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

**INITIAL POST-HEARING BRIEF OF
STEVE AND CATHY CICHOWSKI**

Steve and Catherine Cichowski
24914 Miranda Ridge
Boerne, Texas 78006
(210) 223-5299

DATE: MAY 21, 2021

I. INTRODUCTION

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things."

Lewis Carroll, *Through the Looking Glass*, 1871

Steve and Catherine Cichowski are individual Interveners that live in Anaqua Springs Ranch Subdivision and are directly affected by any route that uses Segments 36, 38, or 43.¹ The subdivision is bordered on the northeast by Toutant Beauregard Road and on the south by Bexar Ranch and The Canyons subdivision. Segment 36 runs through the entrance at Anaqua Springs, and over dedicated parkland. Segments 43 runs approximately 230 feet from my home and is accessed through Segment 38. Although the author of this brief, Steve Cichowski cannot escape the stigma of being an attorney, he is appearing in this proceeding with his wife as a true party in interest, and although he actively participated in the hearing on the merits, it was not as a paid advocate, but as a directly affected and deeply concerned party. This brief is submitted within that context and it is hoped that the Honorable ALJ's will receive it accordingly.

Interveners are asking that the ALJ's recommend to the Commission that CPS Energy's Application and Amended Application be denied. For the reason set forth in the Brief of Anaqua Springs Homeowner's Association, Interveners also oppose any route that utilizes Toutant Beauregard or Segments 38 or 43. Upon reflection on the evidence and testimony presented, and with no prior experience in this arena, the above quote

¹ The Steve and Catherine Cichowski are not addressing all of the preliminary order issues in this brief. The Cichowskis' silence on any issue should not be read as agreement with the position of any other party in this case. Further, the Cichowskis reserve the right to reply to any issues raised by other parties in their initial briefs.

from Lewis Carroll seemed particularly appropriate with respect to the Route which CPS Energy concluded “best meets” the requirements of PURA and the PUC’s substantive rules. Through the hearing we learned that a landowner “support” for segments on CPS’s preferred Route really means “we don’t want the power line more than anybody else”². With respect to CPS, we learned that the word “notice” really means notice to landowners around each substation site except Site 7: CPS Energy’s preferred site. We also learned that in considering a “best meets” or even alternative routes, all of the rating criteria were considered equal except, like the inhabitants of “Animal Farm”, some are more equal than others³. For instance, although floodplains should be avoided, one route, and one route only, utilized over 2500 linear feet of floodplain as right of way. That this was donated, and on CPS Energy’s preferred route, seemed to make cost “more equal” than the other criteria. And, despite the preference to avoid habitable structures, Segment 38 was routed away from undeveloped land for the alleged sole purpose of paralleling an existing property line for a grand total of less than 800 feet. (Segments 38 to 43) That this accommodation to existing property lines came at the expense of impacting three additional habitable structures is hard to reconcile in the context of each factor weighing equally.

In addition to the somewhat arbitrary adherence to the routing evaluation criteria, CPS Energy’s original Application contained obvious errors with respect to that data and the various route cost comparisons. The habitable structure count was off by at least 2 homes with respect to original Routes P and R, and at least 2 and perhaps 3 habitable structures along Toutant Beauregard. CPS Energy’s contractor subjectively made the

² Tr. P. 913, line 12

³ Apologies to George Orwell.

decision to exclude at least two known parks along Route Z from its Route use evaluation criteria. In calculating cost, CPS utilized the same cost per square foot for right of way in Pecan Springs Ranch that it did for right of way in the Bexar Ranch property, despite properties in Pecan Springs selling for \$150,000.00 per acre and Bexar Ranch remaining undeveloped ranch and pastureland. When questioned, CPS Energy's representative could not explain how the values were derived, deferring instead to a "contractor" that was not present for cross examination nor whose work was subject to any review. Simple math reveals that utilizing the real cost of right of way along the original Route Z changes the estimated cost by several *million* dollars. CPS covered up this error by forcing the Pecan Springs Developers to make good those estimates in exchange for CPS removing Segment 49 from the middle of their property: a location their representative described as "business ending".

CPS, far from a neutral observer, has a preferred Route in this case. It is Route Z1. It fought tooth and nail against legitimate questioning of the underlying data, assumptions, and reasoning that went into its declaration that its predecessor, Route Z, best addressed the requirements of PURA and the PUC substantive rules. Its gross miscalculation of the cost of Route Z and the zeal with which it has defended it against all other choices call into question the credibility of all the testimony given in support of that Route. The fact that in its original Application CPS listed cost as the very first reason for Route Z's selection is instructive on why CPS was adamant that Toutant Ranch *et al* not only absorb the cost of CPS's mistake in exchange for not ending its business, but also required it to support those segments against all comers.

In addition, from its initial submittal, CPS has sought to control the narrative by submitting absurd and illogical route segments for no other reason than to bundle them together and count them as alternative routes, no matter how much violence they did to the Route Use Evaluation Criteria. These routes were then used to make its preferred route look reasonable or at least average in comparison. CPS engaged in a “bait and switch” by showing the public one set of route and substation alternatives at its open house, and then submitting a significantly different set of alternatives in its Application: completely depriving affected citizens from any input or voice in the process.

CPS Energy is owned by the City of San Antonio and hence by all its citizens within its ETJ. It owes those citizens a duty to approach these projects fairly and equally without preference to any. In this it has failed its public trust and the ALJ’s should not reward it for doing so. Instead, Interveners request that the ALJ’s deny its application. Alternatively, Interveners request that the ALJ’s recommend Route W for final approval to the Commission.

II. THE EFFECT OF ERRORS AND OMISSIONS IN THE APPLICATION ON SELECTING THE BEST ALTERNATIVE WEIGHING THE FACTORS SET FORTH IN PURA § 37.056(c) AND 16 TAC 25.101(b)(3)(B)⁴

A. Community Values

Any evaluation of this criteria begins with the reasonableness of alternative routes presented by CPS energy in its application. CPS energy's amended application included 31 possible alternative routes. In fact, no more than five or six were ever truly under

⁴ The Cichowskis adopt by reference the arguments made in Anaqua Springs HOA’s and Jauer’s briefs regarding costs, flooding, and right-of-way constraints.

consideration by any reasonable criteria. Evidence of this is found in CPS Energy's Exhibit 16 which is titled scenic Loop Project Focus Map. The map is a reduction of all the possible alternatives into only those that were reasonably under consideration at the time of the hearing. Despite the hundreds of intervenors in this case and plethora of experienced attorneys and experts, none of the initial routes omitted from Exhibit 16 were considered as viable by anyone other than CPS. I respectfully submit that Exhibit 16 could have been created by simply drawing the seven straightest routes on the amended route map⁵. The convoluted segments and route alternatives submitted in the original and amended route maps skewed the comparative habitable structure count to make the numerous structures along routes Z and Z1 appear more reasonable. However, comparing the habitable structure count of the routes shown on Exhibit 16 provides a more accurate comparison of this community value. With over 30 habitable structures within 300 feet of any route that parallels Toutant Beauregard, this factor clearly weighs against using any of those route alternatives. On the other hand, route W has 29 habitable structures within 300 feet of its centerline and does not come within 300 feet of any school or utilize any significant floodplain right of way.

Of additional significance in considering this factor is the location of Sara McAndrew Elementary School. Each and every possible route shown on Exhibit 16 that begins at Substation Site 7 passes through or near property on which this school is located and on which a middle school is planned.⁶ No route from any other substation under consideration on Exhibit 16 burdens a school. The initial brief of Northside

⁵ I point this out merely to illustrate how far CPS has stretched its definition of "viable route" in order to satisfy its obligation to provide a reasonable number of reasonably differentiated routes and to make its preferable route more palatable.

⁶ CPS Exhibit 16

Independent School District further addresses this factor and is incorporated by reference as if set forth herein.

B. Parks

It is uncontested that routes Z and Z1 cross dedicated Parkland that was not included in the analysis performed for CPS by Powers Engineering. On the other hand, there is no evidence in the record that route W crosses any dedicated parkland. This should be considered in evaluating alternative routes.

C. Costs

In its original application CPS grossly underestimated the cost of right away acquisition for segments 46 which was a part of Route Z. At the time of its original application the property through which segment 46 traveled was already under development with lots selling at an average of \$150,000⁷ per acre. Despite this, CPS determined the cost of right away acquisition at \$0.50 a square foot for segment 46. CPS used the same value for acquiring right of way on the proposed Bexar Ranch property, which is undeveloped and, according to its owners, will remain that way. Consequently, CPS underestimated the right of way cost of segment 46 by a factor of 6.88 and then used that number to rank cost as the number one reason for its decision that Route Z best met the requirements of PURA and the PUC substantive rules. Once aware of its mistake, CPS leveraged the threat of a “business ending” scenario to coerce the Developers of Pecan Springs into making good on its erroneous estimate. Details of that transaction are set forth in the Initial Brief of Anaqua Springs Homeowners Association which is adopted herein by reference. The error in land valuation by CPS not only

⁷ Using basic math yields the following: $\$150,000.00/43,560 \text{ sf/acre} = \$3.44 \text{ per square foot.}$

invalidates its original cost analysis when compared to other routes, but also factors into its duty to moderate the impact of the proposed transmission lines on affected landowners. Instead of moderating the potential impact of route Z or Z1 on the Pecan Springs developers, it placed an increased burden on them to make up for its own error in cost estimating. The financial impact to the Developers of any Route using segments 42A or 46 is in the millions of dollars.

D. Moderation of Impact on Affected Community and Landowners

CPS has not done what it could do to moderate the impact of this transmission line on the affected community and landowners. In fact, it has multiplied that effect because of its effort to correct for its errors and omissions in its original application. As noted above the remaining northern routes shown on the focus map all parallel Toutant Beauregard and cross the Pecan Springs development. In addition to the expected impacts on landowners, CPS has added the additional financial burden on the Pecan Springs developers to cover for its errors in right of way acquisition cost.

In addition, CPS has irregularly applied the 48 environmental and land use data for route evaluation in locating segments 38 and 43. Segment 38 could easily have been located slightly further South to parallel an existing parcel line to avoid three habitable structures. The ostensible reason for not doing so was to bring segment 38 to a natural boundary to use compatible right of way and/or parallel existing right of way. To achieve this goal, segment 38 itself never parallels an existing right of way. Instead, its current configuration brings it unnecessarily within 300 feet of two habitable structures. Segment 38 eventually joins with segment 43 at the boundary between and Anaqua Springs Ranch to the north and the Canyons development and Bexar Ranch to the South. At that point

Segment 43 follows the boundary for approximately 400 feet before turning southwest and leaving the property line. In doing so it comes within 280 feet of yet another habitable structure; mine. Segment 43 is slightly over 2 miles long. It makes no sense to impact 3 habitable structures for nothing more than to parallel 400 feet of existing right of way in a two-mile-long segment. This is especially so in light of the fact that the land south of that proposed segment is currently undeveloped.

E. Prudent Avoidance

The Routes utilizing Toutant Beauregard do the greatest damage to the principle of prudent avoidance. Segment 54 is in the front yard of several habitable and inhabited structures. These are otherwise known as homes. These are not large lots such as exist on alternative routes, but modestly sized homes that have been there for over 30 years in some instances. The location of segment 54 leaves these homeowners no alternative but to pass under them and drive and live beside them daily. These lines are not thousands of feet away from these homes but hundreds of feet or less. No other segment save segments 38 and 43 come as close to as many existing homes as does segment 54.

Every “northern” route under serious consideration passes by Sara McAndrew Elementary School.⁸ This property is also home to a future middle school situated on the northwestern portion of the property. Segment 41 crosses a part of the proposed middle school facility. Of the routes shown on CPS Energy’s Exhibit 16, only the routes utilizing Toutant Beauregard come close to or pass over a school. This factor greatly favors any route other than one utilizing Toutant Beauregard right of way.

⁸ CPS Energy Exhibit 16.

F. Miscellaneous Environmental and Land Use Considerations

One of the 48 environmental and land use data for route evaluation criteria is the length of right of way in a recognized 100-year floodplain. Segment 42A, a part of route Z1, is situated almost entirely within a FEMA delineated 100-year flood plain. It does not merely cross the floodplain; it is in the floodplain for over 2500 feet. No other focus route segment is in a floodplain.

Another factor to consider is the number of habitable structures within 300 feet from the center line of the right of way of a proposed transmission line. CPS has intentionally located segments 38, 39 and 43 to impact at least three existing habitable structures. See subparagraph D above. Ostensibly it did so to take advantage of an existing property boundary. However, this configuration results in only a fraction of the segment paralleling that boundary at the expense of impacting three existing homes. On the other hand, segment 38 could have been located several hundred feet further south, still paralleled the property line, and impacted no existing habitable structures. The Segment's configuration as shown pays homage to an existing property line while doing grievance to three existing habitable structures, *for no apparent benefit*. Its current configuration does nothing to moderate its impact on existing homeowners and arbitrarily favors one factor over another. To the uninitiated it might almost appear as though this segment was configured to make those homeowners affected by Segments 38 and 43 more likely to support CPS Energy's preferred route Z1.

G. CPS Energy's Previous Trespass

I have offered uncontroverted testimony of CPS Energy's previous trespass on and destruction of on my property.⁹ I refer the ALJ's to that testimony. Given the damage done to my property when CPS was only installing a distribution line, I am particularly concerned with the location of Segment 43 directly behind my home. CPS's panel of witnesses was unable to confirm exactly where the line would be, whether trees would be cut down, or any degree of variance from the estimated route centerline. The bulldozing of my property over ten years ago is still visible and will not be reforested in my lifetime. There is no reason that this Segment, if selected, could not be moved farther south to avoid my property and the other homes it affects in Anaqua Springs.

III. 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 unknown because CPS has provided no data. However, shifting the line less than 100 feet is unlikely to incur substantial costs, and will very likely reduce cost by eliminating a now existing turning point.

⁹ Direct testimony of Steve Cichowski, Cichowski Exhibits 1&2.

IV. CONCLUSION

CPS Energy's recommendation of Route Z and by implication Route Z1 is the culmination of a results-oriented analysis based on a faulty habitable structure count, grossly undervalued right of way cost, an exacerbation instead of moderation of the lines impacts, and an inconsistent application of the Environmental and Land Use Data for Route Evaluation. For the foregoing reasons, Steve and Catherine Cichowski respectfully requests that the ALJs deny its Application and send CPS home to start over. In the alternative, Steve and Catherine Cichowski respectfully request that the ALJ's issue a proposal for decision that recommends the Commission adopt a route that does not run along Toutant Beauregard or utilize Segments 38 or 43 as currently configured. Steve and Catherine Cichowski respectfully request that the ALJ's issue a proposal for decision that recommends the Commission adopt Route W as the Route that best meets the requirements of PURA and the substantial rules of the Commission.

Respectfully submitted,

By: ___ /s/ **Steve Cichowski**

Steve and Catherine Cichowski

Steve Cichowski TBN # 00793507

24914 Miranda Ridge

(210) 225-2300

(210) (fax)

steve@cichowskilaw.com

INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May 2021, notice of the filing of this document was provided to all parties of record via the PUC Interchange in accordance with SOAH Order No. 3.

/s/ Steve Cichowski

Steve Cichowski