

RECEIVED  
2021 MAY 28 PM 3: 13

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  
POST-HEARING REPLY BRIEF

TABLE OF CONTENTS

I. INTRODUCTION ..... 2

II. JURISDICTION AND NOTICE ..... 2

III. 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)? ..... 3

    A. Routing Criteria under PURA § 37.056(c)(4)..... 3

        1. Adequacy of existing service and need for service..... 3

        2. Community Values ..... 3

        3. Historical Values..... 4

        4. Parks and recreation areas..... 5

    B. Routing Criteria under 16 TAC § 25.101(b)(3)(B)..... 5

        1. Engineering Constraints..... 5

        2. Cost ..... 6

        3. Moderation of Impact on Affected Community and Landowners..... 6

            a. Anaqua Springs..... 6

            b. Bexar Ranch..... 6

            c. Substation Site 7 ..... 8

        4. Prudent Avoidance..... 9

IV. 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? ..... 11

V. CONCLUSION..... 13

CERTIFICATE OF SERVICE ..... 15

861

## **I. INTRODUCTION**

The parties have provided detailed briefing in this case regarding which route or routes each party believes is the route that best meets the applicable routing factors. Many parties discuss the uniqueness of their property, the views, and the lifestyle they enjoy. Those statements are all valid. All land is unique, and most landowners enjoy their properties for their unique characteristics. Nevertheless, this transmission line needs to be built to serve the area and prevent shortfalls in electricity. This reply brief addresses only those arguments made by parties in this case that Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") believes warrants a response to clarify the record or to point out an inconsistency in a party's position. Anaqua Springs HOA's silence on a particular claim does not mean that Anaqua Springs HOA necessarily agrees with that party's position.

## **II. JURISDICTION AND NOTICE**

Anaqua Springs HOA does not contest the jurisdiction of the Public Utility Commission of Texas ("Commission") over this case, nor of the State Office of Administrative Hearings to conduct the hearing and issue a Proposal for Decision.<sup>1</sup>

Anaqua Springs HOA also does not contest that the City of San Antonio acting by and through the City Public Service Board ("CPS Energy") provided notice in accordance with the Commission's rules. However, Anaqua Springs HOA maintains, as indicated in its initial brief, that CPS Energy has treated similarly-situated people differently when providing notice in that CPS Energy did not provide notice to all the individuals adjacent to Substation Site 7, whereas all adjacent residents of other substation sites were provided notice, as were individuals who own property much farther away from those other substation sites.

---

<sup>1</sup> Anaqua Springs HOA is filing proposed findings of fact and conclusions of law as a separate but simultaneous filing in this docket.

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

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

No parties contested these issues.

**2. Community Values**

This case has essentially fallen into two factions, those opposed to routes on Toutant Beauregard Road (“Toutant Beauregard”) (Commission Staff, Northside Independent School District (“NISD”), the numerous self-represented litigants in Serene and Scenic Hills, The San Antonio Rose Palace, Inc. and Strait Promotions, Inc. (“Rose Palace”), Brad Jauer and BVJ Properties, L.L.C. (“Jauer”), Anaqua Springs HOA, Patrick Cleveland, the Barrera family, Raul Figueroa)<sup>2</sup> and those who support routes on Toutant Beauregard (Save Huntress Lane Area Association (“SHLAA”), Clearwater Ranch POA (“Clearwater Ranch”), Bexar Ranch L.P. (“Bexar Ranch”), and Guajalote Ranch Inc. (“Guajalote Ranch”). Notably, in briefing, the Chandler parties have asserted for the first time that, in addition to their proposed Route AA2, they also support routes R1, P, W, and any route that does not utilize Segment 40.<sup>3</sup> The Gutierrez Trust opposes Segment 57, but it is not impacted by the central routes.

No party wants this transmission line on their property. However, community values overwhelmingly favor avoiding impacts to residences.<sup>4</sup> The routes that have the greatest number

---

<sup>2</sup> Additionally, Scott Luedke, a landowner adjacent to Substation 7, received no notice and tried to intervene in opposition to the Toutant Beauregard routes. His intervention was denied.

<sup>3</sup> Chandler Initial Brief at 1.

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

of homes are all along Toutant Beauregard. In fact, Segment 54 alone has more homes than the entirety of some other routes.

SHLAA has argued that only one landowner on Toutant Beauregard has intervened, thereby implying that those landowners have not shown the same interest in this Certificate of Convenience and Necessity (“CCN”) proceeding as other intervenors, particularly SHLAA. To the contrary, over 70 people in the Serene and Scenic Hills neighborhood filed comments or motions to intervene.<sup>5</sup> They did so independently without the organizing force of an attorney to assist them.

Additionally, this case is not about who has invested the most time or money in the case or who has the means to hire an attorney to argue for them or who has the time to understand the procedural process of this case. Additionally, NISD represents the interests of hundreds of elementary school children, future middle school children, as well as the district’s desire to protect the taxpayer funded investments already made in purchasing, planning, and developing infrastructure for the middle school property. The Administrative Law Judges (“ALJs”) should give little weight to SHLAA’s dismissive argument regarding the interests of and the impacts on the Toutant Beauregard landowners. These landowners, particularly those along Segment 54, own small lots and having a 75-100 foot easement through their property will take significant portions of their land. Contrary to SHLAA’s assertions, these individuals are concerned about the transmission line and oppose it.

### **3. Historical Values**

Anaqua Springs HOA adopts by reference Rose Palace/Jauer’s joint reply brief on the historical values issues.

---

<sup>5</sup> Bernsen Initial Brief at 5.

Bexar Ranch continues to argue about its own “historical value.” However, Bexar Ranch, unlike the Heidemann ranch, unlike the White Ranch, and unlike Toutant Beauregard, has no historical designation.

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

It is uncontroverted that the transmission line on Segment 36 crosses dedicated parkland.<sup>6</sup> No party disagreed with that contention, and CPS Energy’s environmental assessment has not been amended to correct its erroneous conclusion that there are no parks or recreation areas in the study area. CPS Energy should not be able to simply ignore facts that do not support CPS Energy’s chosen route.

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

##### **1. Engineering Constraints**

Anaqua Springs HOA adopts by reference Rose Palace/Jauer’s reply brief on the issues of engineering constraints.

Bexar Ranch alludes to engineering constraints in saying that its property is rough and difficult to access, but even the testimony cited by Bexar Ranch undercuts its position: CPS has successfully navigated the terrain for transmission line construction projects.<sup>7</sup> More to the point, the existing 138kV line in Bexar Ranch was constructed in 1965.<sup>8</sup> And advances in construction and transportation technology over the past 56 years will have made CPS’s task easier should it build the line across the same type of terrain crossed in 1965. In fact, it appears that CPS would

---

<sup>6</sup> AS Ex. 1 at 10:9-12, Revised Direct Testimony of Steve Cichowski on behalf of Anaqua Springs HOA (Cichowski Direct).

<sup>7</sup> Bexar and Guajalote Initial Brief at 28, Tr at 734:17-735:5 (Bexar Ranch Redirect) (May 5, 2021).

<sup>8</sup> Tr. at 734:10-12 (Bexar Ranch Redirect) (May 5, 2021).

agree, given that it states in its Initial Post-Hearing Brief that all proposed routes are “constructible route alternatives” that “can be feasibly constructed, operated, and maintained by CPS Energy.”<sup>9</sup>

## **2. Cost**

Anaqua Springs HOA adopts by reference Rose Palace/Jauer’s reply brief on the issues of cost.

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

### **a. Anaqua Springs**

Certain parties argue that CPS Energy will span the Anaqua Springs entrance, thereby moderating the impact of the line on Anaqua Springs. CPS Energy was clear throughout this proceeding that the line has not been designed, and while it appears that it might be possible to span the entrance to Anaqua Springs, CPS Energy could not guarantee that they would span it.<sup>10</sup> Furthermore, the argument that Anaqua Springs’ entrance can be spanned fails to consider the other detriment impacts of routes along Toutant Beauregard, particularly the high number of habitable structures along Toutant Beauregard, including those on which construction has begun in Scenic Crest and in Pecan Springs.<sup>11</sup>

### **b. Bexar Ranch**

Bexar Ranch contends that no other property stands to experience the same breadth of a taking as it does if the line is routed along any segment that touches Bexar Ranch. It is likely that Raul Figueroa and the property owners on Segments 17 and 54 would strongly dispute that contention. Bexar Ranch is a limited partnership, presumably owned in some manner by the Bitter

---

<sup>9</sup> CPS Energy Initial Brief at 20.

<sup>10</sup> Tr. at 477:14-478:16 (CPS Panel Cross) (May 4, 2021); Tr. at 834:16-835:7 (CPS Panel Cross) (May 5, 2021).

<sup>11</sup> Serene Hills Ex. 1, Direct Testimony of Joan M. Arbuckle at 6 (Arbuckle Direct), Tr. at 874:12-23 (Dreiss Cross) (May 7, 2021).

family. But none of the family members live on the ranch.<sup>12</sup> Thus, none of the family members will have a transmission line running through their homestead. Bexar Ranch is nearly 3,200 acres.<sup>13</sup> There are no habitable structures on Bexar Ranch within 300 feet of any of the proposed segments.<sup>14</sup> Furthermore, given the size of Bexar Ranch, if the Bitter family members are on the ranch, they can still enjoy large swaths of land that are not impacted by the transmission line. They might see the lines, but the lines would not be by their homes. The same is not true for the people who have a home close to one of the proposed segments. The Serene and Scenic Hills intervenors and those who filed comments, are all at risk of having a transmission line run close to their homes. Mr. Figueroa is faced with the possibility of a line running on three sides of his home. Bexar Ranch does not even mention Mr. Figueroa in its brief. The sheer breadth of taking a portion of a homestead property is much more than running a line through open land with absentee landowners, not near a habitable structure.

Bexar Ranch does have an existing transmission line on its western border.<sup>15</sup> That transmission line was built sometime in the mid-1960s. The original easement for that line shows a date of 1965, long before CPS Energy was required by statute to seek a CCN from the Commission for a transmission line. Additionally, the easement was not granted by Bexar Ranch, but by the White Ranch.<sup>16</sup> Bexar Ranch separated from White Ranch sometime in the 1970s.<sup>17</sup>

---

<sup>12</sup> AS Ex. 15, Bexar Response to Anaqua RFI 1-6.

<sup>13</sup> Bexar and Guajalote Initial Brief at 3; BR Ex. 2, Direct Testimony of Michael Bitter at 10:3 (picture) and 5 (acreage) (Michael Bitter Direct); BR Ex. 8, Rebuttal Testimony of Sarah Bitter at 6:16-18 (Sarah Bitter Rebuttal).

<sup>14</sup> CPS Energy Ex. 6, Amended Application, Attachment 2, Amended Environmental Assessment at Table 4-23 (Segment 43), Table 4-24 (Segment 45), and Table 4-28 (Segment 44) (Amended Application).

<sup>15</sup> Bexar and Guajalote Initial Brief at 6; Tr. at 734:17-735:5 (Michael & Sarah Bitter Redirect) (May 5, 2021).

<sup>16</sup> AS Ex. 8, White Ranch Easement Deed of Trust.

<sup>17</sup> Bexar and Guajalote Initial Brief at 19; BR Ex. 8, at 6:16-18 (Sarah Bitter Rebuttal).

Thus, when Bexar Ranch separated from White Ranch, Bexar Ranch agreed to take the transmission line on its property. Yet, it now complains about having the transmission line when that line has always served as the western boundary of the ranch. Therefore, Bexar Ranch's arguments based on the existing transmission line should be given little weight.

Bexar Ranch is correct that it lies within the Edwards Aquifer Contributing Zone. However, the entire study area and all alternative routes are entirely in the Edwards Aquifer Contributing Zone.<sup>18</sup> Thus, any impervious cover CPS Energy puts on the land to build its transmission line on any route will be within that zone. Bexar Ranch is not unique in that situation. Furthermore, Bexar Ranch presented no evidence that having the line on its property would, in any way, prohibit it from participating in the various City of San Antonio initiatives.

**c. Substation Site 7**

Both Clearwater Ranch and Save Huntress Lane Area Association ("SHLAA") argue in favor of Substation Site 7 because they agree with CPS Energy that the larger size of the lot may provide for the possibility of partially shielding the substation from view.<sup>19</sup> In other words, the larger size of the lot serves to mitigate the impact of the substation. These parties fail to apply the same logic when discussing the routing of the transmission line. The lot sizes in Serene and Scenic Hills are relatively small – around one acre. In contrast, the lot sizes in Clearwater Ranch are much larger, as are the lots along Huntress Lane.<sup>20</sup> In fact, a review of CPS's Intervenor map shows them to be, by far, the largest-lot subdivisions within the study area.<sup>21</sup>

---

<sup>18</sup> CPS Ex. 1, Attachment 1, Environmental Assessment at 3-6; 4-10 (Original Application).

<sup>19</sup> SHLAA Initial Brief at 11.

<sup>20</sup> The lots in The Canyons are smaller, but the segments that are close to The Canyons skirt the neighborhood and do not run through Canyons' homeowners' yards.

<sup>21</sup> CPS Energy Ex. 8, Intervenor Map.



#### 4. Prudent Avoidance

CPS Energy contends that all of its routes comply with the Commission's policy on prudent avoidance.<sup>22</sup> While all routes run within 300 feet of habitable structures, the impact to people's homes varies significantly depending on the route chosen. Reviewing the initial briefs of the individuals who reside in Serene and Scenic Hills (Paul Craig, Joan Arbuckle, Yvette Reyna, Robert Bernsen, and Betsy Omeis), it is clear that these homes on small pieces of property would be significantly negatively impacted by the transmission line because a large percentage of their small lots along Toutant Beauregard would be taken to route the line.

Bexar Ranch argues that comparing Route W to Route Z1 shows that more habitable structures on W are on the same side of the road as the transmission line compared to those on Route Z1. This argument is a red herring for a number of reasons. First, the Commission's rules count habitable structures by the number of them within 300 feet of the line, not the number on the same versus opposite side of the road. Additionally, CPS Energy has made it crystal clear that the line has not been designed and that places on the map where a transmission structure appears on one side of the road may actually end up on the other side.<sup>23</sup> Because CPS Energy has not provided enough information to even determine which side of the road the structures (and therefore the line) will be, Bexar Ranch's attempt to count how many structures are on which side of the road should be disregarded or given little weight.

---

<sup>22</sup> CPS Energy Initial Brief at 19.

<sup>23</sup> Tr. at 396:4-397:14 (CPS Panel Cross) (May 4, 2021).

Several parties discuss the number of habitable structures within 100 feet of various routes.<sup>24</sup> Segment 54 has an existing home less than 100 feet from the centerline.<sup>25</sup> That home is in Scenic Hills and was in existence long before the application was filed. Segment 26a has one home less than 100 feet from its centerline. That home is listed as habitable structure number 198. It was built in The Canyons subdivision **after** the open house in this case, and it was built directly under the proposed Segment 26. The homeowner who built that home received direct mail notice of the Application and thus likely also received notice of the open house.<sup>26</sup> The construction of the home resulted in the movement of Segment 26 onto other landowners and its renaming to 26a. The ALJs should not weigh the home that was constructed directly under a proposed segment with full knowledge of the CCN proceeding equally with the homes in existence before the open house. Doing so would create an incentive for individuals upon learning of a transmission line project to immediately construct homes under the path of the line. Habitable structure number 204 is located on Segment 15. It is a workshop and, while CPS Energy has classified it as a habitable structure, it is not a home. Therefore, the number of homes in existence at the time of the application and within 100 feet of any of the proposed segments is one, and it is on Toutant Beauregard.

As discussed above, the lots in Clearwater Ranch and along Huntress Lane are large. Thus, each landowner would have the ability to use more of their property than the landowners on Toutant Beauregard. Seventy-five to 100 feet of right-of-way on a small one-acre property has a

---

<sup>24</sup> SHLAA Initial Brief at 9; Clearwater Initial Brief at 7 and 18; Bexar and Guajalote Initial Brief at 36 and 38-39.

<sup>25</sup> CPS Energy Ex. 6, Attachment 2, Amended Environmental Assessment at Table 4-31, Map No. 81 (Amended Application).

<sup>26</sup> The owners of habitable structure number 198, which is on parcel No. F-129 are Assem and Amanda Sherkawy. CPS Energy Ex. 1, Attachment 8 at 5 (Original Application).

much larger impact than a similar amount of right-of-way on a 10-15 acre property, or 3,200 acres for that matter.

SHLAA argues that the Toutant Beauregard routes are acceptable from the perspective of prudent avoidance because, among other reasons, the number of habitable structures along Z1 is lower than the average of all the routes. To be clear, the average number of habitable structures is not a routing criterion. To the contrary, the actual number is the criterion looked at. And in this case, the routes with the lowest numbers of habitable structures are *not* on Toutant Beauregard.

**IV. 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?**

The parties advocating for Route Z1 or other routes on Toutant Beauregard argue that the ALJs and the Commission should weigh the agreement between Toutant Ranch Ltd. and CPS Energy heavily in favor of selecting a route that utilizes the donated and discounted segments.<sup>27</sup> Anaqua Springs HOA strongly disagrees. These parties imply that the agreement is evidence of landowner consent. Mr. Dreiss stated at the hearing that he does not want the lines on his property.<sup>28</sup> He negotiated with CPS Energy at great cost to his business to save his business from potential ruin.<sup>29</sup> And it would be better for his developments if the transmission line avoided the properties entirely.<sup>30</sup> Not wanting the lines and having to negotiate away significant rights (ability to argue against routing, ability to pursue condemnation, ability to obtain remainder damages) shows that Mr. Dreiss was in an impossible position and took the better alternative of two bad deals. This is not the case of a landowner requesting the transmission line on their property so

---

<sup>27</sup> Clearwater Initial Brief at 15; SHLAA Initial Brief at 3-4; Bexar and Guajalote Initial Brief at 17.

<sup>28</sup> Tr. at 877:21-878:2 (Dreiss Cross) (May 7, 2021).

<sup>29</sup> Dreico Companies Ex. 1, Direct Testimony of Tom Dreiss at Exhibit. 1 (Dreiss Direct); *see also* Anaqua Springs HOA initial brief at 17 (outlining contract terms).

<sup>30</sup> Dreico Companies' Ex. 1 at 5-6 (Dreiss Direct).

long as they receive just compensation, like some parties have done.<sup>31</sup> The obvious impact to Toutant Ranch Ltd.'s property should not be ignored or discounted simply because to Toutant Ranch Ltd. agreed to forego large sums of money to protect the core of its business.

To be clear, the agreement does not require Toutant Ranch Ltd. to merely act unopposed or disinterested about the lines on its land. To the contrary, it requires Toutant Ranch Ltd. to support the segments over its properties. Toutant Ranch Ltd. could not provide any testimony about the negative impact of any of the routes. The ramifications of this agreement are severe. It impedes the process, is contrary to public policy, and should not have been enforceable under those terms. A utility, and particularly a governmental entity, should not be encouraged to strong-arm landowners to take a particular position in a case after the landowner has contributed financially by donating right of way. This type of agreement puts other similarly situated landowners at a disadvantage because they are then not only challenging the utility's routing but also the coerced support of other landowners. Additionally, CPS Energy used this agreement to limit Toutant Ltd.'s participation. No party should be limited in its full participation in a hearing. This agreement silences one affected party and forces them to accept the lesser of two evils in exchange for giving up its right to participate and be compensated in the event a route is chosen over its property.

CPS Energy also asserts in its brief that the ALJs ordered changes to the lines on Toutant Ranch Ltd.'s property as a result of the route adequacy hearing.<sup>32</sup> CPS Energy only tells a portion of that story. As part of their agreement, CPS required Mr. Dreiss to file a route adequacy motion

---

<sup>31</sup> See, e.g. *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed McCamey D to Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties*, PUC Docket No. 38354, AC Ranches' Initial Brief at 4 (Nov. 15, 2010) (AC Ranches wanted the transmission line on its property).

<sup>32</sup> CPS Energy Initial Brief at 19.

that CPS Energy would not oppose.<sup>33</sup> In other words, CPS Energy could have agreed to landowner requested modifications with some cost offset as provided in the rules, but instead required Mr. Dreiss at additional expense to file a route adequacy motion, presumably to give CPS Energy some cover so they could argue that the ALJs ordered the change. The reality is, however, that CPS Energy and Mr. Dreiss could have negotiated the agreement on their own.

## V. CONCLUSION

In conclusion, routes along Toutant Beauregard should not be selected to route this transmission line. The routes along Toutant Beauregard are poor choices for the following reasons:

- The habitable structure count is too high.
- There are too many unknowns about routing along the constrained right-of-way along Segment 54 where CPS Energy does not at this point even know which side of the road the line will need to run.
- Segment 54 has more habitable structures on that one segment alone than do many of the other routes in their entirety.
- There is no room to widen Segment 54 if additional lanes are needed as the community grows from new development and a new middle school.
- In the event of a failure of the transmission line into the road, there is no other way for emergency services vehicles to access the subdivisions other than to come from Boerne.
- There are flood dangers associated with Substation Site 7.
- There is flooding along Toutant Beauregard.

---

<sup>33</sup> Dreico Companies Ex. 1 at Exhibit 1 at 1, Terms 2 and 3 (Dreiss Direct).

- The cost of Toutant Beauregard routes from Substations 2 and 3 are essentially equivalent to the central routes but impact many more habitable structures.
- Toutant Beauregard is an historic corridor recognized by the State of Texas.
- The Heidemann Ranch historic district is on Toutant Beauregard.
- George Strait's Rose Palace and his property on the southern part of Toutant Beauregard across from Scenic Hills are on Toutant Beauregard.
- Sara McAndrew Elementary School is impacted only by routes that utilize Toutant Beauregard.
- There are routing constraints in the right-of-way that are present only on Toutant Beauregard.
- CPS Energy has not yet provided complete and accurate data for the rights-of-way along Toutant Beauregard.

Respectfully submitted,

By: Wendy K. L. Harvel  
Ann M. Coffin  
State Bar No. 00787941  
Wendy K. L. Harvel  
State Bar No. 00796719  
C. Glenn Adkins  
State Bar No. 24103097  
Coffin Renner LLP  
1011 West 31<sup>st</sup> Street  
Austin, TX 78705  
(512) 879-0900  
(512) 879-0912 (fax)  
ann.coffin@crtxlaw.com  
wendy.harvel@crtxlaw.com  
glenn.adkins@crtxlaw.com

**ATTORNEYS FOR ANAQUA SPRINGS  
HOMEOWNERS' ASSOCIATION**

**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 28<sup>th</sup> day of May 2021, pursuant to SOAH Order No. 3 issued in this docket.

  
\_\_\_\_\_  
Wendy K. L. Harvel