

SOAH DOCKET NO. 473-21-0247

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

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BEXAR RANCH, L.P. AND GUAJALOTE RANCH, INC.'S REPLY BRIEF

NOW COME BEXAR RANCH, L.P. and GUAJALOTE RANCH, INC., and together file this, their Reply Brief. BEXAR RANCH and GUAJALOTE RANCH continue to support use of **Routes Z2 or Z1** for this project. The record evidence continues to provide a substantial, credible basis to select Routes Z2 or Z1 along Toutant Beauregard Road. Both routes fare exceedingly well on the applicable routing factors and offer important ways to moderate the impact to affected landowners in ways not offered by alternative routes urged by other parties.

I. COSTS: THE DREISS AGREEMENT IS A GOOD THING.

The Dreiss Agreement is a good thing. It benefits Texas ratepayers and encourages continued cooperation between utilities and property owners in CCN proceedings. The Dreiss Agreement moderates the impact on a property owner without shifting any corresponding cost to the ratepayers. Here, Tom Dreiss, the principal and key witness for the Dreiss Interests, approached CPS Energy with the goal of moderating the impact of CPS Energy's proposed segments on the Dreiss Interests' properties.¹ There was no scandal, no coercion, and no malicious intent. And, as will be shown, Tom Dreiss stands by his word.

¹ See Transcript Pg. 542, Ln. 14 – Pg. 543, Ln. 2 (“So, no the developer approached us to modify route segments that were on their property.”) The Dreiss Interests (sometimes referred to as the “Companies” or the “Dreico Companies”) are Toutant Ranch, Ltd., ASR Parks, LLC, Pinson Interests Ltd. LLP, and Crighton Development Co., on whose behalf Tom Dreiss provided written and live testimony.

A. The Dreiss Agreement.

Several intervenors have tried repeatedly to cast Tom Dreiss as a victim. No evidence supports that picture of Tom Dreiss. The reality is that Mr. Dreiss is a successful, sophisticated developer responsible for subdivisions like Anaqua Springs and Pecan Ranch.² The efforts to discredit the Dreiss Agreement by some parties stem from the fact that the Dreiss Agreement caps CPS Energy's cost estimates in material ways, making it very difficult to argue against use of segments that cross the Dreiss Interests. This is particularly relevant when considering the key routes under consideration, *i.e.*, the "Focus Routes." Focus Routes either cross Bexar Ranch or they cross the Dreiss Segments, but not both.³

Segments 43, 44 and 45 which cross Bexar Ranch span 2.05, 1.98 and 2.59 miles each, respectively.⁴ In comparison, the Dreiss 42a→46→46b segment combination (a subset of Route Z2) spans approximately 2.00 miles.⁵ Therefore, the distances at issue between any Bexar Ranch segment and the Dreiss 42a→46→46b segment combination are relatively equal, ignoring that Route Z2 is the *shortest* of all 39 alternative routes, and that Segments 43, 44 and 45 are each quite lengthy and amount to 46%, 44% and 58% of the entire length of Route Z2, respectively.⁶

Bexar Ranch opposes use of Segments 43, 44 or 45, while the Dreiss Interests consent to and do not oppose the Dreiss 46→46b segment combination and they have agreed to donate a portion of Segment 42a if a route with Segment 42a is selected.⁷ In further support of the Dreiss

² Transcript at 874: 6-11 (Dreiss developed Pecan Springs and Anaqua Springs); Transcript at 892:18-22 (Dreiss admits that he is a successful developer); Dreico Companies Ex. 1 at 1:11-13 ("I am President of Toutant Ranch. Collectively, the Companies develop large tracts of unimproved ranchland into residential communities."); Dreico Companies Ex. 1 at 2:2-9 (describing properties developed in area. "Over the past several years, the Companies have developed parts of that ranch into Anaqua Springs and Pecan Ranch communities. . .").

³ See CPS Ex. 16.

⁴ CPS Energy Ex. 15 at 025.

⁵ CPS Energy Ex. 15 at 025 and CPS Exhibit 16 (using scale to approximate portion of Segment 46b on Dreiss Interests' property).

⁶ CPS Energy Ex. 15 at 0025; CPS Energy Ex. 17.

⁷ Dreico Companies Ex. 1 at 013-017; Dreico Companies Brief at 1-6.

42a→46→46b segment combination, in their initial brief, the Dreiss Interests highlight two key benefits: (1) the \$840,000 cost saving associated with using the 42a→46→46b combination (i.e., using Segment 46 instead of Segment 46a, which is the only difference between Routes Z2 and Z1 in terms of route composition) **and** (2) the ability to avoid bisecting some of the Dreiss Interest's property by using Segment 46 instead of Segment 46a.⁸

In contrast, Bexar Ranch points to many reasons **not** to use segments that include Bexar Ranch, including the additional costs (**at least** an additional \$5,770,162.00 or 15.33% increase compared to Route Z2).⁹ The significant impact and importance of the Dreiss Agreement is illustrated when routes like Route W (as suggested by Anaqua Springs HOA and the Cichowskis) with an estimated cost of \$52,869,828 (compared to \$37,638,580 for Route Z2) are considered.¹⁰

The Dreiss Interests was able to moderate the impact to their properties with the Dreiss Agreement. Bexar Ranch's options went from bad to worse. The Dreiss Agreement includes use of modified segments to which the Dreiss Interests consented.¹¹ In contrast, Bexar Ranch initially had the option of the open house versions of Segments 44 and 45, which were horizontal bisects (and Segment 43 ran along the entire northern boundary) – and then, Bexar Ranch had the option of the post-application versions of Segments 43, 44 and 45 – long, winding segments through scenic areas of Bexar Ranch that bisected the property and which did not parallel (except for a portion on the northern property line) any discernable compatible right-of-way. And even now, Bexar Ranch is still fending off attempts by Anaqua and Cichowski to unilaterally move Segment 43 **further into** Bexar Ranch's property, without its consent, further fragmenting Bexar Ranch.¹²

⁸ Dreico Companies Brief at 6.

⁹ BR Ex. 12; see Bexar Ranch and Guajalote Ranch Initial Brief, incorporated herein.

¹⁰ CPS Ex. 17; BR Ex. 12 at pg. 6; Dreico Companies Ex. 2; and CPS Ex. 14 (Lyssy Rebuttal) at 018.

¹¹ Dreico Companies' Ex. 1 at 013-017.

¹² Anaqua Brief at 4, 19-20, and 23-25; CPS Energy Ex. 1 at pages 6-2 through 6-3.

As their Initial Brief confirms, the Dreiss Interests were able to work with CPS Energy to develop the Dreiss Agreement that created alternative routes *along the northern edge* of the communities they are developing, as opposed to routes *that go through them*.¹³ The Dreiss Interests also confirmed in their briefing that they support the use of Segment 46 over 46a, which is the single segment difference between Routes Z2 and Z1 (i.e., the Dreiss 42a→46→46b segment combination).¹⁴ The Dreiss Interests touted the “significant advantages of Segment 46 ... instead of Segment 46a” citing to *favorable routing factors* such as shorter length, “significantly less” cost, better paralleling and fewer turns.¹⁵

The Dreiss Agreement facilitates a significant cost-savings for ratepayers because it sets a cap on right-of-way acquisition costs for routes like Z2 that use segments that cross the Dreiss Interests.¹⁶ As CPS Energy’s Scott Lyssy testified, 38% of the right-of-way acquisition costs are “set” for Route Z2, meaning these costs will not go up¹⁷ (and they could be less under the terms of the Dreiss Agreement). In contrast, the 1.98 miles to 2.59 miles of right-of-way to be acquired on Bexar Ranch is not capped at a pre-set price per unit and Bexar Ranch has not waived its remainder damages (which could be significant given the size of Bexar Ranch’s remainder).¹⁸ In terms of paralleling, the Dreiss Agreement achieves excellent paralleling of compatible right-of-way on the Dreiss 42a→46→46b segment combination, while in stark contrast, paralleling values on Bexar Ranch are highly disputed.¹⁹

¹³ Dreico Companies’ Brief at 1.

¹⁴ CPS Energy Ex. 16; Dreico Companies Brief at 2-3.

¹⁵ Dreico Companies’ Brief at 4-5.

¹⁶ See CPS Energy Ex. 16 (approximately).

¹⁷ Transcript at 261:8-17; see also Agreement at Dreico Companies’ Ex. 1 at 013-017.

¹⁸ See Dreico Companies Ex. at 013-017 explaining cost fixing and cost neutral provisions.

¹⁹ See, e.g., Bexar Ranch and Guajalote Ranch’s Initial Brief at pp 30-34; As Dr. Mark Turnbough testified, “Based on a reconnaissance of the Ranch, proposed changes to those values for Criterion Number 7 [paralleling existing ROW] are suggested in the following: Segment 43 should have a length of approximately 0.65 miles as opposed to 1.50 miles. The only compatible ROW for Segment 43 is 0.65 miles where it parallels the north property line.” BR Ex. 1 at 21:22-22:2 (emphasis added). Dr. Turnbough further testified, “with the exception of the [property line

Notably, the Dreiss Interests (referring to themselves as the “Companies”) close their Initial Brief by confirming:

The Companies appreciate the time and effort that CPS Energy put into developing the various modifications that were necessary across the Companies’ tracts. The Companies’ stand by their resulting Agreement [with CPS Energy].”²⁰

Route Z2, which contains the Dreiss 46→46b segment combination which the Dreiss Interests discounted, consented to, do not oppose, and prefer, best moderates the impact to the Dreiss Interests. The Dreiss Agreement is a game changer for rate payers – donations and cooperation like this should be applauded and encouraged.

B. Reply to Cost Criticisms: The Estimated Costs are Estimates and/or Capped.

Some intervenors criticized CPS Energy’s cost estimates. Some complained about issues that affect all segments. For example, the same appraisal firm was used across the study area to value land acquisition.²¹ Right-of-way to be acquired adjacent to roads was treated similarly.²² The same type materials (monopoles, circuitry, etc.) are used regardless of route, although types and number of poles will vary. Other complaints relate to the per unit value that Mr. Dreiss agreed to in the Dreiss Agreement, and as will be shown, the Dreiss Agreement makes the estimated costs more reliable as they cap a significant percentage of right-of-way acquisition costs on routes that use Dreiss Segments.

For example, Anaqua Springs Homeowners’ Association (“Anaqua”) criticisms of CPS Energy’s estimated costs and the Dreiss Agreement are wholly misplaced. As an initial matter,

paralleling] of Segment 43 noted above, none of the remaining [length] of 43 ... follow[s] any defensible compatible ROW.” BR Ex. 1 at 21:11-13.

²⁰ Dreico Companies’ Brief at 6.

²¹ See Transcript at 483:12-21 (appraisers were Allen, Williford & Seale); BR Ex. 25 (CPS Energy’s response to Jauer RFI 2-4: “. . . The right-of way cost for each segment was determined by CPS Energy real estate experts with experience in obtaining right-of-way throughout CPS Energy’s system.”)

²² Jauer Ex. 26 (75 foot right of way was used for portions of Segments 16 and 56 that run along Scenic Loop Road).

Mr. Dreiss is a sophisticated individual with experienced counsel. The route modifications Mr. Dreiss secured were important enough to Mr. Dreiss that he made sure they were cost-neutral, beneficial to the public, and confirmed in writing.²³ As CPS Energy aptly points out in its Initial Brief, “no parties challenged or protested the Dreiss Interests’ route change request.”²⁴ Each of the six “agreements” that Anaqua criticizes highlight the economic benefit of the Dreiss Agreement to both the Dreiss Interests and to the Texas ratepayer.

The Dreiss Interests also agreed to donate sufficient right of way to offset any incremental costs associated with the new routing options and agreed to ensure that the cost differential between routes using Segments 46 and 49 remained the same, doing so as to not prejudice any other party’s position in this case. Further, the Dreiss Interests agreed to accept the transmission line on their property and to provide any necessary easement rights to CPS Energy at an agreed price.²⁵ And, as stated before, Dreiss Interests expressed sincere gratitude to CPS Energy for the opportunity to re-route the segments on their properties.²⁶

Steve and Cathy Cichowski’s (“Cichowski”) cost criticism center on Cichowski wanting to use his own opinions of value on the Dreiss Interests. Anaqua made similar arguments and also questioned how property like the in-progress Serene Hills was valued. Cichowski and Anaqua’s arguments miss the mark in light of the Dreiss Agreement. Here, CPS used an appraisal firm to provide opinions of value for all properties crossed by segments.²⁷ That Mr. Dreiss then agreed to a discounted value for segments that crossed the Dreiss Interests – sometimes that was a 100%

²³ Notably, Mr. Dreiss did not make the statements ascribed to him by Anaqua. Compare Anaqua Brief at 17 and footnote with Transcript at 900:12-18; Dreico Companies’ Ex. 1 at 013-017 (Dreiss Agreement).

²⁴ CPS Energy Initial Brief at 19.

²⁵ CPS Energy Initial Brief at 33.

²⁶ Dreico Companies Initial Brief at 6.

²⁷ See Transcript at 483:12-21 (appraisers were Allen, Williford & Seale); BR Ex. 25 (CPS Energy’s response to Jauer RFI 2-4: “. . . The right-of way cost for each segment was determined by CPS Energy real estate experts with experience in obtaining right-of-way throughout CPS Energy’s system.”)

discount in the case of a pure donation, and sometimes it was a 20% discount –is of no moment.²⁸. In reality, Mr. Dreiss could have donated all segments that crossed the Dreiss Interests. It just doesn't matter what Dreiss' "lots" are selling for or what Cichowski or Anaqua thinks they should be selling for – what matters is that Dreiss has removed all uncertainty as to the right of way acquisition cost associated with any route that uses segments that cross the Dreiss Interests. This was Dreiss' prerogative, not a response to a "CPS cover up" or "coercion." And, Dreiss has shown a complete willingness to stand by the Dreiss Agreement, going so far most recently as to tout the benefits of using the segments that change CPS Energy's best-meets route (Z1) to Route Z2.²⁹

Even if there was no agreement to fix the cost of the Dreiss right-of-way acquisitions and waive remainder damages, which is denied, Mr. Dreiss has designed his subdivision around these proposed segments (that he chose and consented to), further limiting any possible remainder damages claim that he *could have made*.³⁰ Under Anaqua's logic and given Bexar Ranch has *not* waived damages to its 3,200 acre remainder, routes using Segments 43, 44 and 45 are severely undervalued from a right of way acquisition perspective!

Brad Jauer/BVJ Properties' issues with CPS Energy's cost estimates are also without merit. First, CPS Energy's costs are estimates. Second, Mr. Lyssy is an expert, so he may rely on hearsay testimony (i.e., the appraisers hired by CPS Energy to provide right of way acquisition data) to support his opinion on costs.³¹ While Jauer characterizes Lyssy as unable to answer certain cost questions, the record shows that Lyssy disagreed with certain assumptions made by Jauer's

²⁸ Dreico Companies Ex. 1 at 013-017 (Dreiss Agreement).

²⁹ Companies Brief at 1-6.

³⁰ Dreico Companies' Ex. 1 at 013-017.

³¹ See Transcript at 483:12-21 (appraisers were Allen, Williford & Seale); BR Ex. 25 (CPS Energy's response to Jauer RFI 2-4: ". . . The right-of way cost for each segment was determined by CPS Energy real estate experts with experience in obtaining right-of-way throughout CPS Energy's system.")

counsel, but otherwise explained the basis of how estimated right of way acquisition costs were developed.³²

Further, Jauer continues to confuse the meaning of the estimated cost data presented by CPS Energy and now speculates without record evidence or specificity as to a “myriad of costs that are unique to the Toutant Beauregard routes.”³³ Anaqua has similar misunderstandings. In particular, Jauer and Anaqua misunderstand CPS Energy’s estimated costs as they relate to the right of way width needed for operational clearance versus what is needed for easement widths. The cost savings included in CPS Energy’s estimates, which involved using public road right of way to maintain the operational clearance width while also acquiring narrower easements along public roads where possible, has always been a feature of CPS Energy’s estimated cost estimates.³⁴ These costs translate to important savings on routes that use a public road, and conversely, do not provide a cost savings for routes that cross large land holdings like Bexar Ranch or Guajalote Ranch, or that enter into the neighborhoods like Clearwater Ranch and SHLAA. Notably, *both* Toutant Beauregard Road and Scenic Loop Road were treated this way.³⁵ Furthermore, Jauer and Anaqua do not seem to understand that *even without reducing right of way on public roads*, Route Z2 would have an estimated cost of \$37,962,516.³⁶ This was made very clear in a discovery response so that there would be no doubt on that issue.³⁷ Anaqua also erroneously claims that CPS

³² See Transcript at 483:12-21 (“Well, let me back up here. . . The right-of-way costs that we got for each route and each segment, they were developed with guidance from Allen, Williford & Seale. . . They provided comps in the area. They valued various tracts between 50 cents to \$7.50 per square foot depending on the location, right-of-way, different -- different I guess factors of each -- of each parcel. . . So, they vary throughout -- throughout the segments and throughout the routes and throughout the study area in that matter.”)

³³ Jauer Initial Brief at 24.

³⁴ See BR Ex. 12; BR Ex. 14; CPS Energy Ex. 11 at 9-10; CPS Energy Ex. 17; CPS Energy Ex. 1 at Attachment 3; CPS Energy Ex. 6 at Attachment 3, amended; CPS Energy Brief at 29-30.

³⁵ See *id.*

³⁶ See BR Ex. 12 at 8 (also showing Route Z1 at \$38,798,708 assuming 100-foot right of way for entire length of route).

³⁷ Bexar Ranch Ex. 12 at p. 8. Specifically, Route Z2 with an entire ROW width of 100 feet would cost \$37,962,516.

Energy provided this explanatory cost data too late (although it was provided before the discovery deadline). Anaqua is wrong. As CPS Energy explained pre-hearing, what CPS Energy provided was a confirmation and clarification of estimated cost data regarding existing segments.³⁸ Jauer also lists costs that there is no evidence of needing, like needing to move the entire line in the future. And, Jauer erroneously claims that CPS did not include angle and turning structures in its cost analysis. The evidence shows that CPS determined the number of tangent, running angle and dead end structures needed per route, each differently priced, and included that information in its cost estimates.³⁹

Rose Palace argues that CPS Energy's cost data has uncertainty. However, the uncertainties to which Rose Palace cites are common for all routes given they are estimates. At most, Rose Palace speculates that Substation 7 "may face" additional costs not accounted for by CPS Energy.⁴⁰ Under Rose Palace's logic, there are also significant uncertainties as to the remainder damages that would factor into the true right-of-way acquisition cost should a segment crossing Bexar Ranch be ordered; uncertainty as to the additional engineering costs that would be incurred should the rugged Bexar Ranch be crossed; and uncertainty as to the costs for access roads to reach remote segments on Bexar Ranch. Ultimately, CPS Energy's costs are estimates that are consistent with

³⁸ See CPS Energy's response on this issue at Docket Entry No. 776 ("No good deed goes unpunished. ... To be abundantly clear, *the segment locations proposed by CPS Energy have not changed, the amount of clearance that will be used for the segments (100 feet) has not changed, and the locations of habitable structures or directly affected properties with respect to those segments have not changed. Not a single measurement, data point, or cost estimate was changed in CPS Energy's recently filed clarifications.* There simply have been no meaningful changes as a result of CPS Energy's updated rebuttal testimony and discovery responses. To wit, all of Movants' time and dollars laboriously spent preparing for the hearing based on CPS Energy's original Application materials and cost estimates, previously filed discovery responses, and testimony have not been in any way altered by CPS Energy's clarifications. As such, Movants are free to explore any assumptions, measurements, and constraints at the upcoming hearing on the merits they believe feel are relevant to CPS Energy's proposed routing. CPS Energy's clarifications do not fundamentally change any material issue in this case and are not a basis for delaying this proceeding. Put simply, Movants attempt to make a mountain out of a molehill.") (emphasis original).

³⁹ See CPS Ex. 1 at Attachment 3, Cost Estimates Native; see also Transcript Page 598:17 – 600:11 (discussing cost differences attributable to turning structures).

⁴⁰ Rose Palace Brief at 5.

what is presented in CCN Proceedings and required by the CCN application. The universe of what goes into these estimates is quite finite. CPS Energy has testified that they can be relied on by the Commission to make cost comparisons between the routes.⁴¹

Finally, Mark Siegel accuses CPS Energy of pressuring Mr. Dreiss into the Dreiss Agreement. While Mr. Siegel witnessed objections at the hearing to Cichowski's line of questioning regarding right of way acquisition cost at the hearing, this does not rise to a lack of transparency or justify claims that Mr. Dreiss was "forced" and "pressured" into an agreement with CPS Energy. As stated above, Mr. Dreiss approached CPS Energy about the modifications he wanted on the Dreiss Interests.⁴² As Mr. Dreiss made clear at the hearing, and again in his briefing, he believes he was happy to work with and appreciates CPS Energy.⁴³

C. The Benefits of Route Z2 Go Beyond Costs.

Jauer alleges that the only reason to choose routes like Z2 or Z1 is because of the apparent costs savings compared to the other routes. Jauer is wrong. Route Z2 does not run through existing neighborhoods, but instead runs along a major thoroughfare. Route Z2 does not bisect any properties that have not already been consented to. Additional benefits of Route Z2 include:

- Z2 is the **shortest** of any of the 39 alternative routes at 4.46 miles in length.
- Z2 has a **relatively high** percentage of paralleling existing ROW and property lines at 71% (which is within 12% of the highest percentage for any route at 83%).
- Z2 avoids **entering into neighborhoods**, although it would run along road frontage of some.
- Z2 applies the Dreiss Interests' preference to use Segment 46 instead of Segment 46a.
- Z2 crosses **zero** recorded cultural resource sites.⁴⁴

⁴¹ CPS Energy Ex. 11 at 11:16-17.

⁴² See Transcript Pg. 542, Ln. 14 – Pg. 543, Ln. 2. Mr. Dreiss also testified that the prices at issue and concessions were fair. Transcript at 934:17-24 (fair price); 944:12-15 (fair concessions).

⁴³ Dreico Companies Brief at 6; Transcript at 945:11-12.

⁴⁴ See CPS Energy Ex. 17.

- Z2 crosses **zero** National Register of Historic Places (NRHP) listed properties.⁴⁵
- Z2 utilizes Substation Site 7, which will allow for **greater shielding** of the substation from public roadways and is preferred by the members of SHLAA who abut both substations 6 and 7 associated with the focus routes.⁴⁶
- Z2 avoids use of Substation Site 6 which is **highly visible** and has no documented visual shielding opportunities.⁴⁷
- Z2 has the fourth **shortest** length across upland woodland/brushland at 3.53 acres (compared to 3.05 acres for the lowest (Dreico Route 6)).
- Z2 has the fourth **lowest** acreage of ROW across combined golden-cheeked warbler modeled habitat.
- Z2 Has a **moderate** number of habitable structures within 300 feet of the route centerline at 32, which is below the average of 37, and only one within the 100-foot EMF exposure distance.⁴⁸
- Z2 uses Segment 42a which **avoids crossing NISD property** and uses a **donated** segment.
- Z2 avoids crossing the property of many intervenors, or when multiple segments cross a property, uses the less opposed segment, thereby moderating the impact to the landowner.

Given the foregoing, Route Z2 is an improvement over CPS Energy's best-meets route (Route Z1). Route Z2 is a far better outcome than fragmenting undeveloped properties like Bexar Ranch (who has already been burdened by a 3+ mile electric transmission line that would run parallel to Segments 43, 44 and 45) or Guajalote Ranch. Route Z2 is also better than bisecting growing neighborhoods like Clearwater Ranch and SHLAA.

⁴⁵ See CPS Energy Ex. 17.

⁴⁶ BR Ex. 6 at 11:17-12:2; SHLAA Ex. 1 at 12-13; SHLAA Ex. 2 at 14-15; SHLAA Ex. 3 at 8, 9 and 34; SHLAA Ex. 4 at 11:2-11. See also BR Ex. 26 (CPS Response to Jauer RFI 2-10); BR Ex. 27 (CPS Response to Jauer RFI 2-13). Substation Site 6 does not have the space, shape, natural foliage and tree cover to provide the same visual shielding as does Substation Site 7. BR Ex. 7 at 25:3-7 (referring to MB-17 Rebuttal); BR Ex. 6 at 17:5-6.

⁴⁷ BR Ex. 6 at 12:1-2 and 17:5-6; BR Ex. 7 at 25:3-7; Transcript at 741:15-22.

⁴⁸ CPS Energy Ex. 17; The average is 37. Transcript at 228:12-13; 746:23-747:3; CPS Ex. 12, Exhibit ARM-5R (Scenic Loop 138 KV Transmission Line EMF Analysis); see also CPS Ex. 12 at 13: 1-7; Transcript at 815-817.

II. HABITABLE STRUCTURES: TOUTANT BEAUREGARD HAS CHANGED.

This area of San Antonio has changed, and there's more to come. Toutant Beauregard Road stands ready to bear the weight of the growth that comes along with the new homes planned in Pecan Springs and Scenic Crest alone, and the commercial growth that will likely follow. And, according to CPS Energy, this project is needed in part to serve this area's growth.⁴⁹ That leads to this CCN proceeding, a legal process that tends to pit neighbor-against-neighbor, or as seen in some briefs here, **question** why neighbors haven't turned on each other. And, of course, this isn't about who has the grander gate or even no gate at all.

This is about Toutant Beauregard Road being the true compatible right of way in the study area – it is ***the only road*** that can be followed for a substantial distance toward the Ranchtown to Menger transmission line destination.⁵⁰ It has its first wave of infrastructure in place (distribution lines) and according to CPS Energy's application, the reliability of distribution lines in the area is a concern.⁵¹ Ultimately, people have chosen to live with Toutant Beauregard Road in their midst – whether in their backyard view or their front lawn view. These homes along Toutant Beauregard Road already border a utility and transportation corridor where sustained growth is driving activity.

Under the auspices of prudent avoidance, many parties whose property would not even be crossed, have suggested ***to not follow this busy road***, but to instead to horribly bisect a scenic, rugged, remote ranch that has been preserved in its most natural state for five generations: Bexar Ranch. They suggest burdening a family that already has done so much for the area by bearing the brunt of the 3+ mile Ranchtown to Menger transmission line on their entire western boundary and who is actively working to protect the Edwards Aquifer via a conservation easement. They

⁴⁹CPS Energy Ex. 1 at 000492.

⁵⁰ CPS Energy Ex. 16.

⁵¹ CPS Energy Ex. 1 at 000492.

suggest a route that literally crosses the neighborhoods of SHLAA and Clearwater Ranch. Names like Mariana and Francis Van Wisse,⁵² Joe Acuna, the Davilas and the Cohens all come to mind, each who each have modest homesites that will be crossed under the non-Toutant Beauregard Road route, or the Garcias whose home will be very close.

Given the options, Toutant Beauregard Road should be chosen.

And, prudent avoidance is defined as the “limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”⁵³ It does not mean that a proposed transmission line must avoid all habitable structures at all costs.⁵⁴ CPS Energy’s expert witnesses and PUC Staff’s expert witness concluded that all routes and all segments comply with the Commission’s policy of prudent avoidance, and that would include Route Z2.⁵⁵

Here, the range of habitable structures within 300 feet of the route centerline across all of the potential routes is 12 to 72, and the average is 37.⁵⁶ The number of habitable structures for Routes Z2 and Z1 are 32 and 31, respectively, which is below the average.⁵⁷ Other routes proposed in the briefs have similar, and certainly fewer, habitable structure counts, but those routes have other issues. Furthermore, 21 of the habitable structures within 300 feet of the centerline of Routes Z2, Z1, AA1 and AA2 would be *across Toutant Beauregard Road* from any new transmission line, which exemplifies routing with prudent avoidance in mind.⁵⁸ In contrast, on Route W, *only 6 of the 29* habitable structures would be located on the other side of Scenic Loop Road.⁵⁹ Routes

⁵² See Clearwater Brief at 7.

⁵³ 16 TAC §. 25.101(a)(6).

⁵⁴ CPS Energy Ex. 2 (Meaux Direct Testimony) Pg. 20, Ln. 27-29.

⁵⁵ CPS Energy Ex. 2 (Meaux Direct Testimony) Pg. 21, Ln. 1-7; CPS Ex. 9 (Marin Direct Testimony) Pg. 10, Ln. 22-27; CPS Energy Ex. 12 (Marin Rebuttal Testimony), Pg. 12, Ln. 27-28; and PUC Staff Ex. 1, Pg. 42, Ln. 13-16.

⁵⁶ CPS Energy Ex. 17; The average is 37. Transcript at 228:12-13; 746:23-747:3.

⁵⁷ CPS Energy Ex. 17.

⁵⁸ Transcript at 220:2 –221:21; see also BR Ex. 13, at 49 (Table 4-31 for Route Z1); Mr. Marin, on behalf of CPS Energy, testified that all routes comply with prudent avoidance. Transcript at 565:12-16.

⁵⁹ Tr. pg. 231, Ln. 13 – pg. 232, Ln. 19; see also Bexar Ranch Ex. 13, page 44 (Table 4-28).

P, Q1, R1, and U1 *have no major roadway* like Toutant Beauregard or Scenic Loop Road to provide a buffer.⁶⁰

Habitable structures are inventoried for purposes of providing notice.⁶¹ These inventories then inform exposure to EMF, which is a concern expressed in several briefs. Here, CPS Energy performed an EMF analysis and concluded that the EMF levels associated with CPS' proposed transmission line were consistent with background levels and exposures common to many household appliances and that the exposure distance is approximately 100 feet.⁶² Routes Z2, Z1, AA1 and AA2 *only have one habitable structure* within this 100-foot exposure distance,⁶³ while Route W has four,⁶⁴ and Routes P, Q1, R1, and U1 each have two.⁶⁵ Finally, Route Z2 is from \$5,770,162 to \$15,231,248 less costly than routes advanced in the briefs.⁶⁶ In light of this, it would not be a reasonable or prudent investment of rate payers dollars to choose a more expensive route in this proceeding based upon the policy of prudent avoidance.

Looking even closer than the habitable structure inventory, the position of structures vis-à-vis- intervening roadways, and even EMF exposure distances, some parties have expressed concerns about Segment 54 which includes a non-intervenor with a habitable structure located within 82 feet of Segment 54. There are of course *similar or closer* habitable structures on other routes proposed in the briefs. For example, as to Route P, Habitable Structure 150 is *89 feet* from

⁶⁰ Transcript at 234: 11-19.

⁶¹ Transcript at 817.

⁶² CPS Ex. 12, Exhibit ARM-5R (Scenic Loop 138 KV Transmission Line EMF Analysis); see also CPS Ex. 12 at 13: 1-7; Transcript at 815-817.

⁶³ Bexar Ranch Ex. 13, pages 49-50 (Tables 4-31 and 4-32); see also Tr. at pg. 210, Ln. 18 – pg. 212, Ln. 5 (regarding Route Z2 habitable structures).

⁶⁴ Bexar Ranch Ex. 13, pg. 44 (Table 4-28); Ms. Meaux, on behalf of CPS Energy, testified that along Route W where there are 29 habitable structures, and that HS 194 is 70 feet from centerline; HS 177 is 78 feet from centerline; HS 174 is 94 feet from centerline. She also testified to HS 174 located on Route W which is 122 feet from centerline. Transcript at 224:15-225-11. Ms. Meaux, on behalf of CPS Energy, testified as to the two guardhouses tabulated as “habitable structures” the one on Anaqua Springs HOA is 227 feet from centerline and the one on Route W is 63 feet from centerline. Transcript at 229:23-230:8.

⁶⁵ Bexar Ranch Ex. 13, pg. 36-38 (Tables 4-21 through 4-23).

⁶⁶ See CPS Ex. 17 and BR Ex. 12 at 6.

Segment 22, and Habitable Structure 204 is *54 feet* from Segment 15. As to Routes R1, Q1, and U1, Habitable Structure 198 is *69 feet* from Segment 26a, and Habitable Structure 204 is *54 feet* from Segment 15. As to Route W, Habitable Structure 175 is *94 feet* from Segment 57; Habitable Structure 177 is *78 feet* from Segment 57; Habitable Structure 194 is *70 feet* from Segment 56; and Habitable Structure 208 is *63 feet* from Segment 56.⁶⁷

Here, the evidence shows that CPS can minimize the impact to habitable structures on Segment 54 by using road right of way for clearances purposes.⁶⁸ There is limited opportunity to do that on the neighborhood routes because they have limited to no connection to a public road.

Therefore, it is appropriate and in compliance with the Commission's policy of prudent avoidance for CPS Energy to construct its project on Segment 54, and because of the proximity of habitable structure 81 to Segment 54, CPS Energy could be directed in the final order to engage and cooperate with that property owner and surrounding property owners to moderate the impact of the project, including by utilizing existing road right-of-way and narrower rights-of-way generally as discussed in CPS Energy's testimony in these proceedings. This would address the concerns raised about routing along Segment 54 and is consistent with the approach that CPS Energy has stated it can and intends to follow.

⁶⁷ See BR Ex. 13 at pages 36, 38 and 44.

⁶⁸ See CPS Energy Ex. 14 at Exhibit SDL-3R: Right of Way Proposed for Segment 54. Brad Jauer/BVJ Properties, LLC overstates the impacts along Segment 54. CPS Energy's testimony and exhibits confirm that "for approximately 1,300 feet along Segment 54, less than 100 feet of right of way is proposed on private property in order to maximize the distance to habitable structures and minimize the impacts on the private properties in that area. ... Along that portion of Segment 54 [referring to Exhibit SDL-3R], road right of way will be utilized for the necessary clearances. In a couple of other instances, slightly less than a total width of 100 feet right of way is required on private property because of the curvature of the roadway between poles." CPS Energy Ex. 14 at 9:18-25 and Exhibit SDL-3R.

III. REPLY TO ANAQUA SPRINGS HOMEOWNERS' ASSOCIATION ("ANAQUA").

Guardhouses. It is undisputed that no residential tract owned by any Anaqua resident will be crossed by CPS Energy's project. Given that fact, throughout these proceedings, Anaqua has focused on protecting its commercial guardhouse at Anaqua's subdivision *entrance*. To do so, Anaqua advocates for Route W.⁶⁹ However, Anaqua fails to mention that there are *two* guardhouses in the study area tabulated as "habitable structures." One is Anaqua's (227 feet from centerline), and one is on Route W (63 feet from centerline).⁷⁰

Cost Comparisons. While Anaqua states Route W is the least expensive of certain "southern routes," it is **\$15,231,248.00** more costly than Route Z2, **an increase of 40.47%**.⁷¹ Route W also has 29 habitable structures.⁷²

Habitable Structure Comparisons. Anaqua claims routes along Toutant Beauregard have the highest habitable structure counts – maybe, but those routes are not Z2 or Z1. Those are routes like Routes A, B1 and E that use Segment 17 and impact the Serene Hills *pro se* intervenors.⁷³ Routes Z2 and Z1 do not use Segment 17.⁷⁴

Criticisms of CPS Energy. Anaqua is highly critical of CPS Energy. Anaqua complains that habitable structures were missed and that it had to investigate and verify data. However, Anaqua does not point to a single habitable structure that CPS Energy refused to add to the habitable structure inventory, and Anaqua fails to disclose that habitable structures were also added to other routes as well (meaning, CPS Energy worked with landowners to update the inventories). Conducting discovery and updating habitable structure inventories is not a rare occurrence in CCN

⁶⁹ AS Jauer Ex. No. 25; Anaqua Brief at 25.

⁷⁰ Transcript at 229:23-230:8.

⁷¹ BR Ex. 12.

⁷² CPS Energy Ex. 17.

⁷³ CPS Energy Ex. 15 at Ex. LBM-2R Am. Figure 4-1R, at 027 (inset for route combinations); CPS Energy Ex. 17.

⁷⁴ CPS Energy Ex. 15 at Ex. LBM-2R Am. Figure 4-1R, at 027.

proceedings. Anaqua criticizes CPS's array of segments and revives route adequacy arguments (despite SOAH Order No. 5), takes issue with the very existence of Segment 54, and complains that the public did not get a second open house to voice their concerns about Substation 7 (while the same is true for Substation 6). Here, the record shows that both Substation 6 and Substation 7 did not exist pre-application, but that Substation 5 did (and Substation 5 is very close to present-day Substation 6).⁷⁵ Pre-application, Substation 5 received the highest number of *negative* comments from the public.⁷⁶ Substation 1 existed pre-application, and it received the highest number of *positive* comments by far – and all routes using Substation 1 **use Segment 54 (originally called Segment 14)**, and Segment 14 did not receive near the level of negative response (if any) as did those segments going through the Clearwater Ranch and SHLAA subdivisions.⁷⁷

Notice. As to issues with notice raised by Anaqua and Brad Jauer/BVJ Properties, Anaqua does not fully cite the record on this issue, as it is clear that if the citation is expanded to page 348, line 5, the record will show that CPS Energy testified as to how it complied with the PUC's rules regarding notice.⁷⁸ Moreover, in its Initial Brief, CPS Energy fully detailed how it complied with the applicable notice provisions.⁷⁹ Anaqua admits that the landowners allegedly in question were not entitled to the notice at issue.⁸⁰

Speculative Emergencies. Anaqua paints a dystopian future for Toutant Beauregard Road. Substation 7 is *not* all-of-a-sudden a “flood hazard.” CPS Energy's thorough evaluation, floodplain data analysis and the application of principles of hydraulic engineering supports the conclusion

⁷⁵CPS Energy Ex. 1, at 000190-00192; Table 6-2 summarizes the preliminary alternative route segments and substation site that received the most responses to this question, both positive and negative; CPS Ex. 16.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Any landowner who allegedly did not receive notice has failed to make an offer of proof on this issue. Moreover, Anaqua Springs HOA is likely without standing to assert this issue on behalf of any other landowner.

⁷⁹ CPS Energy Initial Brief at 5-6.

⁸⁰ Anaqua Brief at 9-10.

that Substation 7, which is 45 feet above the rear-adjoining landowner and hasn't flooded in known history, is safe and constructible.⁸¹ Mr. Lyssy, on behalf of CPS Energy stated he had no concerns about Substation Site 7 being inundated with water.⁸²

Similarly, there is no evidence that the presence of electric transmission lines on Toutant Beauregard Road will exacerbate flooding events. While Mr. Siegel may sincerely worry about hitting a powerline during a flood, the evidence shows there are flood gates on Toutant Beauregard Road to protect him and existing distribution lines that, given their span relative to transmission lines, would be closer to the road and more in number than any new transmission lines.⁸³

And, if “towers could fall in the road” along Toutant Beauregard as Anaqua fears, then they could also fall in the road on Scenic Loop. But to be clear, Mr. Lyssy did not testify on that the entire width of Toutant Beauregard Road would serve as the right-of-way, or that a fallen tower would block the entire width of Toutant Beauregard Road.⁸⁴ There is also no basis in the record to support that “falling towers” are a rational concern. Rather, Mr. Lyssy testified, “I cannot envision a scenario in which the steel mono-poles on concrete foundations would fall over and I am not aware of any instances where that has happened in CPS Energy’s service area.”⁸⁵ Even if a tower collapsed, perhaps one of the worst places that this could happen would be on Bexar Ranch where plenty of “kindling” exists and good roads for fire trucks do not.

⁸¹ CPS Energy Ex. 18; SHLAA Ex. 2 at 14-15; SHLAA Ex. 3 at 8, 9, 34; SHLAA Ex. 4 at 11; CPS Energy Ex. 14 at p. 13 and at Ex. SDL-1R. CPS Energy’s Mr. Lyssy (a Professional Engineer with hydrology engineering training and experience) testified Substation Site 7 is viable and does not have concerns about flooding. Transcript at 624, 626, 650-52, 654, 657-58, 689-90. Ms. Grimes explained that the dry creek behind Substation 7 is much higher than the property behind it, some 40 to 45 feet higher, and that the owner of the house behind Substation Site 7 said the dry creek bed hadn’t flooded in a long time. Transcript at 690:4-8.

⁸² Transcript at 654:5-7 (while Mr. Sherman and Mr. Rasmussen disputed whether the question was truly hypothetical or related to Substation Site 7, it is evident that Mr. Lyssy testified as though the question was about the viability of Substation Site 7.

⁸³ See Transcript at 216-223.

⁸⁴ Transcript at 832:5-9.

⁸⁵ CPS Energy Ex. 14 at 8:1-12 (Lyssy Rebuttal).

Questionnaires. Anaqua erroneously asserts that the community values in these proceedings “heavily favor” avoiding schools. A review of the evidence to which Anaqua cites shows only 2% of the respondents to CPS Energy’s questionnaires identified proximity to “schools, places of worship and cemeteries” as their top concern” – **only 4 responses**.⁸⁶ In contrast, CPS Energy states it received numerous emails and letters from citizens expressing concerns about the potential project, a significant number of which addressed potential impacts on the area near Huntress Lane.”⁸⁷ Huntress Lane is located within SHLAA.⁸⁸ These concerns involved the segments that to this day run through the Clearwater Ranch and SHLAA subdivisions – some segments of which only worsened after the open house.⁸⁹

Reviving Route Modifications on Others. Despite SOAH Order No. 9, Anaqua tries to revive the argument that Segment 43 should simply be moved further south into Bexar Ranch and SHLAA, this time under the guise of “moderation of impact” or “paralleling”.⁹⁰ Anaqua argues that CPS **should have** routed the junction of Segments 43 and 39 (which are on Bexar Ranch and SHLAA) 300 feet further south and that this could still be considered Rule 25.101 paralleling because there is no need for the segments to “abut” a property line to be parallel to it.⁹¹ To support this unusual argument, Anaqua uses the fact that CPS Energy **did not** tabulate Segment 15 as paralleling Huntress Lane.⁹² In other words, Anaqua is using CPS Energy’s treatment of Segment

⁸⁶ CPS Energy Ex. 1 at pages 6-2 through 6-3 (original application) as described in footnote 33 to Anaqua Brief.

⁸⁷ *Id.*

⁸⁸ See CPS Energy Exhibit 1 at Figure 6-5, at 000204.

⁸⁹ See CPS Energy Exhibit 1 at Figure 6-5, at 000204 and 6-7, at 000208 (showing further bisecting on the Davila Trust and Cohen Trust properties, for example).

⁹⁰ Anaqua Brief at 4, 19-20, and 23-25.

⁹¹ Anaqua Brief at 23.

⁹² Anaqua Brief at 23.

15 (that contradicts Anaqua's "no abutting required rule") to support a hypothetical route modification on a property that does not belong to Anaqua.⁹³ Bexar Ranch does not consent.

Parks and Recreation Areas. Numerous transmission lines are in and near park and recreation areas throughout the state of Texas regardless of the formal or informal recognition as a park or recreational area.⁹⁴ Anaqua and the Cichowskis claim the Anaqua frontage should have been identified as a parks and recreation area. Patrick Cleveland admits that "the use of HCR is not open to the public" while also complaining that CPS Energy did not identify it as a "park and recreation area."⁹⁵ There is no evidence that Anaqua's entrance is used as a park or recreation area by anyone, including Cichowski. The evidence does show that Anaqua's entrance has a distribution line crossing it already.⁹⁶ And, there is no evidence that the presence of a transmission line would interfere with any alleged parks and recreation uses.⁹⁷ Any alleged interference in any use is capable of being minimized or eliminated by CPS Energy's desire and willingness to span the Anaqua entrance and/or by using Route Z2 which avoids the recreation areas on HCR.⁹⁸

Conclusion. Given the foregoing, Anaqua's Initial Brief does not move the needle away from selection of Route Z2 or Z1. As fully set forth in Bexar Ranch and Guajalote Ranch's Initial Brief, there is substantial, credible evidence in the record to conclusively support selection of Route Z2 or Z1.

⁹³ Anaqua Brief at 23-24.

⁹⁴ CPS Energy Initial Brief at 25-26.

⁹⁵ Cleveland Brief at 2.

⁹⁶ See BR Ex. 7 at MB-6 Rebuttal, MB-7 Rebuttal and MB-8 Rebuttal (photographs).

⁹⁷ CPS Energy Initial Brief at 25-26.

⁹⁸ Mr. Marin, on behalf of CPS Energy, testified that CPS Energy will work with the landowner, here Anaqua Springs, to span the property and minimize the impacts to the entrance, which would include attempting to span the entrance, which was possible from an engineering perspective. Transcript at 834:6-13. Mr. Lyssy, on behalf of CPS Energy, testified that CPS Energy will do "everything in our power" to span the Anaqua Springs entrance adding "we're more than capable to. So I don't envision right now any reason we couldn't." Transcript at 834:22-25; See HCR Ex. 28 at 2:4-9.

IV. REPLY TO BRAD JAUER AND BVJ PROPERTIES, LLC (“JAUER”).

None of Jauer’s arguments justify a departure from Route Z2 or Z1.⁹⁹

Criticisms of CPS Energy. In addition to joining Anaqua in complaints of CPS Energy addressed above, Jauer also makes some new arguments, like CPS Energy should have considered anticipated homes in the Scenic Crest subdivision.¹⁰⁰ There is no basis to claim that CPS Energy should have speculated like this when making routing decisions.

Serene Hills. Jauer argues that 50% of the entire neighborhood of Serene Hills would be impacted if Segments 17, 28 and 54 are used – although Segment Z2 does not follow this path.¹⁰¹ The majority of intervenors’ properties in Scenic Hills are located on Segment 17.¹⁰²

Speculative Safety Threats. Jauer erroneously claims that Substation Site 7 is a “threat to the environment.” Jauer relies on argument of counsel and the testimony of Mark Anderson to do so.¹⁰³ This issue is very cogently addressed in the Reply Brief of Save Huntress Lane Association, and therefore incorporated by reference here. Furthermore, CPS Energy’s Scott Lyssy, a professional engineer with relevant training and experience, has visited the proposed Substation Site 7, gathered appropriate data, studied Mark Anderson’s opinion, and considered the layout of the substation schematic vis-à-vis the area available on Substation Site 7.¹⁰⁴ The evidence also shows that CPS Energy’s evaluation of Substation Site 7 included an analysis of the surrounding area and the substation’s impact on that surrounding area, which led to the determination that Substation Site 7 is acceptable.¹⁰⁵ Furthermore, Lyssy concluded that all seven proposed substation

⁹⁹ Certain arguments raised by Jauer are addressed in Sections I and II above.

¹⁰⁰ Jauer Initial Brief at 10.

¹⁰¹ CPS Energy Ex. 16.

¹⁰² CPS Energy Exhibit 18.

¹⁰³ AS Jauer Ex. 25; Jauer Ex. 25.

¹⁰⁴ CPS Energy Ex. 6, Application Amendment, Figure 2-4 Amended (Constraints Map); Tr. at pp. 689-90.

¹⁰⁵ CPS Energy Ex. 6, Application Amendment, Figure 2-4 Amended (Constraints Map); Tr. at pp. 689-90.

sites “can be constructed, owned, and operated in a safe and reliable manner by CPS Energy.”¹⁰⁶ Mr. Marin, also an engineer testifying on behalf of CPS Energy, stated all substation sites are viable and constructible.¹⁰⁷ In response to Jauer’s arguments, Lyssy testified to several inaccurate measurements and conclusions made by Anderson, including the number of units in the substation and the total surface area and acreage of the substation facilities.¹⁰⁸ Dr. Mark Turnbough, whose resume shows experience with substation site analysis, testified that an inspection of the layout for a typical substation indicates that the substation facilities could be built into the Substation 7 tract far enough to achieve screening by the trees but no so far back as to encroach on any potential flood crest elevations of Leon Creek.¹⁰⁹ Any concerns can be mitigated by normal grading and drainage management practices.¹¹⁰ Jauer also argues, without evidentiary basis, that Toutant Beauregard too “congested” and “unsafe” for consideration, once again citing the “falling tower” scenario addressed above.

Questionnaires Support SHLAA’s Residences. CPS received numerous emails and letters from citizens expressing the concerns about the potential project, a significant number of which addressed potential impacts to the area near Huntress Lane (which leads into SHLAA).¹¹¹ SHLAA is made up of about 750 property owners. Jauer, without basis or explanation, assumes that the community’s concerns about “impacts to residences” somehow belongs to another group entirely.”¹¹² In other words, Jauer implies, with no basis, that documented concerns about residences were not lodged by SHLAA and/or Clearwater Ranch residents. There is no evidence to support Jauer’s position.

¹⁰⁶ CPS Energy Ex. 14 at 13:4-5.

¹⁰⁷ CPS Energy Ex. 12 at 9:24-28.

¹⁰⁸ CPS Energy Ex. 14 at 13:9-18.

¹⁰⁹ BR Ex. 6 at 14:17-15:4; *see also* BR Ex. 1 (Dr. Turnbough’s resume).

¹¹⁰ BR Ex. 6 at 15:1-4.

¹¹¹ CPS Energy Ex. 1 at pages 6-2 through 6-5, at 000198- 000204.

¹¹² *Id.*

Communication Towers. Jauer criticizes CPS Energy for allegedly not listing a communication tower under Segment 20, although CPS Energy included it under Segment 32 and any route that included Segment 20 and/or 32.¹¹³ Furthermore, this issue was addressed by CPS Energy in the rebuttal testimony of Mr. Marin, where he provided a photograph of the tower at issue and where he explained that he did not have any concerns regarding this communication tower, adding:

CPS Energy owns and safely operates a number of transmission facilities that are in close proximity to, or collocated with, communication facilities, including cellular and microwave facilities ... [and] ... transmission facilities are compatible with communication towers and related facilities, and I do not believe that the location of any communication facilities in this case would present a concern with any proposed route or segment.¹¹⁴

CPS Energy confirms this in its Initial Brief.¹¹⁵ To the extent that the issue is now something new, like “line of sight” issues, CPS Energy’s stated experience with microwave facilities and their location near transmission towers addresses these issues.¹¹⁶ Ultimately, the evidence shows that it is unlikely that the presence of transmission facilities along Route Z2 will adversely affect any communication operations in the proximity of that route.

Toutant Beauregard Road No Longer Feels Historic. While Jauer cites familiar reasons that the study area is “historic,” Jauer does not address the fact that Toutant Beauregard’s historic feel has already been changed by the presence of a variety of public infrastructure, contemporary artwork displays, construction, and day-to-day activity incident to a growing community.¹¹⁷ Jauer also describes Toutant Beauregard Road as “congested.”¹¹⁸

¹¹³ Jauer Initial Brief at 5.

¹¹⁴ CPS Energy Ex. 12 (Marin Rebuttal), at 8:10-29.

¹¹⁵ CPS Energy Initial Brief at 31.

¹¹⁶ CPS Energy Ex. 12 (Marin Rebuttal), at 8:10-29.

¹¹⁷ CPS Energy Ex. 15, Rebuttal Testimony of Lisa B. Meaux, at 13:8-15; 14:24-28; 19:25-29.

¹¹⁸ AS Jauer Ex. 1, Direct Testimony of Mark D. Anderson, at 8:1-3.

Conservation Efforts. Jauer complains that its “conservation efforts” will be frustrated by CPS Energy’s transmission line. Jauer ignores Bexar Ranch’s substantiated conservation efforts that span across 3,200 acres.¹¹⁹

Conclusion. Jauer’s Initial Brief does not provide any reason to not select Route Z2 or Z1. There is substantial, credible evidence to support selection of Route Z2 or Z1.

V. REPLY TO STEVE AND CATHY CICHOWSKI (“CICHOWSKI”).

Beyond raising alleged CPS Energy errors and issues of route adequacy, Cichowski goes into new territory by questioning CPS Energy’s credibility, accusing it of a “cover up” on cost estimates as they relate to the Dreiss Agreement, and alleging a “bait and switch” as to routes presented at the open house versus in the application.

Cichowski asks the Administrative Law Judges to deny the application or recommend Route W.¹²⁰ As stated previously, Route W is \$15,231,248.00 more costly than Route Z2.¹²¹

Floodplain. Cichowski takes issue with Segment 42a being located in floodplain, but provides no specifics as to why this is a problem.¹²² CPS Energy’s Scott Lyssy testified that he is not aware of any engineering constraints that would prohibit CPS Energy from safely and reliably constructing, operating and maintaining the proposed transmission line facilities, to include within floodplain, and that CPS Energy has “significant experience with designing, permitting, constructing, and operating transmission lines” in various environments, including floodplains.¹²³ CPS Energy also discussed floodplain in its Environmental Assessment.¹²⁴ Specifically, the

¹¹⁹ See BR Ex. 7 at 7:1-17 (discussing Green Space Alliance of South Texas and the Nature Conservancy) and Exhibit MB-5 Rebuttal (conservation efforts).

¹²⁰ Cichowski Brief at 5.

¹²¹ BR Ex. 12.

¹²² Cichowski Brief at 10.

¹²³ CPS Energy Ex. 11 at 8:10-16.

¹²⁴ CPS Energy Ex. 1, at 0163 (EA at Section 4.1.5).

construction of any of the alternative routes is not anticipated to impact the overall function of a floodplain within the study area, or adversely affect adjacent or downstream properties.¹²⁵ CPS Energy states that engineering design should alleviate the potential of construction activities to adversely impact flood channels and proper structure placement will minimize any flow impedance during a major flood event.¹²⁶ CPS Energy also states that the small footprint of pole structures proposed for the project does not significantly alter the flow of water within a floodplain.¹²⁷

Reviving Route Modifications on Others. To support his efforts to move Segments 43 and 38 further into Bexar Ranch and SHLAA's properties, Cichowski states that he is suspicious as to why CPS routed these segments on Bexar Ranch's property line in this particular area which is incidentally also near his home.¹²⁸ Cichowski then proceeds to blur the routing factors by claiming that prudent avoidance and Rule 25.101 paralleling justify a route modification on Bexar Ranch and SHLAA, claiming no other segment has as many habitable structures (other than 54) as does segment 43 or 38.¹²⁹ To be clear, every segment within the Clearwater Ranch and SHLAA subdivisions have habitable structures that exceed the number on Segments 43 or 38.¹³⁰ Cichowski then claims that paralleling property lines along Segments 43 and 38 is "*for no apparent benefit*" and would have "less negative impact."¹³¹ Mr. Cichowski is wrong.

Indeed, it is Bexar Ranch's position that ***more of Segment 43*** should have followed the property line because where it is now ***substantially does not follow any compatible right of way***.¹³²

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Cichowski Brief at 10.

¹²⁹ Cichowski Brief at 9.

¹³⁰ See CPS Energy Ex. 15 at Ex. LBR-1R at 024-026 (segment information).

¹³¹ Cichowski Brief at 10.

¹³² As Dr. Mark Turnbough testified, "Based on a reconnaissance of the Ranch, proposed changes to those values for Criterion Number 7 [paralleling existing ROW] are suggested in the following: Segment 43 should have a length of

If this data point had been tabulated appropriately as to Segment 43, with the understanding that there is no two-track road running for 0.85 miles on Bexar Ranch near and Segment 43 as CPS alleged at least at one time, then the percentage paralleling for routes using Segment 43 would have dropped dramatically – for example, Route P would decrease to 53.6% and Route R1 would decrease to 46.4%.¹³³

And, the benefit of paralleling property lines is to minimize habitat and *private property* fragmentation.¹³⁴ (Just like paralleling *roadways* reduces habitat fragmentation.¹³⁵) There is ample evidence in the record to show that reducing fragmentation of property is an important value of Bexar Ranch and to the residents of SHLAA and Clearwater Ranch.¹³⁶ Stated differently, unilaterally modifying Segment 43 without Bexar Ranch's consent (and there is no consent) would have a negative impact on Bexar Ranch by fragmenting it even further.

Conclusion. Ultimately, Route Z2 is an exceptional route – it is the shortest and least costly of all of the 39 routes *and* parallels existing ROW (roadways, railways, canals, etc.) and property lines for 71% of its length.¹³⁷ There is no reason to place the transmission line easement on Segment 43 or on Route W – Route Z2 best complies with the routing factors and avoids Cichowski's backyard vistas.

approximately 0.65 miles as opposed to 1.50 miles. The only compatible ROW for Segment 43 is 0.65 miles where it parallels the north property line." BR Ex. 1 at 21:22-22:2 (emphasis added). Dr. Turnbough further testified, "with the exception of the [property line paralleling] of Segment 43 noted above, none of the remaining [length] of 43 ... follow[s] any defensible compatible ROW." BR Ex. 1 at 21:11-13.

¹³³ CPS Energy Ex. 17; CPS Energy Ex. 15 at 024-026.

¹³⁴ Transcript at 182:23-183:1 (emphasis added).

¹³⁵ Transcript at 193:1-194:14 (emphasis added).

¹³⁶ Transcript at 681:22-682:10; 759:1-782:2; Clearwater Ranch Ex. 1-23; SHLAA Ex. 1 at 17; BR Ex. 2, 3, 7, 8.

¹³⁷ CPS Energy Ex. 17; Dreico Companies Ex. 2.

VI. REPLY TO SAN ANTONIO ROSE PALACE/STRAIT PROMOTIONS (“ROSE PALACE”).

Rose Palace advocates for three “Southern Focus Routes” – Routes P, R1 and W. Rose Palace justifies its position by comparing Routes P, R1 and W *to non-Focus Routes* like Route S that costs \$55.33 million rather than comparing it to Route Z2 which is the shortest and least costly route.¹³⁸ Every reason cited by Rose Palace for recommending these Southern Focus Routes is overshadowed by the benefits of Route Z2.

Routes P and R1.

- The estimated cost for Route P is \$43,408,742, which is \$5,770,162 more expensive than Route Z2. The estimated cost for Route R1 is \$43,533,858 which is \$5,884,278 more expensive than Route Z2.
- No landowner has consented to the use of Routes P or R1 and no portion of any of those routes have been donated or discounted.
- Routes P and R1 would respectively cross 4.42 and 4.35 miles of upland woodlands/brushland. Route Z2 would cross only 3.53 miles of upland woodlands/brushland.
- Routes P, R1 and Q1 do not parallel any major roadway like Toutant Beauregard or Scenic Loop Road, and thus, none of the habitable structures identified within 300 feet of those routes would have a major roadway between the homes and proposed transmission line.¹³⁹
- Routes P and R1 each have 2 habitable structures (1 single family residence and 1 workshop) within 100 feet EMF exposure distance. Route Z2 has only 1 habitable structure within 100 feet.¹⁴⁰
- Route P is the worst route in terms of areas of ROW across golden-cheeked warbler modeled habitat designated as 3-Moderate and 4-High Quality acres at 25.11 acres. Route R1 has 19.03 acres.
- Routes P and R1 would use Substation Site 6, which is smaller than Substation Site 7 and provides less shielding from public view.¹⁴¹

¹³⁸ Rose Palace Brief at 5.

¹³⁹ Transcript at 234:11-19.

¹⁴⁰ BR Ex. 13, pg. 36-38 (Tables 4-21 through 4-23); Tr. at pg. 210, Ln. 18 – Pg. 212, Ln. 5 (regarding Route Z2 habitable structures); BR Ex. 13 at pg. 49-50 (Tables 4-31 and 4-32).

¹⁴¹ BR Ex. 6 at 11:17-12:2; CPS Energy Ex. 16.

- According to CPS' Table 4-1 Data, Route P and Route Z2 have the same percent of paralleling ROW at 71%. Route R1 has 64% paralleling. However, the length allegedly paralleling Routes P and R1 include 0.85 miles along Segment 43, which Bexar Ranch disputes.¹⁴²
- Routes P and R1 utilize Segment 43 which would bisect the northern portion of Bexar Ranch.¹⁴³
- Routes P and R1 would each run through existing neighborhoods. Route Z2 does not run through any existing neighborhoods, but instead parallels Toutant Beauregard for a significant portion of its length.¹⁴⁴

Route W.

- Route W is 6.25 miles in length, which is approximately 40% longer than Route Z2, which is only 4.46 miles.¹⁴⁵
- The estimated cost for Route W is \$52,869,828, which makes it the 32nd least expensive route. In comparison, the estimated cost for Route Z2 is only \$37,638,580.¹⁴⁶
- According to CPS' Table 4-1 data, Route W parallels existing ROW for 58% of its length. However, this amount includes 1.39 miles along Segment 44. As noted in Bexar Ranch's initial brief, Bexar Ranch disputes that any portion of Segment 44 parallels compatible ROW. Route Z2 parallels existing ROW for 71% of its length.¹⁴⁷
- Route W would cross 6.03 miles of upland woodland/brushland as compared to Route Z2 which crosses only 3.53 miles.¹⁴⁸
- In addition to its greater length and estimated costs, Route W also has 29 habitable structures within 300 feet of its centerline. Route Z2 has only 3 more habitable structures within 300 feet of its centerline.¹⁴⁹
- Only 6 of the 29 habitable structures within 300 feet of Route W's centerline would be located on the other side of Scenic Loop Road from the proposed transmission line, and 21 of the 32 habitable structures within 300 feet of the centerline of Route Z2 would be across Toutant Beauregard from the proposed transmission line.¹⁵⁰
- Route W has 4 habitable structures within the 100-foot EMF exposure distance for a 138

¹⁴² CPS Energy Ex. 17; CPS Energy Ex. 15 at 024-226.

¹⁴³ CPS Energy Ex. 16.

¹⁴⁴ CPS Energy Ex. 16.

¹⁴⁵ CPS Ex. 17; Tr. at pg. 207, Ln. 5-15.

¹⁴⁶ CPS Ex. 17; BR Ex. 12 at pg. 6; Dreico Companies Ex. 2; and CPS Ex. 14 (Lyssy Rebuttal) at 018.

¹⁴⁷ CPS Ex. 17.

¹⁴⁸ CPS Energy Ex. 17.

¹⁴⁹ CPS Energy Ex. 17.

¹⁵⁰ Tr. at pg. 231, Ln. 13 – Pg. 232, Ln. 19; see also Bexar Ranch Ex. 13, pg. 44 (Table 4-28); Tr. at pg. 220, Ln. 2 – Pg. 221, Ln. 21; see also Br. Ex. 13 at 49-50 (Tables 4-31 and 4-32).

kV transmission line. Route Z2 has only one habitable structure within this exposure distance.¹⁵¹

- Route W includes Segment 44, which would completely bisect the middle of Bexar Ranch.¹⁵²
- Route W includes Segment 27, which would bisect Guajalote Ranch.¹⁵³
- Route W would use Substation Site 6, which is smaller than Substation Site 7 and provides less shielding from public view.¹⁵⁴
- No landowner has consented to Route W, unlike Route Z2 which has the consent of the Dreiss Interests (also referred to as the “Companies”) and right-of way donations and discounts for a significant portion of Route Z2’s length.¹⁵⁵

Toutant Beauregard Road No Longer Feels Historic. Rose Palace also argues that Toutant Beauregard routes should be avoided entirely because of the Heidemann Ranch property and the Scenic Loop-Boerne Stage-Toutant Beauregard Historic Corridor (“SBT Corridor”).¹⁵⁶ Route Z2 does not cross the Heidemann Ranch. In fact, in its initial brief, Anaqua criticizes CPS Energy *for not moving a segment closer to Heidemann Ranch*.¹⁵⁷ Ultimately, Rose Palace does not reconcile how Substation 6, which is located on Scenic Loop, is not worthy of protection under the “SBT Corridor” theory. The evidence is well-developed that Toutant Beauregard Road has lost its historic feel given its prevalence of distribution lines, contemporary art displays, burgeoning subdivisions, microwave antenna, and other public infrastructure. And there are reasons to select Route Z2 due to historic factors including that:

¹⁵¹ BR Ex. 13 at pg. 44 (Table 4-28); Tr. at pg. 210, Ln. 18 – Pg. 212, Ln. 5 (regarding Route Z2 habitable structures); BR Ex. 13 at pg. 49-50 (Tables 4-31 and 4-32).

¹⁵² CPS Energy Ex. 16 (referring to inset); CPS Energy Ex. 15 at LBM-2R, Amended Figure 4-1R at 027.

¹⁵³ CPS Energy Ex. 16 (referring to inset); CPS Energy Ex. 15 at LBM-2R, Amended Figure 4-1R at 027.

¹⁵⁴ BR Ex. 6 at 11:17-12:2; CPS Energy Ex. 16.

¹⁵⁵ Mr. Lyssy, on behalf of CPS Energy, confirmed that Routes Z2, Z1, AA1 and AA2 all have the benefit of the donated land. Transcript at 195:10-196:8.

¹⁵⁶ Rose Palace Brief at 6-7.

¹⁵⁷ Anaqua Brief at 18.

- Routes Z2, Z1, AA1 and AA2 cross zero recorded cultural resource sites, while Route R1 crosses two and Routes P and W each cross one.¹⁵⁸
- Routes Z2, Z1, AA1 and AA2 cross zero National Register of Historic Places listed properties, while Routes P, R1 and W each cross one.¹⁵⁹
- Routes P and R1 have 10-12 additional recorded cultural resource sites within 1000 feet of centerline ROW, as compared to only 2 for Routes Z2, Z1, AA1 and AA2.¹⁶⁰

Conclusion. Given the foregoing, Rose Palace’s Initial Brief does not provide sufficient basis to choose a Southern Focus Route. As shown, there is substantial, credible evidence in the record to conclusively support selection of Route Z2 or Z1.

VII. REPLY TO PATRICK CLEVELAND (“CLEVELAND”).

Cleveland’s brief starts with a strong statement of opposition to Segment 49a.¹⁶¹ Route Z2 avoids Segment 49a which would bisect High Country Ranch.¹⁶²

Selective Commitment to Fragmentation. Cleveland admits that “the States’ long terms interests are served when new utility lines and pipelines are sited where possible in or adjacent to existing utility corridors, road, or rail lines instead of fragmenting intact lands.”¹⁶³ Despite this admission, Cleveland supports routes that would bisect and fragment Bexar Ranch for nearly two miles.¹⁶⁴ Route Z2 avoids this devastating impact on Bexar Ranch – and it avoids any use of Segment 49a which would bisect High Country Ranch.

Not PURA Routing Criteria. While no one has challenged Mr. Cleveland’s data collection, his “number of properties affected by each segment and route” methodology is not

¹⁵⁸ See CPS Energy Ex. 17.

¹⁵⁹ See CPS Energy Ex. 17.

¹⁶⁰ See CPS Energy Ex. 17.

¹⁶¹ Cleveland Brief at 1.

¹⁶² CPS Energy Ex. 16.

¹⁶³ Cleveland Brief at 3.

¹⁶⁴ CPS Energy Ex. 16.

consistent with PURA or the Substantive Rules.¹⁶⁵ Cleveland's methodology would punish large land holdings (like Bexar Ranch) and encourage gamesmanship in routing proceedings by encouraging parties to make temporary subdivisions of property to meet this "rule."

Comparisons to Routes Not Under Serious Consideration. Cleveland's prudent avoidance argument is addressed in Section II above. However, it should be noted that his arguments rely on comparisons to routes that are not under serious consideration.

Reliance on inaccurate information. Mr. Cleveland relies on the testimony of Mark D. Anderson to discredit using Substation Site 7, but fails to consider that Mr. Anderson's substation analysis was fully discredited by CPS Energy's engineer, Scott Lyssy, who identified several inaccurate measurements and conclusions made by Anderson, including the number of units in the substation and the total surface area and acreage of the substation facilities.¹⁶⁶

Route U1. Cleveland advocates for Routes P, Q1, R1, U1 and W. Except for Route U1, these routes have been discussed in Bexar Ranch and Guajalote Ranch's initial brief and above.

Route U1.

- Route U1 is 6.36 miles in length, which is approximately 42.6% longer than Route Z2, which is only 4.46 miles.¹⁶⁷
- The estimated cost for Route U1 is \$50,562,536. In comparison, the estimated cost for Route Z2 is only \$37,638,580.¹⁶⁸
- According to CPS' Table 4-1 data, Route U1 parallels existing ROW for 59% of its length. However, this amount includes 2.59 miles along Segment 45. As noted in Bexar Ranch's initial brief, Bexar Ranch disputes that any portion of Segment 45 parallels compatible ROW on its property and CPS Energy's mapping illustrates a non-linear interior bisect on Guajalote Ranch's western boundary. Route Z2 parallels existing ROW for 71% of its length.¹⁶⁹

¹⁶⁵ Cleveland Brief at 5.

¹⁶⁶ CPS Energy Ex. 14 at 9-18.

¹⁶⁷ CPS Ex. 17.

¹⁶⁸ CPS Ex. 17; BR Ex. 12 at pg. 6; Dreico Companies Ex. 2; and CPS Ex. 14 (Lyssy Rebuttal) at 018.

¹⁶⁹ CPS Ex. 17.

- Route U1 would cross 6.07 miles of upland woodland/brushland as compared to Route Z2 which crosses only 3.53 miles.¹⁷⁰
- No landowner has consented to the use of Route U1 and no portion of any of this route has been donated or discounted.
- Route U1 does not parallel any major roadway like Toutant Beauregard or Scenic Loop Road, and thus, none of the habitable structures identified within 300 feet of those routes would have a major roadway between the homes and proposed transmission line.¹⁷¹
- Route U1 has 2 habitable structures within 100 feet EMF exposure distance. Route Z2 has only 1 habitable structure within 100 feet.¹⁷²
- Route U1 includes Segment 45, which would completely bisect the middle of Bexar Ranch and portions of Guajalote Ranch's western boundary.¹⁷³
- Route U1 would run through existing neighborhoods. Route Z2 does not run through any existing neighborhoods, but instead parallels Toutant Beauregard for a significant portion of its length.¹⁷⁴
- Route U1 includes Segment 26a, which would bisect properties within SHLAA like the Davila Trust and the Cohen Trust.¹⁷⁵
- Route U1 would use Substation Site 6, which is smaller than Substation Site 7 and provides less shielding from public view.¹⁷⁶
- Route U1 has 31.11 acres ROW across combined golden-cheeked warbler modeled habitat as compared to Route Z2's 20.70 acreage.¹⁷⁷
- Route Z2 crosses zero recorded cultural resource sites, while Route U1 crosses 2.¹⁷⁸
- Route Z2 crosses zero National Register of Historic Places listed properties, while Route U1 crosses 1.¹⁷⁹

¹⁷⁰ CPS Energy Ex. 17.

¹⁷¹ Transcript at 234:11-19.

¹⁷² BR Ex. 13, pg. 36-38 (Tables 4-21 through 4-23); Tr. at pg. 210, Ln. 18 – Pg. 212, Ln. 5 (regarding Route Z2 habitable structures); BR Ex. 13 at pg. 49-50 (Tables 4-31 and 4-32).

¹⁷³ CPS Energy Ex. 16 (referring to inset); CPS Energy Ex. 15 at LBM-2R, Amended Figure 4-1R at 027.

¹⁷⁴ CPS Energy Ex. 16.

¹⁷⁵ CPS Energy Ex. 16 (referring to inset); CPS Energy Ex. 15 at LBM-2R, Amended Figure 4-1R at 027; CPS Energy Exhibit 1 at Figure 6-5, at 000204 and 6-7, at 000208 (showing further bisecting on the Davila Trust and Cohen Trust properties, for example).

¹⁷⁶ BR Ex. 6 at 11:17-12:2; CPS Energy Ex. 16.

¹⁷⁷ CPS Ex. 17.

¹⁷⁸ See CPS Energy Ex. 17.

¹⁷⁹ See CPS Energy Ex. 17.

- Route U1 has 12 additional recorded cultural resource sites within 1000 feet of centerline ROW, as compared to only 2 for Route Z2.¹⁸⁰

VIII. REPLY TO NORTHSIDE INDEPENDENT SCHOOL DISTRICT (“NISD”).

NISD states it does not advocate for any route, opposes Segment 41 (which crosses NISD property) and expresses “concern” about Segments 42a, 33, 34 and 35 (which *do not cross* the NISD property).¹⁸¹ Route Z2 *does not* use Segments 33, 34, 35 or 41 and it *does not cross* NISD’s property. In fact, Segment 42a is over 300 feet from the school’s outer fence.¹⁸²

Nevertheless, NISD states that its wastewater treatment facility’s drain field appears to be very near or directly under the location of Segment 42a, and thus is concerned about potential impact. However, NISD has not put forth any specific evidence to explain much less justify this concern, despite having both CPS Energy and Tom Dreiss at its disposal to cross examine at the live hearing. While NISD’s concern is no evidence of any actual impact to the drain field, it is relevant insofar as NISD concedes that if Segment 42a (which is a donated segment per the Dreiss Agreement) is ordered, there are certain accommodations within Segment 42a that can be considered so as to moderate any actual impact to NISD’s water treatment plant and associated drain field. This concession further supports the selection of Route Z2 (or Z1).

¹⁸⁰ See CPS Energy Ex. 17.

¹⁸¹ NISD Brief at 1.

¹⁸² BR Ex. 6 at 13:9-13.

IX. REPLY TO PUC COMMISSION STAFF (“STAFF”).

Staff’s witness, John Poole, selected Route P. For reasons explained below, Route P should not be selected. As an initial matter, Poole admits that his initial opinion did not include consideration of Route Z2 because he didn’t have the information for that route at the time.¹⁸³ This omission is reflected in Staff’s brief, which states that the shortest route is 4.53 miles, which corresponds with Route Z1, instead of referring to Route Z2, which is the shortest route.¹⁸⁴ Poole admits that he did not know of 2008 CPS Energy Warbler Survey.¹⁸⁵ This is important because Route P is the worst route in terms of areas across golden-cheeked warbler modeled habitat designated as 3-Moderate and 4-High Quality acres. Route P crosses 25.11 acres while Route Z2 only crosses 8.92 acres.¹⁸⁶ Poole also admitted that he selected a route with seven bisects.¹⁸⁷ This is relevant because bisecting at this magnitude is avoidable by using Route Z2. Poole also had the benefit of Lisa Meaux’s rebuttal testimony where she responded to criticisms regarding CPS Energy’s tabulation of Segments 43, 44 and 45 on Bexar Ranch as paralleling compatible rights of way by stating these three segments could be considered paralleling natural and cultural features. This conclusion by Meaux was highly disputed by Dr. Turnbough who has been resolute in that there are no natural or cultural features paralleled by Segments 43, 44 or 45.¹⁸⁸ Pool agreed and stated, “None of the proposed alternative routes parallel natural or cultural features.”¹⁸⁹ Poole even stated, “If 0.85 miles of compatible right-of way is removed from Route P, the percentage of length parallel to right of way for Route P would be 53.62%.”¹⁹⁰ Given this, there is no rational

¹⁸³ Transcript at 789:4-12.

¹⁸⁴ Staff Brief at 1.

¹⁸⁵ BR Ex. 36 at p. 11 (RFI 1-9).

¹⁸⁶ CPS Ex. 17.

¹⁸⁷ BR Ex. 36 at p. 64 (RFI 1-62)(Tracts F-006, F-021, K-014, K-015, F-073, F-068, and F-67).

¹⁸⁸ BR Ex. 57.

¹⁸⁹ Staff Ex. 1 at 38:13-15.

¹⁹⁰ BR Ex. 36 at p. 17 (RFI 1-15).

reason to choose a route that is so costly, that bisects in this manner, that has questionable paralleling, and that has such high golden cheeked warbler habitat. This is particularly true when such an unusually great route that has a direct benefit to the ratepayer exists.

Ultimately, instead of selecting a route that “best meets” the applicable routing criteria, Poole selects a middle-of-the road route whose three allegedly “positive” attributes (14th least costly; tied for 4th fewest habitable structures, and 9th shortest) simply do not outweigh the favorable attributes of Route Z2.¹⁹¹ These favorable attributes include:

- The estimated cost for Route P is \$43,408,742, which is \$5,770,162 more expensive than Route Z2.
- No landowner has consented to the use of Route P no portion has been donated or discounted.
- Route P crosses 4.42 miles of upland woodlands/brushland. Route Z2 would cross only 3.53 miles of upland woodlands/brushland.
- Route P does not parallel any major roadway like Toutant Beauregard or Scenic Loop Road, and thus, none of the habitable structures identified within 300 feet of this route would have a major roadway between the homes and proposed transmission line.¹⁹²
- Route P has 2 habitable structures within the 100-foot EMF exposure distance. Route Z2 has only 1 habitable structure within 100 feet.¹⁹³
- Route P is the worst route in terms of areas of ROW across golden-cheeked warbler modeled habitat designated as 3-Moderate and 4-High Quality acres at 25.11 acres. Route Z2 only has 8.92 acres.
- Routes P uses Substation Site 6, which is smaller than Substation Site 7 and provides less shielding from public view.¹⁹⁴

¹⁹¹ Staff Brief at 3.

¹⁹² Transcript at 234:11-19.

¹⁹³ BR Ex. 13, pg. 36-38 (Tables 4-21 through 4-23); Tr. at pg. 210, Ln. 18 – Pg. 212, Ln. 5 (regarding Route Z2 habitable structures); BR Ex. 13 at pg. 49-50 (Tables 4-31 and 4-32).

¹⁹⁴ BR Ex. 6 at 11:17-12:2; CPS Energy Ex. 16.

- According to CPS' Table 4-1 Data, Route P and Route Z2 have the same percent of paralleling ROW at 71%. However, the length allegedly paralleling Route P includes 0.85 miles along Segment 43, which Bexar Ranch highly disputes.¹⁹⁵
- Route P uses Segment 43 which would bisect the northern portion of Bexar Ranch.¹⁹⁶
- Routes P would run through existing neighborhoods. Route Z2 does not run through any existing neighborhoods, but instead parallels Toutant Beauregard for a significant portion of its length.¹⁹⁷
- Routes Z2, Z1, AA1 and AA2 cross zero recorded cultural resource sites, while Route P crosses one.¹⁹⁸
- Routes Z2, Z1, AA1 and AA2 cross zero National Register of Historic Places listed properties, while Route P crosses one.¹⁹⁹
- Route P has 10-12 additional recorded cultural resource sites within 1000 feet of centerline ROW, as compared to only 2 for Routes Z2, Z1, AA1 and AA2.²⁰⁰

Notably, Poole did not visit the study area to determine if the conclusions he made about Route P were valid.²⁰¹ Still, Poole confirmed that all routes are acceptable from a historical values perspective – this includes Route Z2.²⁰² Poole confirmed that there are *eight* routes that would have less visual impact than Route P – including Route Z2.²⁰³ Poole acknowledged that Route P crosses over 25 acres of golden cheeked warbler habitat – this is far more than Route Z2.²⁰⁴ He also acknowledged that all routes are acceptable from an environmental and land use perspective

¹⁹⁵ See, e.g., Bexar Ranch and Guajalote Ranch's Initial Brief at pp 30-34; As Dr. Mark Turnbough testified, "Based on a reconnaissance of the Ranch, proposed changes to those values for Criterion Number 7 [paralleling existing ROW] are suggested in the following: Segment 43 should have a length of approximately 0.65 miles as opposed to 1.50 miles. The only compatible ROW for Segment 43 is 0.65 miles where it parallels the north property line." BR Ex. 1 at 21:22-22:2 (emphasis added). Dr. Turnbough further testified, "with the exception of the [property line paralleling] of Segment 43 noted above, none of the remaining [length] of 43 ... follow[s] any defensible compatible ROW." BR Ex. 1 at 21:11-13.

¹⁹⁶ CPS Energy Ex. 16.

¹⁹⁷ CPS Energy Ex. 16.

¹⁹⁸ See CPS Energy Ex. 17.

¹⁹⁹ See CPS Energy Ex. 17.

²⁰⁰ See CPS Energy Ex. 17.

²⁰¹ Transcript at 791:11-13.

²⁰² Transcript at 794:12-15

²⁰³ Transcript at 794:24-795:3.

²⁰⁴ Transcript at 794:14-17.

and all are viable and constructible – this includes Route Z2.²⁰⁵ Poole also states that he would not oppose any route on the basis of failing to minimize, to the extent reasonable the number of habitable structures – this includes Route Z2.²⁰⁶ Poole has not stated that he opposes the Dreiss Agreement.

Conclusion. It is not surprising that Poole has not stated that he opposed the Dreiss Agreement. It offers a unique and important benefit to the Texas ratepayer. Given the foregoing, there is substantial, credible evidence in the record to support Route Z2 over Route P, including the fact that Route Z2 has the incremental benefit to the public of utilizing donated land and cost-neutral segments.

X. REPLY TO PRO SE INTERVENORS.²⁰⁷

- Ms. Arbuckle’s property is not crossed by Route Z2, and Route Z2 will not encircle her neighborhood by 75%. Route Z2 addresses Ms. Arbuckle’s concerns regarding Segment 17 because it does not use Segment 17.
- Mr. and Mrs. Bernsen live in Scenic Hills off of Segment 17. Route Z2 addresses the Bernsen’s concerns about their home, their desire to build a guest house, their water well, and EMF, as their property will not be crossed by Route Z2.
- Ms. Omeis lives in the interior of Scenic Hills, and no segment will cross her property.
- Ms. Reyna’s property is located at the far northeast corner of Serene Hills near the Primarily Primates property off of Segment 13. Ms. Reyna is therefore not crossed by Route Z2, and Route Z2 avoids crossing the Primary Primates property and the nearby Substation 1.

²⁰⁵ Transcript at 796:1-8

²⁰⁶ Transcript at 797:11-19.

²⁰⁷ CPS Exhibit 16.

- Mr. Craig lives in Serene Hills off of Segment 13 and he expresses a concern about continuous exposure to electromagnetic fields. Route Z2 does not use Segment 13.
- Mr. Figueroa's property is not crossed by Route Z2, although Segment 46b crosses behind his property. There is no evidence that this project will compromise cell phone or internet coverage or cross Mr. Figueroa's water well.
- Mr. Herrera opposes segment 54 and all substation sites but Site 6. Mr. Herrera's property is not crossed by Segment 54 as it is located on the other side of Toutant Beauregard Road.
- Mr. Siegel is a resident of Anaqua. Mr. Siegel's concerns regarding roadway flooding and costs were addressed in prior sections. Mr. Siegel's property will not be crossed by any proposed segment. Mr. Siegel's brief includes substantial information that has not been admitted into evidence, but generally concerns EMF exposure at the elementary school. Route Z2 does not cross NISD's property and is located over 300 feet from the school building, meaning it is well outside the 100-foot EMF exposure radius. Mr. Seigel also relies heavily on the testimony of Dr. Pankratz and Dwivdi but both have admitted that they are not experts.²⁰⁸

²⁰⁸ BR Ex. 40, 41, 42, 43, 44 (Dr. Pankratz and admits that she is not providing testimony as an expert regarding electric and magnetic fields, that she is not providing testimony as a medical expert regarding potential health effects of electric and magnetic fields, and that she is not providing expert testimony regarding any issue in these proceedings. Dr. Dwivdi admits that he is not providing testimony as an expert regarding electric and magnetic fields. Dr. Dwivdi admits that he is not providing testimony as a medical expert regarding potential health effects of electric and magnetic fields.)

XI. REPLY TO PRIMARY PRIMATES.

Primarily Primates does not advocate for a route but requests a route that best minimizes the impact to landowners and the environment to the extent possible while avoiding unnecessary costs to the public. Primarily Primates opposes Substation 1 and Segments 2 and 13. Route Z2 does not use Substation 1 or Segments 2 and 13 and it is the least costly route.

XII. REPLY TO JAY AND AMY GUTIERREZ AND THE GUTIERREZ MANAGEMENT TRUST (TOGETHER, “GUTIERREZ”).

Gutierrez unfortunately uses an outdated version of the CPS Energy’s Route Cost and Data Summary Table in its brief. In doing so, he presents *completely outdated information* as to Segment R1, including the wrong habitable structure count, and does not analyze Route Z2, which improves upon Route Z1. Fortunately, Gutierrez limits his briefing to state that he opposes Route W and that Gutierrez “takes not position on which specific route should ultimately be approved.”²⁰⁹

XIII. REPLY TO LISA CHANDLER, CLINTON R. CHANDLER AND CHIP AND PAMELA PUTNAM.

The Chandlers and the Putnams support Route AA2 and oppose Segment 40. They also state they would not oppose Routes Z2, Z1, AA1 or DD.²¹⁰ Their expert concluded that the Commission *should not approve* Routes BB, P, Q1 or R1 given their significant increased costs over Route Z1. (Note, at the time of Mr. Andrews testimony, data had not yet been confirmed for Route Z2.) Bexar Ranch and Guajalote Ranch agree that Routes BB, P, Q1 or R1, along with Routes W and U1 which are even more costly, should not be chosen given their increased costs. However, given NISD opposes use of Segment 41 which would cross NISD property and is contained in Route DD, Routes Z2 and Z1 are better options than Route DD.

²⁰⁹ Gutierrez Brief at 1-2.

²¹⁰ Chandler/Putnam Brief at 1.

CONCLUSION AND PRAYER

If a picture is worth a thousand words, then Bexar Ranch and Guajalote Ranch leave you with three very special ones.²¹¹

The first is important from a sheer data point. Dr. Mark Turnbough testified about this picture at the hearing after describing his visit to the ranch.

I drove a fairly burly vehicle that's well-prepared to drive in this terrain and was unable to continue in several locations and had to get out and walk. I remember the walking, because it was all uphill.... [This picture is] a fairly typical view of the best part of the road I saw ... what that picture doesn't give justice is the depth of that drop that just up there about two-thirds of the way up on the picture. That's some of the steepest, roughest country I've tried to drive across."²¹²

Dr. Turnbough's testimony explained how his visit to Bexar Ranch confirmed, that based on his expert opinion, other than the portion of Segment 43 on the northern property line, Segments 43, 44 and 45 do not follow any road or natural or cultural feature that would qualify as a compatible right of way.²¹³ Here, CPS Energy is simply relying on maps – which shouldn't be the sole basis of proof, especially given Dr. Turnbough testimony, how long these segments are, how these conclusions are being used so sweepingly against Bexar Ranch by PUC Staff who is relying on the data point despite also admitting there are no natural or cultural features on Bexar Ranch.²¹⁴

This is important to Bexar Ranch and Guajalote Ranch because paralleling became a data point that worked against Bexar Ranch so unfairly. Bexar Ranch hopes that equity will prevail, and that this data will not be relied on to justify burdening Bexar Ranch and its neighbors with this new electric transmission line.

²¹¹ Bexar Ranch Ex. 58 “. . . segment 43 crosses over or crosses immediately adjacent to one of the dams on Bexar Ranch, upstream and less than 300 feet from which there is a natural spring and/or natural seep. . .” See BR Ex. 2 (photos).

²¹² Transcript at 751:7-754:18; BR Ex. 57 (Turnbough's response to question about natural or cultural features).

²¹³ See *supra*.

²¹⁴ Staff Ex. 1 at 38:13-15 (“None of the proposed alternative routes parallel natural or cultural features.”)

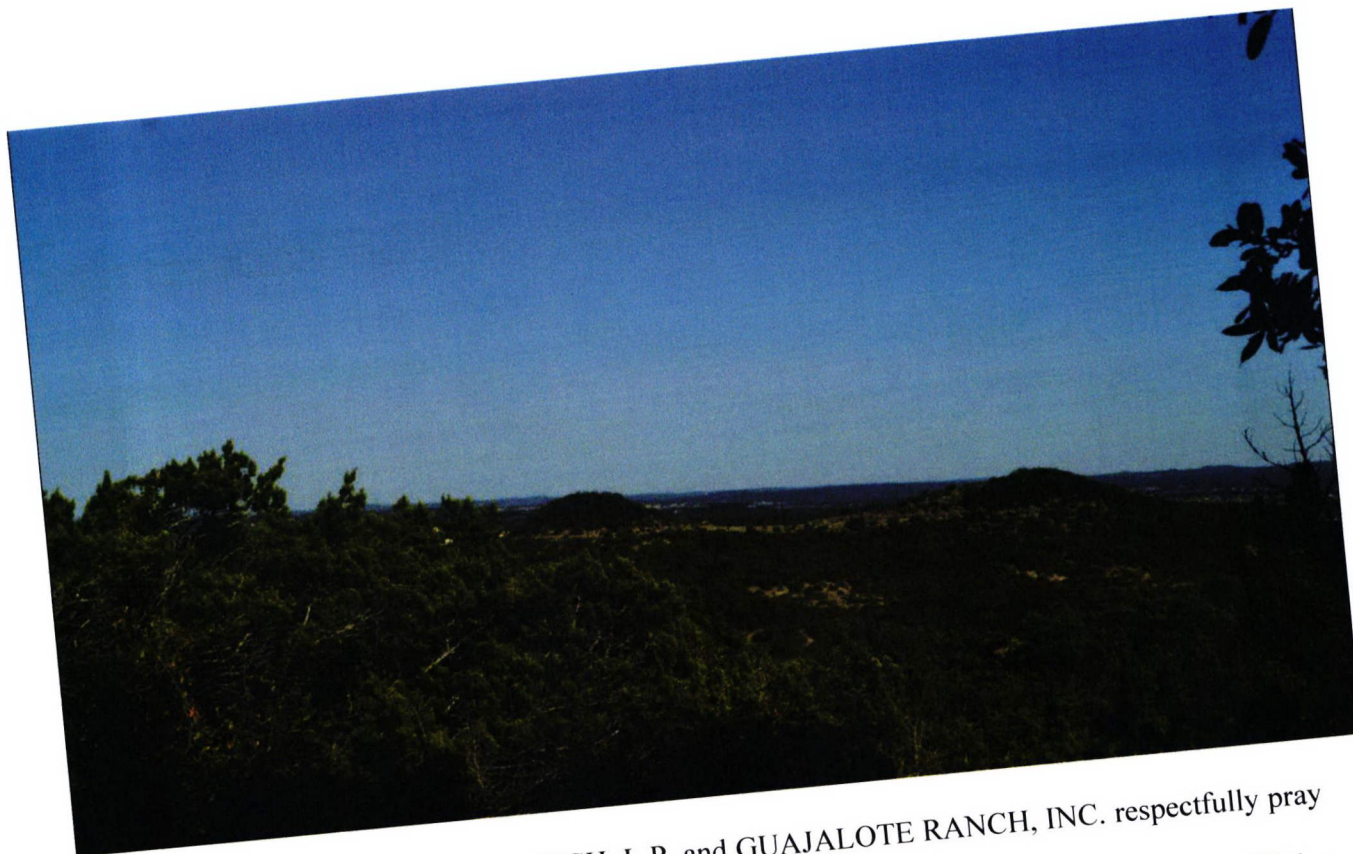


These next two pictures are Sarah and Michael Bitter's favorite pictures of Bexar Ranch, and they were also discussed by Dr. Turnbough at the hearing as well. They capture the unspoiled beauty of this special property that the Bitter Family has owned, preserved and protected for nearly 100 years. Routes suggested by opponents of Routes Z1 and Z2 all include segments that would severely bisect the interior of Bexar Ranch and fragment this incredibly special place. A place where it really does feel like time has stood still.

Here, the record strongly supports the selection of Route Z2 which excels on all routing criteria and which offers substantial means by which to moderate the impact to the vast majority of the participants in these proceedings.

Route Z2 is truly the "best of the best" of all 39 routes.





Accordingly, BEXAR RANCH, L.P. and GUAJALOTE RANCH, INC. respectfully pray that the Administrative Law Judges recommend, and that the Commission order, Routes Z2 (or CPS Energy's best-meets route, Route Z1).

Respectfully submitted,
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**ATTORNEYS FOR BEXAR RANCH, L.P.
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed in the records of Docket 51023 on this 28th day of May, 2021.



Soledad M. Valenciano