lisa B. Meaux, citing to PUC Docket No. 45866).

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4 Only one party has indicated that there is another park in the study area. Mr. Steve
5 Cichowski stated that “segment 36 runs right through our entry way and through dedicated
6 parkland to the northwest and southeast of our entry drive.” Anaqua Springs Exhibit 1, p.10
7 (Revised Direct Testimony of Steve Cichowski). CPS Energy has identified these two properties
8 as B-010 and C-013, both of which are owned by ASR Parks, LLC. See CPS Energy Exhibit 1,
9 Attachment 8 (landowner notice list). But despite the title of the owner and the testimony
10 confirming that these areas are dedicated parkland, CPS Energy again refused to investigate and
11 recognize the existence of such parks.
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14 That makes a total of two parks and recreational areas in the entire study area. Thus, it’s
15 hard to imagine how these two areas involve a degree of subjectivity or are difficult to quantify
16 or assess as alleged by Ms. Lisa Meaux. In addition, Mr. John Poole, the Commission Staff
17 expert, testified that he could see nothing in the wording of the question on the CCN Application
18 that would exclude HCR as a recreational area. Hearing on the Merits Transcript, vol. 4, 800:6-
19 16 (May 5, 2021). Finally, none of the experts involved in this case (except for Lisa Meaux),
20 including the experts in favor of routes that go through HCR, have provided any independent
21 reason, argument or evidence that HCR is not a recreation area.
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III. Routes that Include Segments 49a and 46b are Unfavorable

Any routes that include Segments 49a and 46b are unfavorable for the following reasons:

1. They will go through the recreational area of HCR, which up to this point has been successfully preserved for over 40 years.

2. Although Segment 46b more closely complies with PURA§ 37.056 and 16 Tex. Admin. Code § 25.101 because it follows a property line, 49a fragments intact land and does not follow any right of way, which goes directly against TPWD’s admonition in its Recommendation Letter to the PUC that “the State's long-term interests are best served when new utility lines and pipelines are sited where possible in or adjacent to existing utility corridors, roads, or rail lines instead of fragmenting intact lands.”

1 3. With respect to length of the transmission line NOT following right of way (calculated
2 by subtracting the total ROW from the length of a route), there are at least 21 other routes more
3 favorable than routes that include Segment 49a. See CPS Energy Exhibit 1, Table 4-1
4 (Environmental Data). The routes that include Segment 49a are ranked as follows amongst all
5 other identified routes: Route G1, 30th place; Route J1, 25th place; Route AA1, 22nd place; Route
6 AA2, 24th place and Route EE, 23rd place. *Id.*

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10 4. With respect to percentage of a route that follows ROW, Route AA1, EE and J1 have
11 56%, while Routes AA2 and G1 have 53%. There is only one route that has less percentage of
12 ROW (Route S at 49%). In other words, with respect to percentage of ROW, Routes AA1, AA2,
13 EE, G1 and J1 are the least favorable routes out of all the routes in the entire study area (except
14 Route S). See CPS Energy Exhibit 1, Table 4-1; PC Exhibit 27 (Environmental Data Sorted).

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17 5. With respect to habitable structures within 300 feet of the transmission line, there are
18 nine more favorable routes than the routes that include Segments 49a and 46b. The rankings are
19 as follows: 1. Q1 (12); 2. U1 (12); 3. R1 (13); 4. N1 (17); 5. P (17); 6. F1 (18); 7. BB (27); 8. S
20 (29); 9. W (29) and 10. AA2 (30). *Id.*

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23 6. With respect to length across pasture/rangeland, none of the routes that include
24 Segments 49a or 46b are ranked in the top ten. *Id.*

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27 7. With respect to area of right of way across Golden Cheeked Warbler habitat designated
28 as moderate to high, there are six more favorable routes than Route I1, seven more favorable
routes than Route AA1, and no other routes that include Segments 49a and 46b are ranked in the
top ten. *Id.*

 8. With respect to area of right of way across Golden Cheeked Warbler habitat
designated as low and moderately low, none of the routes that include Segment 49a are ranked
within the top ten. *Id.*

 9. With respect to the number of stream crossings, none of the routes that include
Segments 49a or 46b are ranked within the top ten. *Id.*

 10. With respect to length of right of way across areas of high archeological site
potential, there are nine routes more favorable than Route EE and no other routes that include
Segment 49a are ranked in the top ten. *Id.*

1 11. I compiled a list of properties affected by each segment and route (defined as all
2 properties within 300 feet of a transmission line). See PC Exhibit 25 (Segments with CPS
3 Landowner Designations 300) and PC Exhibit 26 (Alternative Routes and Properties Affected
4 300). Incidentally, CPS also identified all properties within 300 feet of a transmission line for
5 purposes of providing notice. See CPS Energy Exhibit 1, Attachment 8 (Landowner Notice
6 List). With respect to total number of properties affected (defined as being within 300 feet of a
7 transmission line) there are nine other routes more favorable than Route AA1, which has 81
8 properties affected. See PC Exhibit 28, para. 36. No other routes that include Segments 49a and
9 46b are ranked within the top ten.¹

14 Incidentally, no party in this case has challenged the accuracy of the above compiled
15 data.

17 12. Routes that utilize Segments 46b and 49a would be near the Dr. Sarah McAndrew
18 Elementary School.

23 **IV. The Conclusion of Expert Brian Andrews is Unsupported by the Evidence**

26 Brian Andrews, expert witness for the Chandlers and Putnams, recommended Route AA2
27 as the most favorable route. In support of this position, he charted out seven criteria that
28 according to him, “the Commission has put significant weight upon” Chandler Putnam
Exhibit 1 (Brian Andrews Direct Testimony). Yet, not a single one of those criteria favors Route
AA2 over Route Z1. Coincidentally, Route Z1 is the route that goes near his client, Lisa
Chandler’s property. See CPS Energy Exhibit 18, Inset 1 (Intervenors Map). Ignoring the
criteria he had indicated was significant, he stated, “[w]hile conducting my desktop review of
these two segments [49a and 46b] the elevations of the two segments stood out as a way to
differentiate these two segments.” *Id.* at 36. Interestingly, elevation is not an environmental
criteria evaluated by CPS Energy in this case. In addition, he included no field analysis in his
report to show the number of properties that could view Segment 46b as compared to 49a. Thus,

¹ Route AA2 was not included because it was not identified at the time of the compilation, but the number of
properties affected should not significantly vary from Route AA1.

1 his conclusion is not supported by his own highlighted environmental criteria or any other real
2 evidence.
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5 **V. SHLAA's Alleged Common Front in Favor of Route Z1 and Against All Routes in the**
6 **Southern Portion of the Study Area is Illusory.**
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10 The Save Huntress Lane Area Association (SHLAA) consists of three separate housing
11 developments, Altair, Huntress Lane and Canyons. SHLAA Exhibit 1(Direct Testimony of
12 Cynthia Grimes, David Clark and Jerry Rumpf). This association was created for the sole
13 purpose of representing the landowners of these three developments in this case. *Id.* Cynthia
14 Grimes, David Clark and Jerry Rumpf represent SHLAA and filed testimony stating that all of
15 the members of SHLAA are against Routes F1, K, L, N1, O, P, Q1, R1, S, T1, U1, V, W, BB, and
16 CC, and in favor of Routes Z1 and AA1. *Id.* at 5.
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20 Despite the alleged common interests, the Altair, Huntress Lane and Canyons
21 developments have separate and distinct interests, just like most developments in the study area.
22 One only needs to glance at CPS Energy's constraints map and scale to see that the members of
23 Altair are over a mile away from Segments 26a and 15 (segments that are part of Routes P, Q1,
24 U1 and R1). Though there are general allegations that all the southern routes are unfavorable to
25 all three developments, the record is devoid of any proof that Routes P, Q1, U1 or R1 would
26 have any significant impact on the members of Altair.
27
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In addition, no visual evidence/exhibits have been submitted that any property owners in the Canyons will be able to see Routes P, Q1, U1 or R1, let alone be significantly impacted by them.

VI. The Problems with Substation 7 and Comparison of Data for Other Substations

There are numerous reasons why Substation 7 is not a favorable location as explained in the testimony of Mark D. Anderson, including, but not limited to:

- The site was not included in the open house meeting
- The site is heavily wooded with mature trees
- The site is pie shaped and not able to accommodate a standard sub-station layout

- The site is surrounded by mature homes
- The site slopes down to the flood plain of Leon Creek

Anauqua Springs Jauer Exhibit 25, pp. 24-28 (Revised Direct Testimony of Mark D. Anderson).

If Substation 7 was found to be unfavorable by the ALJ's, the other most viable substations near the Toutant Beauregard Road area would be Substation 3 and Substation 2. The northern routes that utilize these substations are G1, H, I1, J1, D1 and E. The following table indicates the number of habitable structures and cost associated with each of these routes compared with Routes P, Q1 and R. (Costs are from CPS Energy Exhibit 6, Attachment 3 Amended.)

Table 1.

Route	Habitable Structures w/i 300'	Cost (millions)
I1	44	42.99
P	17	43.41
R1	13	43.52
D1	44	44.03
J1	42	44.73
Q1	12	45.89
G1	53	51.93
H	62	53.62
E	61	54.51

As can be seen in Table 1, all of the northern routes are more costly than Route P, except for Route I1. However, Route I1 has double the number of habitable structures compared to Route P. Also, all of the northern routes are more costly than Route R1, except for Route I1, which has over triple the number of habitable structures compared to Route R1. Finally, with respect to Route Q1, the average cost of the northern routes in the above table is 47.18 million,

1 while the cost of Route Q1 is 45.89 million. However, the number of habitable structures
2 affected in these northern routes is approximately 4-5 times more than Route Q1.
3

4 In summary, Substation 7 is an unfavorable location and other northern routes that lead to
5 Substations 3 and 2 are less favorable than Routes P, Q1 and R1 based on cost and number of
6 habitable structures affected.
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8 9 10 **VII. Routes P, Q1, R1, and U1 Are The Most Favorable Routes**

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13 Routes P, Q1, R1, and U1 are the most favorable for the following reasons:

14 1. Routes Q1 and U1 affect 12 habitable structures, which is the least amount in the study
15 area, while Route R1 has 13 and Route P has 17. See CPS Energy Exhibit 1, Table 4-1
16 (Environmental Data).
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19 2. Route P is the number one ranked route in the entire study area with respect to the
20 total number of properties affected (defined as being within 300 feet of a transmission line),
21 having only 60 properties affected. Routes Q1, U1 and R1 are ranked 5th through 7th
22 respectively. Conversely, Route AA1 is in 10th place with 81 properties affected and all other
23 routes utilizing Segments 49a and 46b are higher. See PC Exhibit 28, para. 36; PC Exhibit 25
24 (Segments with CPS Landowner Designations 300) and PC Exhibit 26 (Alternative Routes and
25 Properties Affected 300).
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3. *Routes P (tied with Route BB) is ranked in the top ten most favorable with respect to
nine separate environmental categories²—more than any other routes in the study area.* See
PC Exhibit 28, para. 38; CPS Energy Exhibit 1, Table 4-1 (Environmental Data).

4. With respect to length not following right of way, Routes P is ranked 6th out of all the
routes in the study area, which is much better than the routes that utilize Segments 49a (the best
one being ranked 22nd). See CPS Energy Exhibit 1, Table 4-1 (Environmental Data).

5. Commission Staff has recommended Route P as the best route that complies with
PURA § 37.056 and 16 Tex. Admin. Code § 25.101. See Staff Exhibit 1 (Poole Testimony).

² 15 significant environmental categories were counted (insignificant environmental criteria that ranged from 0-2 were not counted).

1 WHEREFORE, based on the information herein and my previously submitted testimony,
2 I respectfully request that the ALJ's avoid choosing any route that includes segment 49a or 46b.
3
4 I am not opposed to any routes that utilize Substation 6, including, but not limited to Routes P,
5 Q1, R1, and W. My silence on any issue should not be construed to indicate I agree with that
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7 issue. I also reserve the right to file a reply to any issue raised in an initial brief, even if not
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9 addressed herein.

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16 Respectfully submitted this 21st day of May 2021.

17
18 /Patrick Cleveland/

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CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on May 21, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/Patrick Cleveland/

Patrick Cleveland