

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

RECEIVED
2021 MAY 28 PM 3:14

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

**ANAQUA SPRINGS HOMEOWNERS' ASSOCIATION'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS**

Anaqua Springs Homeowners' Association files these proposed findings of fact, conclusions of law, and ordering paragraphs.

I. Findings of Fact

Procedural History, Notice, Jurisdiction, and Project Background

1. The City of San Antonio acting by and through the City Public Service Board (CPS Energy) is a governmental entity and a municipal utility providing service under certificate of convenience and necessity (CCN) No. 30031.
2. On July 22, 2020, CPS Energy filed with the Commission an application to amend its CCN for a new double circuit 138 kV transmission line that includes the construction of a new substation and a transmission line connection to the existing 138 kV Ranchtown-Menger transmission line.
3. CPS Energy will build, own, and operate the proposed transmission line.
4. CPS Energy proposes to use double circuit 138 kV steel monopole structures that range in height from 70 to 130 feet above ground.
5. CPS Energy filed 29 alternative routes in its Original Application.
6. CPS Energy filed an Amended Application that eliminated most of Segment 49.

862

7. CPS noticed landowners who were crossed or had a habitable structure within 300 feet of the transmission line, according to the Commission's notice provisions.
8. CPS failed to provide direct mail notice to all landowners adjacent to Substation Site 7, even though CPS Energy provided direct mail notice to all landowners adjacent to every other proposed substation site including individuals who were not entitled to notice under the Commission's notice provisions.
9. Because CPS Energy applied different notice standards depending on the location of the individuals, it treated similarly situated individuals differently.
10. As a municipal utility and a governmental entity, CPS Energy should treat all similarly situated landowners in a non-discriminatory manner and failed to do so in this case.
11. On August 21, 2020, the Commission Administrative Law Judge (ALJ) found the Application to be administratively complete and found CPS Energy's notice for the transmission line to be sufficient.
12. On September 20, 2020, the Commission referred this case to the State Office of Administrative Hearings (SOAH) and issued a preliminary order identifying issues to be addressed.
13. Over 150 parties were initially granted intervention. Subsequently, approximately 100 parties were dismissed from the docket prior to the hearing on the merits.
14. The notice of the hearing on the merits was issued on November 23, 2020. It informed the parties of the time and place of the hearing.
15. On December 10, 2020, the SOAH ALJs convened a route adequacy hearing. The ALJs determined that CPS Energy had provided in the Application an adequate number of reasonably differentiated routes.
16. On December 22, 2020, CPS Energy filed an Amended Application.

17. The hearing on the merits was held from May 3 through 7, 2021.
18. The record closed on May 28, 2021 with the filing of reply briefs.

Need for the Project

19. The project is needed to serve load growth within Bexar County.
20. No party contested the need for the Project.

Route

Initial Routing

21. CPS Energy retained POWER Engineers, Inc. to prepare an Environmental Assessment and Routing Study for the Project (EA).
22. CPS Energy held one public open house meeting on October 3, 2019, to discuss the Project and solicit comments from the community.
23. CPS Energy presented preliminary segments at that open house meeting.
24. CPS Energy did not hold any other open houses, either in person or virtual after the open house on October 3, 2019.
25. CPS Energy's Application differed significantly from the segments shown at the open house in that Segment 12 was removed, Substation 1 was relocated, and Substations 6 and 7 were added.
26. CPS Energy did not provide an opportunity through an open house or any other means for landowners to provide input on the changes made from the preliminary segments shown at the open house before filing the Application.

Community Values

27. The term "community values" is not formally defined by statute or in Commission rules. However, the Commission has viewed community values as a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community. Adverse effects upon community values consist of those aspects of a proposed

project that would significantly alter the use, enjoyment, or intrinsic value attached to an important area or resource by a community.

28. To address and consider community values, CPS Energy solicited input from individuals in the study area, as well as federal, state, and local government agencies. CPS Energy solicited input on questionnaires that showed an overwhelming preference for the Project to distance the line from residences.

Recreational and Park Areas

29. CPS Energy failed to identify any recreational and park areas in its filings.
30. There are two recreational and park areas in the study area. One is the dedicated parkland at the entrance to the Anaqua Springs Ranch subdivision on Segment 36, the other is the High Country Ranch recreational area on Segment 49a.
31. Therefore, contrary to the information provided in CPS Energy's Application, Routes J1, AA1, EE, AA1, and AA2 cross two park and recreational areas, and Routes C1, D1, G1, DD, M1, I1, T1, Y, and Z1 cross one.

Cultural, Aesthetic, and Historical Values

Aesthetics

32. The land in the study area is a rapidly developing suburban area with some remaining rural areas.
33. During construction, some temporary aesthetic effects will occur from the presence of construction equipment, recent disturbance from clearing and construction, debris, and construction materials.
34. Following construction, CPS Energy will revegetate the right of way, remove construction equipment and material, and dispose of debris and trash.
35. Permanent aesthetic impacts from the project will be the views of the towers and lines.

Cultural and Historical Values

36. The Heideman Ranch is located on the north side of Toutant Beauregard. Segments 36 and 31 abut or their centerlines are within 1,000 feet of the Heideman Ranch.
37. CPS Energy failed to include the Toutant Beauregard/Boerne Stage, Scenic Loop historic corridor in its list of historical sites in the study area.
38. House Bill 1499 in the 2011 Texas Legislative Session created Texas Government Code section 442.024, which establishes the Scenic Loop Road–Boerne Stage Road–Toutant Beauregard Road Historic Corridor.
39. This historic corridor was the first of only two Historic Corridors designated in the State of Texas.
40. This third leg of the Historic Corridor runs directly along Segments 4, 5, 14, 54, 20, 36, and 35.
41. CPS Energy has agreed to report the discovery of any artifacts or other cultural resources to the Texas Historical Commission (THC) and cease work immediately in the vicinity of the resource.

Environmental Impacts

42. POWER Engineers studied and analyzed potential impacts to water resources, ecology (including endangered/threatened vegetation and fish and wildlife), and land use within the study area for the project.
43. With respect to overall environmental integrity, the project will cause short-term impacts to soil, water, and ecological resources.
44. Substation Site 7 presents environmental challenges in that it is in an area that presents a flood hazard and is in adjacent to a waterway (Leon Creek), which is subject to flooding.

45. Substation Site 7 presents an environmental hazard to Leon Creek in that the land is not level, and any spillage from the substation would be immediately adjacent to Leon Creek.
46. Substation Site 6 is level with only a 20-foot elevation difference. and not adjacent to Leon Creek or any other body of water.
47. Substation Site 6 is the most remote of all proposed sites from any body of water.
48. Substation Site 6 does not present the same environmental challenges found on Substation Site 7.
49. Each of the routes has the potential to impact threatened and endangered species, including the golden cheeked warbler.
50. All the routes cross modeled potential golden cheeked warbler habitat.
51. Routes W and O cross the least amount of acreage of high value golden cheeked warbler habitat.
52. Before construction, CPS Energy will conduct a natural resources assessment to consider threatened and endangered wildlife and plant species along the approved route.
53. CPS Energy will comply with the Migratory Bird Treaty Act, the Endangered species Act, and the Commission's ordering language including appropriate consultation with TPWD and United States Fish and Wildlife Service (USFWS).
54. TPWD's concerns will be adequately addressed by the environmental mitigation ordering paragraphs contained in the Commission's order.
55. The entire study area is within the Edward Aquifer Contributing Zone.

Engineering Constraints

56. No significant impact to airports, airstrips, or heliports is anticipated from the construction of any route.

57. Segment 54, which is a part of Routes A, B1, C1, D1, E, G1, H, I1, J1, K, L, M, X1, Y, Z1, AA1, AA2, BB, CC, DD, and EE, presents significant engineering constraints due to the inability to widen the road at that location.
58. Gas and water utilities exist in the area of the transmission line to the south of Habitable Structure 88.
59. Substation Site 7, which is a part of Routes X1, Y, Z1, AA1, AA2, BB, CC, DD, and EE presents significant engineering constraints in that it is located within a flood plain adjacent to Leon Creek, which is subject to flooding, is a steeply sloping property, and will require significant grading and containment to prevent any spillage or seepage of oil from the substation from draining into Leon Creek.
60. Using Substation Site 7 directly contravenes CPS Energy's Siting Manual, which 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."
61. Toutant Beauregard a rapidly developing area with two subdivisions under construction with hundreds of homes and associated impervious cover, all upstream from Substation Site 7.
62. The Army Corps of Engineers has recognized the Leon Creek watershed as one of the most flood prone areas in the United States.
63. CPS Energy eliminated other substation sites that presented flooding hazards prior to adding Substation Site 7.
64. There is a CPS Energy natural gas distribution line on the north side of Toutant Beauregard Road and metal risers from that pipeline, which CPS Energy will have to avoid when digging foundations for the transmission line.

65. CPS Energy will design the project to meet or exceed nationally recognized guidelines and specifications for operating the transmission facilities in a safe and reliable manner, including the Rural Utilities Service “Design Manual for High Voltage Transmission Lines.” The project will also be designed to meet or exceed requirements of the applicable version of the National Electrical Safety Code.
66. CPS Energy identified seven potential substation sites in its Application. However, only two of those substation sites (6 and 7) connect directly to the Ranchtown Menger transmission line in the west without the line passing another substation site.
67. Substation Site 7 is in a flood hazard area adjacent to Leon Creek, which is subject to flooding, would require significant grading and containment, is environmentally risky, and should not be considered.
68. Substation Site 6 is not located in a flood plain or adjacent to any body of water.
69. All substations other than sites 6 and 7 add cost and length and additional routing corridors because any route from any other substation must cross by the location of either Substation Site 6 or 7.
70. The cost of the routes exiting Substation Sites 2 or 3 are essentially equivalent to the costs of central routes out of Substation Site 6 and impact significantly fewer habitable structures.
71. There is one communications tower in the study area that relies on line-of-sight to send microwave communication signals. It is uncontested that Segments 20, 36, and 32 would interfere with that tower’s transmissions due the azimuth of the facilities on that tower.
72. CPS Energy cannot confirm that Raul Figueroa’s cell phone would work if the line were routed along Segment 46b.

73. Segments 54, 20, 36, 32, and 46b present engineering constraints that can be avoided by avoiding routes along Toutant Beauregard.

Costs, Compatible right-of-way, and Prudent Avoidance

74. CPS Energy's estimated costs for all routes range from approximately \$37.6 million to \$56.1 million.
75. CPS Energy's cost estimates for routes along Toutant Beauregard are not reliable.
76. 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.
77. CPS Energy failed to provide complete and accurate information for the right of way widths along Segment 54 and other segments.
78. 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.
79. CPS Energy does not factor the additional costs of angle and turning structures into its cost estimates.
80. Segment 54 along has 4 or 5 road crossings, which require more expensive angle structures.
81. Costs for flood mitigation are not included in the estimated costs for Substation Site 7.
82. Costs for grading Substation Site 7 are not included in CPS Energy's cost estimates.
83. CPS Energy did not include estimated costs for spillage mitigation for Substation Site 7.
84. CPS Energy has not provided accurate costing estimates for Substation Site 7.
85. All routes use compatible right-of-way for some portion of their lengths.
86. There are at least 31 habitable structures within 300 feet of the centerline of Route Z1.
87. There are 29 habitable structures within 300 feet of the centerline of Route W.

88. There are 13 habitable structures within 300 feet of Route R1.
89. There are 17 habitable structures within 300 feet of Route P.
90. CPS Energy incorrectly identified only one home within 300 feet of Segments 38, 39, and 43.
91. Between the time CPS Energy presented initial segments at the open house and the time it filed its Application, CPS Energy moved a portion of Segment 38 to avoid a large number of homes on the southern border of the Anaqua Springs subdivision.
92. Although three homes were still within 300 feet, CPS believed it was only within 300 feet of one of them -- Sunil Dwivedi's home.
93. CPS Energy may still parallel the property line on the southern border of Anaqua Springs while moving the line consistent with the move of Segment 38 by moving the line to the south by 100 feet, which would move it more than 300 feet away from all of the residences in Anaqua Springs without moving it within 300 feet of any other residence.
94. There are no habitable structures for a great distance south of the southern border of Anaqua Springs, but the routes are currently within less than 300 feet of three residences in Anaqua Springs.

Texas Parks and Wildlife Department (TPWD) Comments and Recommendation

95. TPWD provided comments and recommendations on the original Application in a letter dated July 22, 2020, a correction to their letter dated September 10, 2020, and on the Amended Application in a letter dated February 18, 2021.
96. TPWD did not provide testimony or evidence in this proceeding.
97. The TPWD letters addressed issues related to ecology and the environment. TPWD did not consider other factors that the Commission and utilities must consider and balance in CCN applications, including the other routing criteria that involve direct impacts on people.

98. Once the Commission approves a route, CPS Energy can undertake on-the-ground measures to identify potential endangered or threatened species habitat and respond accordingly.
99. CPS Energy will use avoidance and mitigation procedures to comply with laws protecting federally listed species.
100. CPS Energy will revegetate the new right-of-way as necessary and according to CPS Energy's vegetation management practice, and landowner preferences and requests.
101. Vegetation removal will be limited to necessary removals to establish appropriate access and clearances.
102. CPS Energy will use appropriate avian protection procedures.
103. CPS Energy must comply with all applicable environmental laws and regulations governing erosion control, endangered species, storm water pollution prevention, and all other environmental concerns.
104. The recommended ordering paragraphs are sufficient to address TPWD's recommendations or requests.

II. Conclusions of Law

1. CPS Energy is a municipally-owned utility.
2. The Commission has jurisdiction over this matter. PURA §§ 14.001, 32.001, 37.001, 37.053, and 37.056.
3. SOAH has jurisdiction over this proceeding. PURA § 14.053; Tex. Gov't Code § 2003.049.
4. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act, Texas Government Code Chapter 2001, and the Commission's rules.

5. Although CPS Energy provided proper notice of the application, it did not provide uniform notice and treated similarly situated landowners differently.
6. CPS Energy provided proper notice of the public open house meeting. 16 TAC § 22.52(a)(4),
7. The project is necessary for the service, accommodation, convenience or safety of the public. PURA § 37.056(a), (c); 16 TAC § 25.101.
8. All of the routes under consideration comply with routing factors to be considered as well as the Commission's policy on prudent avoidance. PURA § 37.056; 16 TAC § 25.101.
9. CPS Energy is entitled to approval of the Amended Application as described in the findings of fact, using Route W, having demonstrated that the proposed transmission line facilities are necessary for the service, accommodation, convenience, or safety of the public. PURA § 37.056(a), (c).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. CPS Energy's application to amend its CCN to build a new 138-kV double-circuit transmission line that extends from a new substation to the Ranchtown Menger transmission line is approved. The project will follow the route described as Route W.
2. CPS Energy shall implement erosion control measures as appropriate. CPS Energy shall return each affected landowner's property to its original contours and grades except to the extent necessary to establish appropriate right of way, structure sites, setup sites, and access for the transmission line or unless otherwise agreed to by the landowner.
3. In the event CPS Energy contractors encounter any archaeological artifacts or other cultural resources during construction of the project, CPS Energy shall cease work immediately in

the vicinity of the resource and report the discovery to the THC and take action as directed by the THC.

4. CPS Energy shall follow the procedures outlined in the following publications for protecting raptors: *Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC), 2006 and the *Avian Protection Plan Guidelines* published by APLIC in April 2005.
5. CPS Energy shall minimize the amount of flora and fauna disturbed during construction of the project, except to the extent necessary to establish appropriate right-of-way clearance for the transmission line. CPS Energy shall re-vegetate using native species considering landowner preferences and avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS.
6. CPS Energy shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides for controlling vegetation within the right of way and such herbicide use shall comply with rules and guidelines established in the *Federal Insecticide, Fungicide and Rodenticide Act* and with the Texas Department of Agriculture regulations.
7. CPS Energy shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviations in the approved route shall only directly affect landowners who received notice of the transmission line in accordance with 16 TAC § 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation.
8. CPS Energy shall coordinate with pipeline owners or operators in the vicinity of the approved route regarding the pipeline owner's or operator's assessment of the need to

install measures to mitigate the effects of AC interference on existing natural gas pipelines or risers that are impacted by the proposed electric transmission facilities.

9. CPS Energy shall conduct surveys to identify pipelines that could be affected by the proposed transmission line, if not already completed, and coordinate with pipeline owners in modeling and analyzing potential hazards.
10. CPS Energy shall work with Bexar County and any applicable road authorities to ensure that the portions of the project potentially affected by the expansion of Toutant Beauregard Road are sited and constructed so that project facilities do not need to be relocated at a later date due to road expansion for turn lanes or flood control and so as to avoid any associated costs being passed on to ratepayers.
11. CPS Energy shall update the reporting of this project on their monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with 16 TAC § 25.83(b). In addition, CPS Energy shall provide final construction costs, with any necessary explanation for cost variance, after completion of construction and when all charges have been identified.
12. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

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 31st 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 28th day of May 2021, pursuant to SOAH Order No. 3 issued in this docket.

Wendy K. L. Harvel
Wendy K. L. Harvel