

SOAH DOCKET NO. 473-21-0247  
PUC DOCKET NO. 51023

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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 IN BEXAR COUNTY

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BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S REPLY BRIEF**

Dated: May 28, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DATE: MAY 28, 2021**

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**COMMISSION STAFF’S REPLY BRIEF**

**I. INTRODUCTION**

The applicant, the City of San Antonio, acting by and through the City Public Service Board (CPS Energy), seeks to amend its certificate of convenience and necessity (CCN) for a proposed 138-kV transmission line in Bexar County, Texas. The Staff (Staff) of the Public Utility Commission of Texas (Commission) continues to support the routing of the Project along what is designated as Route P (Substation Site 6, Segments 50, 15, 22, 25, 37, 38, and 43) in the Application.<sup>1</sup> As discussed below, it is Staff’s position that Route P best meets the criteria in PURA<sup>2</sup> § 37.056 and 16 Texas Administrative Code (TAC) § 25.101 when compared to all the proposed routes.

Staff’s witness, Mr. John Poole, recommended Route P as the route that best meets PURA and the Commission’s criteria.<sup>3</sup> CPS Energy identified Route Z as the route it believes best meets PURA and the Commission’s criteria.<sup>4</sup> However, CPS Energy amended its application on

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<sup>1</sup> Direct Testimony of John Poole, Staff Ex. 1 at 12:6-8.

<sup>2</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (PURA).

<sup>3</sup> Staff Ex. 1 at 10:1-3.

<sup>4</sup> *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* (Application) CPS Energy Ex. 1, at 2 (July 22, 2020).

December 22, 2020 and Route Z was functionally replaced by Route Z1.<sup>5</sup> Texas Parks and Wildlife Department (TPWD) recommended Route DD.<sup>6</sup>

## II. JURISDICTION AND NOTICE

Staff addressed this issue in its initial brief.

## III. EVALUATION OF PROPOSED ROUTES

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

The Commission may grant a CCN only if it finds that it is necessary for the service, accommodation, convenience, or safety of the public.<sup>7</sup> PURA § 37.056 provides certain routing criteria to be considered in an electric CCN proceeding, which are analyzed in turn below.<sup>8</sup>

#### 1. Community Values

Staff's analysis of community values supports selection of Route P. The criterion that was ranked as most important to members of the community at the open house meeting held by CPS Energy was maximizing distance from residences.<sup>9</sup> Route P has 17 habitable structures within 300 feet of the centerline, tied for the 4th fewest of all the alternative routes.<sup>10</sup> The routes that the Save Huntress Lane Area Association (SHLAA) and Clearwater Ranch POA (Clearwater) indicated they supports in their initial briefs<sup>11</sup> all have 30 or more habitable structures within 300 feet of the

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<sup>5</sup> Rebuttal Testimony of Adam R. Marin on behalf of CPS Energy, CPS Energy Ex. 12 at 5 (April 7, 2021).

<sup>6</sup> Letter from TPWD to Rachele Robles dated February 18, 2021, Bexar Ranch Ex. 10 at 2 (Feb 18, 2021).

<sup>7</sup> PURA § 37.056(a).

<sup>8</sup> PURA § 37.056(c).

<sup>9</sup> CPS Energy Ex. 1, Attachment 1 at 6-2.

<sup>10</sup> CPS Energy Ex. 17 at Evaluation Criteria 2.

<sup>11</sup> Initial Brief of Save Huntress Lane Area Association at 2 (May 21, 2021); Clearwater Ranch POA's Post-Hearing Initial Brief at 19 (May 21, 2021)

centerline.<sup>12</sup> As is true in nearly all transmission line routing cases, parties generally oppose routes that impact their own property. This proceeding is no different. However, in terms of impact to habitable structures, it is objectively true that Route P performs the same or better than all but three other alternative route options. The only routes that rank higher than Route P in this category are Routes R1, Q1, and U1, each of which are more expensive than Route P.<sup>13</sup>

## **2. Park and Recreational Areas**

According to CPS Energy, no significant impacts to the use of the parks and recreation facilities located within the study area are anticipated from any of the alternative routes.<sup>14</sup> Although Intervenor Patrick Cleveland (Cleveland) claimed portions of the High Country Ranch (HCR) should have been designated as a park or recreational area, it was not established in evidence that these properties are open to the public. Consequently, CPS Energy did not formally designate this area as a park or recreation area.<sup>15</sup> The routes that would impact the HCR are Routes G1, J1, AA1, AA2 and EE. Route P would not impact the HCR. Similarly, Intervenor Steve Cichowski claims Segment 36 runs through dedicated parkland.<sup>16</sup> Route P does not utilize Segment 36.

## **3. Historical Values**

The parties in this case generally disagreed as to which parts of the study area are historical in nature. Intervenor Bexar Ranch, L.P and Guajalote Ranch, Inc. (Bexar Ranch) discussed the historical nature of the R.L. White Ranch and, by extension, the Bexar Ranch.<sup>17</sup> Intervenor Rose Palace claimed that the Heidemann Ranch, the San Antonio Rose Palace, and the SBT Historic Corridor would all be adversely affected if the transmission line was routed on any of the focus

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<sup>12</sup> *Id.*

<sup>13</sup> CPS Energy Ex. 17 at Estimated Costs.

<sup>14</sup> CPS Energy Ex. 1 at 40.

<sup>15</sup> CPS Energy's Initial Post Hearing Brief at 25.

<sup>16</sup> Initial Post-Hearing Brief of Steve and Cathy Cichowski at 2 (May 21, 2021).

<sup>17</sup> Bexar Ranch, L.P. and Guajalote Ranch, Inc. Initial Brief at 18 (May 21, 2021).

routes that run along Toutant Beauregard (Routes Z1, AA1, AA2, DD).<sup>18</sup> Route P crosses the Bexar Ranch but, according to CPS Energy, only crosses the R.L. White Ranch District for a few feet.<sup>19</sup> Route P does not run along Toutant Beauregard and would not impact the Heidemann Ranch, the San Antonio Rose Palace, or the SBT Historic Corridor.<sup>20</sup> Consequently, Staff has concluded that Route P is acceptable and comparable to the other alternative routes from a historical values perspective.

#### **4. Aesthetic Values**

It is Staff's position that the negative impact on aesthetic values from constructing Route P is comparable to the negative impact from constructing other alternative routes.<sup>21</sup> Some landowners understandably argue that segments and routes that would be visible from their property have a more significant negative aesthetic impact. However, the evidence shows that Route P is comparable to other routes in this regard as Route P is among the shortest routes and impacts the fourth fewest habitable structures of the proposed alternative routes, both of which would help mitigate aesthetic impacts.<sup>22</sup> For these reasons and those outlined in its initial brief, it is Staff's position that Route P is acceptable from an aesthetic impact perspective.

#### **5. Environmental Integrity**

Intervenors who oppose Route P have noted that Route P crosses 37.15 acres of modeled habitat for Golden-Cheeked Warblers, the most of any route. However, as conceded by Clearwater, this only shows the possibility of suitable habitat and not their actual presence.<sup>23</sup> Staff recommended in its testimony that, in the event endangered or threatened plant or animal species

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<sup>18</sup> Rose Palace Initial Post-Hearing Brief at 6 (May 21, 2021).

<sup>19</sup> Tr. at 332 10-17.

<sup>20</sup> *Id.*

<sup>21</sup> Staff Ex. 1 at 6.

<sup>22</sup> CPS Energy Ex. 17 at Evaluation Criteria 2

<sup>23</sup> Clearwater Ranch POA's Post-Hearing Initial Brief at 12.

are actually encountered, CPS Energy should attempt to span or avoid them as much as practicable.<sup>24</sup> Route P is among the shortest routes, only 0.36 miles longer than the shortest route, which would help mitigate environmental impacts.<sup>25</sup> 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.<sup>26</sup>

After reviewing the information provided by CPS Energy and TPWD, Staff believes that Route P is acceptable and comparable to the other routes from an environmental perspective.

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

The relevant rule presents additional criteria to be considered in an electric CCN, which are discussed below.<sup>27</sup>

**1. Engineering Constraints**

Staff addressed this issue in its initial brief.

**2. Cost**

Route P is the 14<sup>th</sup> least expensive proposed alternative route.<sup>28</sup> All of the routes less expensive than Route P impact more habitable structures.<sup>29</sup>

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

In an effort to moderate the impact on the affected community and landowners, Staff reviewed and analyzed the application and its attachments, the direct testimonies, supplemental

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<sup>24</sup> Staff Ex. 1 at 31.

<sup>25</sup> CPS Energy Ex. 17 at Evaluation Criteria 1.

<sup>26</sup> *Id.* at Evaluation Criteria 7.

<sup>27</sup> 16 TAC § 25.101.

<sup>28</sup> Staff Ex. 1 at 35.

<sup>29</sup> Staff Ex. 1 at 35:4-36:1.

testimonies, and statements of position filed in the docket, as well as other filed responses, requests for information, and comments. Although none of the routes perform better than all of the other routes in all of the criteria considered, it is Staff's position that Route P best moderates the impact on the community and landowners. Route P is the 14th least expensive route, has the 4th fewest habitable structures with 300 feet of the centerline, and is the 9th shortest route overall. To further moderate impact, Staff recommends the addition of language in the ordering paragraphs requiring the utility to work with directly affected landowners to implement minor deviations from the approved route in order to minimize any impact on those landowners, similar to ordering paragraphs that have been adopted in the past.<sup>30</sup>

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

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.<sup>31</sup> One of the main benefits of paralleling compatible ROW is to minimize the impact on landowners. In this proceeding, all of the routes with a higher paralleling percentage also directly impacted more habitable structures.<sup>32</sup> Routes A, H, E, T1, V, and M1 were all also at least one million dollars more expensive than Route P.<sup>33</sup> Staff carefully weighed these factors and concluded that, based on the information outlined above, Route P is an acceptable alternative route option.

#### **5. Prudent Avoidance**

The Commission's rules define prudent avoidance as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and

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<sup>30</sup> See *Application of Electric Transmission Texas, LLC to Amend Certificates of Convenience and Necessity for the Stewart Road 345-kV Transmission Line in Hidalgo County*, Docket No. 47973, Ordering Paragraph No. 11 (Feb. 13, 2019) (adopting similar ordering language).

<sup>31</sup> *Id.*

<sup>32</sup> CPS Energy Ex. 17.

<sup>33</sup> CPS Energy Ex. 17 at Estimated Costs.



effort.”<sup>34</sup> One way in which to limit exposure to electric and magnetic fields is by choosing a route that has fewer habitable structures in close proximity to the route.

The alternative routes impact between 12 and 72 habitable structures. Route P impacts 17 habitable structures, making it tied for 4th overall.<sup>35</sup> Route Z1, the route CPS Energy indicated it believed best meets<sup>36</sup> the requirements of PURA and the Commission’s criteria impacts 31 habitable structures, ranking 11th overall.<sup>37</sup> The routes that the SHLAA and Clearwater indicated each supports in their initial briefs all have 30 or more habitable structures within 300 feet of the centerline.<sup>38</sup> Based on the above definition, Staff supports Route P as a route that is acceptable from a prudent avoidance perspective.

#### **IV. PRELIMINARY ORDER ISSUES RELATING TO THE APPLICATION**

##### **A. Application and Route Adequacy**

- 1. Is CPS Energy’s application to amend its CCN adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation?**

Staff addressed this issue in its initial brief.

##### **B. Need and Project Alternatives**

- 2. Are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a) taking into account the factors set out in PURA § 37.056(c)? In addition,**
  - a) How do the proposed facilit[i]es support the reliability and adequacy of the interconnected transmission system?**

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<sup>34</sup> 16 TAC § 25.101(a)(6).

<sup>35</sup> Staff Ex. 1 at 41-42.

<sup>36</sup> In its initial brief, Staff incorrectly indicated that CPS Energy “recommended” or “preferred” Route Z1. However, CPS Energy has only stated that it believed Route Z1 best meets the requirements of PURA and the Commission’s rules.

<sup>37</sup> Staff Ex. 1 at 41-42.

<sup>38</sup> *Id.*

- b) **Do the proposed facilit[ies] facilitate robust wholesale competition?**
  - c) **What recommendation, if any, has an independent organization, as defined in PURA § 39.151, made regarding the proposed facilit[ies]?**
  - d) **Are the proposed facilit[ies] needed to interconnect a new transmission service customer?**
3. **Is the transmission project the better option to meet this need when compared to employing distribution facilities? If [Rayburn] is not subject to the unbundling requirements of PURA § 39.051, is the project the better option to meet the need when compared to a combination of distributed generation and energy efficiency?**

Staff addressed these issues in its initial brief.

### C. Route

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)?<sup>39</sup>**

Consistent with the above discussion, Staff recommends approval of Route P after weighing the factors set forth in PURA § 37.056(c)(4) and 16 TAC § 25.101(b)(3)(B).<sup>40</sup> As is outlined above and in Staff's initial brief, Route P best balances the criteria to be considered and has many advantages over the other routes.<sup>41</sup>

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?<sup>42</sup>**

Some intervenors assert that routes other than Route P would have less of a negative impact on landowners; however, the evaluation of this criterion is subjective and Staff recommends that Route P adequately balances the concerns regarding the impact on landowners with the other

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<sup>39</sup> Preliminary Order at 5.

<sup>40</sup> Staff Ex. 1 at 10:13-15.

<sup>41</sup> *Id.* at 43:20-23.

<sup>42</sup> Preliminary Order at 5.

statutory criteria. Mr. Poole further recommended that the Commission include language that would allow the utility to make minor deviations under certain conditions if necessary.<sup>43</sup>

**6. If alternative routes or facility configurations are considered due to individual landowner preference:**

- a.) **Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?**
- b.) **Have the accommodations to landowners diminished the electric efficiency of the line or reliability?<sup>44</sup>**

Staff addressed these issues in its initial brief.

**D. Texas Parks and Wildlife Department**

**7. On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:**

- a) **What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?**
- b) **What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?**
- c) **What other disposition, if any, should be made of any recommendations or comments?**
- d) **If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and**

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<sup>43</sup> Staff Ex. 1 at 15:7-12.

<sup>44</sup> Preliminary Order at 4-5.

**circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.**<sup>45</sup>

Staff addressed these issues in its initial brief.

**E. Other Issues**

**8. Are the circumstances for this line such that the seven-year limit discussed in section III of this order should be changed?**<sup>46</sup>

Staff addressed this issue in its initial brief.

**V. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Staff's proposed findings of fact and conclusions of law will be filed concurrently with this brief.

**VI. CONCLUSION**

Based on the foregoing discussion, Staff supports the adoption of Route P. Specifically, Route P is comparable to, or superior to, the other alternative route options based on the evidence and the evaluation of the qualitative and quantitative criteria.

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<sup>45</sup> Preliminary Order at 5.

<sup>46</sup> Preliminary Order at 5.

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 28, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rustin Tawater  
Rustin Tawater