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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

ANAQUA SPRINGS HOMEOWNERS' ASSOCIATION  
INITIAL POST-HEARING BRIEF

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## I. INTRODUCTION

Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") is an organization composed of individual homeowners within the Anaqua Springs subdivision ("Anaqua Springs"). The subdivision is bordered on the northeast by Toutant Beauregard Road ("Toutant") and on the south by Bexar Ranch L.P. ("Bexar Ranch") and The Canyons subdivision. Segment 36 runs through the entrance at Anaqua Springs, and the right-of-way is located over Anaqua Springs' dedicated parkland. Segments 38, 39, and 43 run closer than 300 feet from homes of the members of Anaqua Springs HOA.

Anaqua Springs HOA strongly opposes any route that runs along Toutant.<sup>1</sup> Routes utilizing Toutant suffer from significant routing constraints that call into question routing costs and safety along those segments. They have the highest habitable structure counts. Specifically, *Segment 54* has more habitable structures on it alone than do some of the other *routes* in their entirety. As discussed in this brief, the completeness and accuracy of the data upon which the City of San Antonio, acting by and through the City of Public Service Board ("CPS Energy") has been shown by several parties to be inaccurate in many respects.

Substation Site 7, also along Toutant, suffers from other constraints, including flood hazards and sloping terrain. It is surrounded by homes, many of which CPS Energy did not provide notice. And because Substation Site 7 was added after the only open house, there was no opportunity for those adjacent landowners to express any concerns to CPS Energy regarding the siting of the substation. If Substations Site 2 or 3 were used rather than Substation Site 7, the

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<sup>1</sup> Anaqua Springs HOA is not addressing all of the preliminary order issues in this brief. Anaqua Springs HOA's silence on any issue should not be read as agreement with the position of any other party in this case. Further, Anaqua Springs HOA reserves the right to reply to any issues raised by other parties in their initial briefs.

habitable structure count along Toutant increases significantly, and the cost of the line increases as well.

Routes that utilize the central corridor along Segments 38 and 43 have fewer habitable structures than the Toutant routes. The central routes cost slightly more in comparison to the routes utilizing Substation 7, but all central routes were routed close to homes on the southern property boundary of Anaqua Springs, when there is space to route them farther south, farther away from those homes, some of which were incorrectly excluded in the original habitable structure counts.

The routes that end with Segment 46b travel along Toutant for at least part of their length. Segment 46b surrounds Raul Figueroa on three sides of his property, which is not a particularly large property.<sup>2</sup> The burdens on his property would be extreme, not the least of which is that CPS Energy is unaware whether his cell phone will work if the line is routed as shown.<sup>3</sup>

Of the southernmost routes, Route W performs the best when looking at the amount of modeled golden-cheeked warbler habitat. It has fewer habitable structures than Route Z1 (CPS Energy's best meets route) and avoids Toutant. Route W is the least expensive of the southern routes O, S, V, and W.

Additionally, and as addressed in more detail below, CPS Energy's Original and Amended Applications suffer from limited routing options, mistakes and omissions, which call into question the accuracy and validity of many of the routing decisions made in CPS Energy's Application.

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<sup>2</sup> See CPS Energy Ex. 15, Rebuttal Testimony of Lisa Meaux at Amended Figure 4-1R (Meaux Rebuttal). Mr. Figueroa's home is habitable structure 16.

<sup>3</sup> Tr. at 570:7-14 (CPS Panel Cross) (May 4, 2021).

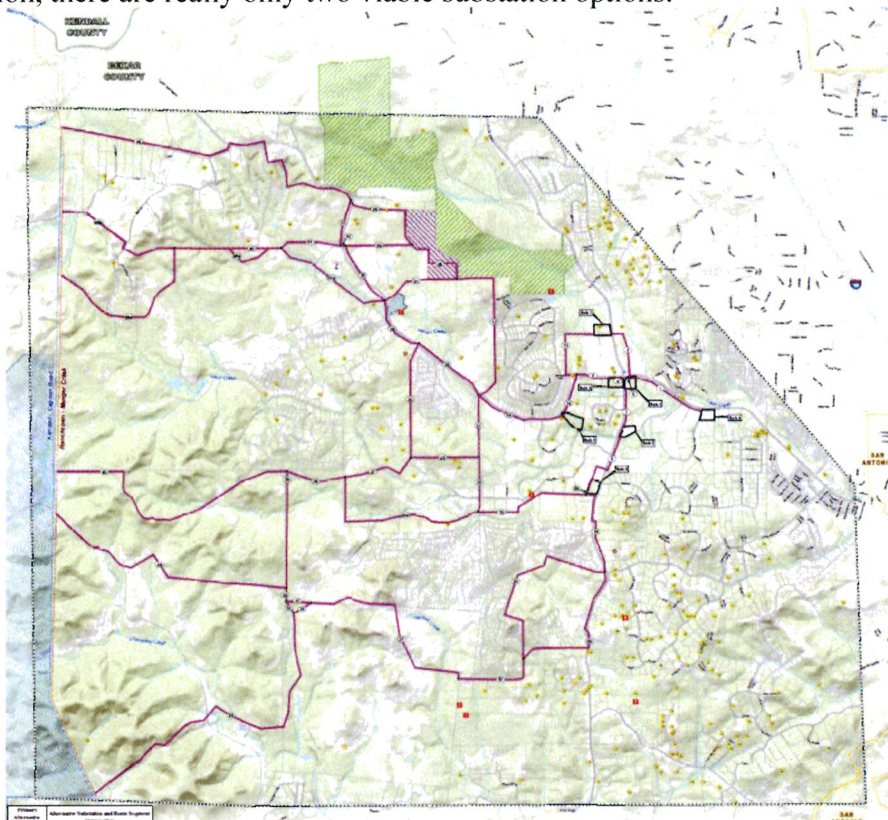
## II. JURISDICTION AND NOTICE

Anaqua Springs HOA does not contest jurisdiction or notice. However, because of the discrepancies in notice, mistakes, and the overall lack of due diligence in CPS Energy's Application, Anaqua Springs HOA is addressing these issues.

## III. ERRORS AND OMISSIONS IN THE APPLICATION

### A. CPS Energy's Application suffers from a lack of routing diversity.

Although the Administrative Law Judges ("ALJs") determined that CPS Energy's Application has a reasonable number of adequately differentiated routes, CPS Energy's Application is, nevertheless, constrained. Throughout this proceeding, CPS Energy has asserted that it has provided seven diverse substations. However, upon reviewing Figure 2-4 of the Application, there are really only two viable substation options.<sup>4</sup>

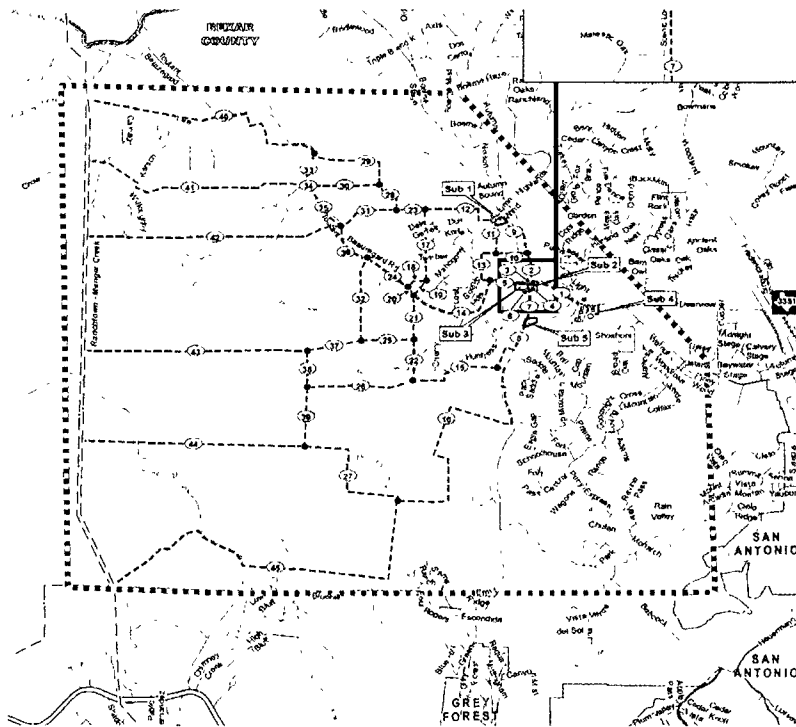


<sup>4</sup> CPS Energy Ex. 6, Amended Application, Amended Environmental Assessment, Figure 2-4 (Amended Application).

As shown in Figure 2-4, and as confirmed at the hearing by CPS Energy witness Scott Lyssy, of the seven substation locations, only two can route directly to the interconnect at the Ranchtown Menger transmission line without crossing the location of either Substation 6 or Substation 7.<sup>5</sup> As indicated by Mr. Lyssy, as a general rule, the longer a transmission line, the more expensive it is.<sup>6</sup> So, CPS Energy's Application contains two substations that connect directly with the Ranchtown Menger line. The other substations serve to add length and cost without providing additional routing corridors.

**B. CPS Energy did not conduct a second open house after substantially changing routing.**

CPS Energy held one open house as part of this proceeding in October 2019.<sup>7</sup> At that open house, CPS Energy presented the following possible segments<sup>8</sup>:



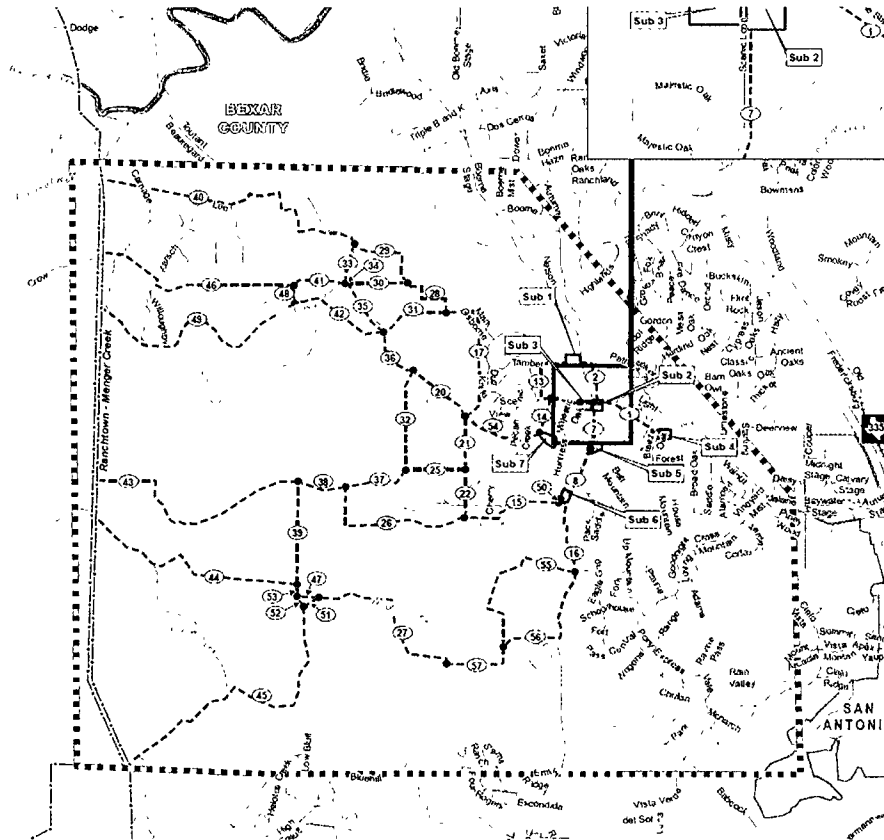
<sup>5</sup> Tr. at 360:16-22 (CPS Panel Cross) (May 4, 2021).

<sup>6</sup> *Id.* at 360:12-15

<sup>7</sup> CPS Energy Ex. 1, Original Application, Environmental Assessment at 6-1 (Original Application).

<sup>8</sup> *Id.*, Figure 2-2 at 2-7.

However, when CPS Energy filed its Application in July 2020, around nine months later, the segments and substations had changed significantly. CPS Energy did not hold a second open house or provide an opportunity prior to filing for landowners to provide input on the changes.<sup>9</sup> Those segments and substations are shown here<sup>10</sup>:



Notably, Segment 12 in the northeast was eliminated and Substations 6 and 7 were added. CPS Energy asserts that its impetus for removing Segment 12 was a letter from the Air Force dated March 26, 2020.<sup>11</sup> However, in the four months between the date of that letter and the date CPS Energy filed the Application, CPS Energy did not conduct a second open house and did not notify

<sup>9</sup> Although the COVID-19 pandemic would have likely eliminated the possibility of an in-person open house, a virtual open house could have been held.

<sup>10</sup> CPS Energy Ex. 1, Figure 2-3 at 2-11 (Original Application). The segments included in the amended application are shown in Figure 2-4.

<sup>11</sup> AS/Jauer Ex. 11, USAF Letter dated Mar. 26, 2020.



any of the landowners of the changes to the segments and substations.<sup>12</sup> Additionally, unlike every other substation site, CPS Energy did not send notice to all individual landowners around Substation Site 7.<sup>13</sup> One individual, Scott Luedke, who lives adjacent to Substation Site 7 and was not provided notice by CPS Energy, attempted to intervene late, but his motion to intervene was denied.<sup>14</sup>

Then, CPS Energy entered into an agreement with Toutant Ranch LP and its related companies that reduced the routing diversity further by eliminating much of Segment 49. This change is visible by comparing Figure 2-4 from the Original Application to Figure 2-4 from the Amended Application. It is also discussed in detail in Tom Dreiss' direct testimony, which is Dreico Companies Ex. 1.

**C. CPS Energy failed to properly account for park and recreation areas.**

CPS Energy's Application provides that none of the routes cross or are located within 1,000 feet of any park or recreational areas.<sup>15</sup> Patrick Cleveland testified that High Country Ranch is a park and recreation area.<sup>16</sup> Steve Cichowski testified that Anaqua Springs has dedicated parkland at its entrance over which the line would cross.<sup>17</sup> Both of these parkland areas are owned by homeowners' associations. CPS Energy witness Lisa Meaux and Staff witness John Poole agreed that a homeowners' association is an organized group for purposes of determining whether a parks and recreation area is owned by an organized group to fit the definition of a parks and recreation

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<sup>12</sup> Tr. at 369:9-12 (CPS Panel Cross) (May 4, 2021).

<sup>13</sup> Tr. at 344:21 – 345:20 (CPS Panel Cross) (May 3, 2021).

<sup>14</sup> Tr. at 254: 25-255:3 (May 3, 2021).

<sup>15</sup> CPS Energy Ex. 1, Environmental Assessment at 4-23 (Original Application); CPS Energy Ex. 15 at Table 4-2R (Meaux Rebuttal).

<sup>16</sup> PC Ex. 28, Direct Testimony of Patrick Cleveland at 2:5-8 (Cleveland Direct).

<sup>17</sup> AS Ex. 1, Revised Direct Testimony of Steve Cichowski on behalf of Anaqua Springs HOA at 10:9-12 (Cichowski Direct).

area.<sup>18</sup> CPS Energy made routing decisions with inaccurate information because it was unaware of parks and recreation areas.

**D. CPS Energy was unaware of its own natural gas pipeline.**

CPS Energy owns a natural gas distribution line that runs parallel to Toutant on the north side of the road. There are risers along Toutant where the pipeline runs above ground.<sup>19</sup> In discovery, CPS Energy was asked whether there was a natural gas pipeline along Toutant, and CPS Energy responded that they were unaware of any. After being shown images of flags noting the pipeline location, CPS Energy then indicated that there is a natural gas distribution line owned by CPS Energy itself.<sup>20</sup> Again, CPS Energy made routing decisions with inaccurate information because it was unaware of the presence of the pipeline.

**E. CPS Energy treated similarly situated individuals differently.**

CPS Energy provided notice to all landowners adjacent to all substation sites, except Substation Site 7. Neighbors adjacent to Substation Site 7 who were not within 300 feet of the transmission line were not sent a landowner notice packet. While CPS Energy objected during the hearing multiple times to this line of questioning, it is, in the end, undisputed that those individuals were not sent notice. Scott Luedke attempted to intervene once he learned of the construction of the transmission line. He provided the location of his property, and a search of CPS Energy's landowner notice list (Attachment 8 to the Application) shows that Scott Luedke's name does not appear as an individual who was sent notice.

While it may be true that those individuals adjacent to Substation Site 7 were not entitled to notice under the Public Utility Commission of Texas's ("Commission") notice rules, other

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<sup>18</sup> Tr. at 286-87 (CPS Panel Cross) (May 3, 2021); Tr. at 800:6-16 (Poole Cross) (May 5, 2021).

<sup>19</sup> AS/Jauer Ex. 25, Revised Direct Testimony of Mark Anderson at 31:3-5 (Anderson Direct).

<sup>20</sup> AS Ex. 50, CPS Supplemental Response to Jauer RFI 2-16.

individuals around other substation sites, who were not otherwise required to receive notice, did in fact receive direct mail notice.<sup>21</sup>

By not providing notice to those individuals adjacent to and surrounding Substation Site 7, CPS Energy did not provide them the same opportunity to intervene and to participate in the docket to those people adjacent to and close to Substation Site 7 as it did to others similarly situated. Again, this disparately impacts people who are affected by the routing on Toutant.

**F. CPS Energy provided unsubstantiated and inaccurate right-of-way costs.**

CPS Energy assigned different values to right-of-way acquisition costs depending on the type of land. For example, raw land in Bexar Ranch was valued at 50 cents per square foot, while developed property along Segment 54 was valued at \$2.00 per square foot.<sup>22</sup> Yet for other land, the state of its development was not properly recognized or taken into account.<sup>23</sup> Mr. Dreiss testified that he believed CPS Energy was unaware of the stage of his development at Pecan Springs.<sup>24</sup> Indeed, although Dreico Companies had finished building homes in Pecan Ranches prior to CPS Energy filing its application, the original application estimated the value of this land at 50 cents per square foot.<sup>25</sup> From the outset, CPS Energy's application was unreliable regarding the value of land along Toutant.

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<sup>21</sup> Tr. at 343:1–348:10 (CPS Panel Cross) (May 3, 2021); Tr. at 401:1-404:3 (CPS Panel Cross) (May 4, 2021). There were a number of objections to these questions at the hearing and some simultaneous discussion. However, this information can be verified in the following way: all properties surrounded in yellow have a tract ID number such as F-051. Those numbers correspond to the tract ID numbers in Attachment 8 to CPS's Application. Attachment 8 is the notice list. Any property without a tract ID, such as those around Substation 7 did not receive mailed notice from CPS. Looking at the properties around the other substations and using the scale of the map and a ruler, it can be determined that many of those properties are not crossed by the transmission line and do not have a habitable structure within 300 feet of the centerline.

<sup>22</sup> AS/Jauer Ex. 25 at bates 145 (Anderson Direct).

<sup>23</sup> Dreico Companies Ex. 1, Direct Testimony of Tom Dreiss at 4:8-10 (Dreiss Direct).

<sup>24</sup> *Id.* at bates 006:8-10.

<sup>25</sup> *Id.* at bates 007:14-17; AS/Jauer Ex. 25 at Exhibit MDA-17, Segments 42a, 46, 46a, 46b, 49a (Anderson Direct).

Moreover, subsequent changes in the study area undermine cost estimates provided in the application. Notably, the formerly raw land to the west of Scenic Hills subdivision is now platted and under construction.<sup>26</sup> As Mr. Marin testified at hearing, the changes to the area that have occurred since the Application was filed should be considered.<sup>27</sup> Right-of-way is more expensive on developed and developing land than on raw land. For the most part, CPS Energy's application recognizes this fact, but it incorrectly calculated the value in Pecan Springs. As such, CPS Energy's routing was based, again, on inaccurate data.

Additional cost issues are addressed in Brad Jauer's and BVJ Properties, L.L.C.'s ("Jauer") brief and adopted here by reference.

**G. CPS Energy failed to conduct accurate habitable structure counts.**

CPS Energy failed to count numerous habitable structures that were plainly visible on its satellite images. This issue will be discussed more fully below. But the omitted habitable structures included the guardhouse at the gate of Anaqua Springs as well as a residence at the southern border of Anaqua Springs. Another home on Anaqua Springs' southern border was constructed before the application was filed.<sup>28</sup>

Inaccuracies and inconsistencies related to substation diversity, parkland designations, habitable structure counts, pipelines, and other infrastructure result in an application that is based on incomplete and inaccurate data. Parties should be able to rely on the data provided by an applicant, and many parties did simply rely on the data contained in CPS Energy's application. However, a number of parties, including Anaqua Springs HOA and Jauer, investigated the

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<sup>26</sup> Arbuckle Ex. 1, Direct Testimony of Joan M. Arbuckle at 6 (Arbuckle Direct).

<sup>27</sup> Tr. at 555:7-13 (CPS Panel Cross) (May 4, 2021).

<sup>28</sup> This habitable structure was numbered 212 in Ms. Meaux's rebuttal testimony. The aerial map with a date of January 2019 filed in the original Application shows grading equipment on the property (Attachment 6).

underlying data to determine its accuracy. As a result of those investigations, parties discovered errors and constraints in the study area about which CPS Energy was unaware. Given the lack of due diligence in the application, it is likely that more constraints exist that CPS Energy did not accurately record in its application, which can impact cost and feasibility. Therefore, Anaqua Springs HOA respectfully requests that the ALJs and ultimately the Commission evaluate CPS Energy's Application in that light.

**H. CPS Energy waited until one week before the hearing to provide critical ROW data that implicates the community's safety.**

In the errata to Scott Lyssy's rebuttal testimony and in supplements to discovery requests, CPS Energy provided information about portions of the transmission line that will use road right-of-way in routing the transmission line.<sup>29</sup> That information was provided on April 26, 2021, and the hearing on the merits started on May 3, 2021, so there was no opportunity for the parties to evaluate the information before the hearing. Prior to those filings, CPS Energy had not designated any specific locations where road right-of-way would be used. The arguments related to these omissions are included in Jauer's brief, and Anaqua Springs HOA adopts them by reference.

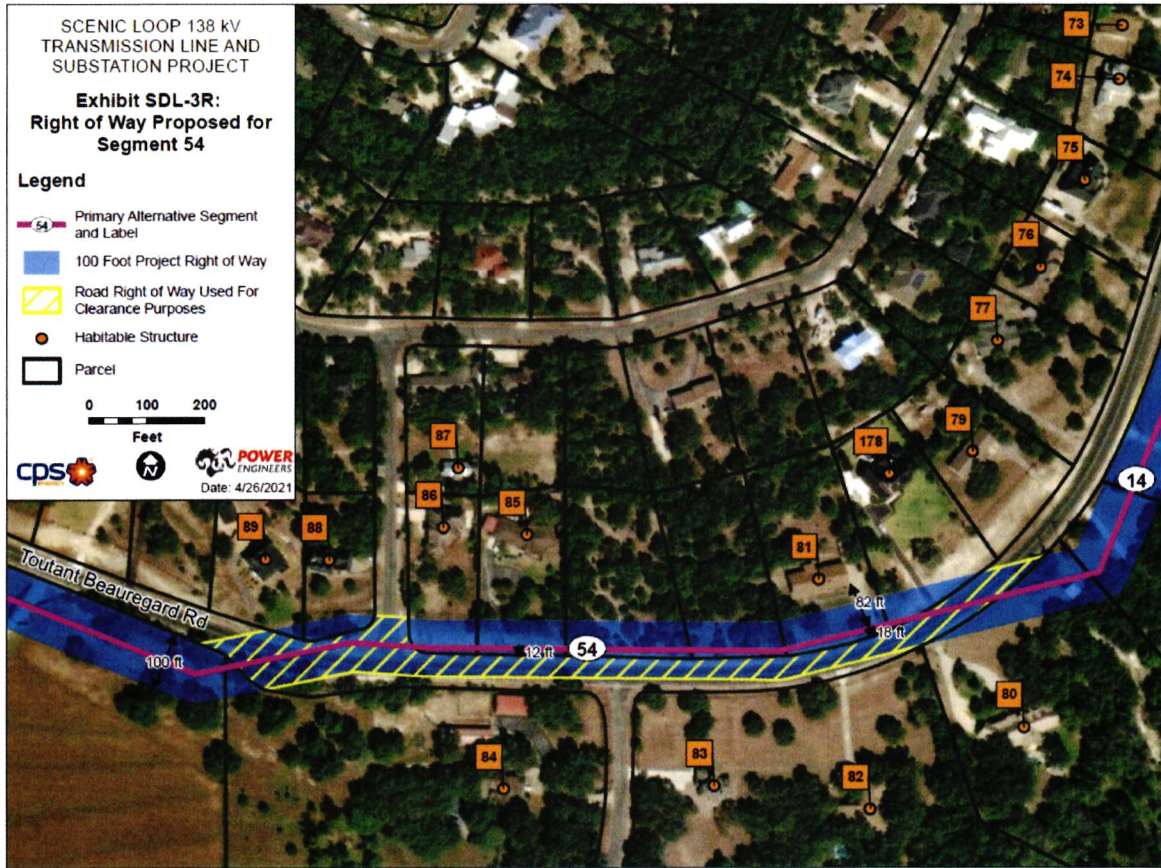
In addition to the arguments presented in Jauer's brief on this issue, Anaqua Springs HOA would assert that by routing along Toutant, and in particular routing within the road right-of-way, CPS Energy has failed to consider the potential impact on the community in the event of a failure of the transmission line. In general, according to CPS Energy, when transmission line structures fall, they tend to fall within 45 degrees of the right-of-way.<sup>30</sup> If the structures were to fall within 45 degrees of the right-of-way, at least along Segment 54, there are towers within the road right-

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<sup>29</sup> CPS Energy Ex. 14, Errata to the Rebuttal Testimony of Scott D. Lyssy, P.E.(Lyssy Rebuttal); AS Ex. 29-36, CPS Response and Supplemental Response to Anaqua RFIs 2-5, 2-7, 2-8, 2-9, 2-10, 2-11, 2-12, 2-15.

<sup>30</sup> CPS Ex. 14 at 8:9-11 (Lyssy Rebuttal).

of-way where the towers could fall in the road. A review of Mr. Lyssy’s map of the right-of-way along Segment 54 illustrates this point.



As discussed at the hearing, Toutant is the main access road through this part of the community. There are no access points from the west or southwest to any of the subdivisions along Toutant, which include Anaqua Springs, Sundance Ranch, and Pecan Springs.<sup>31</sup> Serene and Scenic Hills can be reached from Toutant near the node at Segments 13, 14, and 5 and also on Segment 54. The only other access to these subdivisions is from Boerne, Texas where Upper Balcones Road exits off of I-10 in Boerne and becomes Toutant. Should a transmission line fail, and a tower fall into Toutant, blocking the road, emergency services vehicles would be unable to access the subdivisions from the east. This community is already at risk from flooding, as

<sup>31</sup> Tr. at 393:22-394:1 (CPS Panel Cross) (May 4, 2021).

evidenced by the flood gauges and gates along Toutant that close the road when there is flooding.<sup>32</sup> Adding transmission lines along the only road to access the community unnecessarily increases the risk to them. By way of comparison, while the only access to Toutant is from the intersection at Boerne Stage Road or from Boerne in the far north and out of the study area, Scenic Loop Road can be accessed from a number of cross streets. The cross streets and the length of Toutant visible on Ms. Meaux's rebuttal habitable structure map are shown on Attachment 1 to this brief.

**IV. PRELIMINARY ORDER ISSUE 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)?**

A route that does not parallel Toutant is the best alternative. The factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B) are addressed below.

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

**1. Adequacy of existing service and need for service**

Anaqua Springs HOA does not contest these issues.

**2. Community Values**

Community values in this case heavily favor avoiding residences and avoiding schools.<sup>33</sup> In this case, there is only one public school, Sara McAndrew Elementary. The vast majority of CPS Energy's northern routes run either across Northside Independent School District ("NISD") property, across the street from the school, or just behind the school building. Completely avoiding the school and the hundreds of children, teachers, and parents to study, work, and attend functions at the school aligns with the community values expressed at the open house. It is possible to completely avoid the school by choosing one of the routes that does not utilize Segments 42a, 41,

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<sup>32</sup> Tr. at 920:12-20; 920:25-922:3 (Dreiss Cross) (May 7, 2021).

<sup>33</sup> AS/Jauer Ex. No. 24 at 16:13-17:1 (Anderson Direct); CPS Energy Ex. 1, Environmental Assessment 6-2 through 6-4 (Original Application).

36 or 35. Further briefing on the issues related to McAndrew Elementary are contained in NISD's initial brief and are adopted here by reference.

It is also possible to avoid a large number of homes and other habitable structures. Route Z1 is within 300 feet of at least 31 habitable structures.<sup>34</sup> Habitable structure counts on the routes range from a high of approximately 72, to a low of 12.<sup>35</sup> At least two of the homes within 300 feet of Segment 26a were built since the time the Application was filed. For example, habitable structure number 198 was built after the line and was the impetus behind moving Segment 26 onto other landowners' properties because it was built directly under the line.<sup>36</sup> Habitable structure numbers 199 and 209 were also built after the notice of the Application.

### **3. Historical Values**

The historical values analysis is contained in the briefs of Jauer and Rose Palace/Strait Promotions ("Rose Palace"), and Anaqua Springs HOA adopts those arguments by reference.

### **4. Parks and recreation areas**

As discussed above, CPS Energy failed to account for any parks and recreation areas within 1,000 feet of any segment of the transmission line. Two homeowners' associations – Anaqua Springs HOA and High Country Ranch both produced uncontroverted evidence that some of the proposed segments cross their parks and recreation areas.<sup>37</sup> Therefore, there are routes that cross those areas, despite CPS Energy's failure to count them, and they should be included in the evaluation of the routing criteria.

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<sup>34</sup> CPS Energy Ex. 15 at Amended Table 4-1R (Meaux Rebuttal).

<sup>35</sup> *Id*

<sup>36</sup> Tr. at 384:16-385:19 (CPS Panel Cross) (May 4, 2021).

<sup>37</sup> AS Ex. 1 at 10 (Cichowski Direct); PC Ex. 28 at 2:4-9 (Cleveland Direct).



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

**1. Engineering Constraints**

Anaqua Springs HOA adopts and incorporates by reference the arguments provided in briefing by Jauer.

**2. Cost**

In addition to cost arguments made by Jauer in his initial brief, which are adopted here by reference, Anaqua Springs HOA makes the following arguments.

As discussed above, Mr. Dreiss had begun to develop the property known as Pecan Springs when CPS Energy sent him notice about its proposed transmission line. He was concerned that the proposed routing would be disastrous for his business.<sup>38</sup> To protect his investment and the infrastructure he had already built, he first purchased property and donated an easement to CPS Energy along part of what became Segment 42a.<sup>39</sup> However, Segment 49 still ran through his development while Segment 46 ran along the northern boundary. He then negotiated with CPS Energy to eliminate most of Segment 49 on his property and leave Segment 46, with one option to route Segment 46a away from a home.<sup>40</sup> Mr. Dreiss' agreement required him to give up a lot. In many CCN cases it is not unusual for landowners to donate or discount easements in exchange for routing changes. This agreement, however, went much further. Mr. Dreiss agreed:

1. To donate part of the easement on Segment 42a;
2. To discount the value of the easement on Segment 46 at the rate of *the lower of* 40 cents per square foot or the value subject to an appraiser (paragraph 8);
3. To give up any damages to the remainder (paragraph 8);

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<sup>38</sup> Dreico Companies Ex. 1 at 4:8-13 (Dreiss Direct).

<sup>39</sup> *Id.* at 5:5-8.

<sup>40</sup> *Id.* at Ex.1, Term 2.b.

4. To not pursue a condemnation case (paragraph 8);
5. To support the routing across his property starting at the node at Segment 42a and 41 (paragraph 5); and
6. To donate yet additional right-of-way to offset any net cost increase and maintain existing cost differentials (paragraphs 6 and 7).<sup>41</sup>

At the hearing on the merits, Mr. Dreiss clarified that he did not want the line on his property and that it would be better for his business interests if the line did not run on his land.<sup>42</sup> As discussed above, developed or developing land costs more than raw land. So, CPS Energy was able to manipulate the cost of the Toutant Routes by keeping the value of the right-of-way across Mr. Dreiss' property at 50 cents per square foot, but locking in an even lower price under their contract of 40 cents per square foot. Yet, the value of those lots, according to Mr. Dreiss, is significantly higher.<sup>43</sup> Thus, through this agreement CPS Energy was able to leverage Mr. Dreiss to hold the cost of the right-of-way at an artificially low price, making CPS Energy's best meets route one of the lowest cost routes, and, at the same time, reducing the routing diversity in this case by eliminating the majority of Segment 49.

### **3. Moderation of Impact on Affected Community and Landowners**

In addition to the arguments presented in Jauer's initial brief, Anaqua Springs HOA would assert that CPS Energy has not done what it can at a reasonable cost to moderate the impact of the routing on the residents of Anaqua Springs and on the community as a whole. As mentioned above, CPS Energy failed to account for numerous habitable structures. That miscount impacts homeowners in Anaqua Springs.

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<sup>41</sup> *Id.* at Ex. 1.

<sup>42</sup> Tr. at 877:21-878:2 (Dreiss Cross) (May 7, 2021); Jauer Ex. 28, Toutant et al. Response to Jauer's 1<sup>st</sup> RFI.

<sup>43</sup> Tr. at 900:12-18 (Dreiss Cross) (May 7, 2021).

**a. Anaqua Springs Guardhouse**

CPS Energy failed to count the guardhouse at the front of Anaqua Springs as a habitable structure.<sup>44</sup> The guardhouse was not listed as a habitable structure in CPS Energy's original application, and it was added as a result of Anaqua Springs informing CPS Energy that the guardhouse should be counted. Thus, when CPS Energy routed Segment 36 on the south side of Toutant, it mistakenly believed that there were no habitable structures on the south side. To the contrary, there is one with people in it 24 hours every day, while there are none on the north side. CPS Energy has argued that it crossed the road to avoid the Heidemann Ranch historical site farther to the north, but it could have crossed the road closer to the historical site and avoided the only habitable structure on the segment, rather than running the line within 300 feet of it. CPS Energy again based its routing on inaccurate data.

**b. Segments 38, 39, and 43**

At the open house, Segments 38, 39, and 43 were shown paralleling the southern border of Anaqua Springs and would have been within 300 feet of numerous homes. CPS Energy changed the routing of Segments 38 and 43 prior to filing the application. (compare Figures 2-2 and 2-3 from the original Application as copied above). Because CPS Energy did not count the Cichowski home or the Rosales' home at the time they routed the lines, CPS Energy mistakenly believed that only one house on the southern border of Anaqua Springs would be within 300 feet of the transmission line.<sup>45</sup>

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<sup>44</sup> The guardhouse is staffed 24 hours per day, 7 days per week. It has a bathroom, electricity, and phones. AS Ex. 1 at 13:10-13 (Cichowski Direct).

<sup>45</sup> Tr. at 374:7-375:9 (CPS Panel Cross) (May 4, 2021). This is the Dwivedi family home.

Ms. Meaux testified in rebuttal that “paralleling property lines does not outweigh all other factors the commission must consider in evaluating potential routes.”<sup>46</sup> In that testimony, she noted that paralleling property lines must be balanced with other factors. At the hearing on the merits, she indicated further that one of the factors that must be balanced is habitable structures.<sup>47</sup> On the southern border of Anaqua Springs, CPS Energy weighed paralleling property lines heavily. In fact, paralleling property lines along the southern borders comes at the expense of having the line closer than 300 feet to three homes, and because Segment 38 diverts to the northwest, then turns to follow the property line before becoming Segment 43 and then turning back to the southwest, CPS Energy has added the cost of the angle structures and additional unnecessary length. Thus, in this instance, rather than moderating the impact to the landowners, CPS Energy has chosen to increase its costs and directly impact homes for the benefit of approximately 400 feet of paralleling property lines. Therefore, without some type of mitigation to the homeowners, those Segments should not be routed in that manner.

It is unclear from the record why CPS Energy rerouted portions of these segments to avoid the homes but left parts of the lines impacting others. There are no homes to the south of those segments for great distances, and the line would not have to be moved far to move it more than 300 feet away from the homes in Anaqua Springs. According to CPS Energy, Sunil Dwivedi’s home, which CPS Energy mistakenly believed was the only home within 300 feet of Segments 38, 39, and 43, is 218 feet away from the node at Segments 38, 39, and 43.<sup>48</sup> The accurate count of the homes includes the Cichowskis’ home at 280 feet away from Segment 43, and the Rosales’s

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<sup>46</sup> CPS Energy Ex. 15 at 10:24-25 (Meaux Rebuttal).

<sup>47</sup> Tr. at 837:10-22 (CPS Panel Cross) (May 5, 2021).

<sup>48</sup> CPS Energy Ex. 1 at Table 4-23 (Original Application); Tr., vol 3, 372:5-12.

home at 228 feet away from Segment 38.<sup>49</sup> There are no homes immediately to the south of the Anaqua Springs' southern border, so a slight adjustment would not impact additional homes.<sup>50</sup> CPS Energy again made routing decisions based on incomplete and inaccurate data.

**c. Segment 54**

In addition to the omissions and the impacted habitable structures in Anaqua Springs, CPS Energy has also routed the line along Segment 54, where homes are on small lots, and some of those homes would have the line routed across their front yards.<sup>51</sup> CPS Energy also miscounted habitable structures on Segment 54 and added one during this proceeding.

In contrast to the small lots in Scenic and Serene Hills on Segment 54, the lots in Clearwater Ranch POA ("Clearwater") on Segments 26a, and 37 are large, multi-acre lots, and CPS Energy's routing in that area avoids many of the existing habitable structures. A review of the habitable structure map attached to Ms. Meaux's rebuttal testimony shows that only a few homes in Clearwater are within 300 feet of the transmission line.

Because the routes along Toutant, including CPS Energy's best meets route, do little to moderate impact on the affected community and landowners when compared to other routes, Anaqua Springs HOA asserts that a route with fewer habitable structures is a better choice.

**d. Landowner groups and actual impact**

A number of landowner groups have intervened in this case. But their interests do not necessarily align. For example, Clearwater intervened as a property owners association, and everyone who filed testimony on behalf of Clearwater filed substantially identical testimony. But

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<sup>49</sup> CPS Energy Ex. 6 at Table 4-23 (Amended Application); CPS Energy Ex. 15 at 6 (Meaux Rebuttal).

<sup>50</sup> Tr. at 376:8-20 (CPS Panel Cross) (May 4, 2021); AS Ex. 13, Bexar Response to Anaqua RFI 1-4; AS Ex. 14, Bexar Response to Anaqua RFI 1-5.

<sup>51</sup> Tr. at 408:20-409:10 (CPS Panel Cross) (May 4, 2021).

their interests are not identical. For example, Route R1 utilizes Segment 26a, which crosses properties on the southern portion of Clearwater. While Route P utilizes Segment 37, which crosses properties far to the north of those on Segment 26a. Additionally, some of the Clearwater witnesses indicated they oppose Route W. Route W does not impact them at all because it starts at Substation 6, far to the east from Clearwater, and runs to the south. It is unclear whether Route W would even be visible to Clearwater residents, and homes in the Canyons sit between them and Route W.

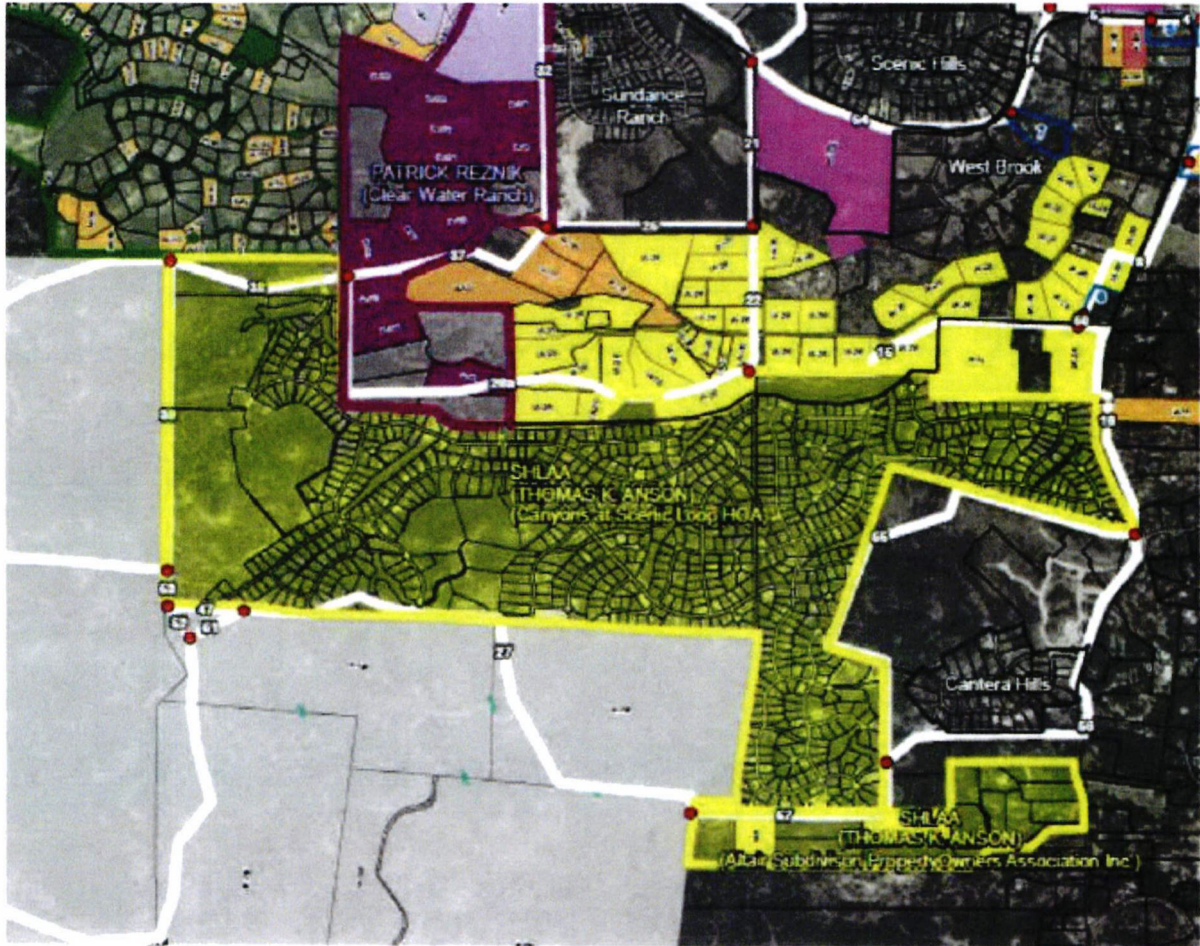
Save Huntress Lane Area Association (“SHLAA”) presents another issue. It is composed of people who in some instances live miles apart from each other and do not have aligned interests. People who live on Huntress Lane, like Ms. Grimes, are impacted most by the central routes, except those members who live closest to Substation 7. The Canyons is bordered by several different segments. Those who live in the north of The Canyons are much closer to 26a than those in the south. People in the middle are far away from all of the proposed segments. Finally, the Altair subdivision, which is in the far southeastern portion of the map has homes within 300 feet of only one segment. It is disingenuous for such a diverse group of people with clearly disparate interests to form a coalition against all routes that are in the central and the southern portions of the subdivision. At the hearing, Mr. Clark finally admitted that their interests diverged when he indicated that certain segments would have very different impacts depending on whether the line crossed a property or was simply visible in the distance.<sup>52</sup> It is unclear why so many of these individuals formed a group. But not every homeowner in the Canyons was in agreement. Mr. Gutierrez hired his own attorney and did not oppose some of the central routing.<sup>53</sup> The ALJs

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<sup>52</sup> Tr. at 701:4-23 (Clark Cross) (May 5, 2021).

<sup>53</sup> Joint Motion for Referral of Certified Issues and Request for Expedited Ruling at 3 (Feb. 24, 2021).

should give little weight to the attempt of a too-large coalition with significantly different interests to block all but one routing corridor. A review of the intervenor map shows how untenable SHLAA's position is.



As can be seen on this excerpt of the Intervenor map, everything in yellow is SHLAA. By stating they all oppose every route that impacts everyone in their own neighborhoods and subdivisions, everyone in other subdivisions, and every visual impact, they prohibit a meaningful inquiry into their actual interests in the case. Therefore, their combined testimony should be given little if any weight. It is clear from the map that the witnesses are impacted differently but are

attempting to create a conglomerate of differently interested parties. This is not a litigation tactic that should be rewarded.

#### **4. Use of Compatible Rights-of-Way, Paralleling Existing Rights-of-Way**

A very small stretch of Segment 43, near the junction of Segments 39 and 39 parallels property lines. Lisa Meaux testified in rebuttal and on cross-examination, paralleling property lines is not a more important criterion than others, including impacting habitable structures.<sup>54</sup>

The Commission's rules do not define "parallel." Although in the context of a CCN proceeding, paralleling must certainly mean that the line follows parallel to the property line at a reasonable distance, there is nothing in the rule to indicate that paralleling means abutting or that to be considered parallel, the line or its right-of-way must directly abut the property line. Ms. Meaux indicated that Segment 15 generally parallels Huntress Lane but was not tabulated as parallel to Huntress Lane because it does not abut it.<sup>55</sup> Yet, the Commission's routing criteria rules do not list "abut" as a criterion. If the Commission had meant abut, it could have written its rule accordingly. However, CPS Energy has interpreted paralleling to mean abutting, and has sacrificed habitable structures in favor of abutting a property line along Segments 38, 39, and 43.

The western portion of Segment 43, the node at the intersection of 43, 39, and 38, and the western portion of Segment 38 are within 300 feet of homes in Anaqua Springs. Yet, those segments could still parallel the property lines and be more than 300 feet away from those homes. As discussed above, CPS Energy failed to count two homes in Anaqua Springs as habitable

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<sup>54</sup> CPS Energy Ex. 15 at 10:18 – 11:3 (Meaux Rebuttal); Tr. at 836:25-837:22 (CPS Panel Cross) (May 5, 2021).

<sup>55</sup> Tr. at 516:20 – 517:5 (CPS Panel Cross) (May 4, 2021).



structures, and when developing those Segments incorrectly believed that there was only one home within 300 feet, the home of Sunil Dwivedi.<sup>56</sup>

## 5. Prudent Avoidance

A number of witnesses expressed concerns about electric and magnetic fields (“EMFs”). The Commission recognizes these concerns in its policy on prudent avoidance. One of the big concerns that impacts a large number of people is Sara McAndrew Elementary School. The school and all of the children and other people who use the facilities can be avoided completely by choosing a route that does not run along Toutant.

The large habitable structure counts on the routes that utilize Toutant can be minimized by selecting a different route. Many fewer habitable structures are within 300 feet of the line on other routes. While some parties have argued the cost of those routes is not worth the difference in the habitable structure count, Anaqua Springs HOA disagrees. Based on the routing constraints on Toutant, the cost is likely underestimated. Furthermore, if Substation Site 7 is eliminated due to it being a flood hazard, particularly given the impending increase in development and impervious cover, the estimated cost of a Toutant route out of Substation Site 2 or 3 is essentially equivalent to other non-Toutant routes. (Compare cost of H to cost of P).

### **V. 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?**

If a route using Segments 38, 39, and 43 is chosen, moving those segments slightly to the south to avoid the existing homes along the southern border of Anaqua Springs would have a less negative impact. There are no homes south of the southern border of Anaqua Springs for a great distance, and the line could still parallel the property line. The cost of making these adjustments is

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<sup>56</sup> Tr. at 374-375:9 (CPS Panel Cross) (May 4, 2021); CPS Energy Ex. 1 at Table 4-23, Alternative Route (showing the only habitable structure on the route as number 134 on Segment 43) (Original Application).

unknown because CPS Energy has provided no data. However, shifting the line less than 100 feet is unlikely to incur substantial costs.

## VI. CONCLUSION

For the foregoing reasons, Anaqua Springs HOA respectfully requests that the ALJs issue a proposal for decision that recommends the Commission first and foremost adopt a route that does not run along Toutant. Anaqua Springs HOA supports Route W. Route W is the least expensive of the southern routes. It ties for the lowest amount of modeled golden cheek warbler habitat among all routes. There is no evidence that Route W was developed with incomplete or inaccurate data, unlike the routes along Toutant or the central routes that utilize Segments 38, 39, and 43.

Respectfully submitted,

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**ATTORNEYS FOR ANAQUA SPRINGS  
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**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 21<sup>st</sup> day of May 2021, pursuant to SOAH Order No. 3 issued in this docket.

  
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Wendy K. L. Harvel

