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SOAH DOCKET NO. 473-21-0247
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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 PROJECT IN BEXAR COUNTY, TEXAS	§	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

JOINT REPLY BRIEF OF BRAD JAUER AND BVJ PROPERTIES, LLC AND THE SAN ANTONIO ROSE PALACE, INC. AND STRAIT PROMOTIONS, INC.

TO THE HONORABLE ADMINSTRATIVE LAW JUDGES:

Intervenors Brad Jauer and BVJ Properties, LLC and The San Antonio Rose Palace, Inc. and Strait Promotions, Inc. (collectively, "**Jauer/Rose Palace**") file this Joint Reply Brief and respectfully show:

I. INTRODUCTION

As stated in their Initial Briefs,[1] the overall choice of routes comes down to choosing between the middle routes that impact far fewer habitable structures and community/historical resources with the northern Toutant Beauregard routes that have slightly lower, but less reliable estimated costs. Based on these criteria and the preponderance of the evidence in the administrative record, the clear choice is Route P recommended by the Staff of the Public Utility Commission of Texas ("Commission"), followed by Route R1 and RouteQ1 (collectively the "**Middle Routes**"), not Routes Z1, AA1, AA2, or DD (the "**Northern Routes**").

II. JURISDICTION AND NOTICE

Jauer/Rose Palace adopts by reference the jurisdiction and notice sections of the reply brief of Anaqua Springs Homeowners Association, Inc. ("**Anaqua Springs**").

[1] Jauer/Rose Palace incorporates their Initial Briefs hereto by reference as if set out in full.

III. ISSUES

1. Community Values

This docket has been litigated in the wake of the one of, if the not biggest, utility crisis to impact the State of Texas. At a time when public confidence in Texas utilities and the Commission is a low point, the *pro se* intervenors in this case have had a peek behind the curtains of the PUC regulatory process. And as outsiders to the industry, they have not seen anything to salve the damage done by Winter Storm Uri to the public trust. *Pro se* intervenor Siegal aptly observes in his initial brief that, "Costs have been manipulated and agreements made in favor of Route Z1, in spite of it clearly being among the poorest and most dangerous routes."[2] CPS engaged in a "bait and switch" by showing the public one set of routes and substation alternatives at its open house, and then submitting a significantly different set of alternatives in its Application that completely deprived affected citizens from any meaningful input or voice in the process.[3] The routing map filed with the CPS application filed was substantially different than the routing map shown to the community at the Open House, with the removal of some routes and the addition of two substations that the public never had an opportunity to review prior to filing. But the community was able to provide some feedback to CPS prior to the modifications. The community was asked for input at the Open House through a series of questionnaires. The largest concern to the community was "Impact to residences," with 58% of the vote, while the concern regarding "Visibility of structures," was second at only r6%.[4] Selection of a route that places a heavy emphasis on a factor other than habitable structures is contrary to the clearly stated values of the community.

Jauer/Rose Palace notes the issues raised in the Initial Briefs of Robert and Leslie Bernsen, Betsy Omeis, Yvette Reyna, and Joan Arbuckle – all of whom live in Scenic Hills and Serene Hills Subdivision, an older community on north Toutant Beauregard on Segment 54.[5] These landowners not only actively participated in the hearing on the merits, but filed briefs calling attention to the individual and subdivision-wide impacts a Toutant Beauregard route would have on their long-

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[2] Initial Brief of Mark Siegal at 6, bullet point 3.
[3] Redacted Direct Testimony of Steve Cichowski at 5, l. 22 –6, l. 2; AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson* at 24, l. 6 – 9.
[4] CPS Exhibit 1, Attachment 1 at 6-2 - 6-3.
[5] Initial Briefs of Raul G. Figueroa, Robert and Leslie Bernsen, Betsy Omeis, Yvette Reyna, and Joan Arbuckle (Docket Nos. 844, 847, 848, 848, and 851); *see also* CPS Exh. 16

established community. Other than CPS Energy, only 22 initial briefs were filed in this case. Of those briefs, only four briefs expressed support solely for routes among the Northern Routes. All other briefs either solely supported a non-Toutant Beauregard Route or were not opposed to one or all of the Middle Routes. Except for Mr. Raul G. Figueroa, who is "impacted by transmission line 46b that surrounds [his] home on three sides" and solely opposes only a Toutant route that uses Segment 46b,all of the *pro se* parties that filed initial briefs in this matter oppose any route that utilizes Segment 54, which necessarily includes all of the Northern Routes and impacts more habitable structures than the Middle Routes.

Routes Supported, Unopposed, or Opposed by Intervenors

	P, R1	Z1, Z2, AA2
ANAQUA SPRINGS HOA	Unopposed	Oppose
BETSY OMEIS	Support	Oppose
BEXAR RANCH, L.P. AND GUAJALOTE RANCH, INC.	Oppose	Support
BRAD JAUER AND BVJ PROPERTIES, L.L.C	Support	Oppose
CHANDLERS AND PUTNAMS	Unopposed	Support
CLEARWATER RANCH POA'S POST-HEARING INITIAL BRIEF	Opposed	Support
CPS ENERGY		
JAY AND AMY GUTIERREZ AND THE GUTIERREZ MANAGEMENT TRUST	Unopposed	Unopposed
MARK SIEGEL	Unopposed	Opposed
NORTHSIDE INDEPENDENT SCHOOL DISTRICT	Unopposed	Opposed
PATRICK CLEVELAND	Unopposed	Opposed
PAUL CRAIG	Unopposed	Opposed
PRIMARILY PRIMATES, INC.	Unopposed	Unopposed
PUC STAFF	Support	
RAUL G FIGUEROA	Unopposed	Opposed
ROBERT BERNSEN	Support	Opposed
SAVE HUNTRESS LANE AREA ASSOCIATION	Opposed	Support
STEVE AND CATHY CICHOWSKI	Unopposed	Opposed
STEVEN GOMEZ HERRERA	Unopposed	Opposed
THE SAN ANTONIO ROSE PALACE, INC. AND STRAIT PROMOTIONS, INC	Unopposed	Support
TOUTANT RANCH, LTD., ASR PARKS, LLC, PINSON INTERESTS LTD. LLP, AND CRIGHTON DEVELOPMENT CO.	Unopposed - (but: " do not take a position with respect to the portions of this transmission line that do not directly impact their properties"	
YVETTE REYNA	Unopposed	Opposed

In its Initial Brief, SHLAA argues that some proposed routes, such as Routes P and R1, run though the neighborhoods represented by SHLAA. According to SHLAA, Segments 15, 26a, and 27 bisect the interior portions of properties on those routes. If one follows Segment 15, which is used in Route P and R1, Segment 15 runs along property lines except for one instance where the

line travels west once it passes Habitable Structure 143.[6] Figure 4-1 Amended, however, shows that the property crossed by this segment does not have a habitable structure on the property and that the proposed location of Segment 15 is angled in such a way to maximize distance between a cemetery to the north and the northern portions of the Canyons at Scenic Loop to the south. Similarly, Segment 26a, which is used by R1, generally follows property lines and parallels the roadway in that area. In those instances where the proposed Segment 26a crosses the interior of a property, the property it crosses are remote tracts with no habitable structures present.

2. Historic Values of the Scenic Loop Road – Boerne Stage Road – Toutant Beauregard Road Historic Corridor

In its Initial Brief, Save Huntress Lane Area Association ("**SHLAA**") attempts to downplay the impact a route using Toutant Beauregard would have on the Scenic Loop Road – Boerne Stage Road – Toutant Beauregard Road Historic Corridor (the "**SBT Historic Corridor**").[7] Such attempts fall into four categories.

First, SHLAA claims that this historic corridor would be equally, if not more, negatively impacted by a route using Substation 6 as it would the Toutant Beauregard routes which use Substation 7.[8] This is not the case. The *only* point at which the Substation 6 routes (i.e., the Middle Routes) touch the historic corridor is along the eastern boundary of Substation 6 on Scenic Loop Road.[9] Unlike the Northern Routes that travel along Toutant Beauregard for much of its length, the Middle Routes, which terminate at Substation Site 6, never even make contact with Scenic Loop Road.[10]

Second, SHLAA suggests that Substation Site 6 along Scenic Loop Road "is more open to public visibility than Substation Site 7" on Toutant Beauregard.[11] Notably, this position directly contradicts the testimony of SHLAA's own expert who unequivocally testified, "The inescapable fact is that Substation Site 7 is substantially larger than the other sites and allows for mor of a buffer. . . [a]nd it also has vegetation that would provide visual screening of the substation facility

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[6] CPS Exhibit No. 1, *Application*, Figure 4-1Amended
[7] Initial Brief of Save Huntress Lane Area Association, Docket No. 834 ("SHLAA Brief") at. 10-11.
[8] *Id.* at 10 ("Substation Site 6 is on Scenic Loop Road (which is as, if not more, historic as Toutant Beauregard Road, as discussed elsewhere). ..").
[9] *See* CPS Exhibit No. 1, Application, Figure 4-1Amended. .
[10] *Id*
[11] SHLAA Brief at 10

itself, as I have previously described in my direct testimony."[12] Nevertheless, although the site for Substation 7 may be slightly larger, there is no record evidence that either site would have less public visibility after the construction of the substation. In fact, the evidence is clear that CPS performed no actual engineering work with regard to screening or vegetation on any of the proposed substation sites, and any such screening will be installed after-the-fact, after the route is chosen.[13]

Third, SHLAA appears to claim that the Scenic Loop portion of the SBT Historic Corridor is more historic that the Toutant Beauregard portion because the Toutant Beauregard portion was added "several years after" the Scenic Loop portion.[14] Again, this is more than a bit of a red herring since the Middle Routes that terminate at Substation Site 6 never even make contact with the Scenic Loop portion of the historic corridor. Nevertheless, the SBT Historic Corridor applies to each of the three roads in its eponymous name without favor, and the Texas Legislature designated the SBT Historic Corridor, including Toutant Beauregard, in 2011, just two years after the original designation. This designation, was made by Preservation Texas, not the Legislature.[15] It is the entirety of the SBT Historic Corridor that is the historic resource,[16]not a portion thereof as SHLAA asserts.

Fourth, SHLAA claims that "Toutant Beauregard Road is not historic from a visibility standpoint since there are electric distribution lines up and down it, there is the big cell phone tower on Jauer's neighboring property near to and visible from the road, there is development activity with ongoing construction up and down the road, and it is a busy road route."[17] This runs contrary to SHLAA's other claims regarding visibility of the substation sites. Further, there is no record evidence that all of the visibility items – distribution lines, cell tower, development activity – are new elements of this portion of the SBT Historic Corridor or are incompatible with its historic nature. Since the historic designation in 2011, it is very likely such items existed in 2011 and well before that date., CPS Energy was unaware of any evidence those distributions lines had not been

[12] SHLAA Exhibit No. 4, Intervenor Cross Rebuttal Testimony of Harold L. Hughes Jr., P.E. on behalf of Save Huntress Lane Area Association ("SHLAA") at. 11.
[13] Note also how SHLAA does attempt to argue "visibility" as a factor that favors Substation 6.
[14] SHLAA Brief at 10.
[15] Rose Palace Exh. 1 at 10.
[16] *Id.* at 5.
[17] SHLAA Brief at 10.

there at the time of the historic designation.[18] Therefore, the existence of larger, more intrusive, out-of-character transmission lines would present an actual negative impact to the historic nature of this Toutant Beauregard section of the SBT Corrido. This is in contrast to the illusory impact of items very likely in existence in 2011, such as wooden distribution lines and single-family residential development.

3. Other Historical Resources

Bexar Ranch's assessment of historical resources is wrong because the impact to historic resources is greater for the Northern Routes along Toutant Beauregard than on any of the Middle Routes. Route P and the other Middle Routes are favorable for two simple reasons.

Contrary to Bexar Ranch's claims[19], the historical significance of the R.L. White Ranch *does* stop at the border with Bexar Ranch. That is because the R.L. White Ranch is on the other side of the transmission corridor that is on the entire western boundary of the Bexar Ranch.[20] More importantly, they are simply different ranches![21]

In direct contrast, any of the Northern Routes along Toutant Beauregard would have adverse effects on the SBT Historic Corridor, because such a transmission line would run directly along this corridor.[22] Although there is residential development and existing distribution lines on Toutant Beauregard, there is no evidence in the record showing why these would detract from the historical significance of a recently-designated historical corridor. The residential development and smaller wooden distributions lines are part of the character of an undivided suburban roadway. Any of the Northern Routes would also adversely affect the Heidemann Ranch.

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[18] Tr. at 328.
[19] Bexar Ranch, Initial Brief at 19 ("It is difficult to imagine that the historic significance of the White Ranch stops at the border of the White and Bexar ranches.").
[20] Rose Palace Exh. 1 at 13, 29 (Exhibit 4 therein)
[21] Rose Palace Exh. 1 at 10.
[22] *Id*

Finally, any attempt to compare the historical impacts to the Bexar Ranch with those to Toutant Beauregard ignores a key difference between those two areas: one is a public right-of-way available and used by the community, while the other is not.[23]

4. Effect of Route Choice on the Edwards Aquifer

As Bexar Ranch points out in its Initial Brief, "the entire study area is included in the Edwards Aquifer Contributing Zone."[24] Still, Bexar Ranch attempts to distinguish its property from the rest of the study area with respect to the Edwards Aquifer. Bexar Ranch alleges that "[b]uild[ing] an electric transmission line on Bexar Ranch would not be consistent with the purpose of the [Aquifer Protection Program]," a program for which Bexar Ranch has applied but has not yet been accepted.[25] However, there is no record evidence that any impacts to the Edwards Aquifer caused by the construction and installation of electrical towers will uniquely affect Bexar Ranch in any way that would not otherwise occur for any of the routes that do not cross Bexar Ranch.

There is also record evidence that the installation of electrical towers would "create soil disturbance and the addition of some impervious cover" due to the nature of the project – not due to differences in locations of the transmission line.[26] CPS Energy has stated repeatedly that it will work with other local and state agencies to obtain the necessary permits to construct the transmission line.[27] Based on the evidence in this case, CPS Energy's ability to obtain Edwards Aquifer-related permits should not vary based on the decision of what route is chosen.

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[23] Tr. at 965:10-18 (Tom Dreiss testified that that that area is "remote" and that "there's not any access to that area other than through the individual ranches); *see also* Bexar Ranch Exh. 2 at 8-11 and at26, l. 10-14 (Michael Bitter testified that he hopes "to preserve and protect [Bexar Ranch] so that the family can enjoy it for generations to come" and that he "hopes to preserve [Bexar Ranch] as a working ranch and gathering place for future generations").

[24] Bexar Ranch Initial Brief at 26.

[25] *Id See also*, the Environmental Assessment, Attachment 1 at 3-6 ("Due to the study area's location within the Edwards Aquifer Contributing Zone, the proposed project must be reviewed and approved by the TCEQ (2020) Edwards Aquifer Protection Program prior to start of construction.")

[26] Application, Environmental Assessment, Attachment 1 at 000262 (email correspondence from TCEQ).

[27] Tr. at 847-858.

5. Additional Support for Middle Routes

Intervenors Lisa Chandler, Clinton R. Chandler, and Chip and Pamela Putnam ("**Chandlers**") are landowners whose property would be most affected by a route that uses Segment 40.[28] In their Initial Brief, the Chandlers note that none of the Focus Routes use Segment 40, and that therefore they support any of the Focus Routes which were the focus of the hearing on the merits.[29] This broad and self-serving support for any of the focus Routes but a route using Segment 40, contradicts its own expert witness' conclusion that Route AA2 best addressed PURA and the Commission's Substantive Rules.

The Chandlers further note that five routes – Z1, AA2, DD, and EE, which include many of the Northern Routes – are estimated to cost under $40 million. They then note that the Middle Routes each have "relatively low numbers of habitable structures within 300 feet of the route centerline."[30] The Chandler's comparison affirms one of the primary trade-offs between northern routes and southern routes: habitable structures versus cost. Although there are fewer habitable structures on Routes P (17) and R1 (13) than nearly every other alternative routes, Routes P and R estimated costs ($43.41 million and $43.52 million, respectively) are significantly more costly than Route AA2 ($39.05 Million).

6. Environmental Integrity

The alternatives routes are largely comparable from an environmental perspective. Staff pointed out that Route P "generally ranked well" with regard to environmental impacts and also noted that CPS Energy has not confirmed "the presence of the golden-cheeked warbler in the study area via field survey".[31] Route P and Route R1 are of comparable length with the Northern Routes. Further, Staff noted that the project is "expected to cause only short-term effects to water, soil, and ecological resources during the initial construction phase."[32] CPS Energy concluded that the project "will not have a significant detrimental impact on vegetation and

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[28] Chandler Initial Brief at 1.
[29] *Id*
[30] Chandler Initial Brief at 6 (*citation omitted*).
[31] Staff Direct Testimony at 32-33.
[32] *Id.* at 33.

wildlife habitat" and that after the construction phase erosion control and revegetation can largely return the disturbed ground to its prior state.[33]

7. Engineering Constraints

CPS acknowledges that "topography and other unique attributes . . . will require engineering consideration" without identifying any particular instance, much less its associated costs. This and other blanket assertions like CPS' statement that, , "There are no significant engineering constraints along any of the alternative routes"[34] do not assist the trier of fact. However, the evidence in the record suggests the engineering constraints are substantive and clearly relevant.

Segment 54 and Toutant Beauregard

A glaring example is the engineering constraints on Segment 54 that necessitated a last-minute, post-discovery errata[35] to move the line partially into the road right-of-way with an indicated angle structure *within* road right-of-way[36] aside the entrance to Serene and Scenic Hills Estates off Toutant Beauregard and in front of Habitable Structure 88.[37] The engineering constraints that remain for this proposed solution are also significant. As sited, the angle structure is aside the entrance to Serene and Scenic Hills Estates in the turning area coming out of the entrance and merging onto Toutant Beauregard, presenting a potential vehicular safety issue.[38] In addition, CPS Witness Lyssy confirmed that gas and water utilities exist in the area of the angle structure,[39] and their proximity may hinder the construction, maintenance, repair, and operation of the angle structures and the transmission line. Moreover, CPS plans to extend multiple distribution circuits out of Substation Site 7 and run two circuits on each side of Toutant Beauregard going both east and west. This will congest the already congested Segment 54 right-of-way even further. Then, to make matters even worse, Toutant Beauregard is a two-lane road that will likely require

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[33] CPS Energy Exh. 15 at 8-9 (Rebuttal Testimony of Lisa B. Meaux).
[34] CPS Energy's Initial Post-Hearing Brief, at 28.
[35] Errata to Rebuttal Testimony of Scott Lyssy. *See also* CPS Energy Exhibit No. 14, Rebuttal Testimony of Scott D. Lyssy, P.E. (w/ Errata)
[36] Tr.at 397, ll. 9-14; CPS Energy Exhibit No 14, Rebuttal of Scott D. Lyssy, P.E. with errata, Exhibit SDL-3R, p. 8.
[37] *Id.*
[38] *See* AS/Jauer Exhibit No. 25, Revised Direct Testimony of Mark Anderson at. 21, ll 1-8.
[39] Tr. at 850, ll. 7-8.

expansion, and Mr. Lyssy suggested that Segment 54 and its poles might be impacted any widening of the roadway.[40]

Segment 20

According to CPS's costing table, almost all of Segment 20 was costed (at least at one point) based on 100-foot right-of-way.[41] However, now that the property on which Segment 20 is sited is under active development into the Scenic Crest subdivision, both the width and the cost of its right-of-way is likely to change.[42] Constraints that are similar to those on Segment 54 may also result on Segment 20.

Substation Site 7

There are significant engineering constraints related to Substation Site 7, given its vulnerability to flooding and 100-year flood line at 1250 amsl,[43] which extends into the layout of the substation set forth by CPS Witness Lyssy.[44] A substantial portion of Substation Site 7 is below the 100-year flood line directly contravenes CPS's Siting Manual.[45] CPS' Siting Manual specifically 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."[46] This set of requirements should preclude Substation Site 7 from being considered, because it violates the first requirement. Moreover, it likely violates the second requirement as well in light of the development that is prompting this Scenic Loop project, as pointed out by Mr. Anderson.[47] And, notably, the new development that is on the way, including 393 homes in the Scenic Crest development,[48] 280 homes in Pecan Springs, and the

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[40] Tr. at 591, l 17 to 592, l. 3.
[41] *See* Jauer Exhibit No. 26, CPS's Amended Application, "Scenic Loop CE Spreadsheet Final 12-18-2020-1," Sheet 1, Row 14, Columns E & G.
[42] Tr. at555, ll. 7 – 9.
[43] AS/Jauer Exhibit No. 25, Revised Direct Testimony of Mark Anderson at 24, l. 16-23 and Exhibits MDA-18 & MDA-19.
[44] CPS Energy Exhibit No. 14, Exhibit SDL-1R.
[45] Jauer Exhibit No. 16, Attachment AS 2-28, Sec. 4.A.2 d(1) at 6 (Bates Stamp 077).
[46] AS/Jauer Exhibit No. 25, Exhibit MDA-3, Sec. 4.A.2.d(1) at 6 *See also* AS/Jauer Exhibit No 25 at 25, l. 6 – 16; Jauer Exhibit No. 25 at 7; Tr. at 424, ll. 5 – 17.
[47] *Id.*, at 25, l. 12 – 14.
[48] Brittany Sykes Exhibit No. 1, *Direct Testimony and Exhibits of Brittany Sykes*, Exhibit A ("Scenic Crest Master Development Plan").

roads, parking lots and other structures that come with them, are all upstream from 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.[49] The proposed site for Substation 7 has an elevation change of 54 feet from its high point to the low point, and slopes toward Leon Creek.[50] Any spills at the substation will quickly and inevitably make their way to Leon Creek with the existing topography.[51]

Communication Tower No. 501

Staff's Initial Brief repeats CPS's representation that, "None of the alternative routes filed in this Application are anticipated to have any impact on the existing communication towers."[52] Staff's brief, however, does not address the uncontroverted testimony of Carl Huber, the only professional radio tower operator to testify in this case. Mr. Huber testifies that the azimuths of the microwave public safety communications facilities on Tower No. 501 (which utilizes line of site transmission) would experience interference from proposed transmission line Segments 20, 36, or 32.[53] The communications tower is not addressed by CPS as a constraint that can be engineered away. Contrary to CPS and Staff's positions, there are certain routes that will impact existing communications towers – and those routes are the Northern Routes.

According to CPS, it will be able to overcome any foreseeable engineering constraints by utilizing design and construction practices and techniques usual and customary in the electric utility industry.[54] While this "can do" positive attitude is admirable, and Jauer/Rose Palace has no reason to question the capability of CPS's engineers, it must be pointed out that such solutions come with a price. For example, CPS itself said that while it could develop engineering solutions

[49] AS/Jauer Exhibit No. 25, *Revised Direct Testimony of Mark Anderson* at 25, ll. 19 – 20.
[50] *Id.*, at. 26., ll 2 – 5, and Exhibits MDA-18 and MDA-19.
[51] *Id.*, at 26., ll. 2 – 5, and Exhibits MDA-18 and MDA-19.
[52] Staff Initial Brief at 8.
[53] Jauer Exhibit No. 2, *Direct Testimony of Carl Huber* at 6, l. 2 – 11.
[54] CPS Initial Brief at 28, citing CPS Energy Ex. I 1 at 8 (Direct Testimony of Scott Lyssy); Staff Ex. I at 33.

that would allow underground distribution circuits to improve their reliability, the engineering and maintenance for underground distribution circuits is more complex and expensive.[55] Occam's Razor states: "the simplest solution is almost always the best." Rather than design a fix and bring in trucks of leveling soil for an uneven, flood-prone Substation 7, it would be wisest to simply use Substation 6. Having to engineer a solution and increase material to implement that solution increases the unaccounted costs for using Substation 7. Similarly, rather than snake the transmission line through a congested historic corridor on Toutant Beauregard, it is best to use one of the more direct southern routes such as P or R1. Because CPS *could* engineer solutions to certain problems does not mean that it *should* take such actions rather than opt for the easier, simpler, solution.

8. Cost

In its post-hearing brief, CPS definitively declares that Route Z2 (a Toutant Beauregard Route utilizing Substation Site 7) is "estimated to be the lowest cost route."[56] However, there are numerous reasons to believe that Route Z2 and the other Toutant Beauregard routes, all of which terminate at Substation Site 7, will cost significantly more than what CPS has estimated.

How can the parties be certain that CPS's cost estimates are accurate, when it made a major change in its case-long representations about right-of-way widths, especially along Toutant Beauregard, in an errata filed *after* the opportunity for discovery had ended?[57] And, how can the ALJs be certain of the accuracy of CPS's cost estimates when CPS did not present a single witness who can explain them?[58]

There are numerous issues related to CPS's cost estimates that have not yet been resolved, particularly along Toutant Beauregard.

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[55] CPS Initial Brief at 14.
[56] CPS Energy's Initial Post-Hearing Brief at 29.
[57] *See* Rebuttal Testimony of Scott Lyssy at6, ll 13-16.
[58] Mr. Lyssy, who populated CPS's cost tables, admitted that he based them on estimates provided by other people – none of whom were presented as witnesses. Tr. at 492, ll. 15-22; Tr. at 505, ll. 18-22.

Unreliable Unit Costs

It is uncertain whether CPS's right-of-way costs were based on the cost of developed lots or the cost of rural land.[59] The unit costs of right-of-way for Segment 20 on Toutant Beauregard are based on values at the lower, undeveloped end of the range (e.g., $1.50/sq ft),[60] even though the property is now under active development into the Scenic Crest subdivision. CPS acknowledges this is something "for the Commission to look at and evaluate."[61] 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."[62]

The same issue applies Segment 36, which runs along Toutant Beauregard on property slated for a 60+ home development that Brad Jauer purchased from the developer of Anaqua Springs to keep it from being developed.[63]

Unreliable Right-of-Way Widths

Throughout the pendency of this matter, until discovery had ended, CPS maintained that "the right of way proposed for the Project is *100 feet*" and "all measurements included in the Application . . . are based on a right of way width of *100 feet*."[64] However, a week prior to the hearing on the merits, CPS filed an errata to change from "all" to "most" its representations regarding measurements being based on 100-foot right of way.[65] In the errata, CPS Witness Lyssy also changed his testimony to state that, "for approximately 1,300 feet along Segment 54, *less than 100 feet* of right of way is proposed."[66] This very specific approximation of *less than 100-foot* right-of-way along Segment 54 on Toutant Beauregard illustrates another glaring

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[59] Tr. at 492, ll. 21-22.
[60] *See* Jauer Exhibit No. 26, CPS's Amended Application, "Scenic Loop CE Spreadsheet Final 12-18-2020-1," Sheet 1, Row 14, Column J.
[61] Tr. at 555, ll. 7- 9.
[62] Tr. at 455, ll. 18-19.
[63] Jauer Exhibit No. 1, Revised Direct Testimony of Brad Jauer at 3, ll. 13-20.
[64] Rebuttal Testimony of Scott Lyssy at 6, ll. 13-16 (*emphasis added*). *See also* Jauer Exhibit No. 8, RFI 2-2 (last paragraph: "*CPS delineated all route segments presented in this proceeding with a 100 foot right-of-way* "), Jauer Exhibit No. 11, RFI 3-1(vi) ("*Refer to CPS Energy's response to Brad Jauer & BVJ Properties RFI 2-2*"); Jauer Exhibit No. 16, RFI 2-5 (" . . . *it is currently anticipated that the proposed transmission line facilities will be constructed utilizing a right-of-way of approximately 100 feet*").
[65] Rebuttal Testimony of Scott Lyssy at 6, ll. 13-16.
[66] Errata to Rebuttal Testimony of Scott Lyssy at 5, ll. 18-19 (*emphasis added*). *See also* CPS Energy Exhibit No. 14, Rebuttal Testimony of Scott D. Lyssy, P.E. (w/ Errata) at 9, ll. 18 – 19.

incongruity in CPS's representations in this case and the absolute confusion that still exists about its cost estimates for Toutant Beauregard: CPS's "costing tables" have suggested all along that Segment 54 is *less than 100 feet*, specifically 75 feet, for its entire length. This was the case when CPS was absolute in its statements that "*all* measurements included in the Application...are based on a right of way width of 100 feet,"[67] and it was still the case after Mr. Lyssy filed his errata to specify "for approximately 1,300 feet along Segment 54, less than 100 feet of right of way is proposed."[68] The fact is, the "costing tables" indicate Segment 54 contains *3 times more* right-of-way of less than 100 feet than Mr. Lyssy's last-minute errata contains (i.e., 3,612 linear feet).[69] Which is correct? To date, we have had three widely divergent answers, from *all* 100-foot, to *some* 100-foot, to *no* 100-foot, and still no definitive answer. The same issues exist for the entire length of Toutant Beauregard (e.g., Segments 36 and Segment 20).[70] CPS definitively declares Route Z2 along Toutant Beauregard Route as being "estimated to be the lowest cost route." How do we know? Based on what unit costs and right-of-way widths? How are we to determine the answer post-discovery and with no CPS witnesses who know anything of relevance?

Unreliable and Incomplete Substation Costs

Similar issues also exist for Substation Site 7. As reflected on Sheet 2 of the "costing tables,"[71] the cost estimate for each substation is predicated on its "Estimated Value Per Sq. Ft." However, there are *two completely different* "estimated values" given for Substation Site 7: i) $2.00/sq ft in the small table between Rows 35 and 42; and ii) $3.00/sq ft in the larger table at the top. Consistent with other cost items and routing criteria, such a change occurs *only* for Substation Site 7 and, therefore, the Toutant Beauregard routes which it uniquely serves. None of the other substation sites have such a change.

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[67] Rebuttal Testimony of Scott Lyssy at. 6, ll 13-16 (*emphasis added*).
[68] Errata to Rebuttal Testimony of Scott Lyssy at 5, ll. 18-19. *See also* CPS Energy Exhibit No. 14, Rebuttal Testimony of Scott D. Lyssy, P.E. (w/ Errata) at 9, ll. 18 – 19.
[69] *See* Jauer Exhibit No. 26, CPS's Amended Application, "Scenic Loop CE Spreadsheet Final 12-18-2020-1," Sheet 1, Row 50, Column G.
[70] *See* Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, LLC at24.
[71] Jauer Exhibit No. 26.

The "costing tables" also contain *no* costs to address the unique topographic characteristics of each site.[72] In fact, another table contained in the Amended Application (i.e., Table 4 of Attachment 3, entitled "Substation Facilities Total Estimated Costs")[73] clearly indicates that CPS assumed the same amount of "Engineering and Design" costs for each substation, irrespective of their size or their topographic and other differences. This is particularly important with respect to Substation Site 7, given is dramatic 54-foot change in elevation and the need to protect adjacent Leon Creek from any spillage from the substation.[74] Similarly, Substation Site 7 also needs to be protected from Leon Creek flooding; however, CPS's substation cost estimates contain no amounts to address Substation Site 7's location within the 100-year flood plain.[75] It also appears that the cost estimates for Substation Site 7 do not include the cost associated with San Antonio and Bexar County's "no rise" ordinance that seeks to prevent increased runoff resulting from the proposed development and requires either on-site detention or a "fee in lieu of" payment.[76]

Notably, Substation Site 6 (the other substation primarily under consideration) does not present the same issues as Substation Site 7. , Substation Site 6 only has a 20-foot elevation difference[77] and it is not threatened by flooding, because it is not adjacent to any flood plain or any river, creek, stream or other body of water.[78]

Another unresolved issue related to the cost of Substation Site 7 is the $2,920,000 estimated cost of possible underground construction for 2 circuits to exit the back of the substation and how it might impact the engineering solutions ultimately needed to address the topographic and flood vulnerability issues discussed above.[79]

Finally, it is worth noting that Table 4 of Attachment 3[80] reflects a "ROW & Land Acquisition" cost for Substation Site 7 of $627,264, which is the total for the $2/sq ft "estimated

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[72] *Id*
[73] CPS Energy Exhibit 6, Attachment 3, "Cost Estimates" Sheet, Table 4.
[74] Jauer Exhibit No 14, RFI 5-1.
[75] *Id.*, RFI 5-2. *See also* Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, LLC at. 13-18 (Substation Site 7 and its flood vulnerability).
[76] Jauer Exhibit No. 3 at 41 & 140.
[77] *Id.*, RFI 5-4.
[78] Jauer Exhibit No 14, RFI 5-3.
[79] Tr. at 848, l 18 – 850, l 4. *See also* Jauer Exhibit No. 15, Anaqua Springs RFI 1-16, "Attachment AS 1-16 Notes" at 106/107 (Bates 000004). Tr. at 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)
[80] CPS Energy Exhibit 6, Attachment 3, "Cost Estimates" Sheet, Table 4.

value" for Substation Site 7 in the "costing tables."[81] And, it is $313,632 *less* than the estimated value at $3/sq ft.[82] That is a significant difference. As a result, in addition to the cost estimates needed for Substation Site 7's unique characteristics, it is imperative that the fact finders are able determine the "estimated value" of Substation Site 7 to be applied in this case. Is it $2/sq ft or $3/sq ft? If CPS is still struggling to make that determination, how can the ALJs be expected to do it?

Cost of Right-of-Way Constraints

The costs associated with the right-of-way constraints on Toutant Beauregard also are not addressed in CPS's cost estimates.

Given all the uncertainties regarding the cost of Substation Site 7 and the Toutant Beauregard routes, coupled with what we know about the engineering constraints on Toutant Beauregard, it clearly is a poor routing choice that has too many unknown and unchecked escalating costs and impacts too many homes.

In summary,

- CPS Energy's cost estimates for routes along Toutant Beauregard are not reliable.
- CPS Energy failed to present competent evidence on the right-of-way costs along Toutant Beauregard, which is undergoing rapid development with associated cost increases.
- CPS Energy failed to provide complete and accurate information for the right-of-way widths along Segment 54 and other segments.
- Because of the significant infrastructure in the right-of-way along Toutant Beauregard, including along segments where CPS Energy plans to use road right-of-way, more engineering and design will be needed to avoid that infrastructure. CPS Energy failed to account for those additional costs in its estimates.
- CPS Energy does not factor the additional costs of angle and turning structures into its cost estimates.
- Segment 54 alone has 4 or 5 road crossings, which require more expensive angle structures.
- Costs for flood mitigation are not included in the estimated costs for Substation Site 7.

[81] Jauer Exhibit No. 26, CPS's Amended Application, "Scenic Loop CE Spreadsheet Final 12-18-2020-1."
[82] *See Id.*, Sheet 2, Rows 25 to 32, Column P.

- Costs for grading Substation Site 7 are not included in CPS Energy's cost estimates.
- CPS Energy did not include estimated costs for spillage mitigation for Substation Site 7.
- CPS Energy has not provided accurate costing estimates for Substation Site 7.

9. Factors Favoring of Route P

As Commission Staff states in its Initial Brief, Route P adequately balances the desire to select a route exhibiting reasonable quantitative criteria, while also exhibiting qualitative features consistent with the community values expressed by parties and residents.[83]

- Route P is one of the shortest routes at 4.89 miles;[84]
- Route P because it performs well with regard to community values because it impacts few habitable structures;
- Route P is within 300 feet of only 17 habitable structures, which is the fourth lowest of all alternative routes[85] and less than the number of habitable structures impacted by the Northern Routes along Toutant Beauregard, even less than Segment 54 alone;[86]
- The only routes than rank higher than Route P in this category are Routes Rl, Ql, and Ul, each of which are more expensive than Route P;[87]
- Route P's transmission line does not cross or impact the Scenic Loop Road – Boerne Stage Road – Toutant Beauregard Road Historic Corridor;
- Route P is among the shortest routes and is only 0.36 miles longer than the shortest route, which would help mitigate aesthetic impacts;[88]
- Route P is among the shortest routes, only 0.36 miles longer than the shortest route, which would help mitigate environmental impacts;[89]
- Route P also performs well in its utilization of compatible rights-of-way (ROW), with approximately 71% of its length paralleling or utilizing compatible ROW;[90]
- Route P will not interfere with the public safety radio transmitters on Communications Tower No. 501;

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[83] Commission Staff Initial Brief, pg 2.
[84] CPS Exhibit #17.
[85] *Id*
[86] Tr. p. 406, l. 18 to p. 407, l. 25; CPS Energy Exhibit No. 6, Amended Application, Table 4-1, Environmental Data
[87] CPS Energy Ex. 17 at Estimated Costs.
[88] Cps Energy Ex. 1 at Table 4-1, Evaluation Criteria 1.
[89] CPS Energy Ex. 17 at Evaluation Criteria 1.
[90] Id. at Evaluation Criteria 7.

- Route P is the 14th least expensive route, and all of the routes less expensive than Route P impact more habitable structures;[91]
- Cost estimates for Route P appear to be much more reliable than for the Northern Routes along Toutant Beauregard;
- The percentage of Route P' s length that parallels or utilizes existing transmission or distribution line ROW, other existing compatible ROW (highways, roads, railways, etc.), and apparent property boundaries is 71% of its length, which minimizes the impact on landowners;[92]
- Route P does not have the congestion and engineering constraints that the Northern Routes along Toutant Beauregard have;
- Route P, which terminates at Substation Site 6, avoids the unique flood vulnerabilities, spillage dangers associated with Substation 7;
- Sara McAndrew Elementary School will not be impacted by Route P; and
- Route P is supported by Commission Staff.

Alternatively, Route R1 has very similar ratings among the above-described criteria – including that it costs slightly less and impacts fewer habitable structures.

IV. CONCLUSION

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/Rose Palace opposes any route that uses the Toutant Beauregard segments. A far better option is Route P, which Commission Staff has put forward as the route that best meets the routing criteria. Jauer/ Rose Palace agrees. In the alternative, Route R1 (which is similar to Route P) also meets the routing criteria much better than the routes that use Toutant Beauregard. Finally, Jauer/Rose Palace do not object to Route W.

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[91] Staff Ex. 1 at 35:4-36:1.
[92] Staff Ex. 1 at 38-39.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 28st 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.

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