



Control Number: 51023



Item Number: 864

Addendum StartPage: 0

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



APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
SAN ANTONIO TO AMEND ITS §
CERTIFICATE OF CONVENIENCE § OF
AND NECESSITY FOR THE §
SCENIC LOOP 138 KV TRANSMISSION § ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY §

**CPS ENERGY'S
POST-HEARING REPLY BRIEF**

May 28, 2021

864

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

**APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
SAN ANTONIO TO AMEND ITS §
CERTIFICATE OF CONVENIENCE § OF
AND NECESSITY FOR THE §
SCENIC LOOP 138 KV TRANSMISSION § ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY §**

**CPS ENERGY'S
POST-HEARING REPLY BRIEF**

TABLE OF CONTENTS

I. INTRODUCTION	4
II. SUFFICIENCY OF APPLICATION	5
III. NOTICE.....	5
IV. RESPONSE TO SPECIFIC ISSUES.....	6
A. CPS Energy has No Preferred Route.	7
B. The Application Data is Reliable.	7
1. Habitable Structures.....	7
2. Cost Data.....	9
C. The Dreiss Agreement is Proper and in Accordance with the Preliminary Order.....	15
D. Substation Site 7 is a Viable Substation Location for the Project.	17
E. EMF Does Not Present a Concern of Adverse Health Effects.	19
F. The 300-Foot Distance Regarding Habitable Structures is Simply a Notice Element.	20
V. RESPONSE TO SPECIFIC INTERVENOR ARGUMENTS.....	21
A. Anaqua Springs HOA	21
B. Brad Jauer and BVJ Properties (JAUER).....	23
1. CPS Energy has provided timely and accurate information in this proceeding.	23
a. Plastic Natural Gas Distribution Facilities within Road Right of Way have no impact on the Project.	24
b. CPS Energy's errata of April 26, 2021, properly clarified previously provided Project information and was not an alteration of any CPS Energy position.....	25
c. CPS Energy has stated throughout this proceeding that it has not, and cannot, yet state where specific pole structures will be located.....	28

d. There are no issues regarding the distribution circuits potentially exiting Substation Site 7	29
2. The communication tower located south of Segment 20 will not be impacted by the Project	31
3. The CPS Energy <i>Electric Transmission Line Routing/Substation Siting General Process Manual</i> is not applicable to projects requiring a CCN from the Commission and is, as the title states, a general process manual, not a set of mandated criteria.	33
C. Northside Independent School District	33
D. The San Antonio Rose Palace and Strait Promotions	34
E. Steve and Cathy Cichowski	35
F. Mark Siegel	38
G. Robert and Leslie Bernsen	38
VI. CONCLUSION	39

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

APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
SAN ANTONIO TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF
AND NECESSITY FOR THE	§	
SCENIC LOOP 138 KV TRANSMISSION	§	ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY	§	

**CPS ENERGY'S
POST-HEARING REPLY BRIEF**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The City of San Antonio, acting by and through the City Public Service Board (CPS Energy) files this Post-Hearing Reply Brief, respectfully showing as follows:

I. INTRODUCTION

More than 20 parties have filed initial closing briefs in this docket and, after reviewing those filings, a few things are clear. First, no parties have challenged the need for the Project. In fact, many parties have affirmatively recognized the need. Second, no parties have identified any instances in which CPS Energy failed to provide notice to a person entitled to such under the rules of the Public Utility Commission of Texas (Commission). Some parties assert CPS Energy should have provided additional direct mailed notice to one or more landowners living near Substation Site 7, but they acknowledge that such notice is not required under the Commission's rules. This issue is discussed further under Section III of this reply brief. Finally, as noted in CPS Energy's Initial Post-Hearing Brief, CPS Energy's Application has already been found to be sufficient and to have a sufficient number of reasonably-differentiated routes for the Commission and the Administrative Law Judges (ALJs) to consider.

Given that there is no dispute on the need for the Project, the sufficiency of the Application or notice, or the adequacy of the routes, it is clear that CPS Energy's Application should be approved, with the primary remaining issue centering on the route to be recommended by the ALJs. There are 33 alternative routes for which data has been provided in CPS Energy Exhibit 17.¹

¹ Commission Staff has referenced six "Dreico" routes in its briefing, but those routes were identified only in discovery and no parties have proposed them; therefore, CPS Energy did not include data for them in CPS Energy Exhibit 17 and it does not appear they are being proposed by any party for consideration in this case.

II. SUFFICIENCY OF APPLICATION

As noted in CPS Energy's Initial Post-Hearing Brief, Order No. 5 from the Commission ALJ deemed CPS Energy's Application sufficient and materially complete.² No party challenged the sufficiency of CPS Energy's Application. Under 16 TAC § 22.75(d)(2), the Application is deemed sufficient if no written order finding a material deficiency is issued within 35 days after filing of the application. Therefore, in light of the Commission's rule and the ALJ's order, CPS Energy's Application is adequate.

In initial briefs, some intervenors have challenged the reliability of the data contained in the Application, including in the attached Environmental Assessment (EA). These arguments are unfounded, but they also do not go to the sufficiency of CPS Energy's Application. These arguments that relate to the reliability of the data in the Application and attachments, including the EA, are addressed below in other sections of this reply brief.

III. NOTICE

No parties have raised any notice challenges based upon the Commission's rules. The evidence conclusively demonstrates that all notice requirements under the Commission's rules have been satisfied,³ and there is no evidence in the record to the contrary.

However, some parties have questioned why CPS Energy mailed written notice to some landowners around some substation sites, when such notice was not required under the rules, yet purportedly did not provide similar notice to Scott Luedke, a landowner near Substation Site 7.⁴ Anaqua Springs HOA makes the incorrect assertion that Mr. Luedke "lives adjacent to Substation Site 7."⁵ This is incorrect, as Mr. Luedke's position statement states that he does not currently live at the property and his motion to intervene identifies his address as being in Dallas, Texas.⁶ Moreover, as seen in his position statement, there is not a permanent residence on the property.

² Order No. 5 Finding Application and Notice Sufficient and Establishing Procedural Schedule (Aug 21, 2020) (Interchange Filing No. 65).

³ See *CPS Energy's Initial Post-Hearing Brief* at 5-6, for a recitation of the notice provided and the evidence supporting such.

⁴ See, e.g., *The San Antonio Rose Palace, Inc and Strait Promotions, Inc 's Initial Post-Hearing Brief* at 13-15; *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, LLC* at 6; *Anaqua Springs Homeowners' Association Initial Post-Hearing Brief* at 7-8

⁵ *Anaqua Springs Homeowners' Association Initial Post-Hearing Brief* at 8.

⁶ Scott Luedke's Statement of Position (Interchange Filing No. 758) and Motion to Intervene (Interchange Filing No 814).

Most importantly, however, there is no evidence or assertion that Mr. Luedke was entitled to direct mailed notice of CPS Energy's Application. Quite the contrary, the evidence shows and the parties acknowledge that he is not entitled to direct mailed notice under the Commission's rules.⁷ While CPS Energy may have mailed written notice to some landowners who were not legally entitled to such, this does not create a burden on CPS Energy to provide notice to anyone else who might be similarly situated when the Commission's rules do not require it. There are times when a utility may intentionally or inadvertently provide more notice than is required. Such cannot be construed as creating a burden on the utility to locate all similarly situated landowners and provide them notice as well when such notice is not required by the Commission's rules. Such an approach would penalize utilities for doing more than required at times, or penalize them in situations where they inadvertently gave greater notice than required, and would also result in the creation of a notice "rule" outside of the proper rulemaking requirements of the Administrative Procedure Act. This is impermissible.

The Commission's notice rule is clear and the evidence conclusively demonstrates that CPS Energy complied with it. Not providing Mr. Luedke with direct mailed notice is of no legal significance because he is not legally entitled to such notice under the Commission's rules as his property is not crossed by any proposed transmission line segment nor does his property have a habitable structure within 300 feet of any transmission line segment proposed in the project.⁸

IV. RESPONSE TO SPECIFIC ISSUES

Some issues have been raised separately in multiple briefs and CPS Energy addresses them once in this section. Other arguments that are more unique to a particular intervenor are addressed further below in the following section.⁹ Any party arguments not addressed herein are not necessarily agreed to by CPS Energy, unless explicitly noted.

⁷ See, e.g., *The San Antonio Rose Palace, Inc and Strait Promotions, Inc 's Initial Post-Hearing Brief* at 13-14 ("Based on the data CPS Energy provided, it appears the utility substantially complied with [the notice] requirement" and "many properties adjacent to Substation 7 are not bordered in yellow, indicating that such properties did not receive notice despite their proximity to Substation 7 Under the PUC's procedural rules, such notice would not be required so long as the properties that did not receive notice were not crossed by the transmission line or within 300 feet of the centerline of the transmission line.")(emphasis added); *Anaqua Springs Homeowners' Association Initial Post-Hearing Brief* at 9 ("While it may be true that those individuals adjacent to Substation Site 7 were not entitled to notice under the Public Utility Commission of Texas's notice rules . . ."); also Tr. Vol. 2 at 344-346.

⁸ See 16 TAC §22 52(a)(3)

⁹ Some parties adopt by reference other parties' arguments. Accordingly, any responsive argument provided in this reply brief should be deemed as responsive to any party raising the issue addressed, regardless of whether they are identified by name in the responsive argument.

A. CPS Energy has No Preferred Route.

At the outset, it is important to note that CPS Energy has no route that it prefers, recommends, favors, or for which it otherwise shows any preference. A number of parties have referred to Route Z in the Application filed on July 22, 2020, or Route Z1 which functionally replaced Route Z in the amendment to the Application filed on December 22, 2020, as CPS Energy’s “preferred” or “recommended” route. This is not an accurate reflection of the record. CPS Energy has steadfastly demonstrated its neutrality toward all route options. The Commission’s CCN application form requires CPS Energy to “state which route the applicant believes best addresses the requirements of PURA and P.U.C. Substantive Rules.”¹⁰ CPS Energy complied with this requirement, but has never recommended a route nor indicated a preference for any route. To the contrary, the evidence demonstrates that CPS Energy has no preference for a route in this case.¹¹ Accordingly, all arguments indicating that CPS Energy has a preferred or recommended route are misplaced and not supported by the evidentiary record.

B. The Application Data is Reliable.

Some parties have questioned the reliability of the Application, contending it has been shown to contain errors and omissions. Such arguments are without merit, and the evidence reflects that the Application data is reliable for the ALJs and Commission to evaluate the routes and select one for the Project.

1. Habitable Structures.

Question 21 of the Commission’s CCN application form requires a listing of all “single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis” within 300 feet of the centerline of a proposed 138 kV transmission line route. Based on aerial photography and access from public rights of way, CPS Energy attempted to identify all such structures in its initial application filing. Because of limited access to private property, it is not unusual in CCN proceedings for landowners to present additional information to the utility applicant regarding the actual use of some structures during

¹⁰ CPS Energy Ex. 1 at 28.

¹¹ CPS Energy Ex. 12 at 5-6.

the pendency of the proceeding. In some instances, the utility applicant will agree that such structures should reasonably be included in the application structure count. In other instances, the utility may not feel such structures meet the criteria established by the Commission.

In this proceeding, Anaqua Springs HOA provided CPS Energy with information regarding the use and operation of its gate facilities (structure 200) (including that it was manned 24 hours a day) and the Cichowskis' guest house (structure 201) (a structure that had previously been identified as a pool cabana, but was subsequently identified as a guest house on the Cichowski property). Given this information provided by Anaqua Springs HOA, CPS Energy updated its habitable structure data to include these two structures.

In other instances, habitable structures were erected during the pendency of this proceeding (structures 198 and 199). In one instance, due to aerial photography interpretation, a habitable structure was inadvertently not included in the listing responsive to Question 21 (structure 197). These structures were included in the amended Application filed on December 22, 2020.¹² As the proceeding continued, additional newly constructed structures identified by CPS Energy through field reconnaissance and existing structures identified by intervening parties were evaluated and, if consistent with the Commission's application requirements, were also included in the data tabulation for this proceeding with the rebuttal testimony of Ms. Lisa Meaux.¹³

In some instances, CPS Energy evaluated and considered a particular structure and determined that it did not meet CPS Energy's interpretation of the Commission's requirements for a structure to be listed in response to Question 21. For example, the structure located north of Segment 20 that Mr. Cleveland discussed in his cross examination was evaluated by CPS Energy, determined not to be normally inhabited or intended to be inhabited on a daily or regular basis, and was therefore not included in the structure listings by CPS Energy.¹⁴

In an apparent attempt to discredit CPS Energy, a few parties have criticized CPS Energy for updating the structure listings within 300 feet of the proposed routes during this proceeding.¹⁵

¹² CPS Energy Ex. 6 at 5-6.

¹³ CPS Energy Ex. 15 at 5-6.

¹⁴ Tr. Vol. 2 at 267:13 - 271:12.

¹⁵ See *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 4; *Initial Post-Hearing Brief of Steve and Cathy Cichowski* at 3; and *Anaqua Springs Homeowners' Association Initial Post-Hearing Brief* at 11-12. For example, Anaqua Springs HOA criticizes CPS Energy for not originally including newly constructed structure 212 in the application because the aerial photography with the application shows "grading equipment on the property." *Id.* at FN 28.

The actual record evidence reveals precisely the opposite. As can be seen from the record, many of the structures subsequently added by CPS Energy were recently constructed or were included following the receipt by CPS Energy of information that was not publicly available or visually verifiable through aerial photography. Rather than blindly refute, rebut, or reject the addition of properly includable structures, CPS Energy has attempted to accurately update the evidentiary data available to the ALJs and Commission to ensure that the most complete information is presented for evaluation and a decision in this proceeding. These types of revisions are common in CCN cases and CPS Energy's updates to the Application are a reflection that its data can be relied upon.

2. Cost Data.

CPS Energy presented estimated costs for the routes proposed in this proceeding through the testimony of Mr. Scott Lyssy, a witness with significant experience in preparing engineering cost estimates for nearly 15 years.¹⁶ Because Mr. Lyssy is an engineer, and not a real estate professional, real estate cost estimates for the Project were developed for Mr. Lyssy by real estate professionals at CPS Energy with guidance from a real estate appraiser that CPS Energy often uses for this type of transmission line project.¹⁷ The real estate estimates for each tract were based on a per square foot cost based on the size, location, and type of property.¹⁸

All of CPS Energy's detailed cost estimation data, including the real estate cost estimates for each segment of the Project, were provided to all interested persons who requested access to CPS Energy's project documentation and who were willing to sign a protective order certification to obtain access to the document database within a few weeks of the filing of the Application.¹⁹ By the end of October 2020, counsel, consultants, and client representatives for many parties, including Anaqua Springs HOA (including Steve Cichowski),²⁰ Brad Jauer and BVJ Properties LLC (Jauer),²¹ San Antonio Rose Palace Inc. and Straight Promotions Inc. (Rose Palace).²² had executed protective order certifications and had been granted access to CPS Energy's project

¹⁶ CPS Energy Ex. 11 at Exhibit SDL-1.

¹⁷ CPS Energy Ex. 11 at 10.

¹⁸ CPS Energy Ex 11 at 10

¹⁹ CPS Energy requested issuance of a Protective Order on August 14, 2020 (see Interchange Filing No. 27).

²⁰ Interchange Filing No. 344

²¹ Interchange Filing No 351

²² Interchange Filing No. 358.

documentation, including the detailed data associated with the real estate cost estimates. Thus, the details of CPS Energy's cost estimates have been both known and knowable to parties to this proceeding for many months.

Now, in briefing, some parties attempt to cast aspersions on CPS Energy's cost estimates. They base their challenges on a variety of factors: the fact that CPS Energy's project engineer relied on real estate professionals to provide him with real estate cost estimates;²³ vague testimony that some development may or may not be taking place near or north of Segment 20;²⁴ that property crossed by a portion of Segment 36 may have once been proposed for development;²⁵ and that property now proposed for portions of Segment 46 and 46a may have a higher per lot retail value than the value for which the owner of that property agreed to sell right of way to CPS Energy.²⁶ The arguments have no reasonable basis and should be disregarded.

Most of these arguments are raised by Jauer. But, from reviewing Jauer's initial brief, it appears that Jauer does not grasp how costs were estimated for the Project. This inference is drawn from unusual and unsupported statements in Jauer's brief. Jauer makes allegations that CPS Energy's cost estimates do not account for different considerations, stating the following:

There is a myriad of costs that are unique to the Toutant Beauregard routes that should have been included in the Toutant Beauregard cost estimates but were not. For example, because of other infrastructure in the right-of-way along Toutant Beauregard, more engineering and design will be needed to avoid interference with the other infrastructure. These costs are not factored into the cost estimate for Segment 54.

Similarly, angle and turning structures are more expensive than non-turning structures, but CPS does not factor those into the cost estimates, instead using a flat rate multiplied by the length of the line.²⁷

There is no cited basis for these statements in Jauer's briefing and the arguments that follow, and these assertions are both patently false and lead one to believe that Jauer has never reviewed the cost estimating data provided by CPS Energy in this case. The evidence demonstrates

²³ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 22.

²⁴ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 22, Anaqua Springs Initial Brief at 10-11.

²⁵ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L L C* at 22

²⁶ Anaqua Springs Initial Brief at 10, Cichowski Initial Brief at 7

²⁷ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 24.

that the cost calculations were an involved process that took into account many different factors. A review of Attachment 3 to the Application demonstrates that Jauer's assertions are baseless.²⁸ Table 2 of Attachment 3 to the Application identifies the costs of routes, from least expensive to most expensive.²⁹ Table 2 shows that the cost estimates were based upon a variety of factors, each calculated separately. These factors, identified by separate costs, include: (1) right of way and land acquisition, (2) engineering and design (utility), (3) engineering and design (contract), (4) procurement of material and equipment, (5) construction of facilities (utility), (6) construction of facilities (contract), and (7) other.³⁰

Thus, as can be seen from the separate categories, CPS Energy did look at engineering costs for each route separately, and broke the engineering costs into two separate categories, those performed by CPS Energy and those performed by outside contractors. Further, Jauer's bald assertion that CPS Energy's cost estimates did not account for structures individually, but simply used "a flat rate multiplied by the length of the line" is shown false by the evidence. A simple review of Table 2 of amended Attachment 3 to the Application shows that Route AA1 is longer than Route Z1, yet Route Z1 has a higher cost for Procurement of Materials and Equipment.³¹ Such could not occur if the costs were based simply upon "a flat rate multiplied by the length of line" as alleged by Jauer. A cursory review of the table demonstrates that costs do not directly correlate to length, but were individually calculated. In addition to the AA1-Z1 comparison, the same dynamic holds true for other routes. For example, Route BB has a higher material and equipment cost than Route Y, even though Route Y is longer.³² The same is true for many other route comparisons (D1 v. CC, B1 v. U1, and X1 v. Q1 are just a few of many such examples).³³ Thus, Jauer's briefing on costs appears to show a complete lack of understanding of the evidence and should be disregarded in its entirety as unsupported by the record. The evidence is clear that the cost estimating process was involved, detailed, and took into account many different variables, correlated specifically to each route.

²⁸ CPS Energy Ex. 6, Attachment 3 Amended.

²⁹ CPS Energy Ex. 6, Attachment 3 Amended, at Table 2

³⁰ CPS Energy Ex. 6, Attachment 3 Amended, at Table 2

³¹ CPS Energy Ex. 6, Attachment 3 Amended, at Table 2

³² CPS Energy Ex. 6, Attachment 3 Amended, at Table 2.

³³ CPS Energy Ex. 6, Attachment 3 Amended, at Table 2.

It is both reasonable and appropriate that Mr. Lyssy relied on real estate professionals to develop real estate cost estimates for the Project. He did so openly with clear testimony filed in this docket in November.³⁴ Without substantively inquiring regarding CPS Energy’s real estate cost estimation process in discovery and without challenging CPS Energy’s real estate cost estimation process in direct testimony, parties attempted to ambush Mr. Lyssy regarding the specific underlying assumption for a particular square foot of easement cost estimate at the hearing. They then attempt to play “gotcha” in briefing when Mr. Lyssy did not know a specific data point on the witness stand for a specific segment based on alleged development that may or may not be occurring in that area.³⁵ Such actions are not a reasonable basis to develop an administrative record upon which the ALJs and the Commission can rely in making a determination in this case.

All of the testimony and briefing regarding the theoretical value of right of way across platted lots or development property along all or portions of Segments 42a, 46, 46a, and 49a across property owned or controlled by Toutant Ranch, ASR Parks, LLC, Pinson Interest Limited, LLP, and Crighton Development Company (collectively the “the Dreiss Interests”) is entirely moot. Based on the agreement of the Dreiss Interests with CPS Energy—which Mr. Driess stands by—the value of the easement costs for all right of way across the Dreiss Interests is known and indisputable. In fact, of all of the cost estimates in this proceeding, the cost estimates for nearly two miles of route segments across the Dreiss Interests property is the most known data in this proceeding, particularly in light of the agreement of the Dreiss Interests not to challenge right of way acquisition across their properties in condemnation proceedings.³⁶

With respect to the development activities in the area of Segments 17 and 20, there is simply no evidence whatsoever regarding any specific nature of development, the timing of development, or the location of the development in that area. The best evidence regarding the area of Segment 20 is the very recent photographs of Cleveland Exhibits 33 and 34 showing the undisturbed landscape and no development activity in proximity to Segment 20.

³⁴ CPS Energy Ex. 11 at 10

³⁵ See *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 22 (“However, when asked whether the right-of-way acquisition cost for Segment 20 was predicated on it being undeveloped land, Mr. Lyssy testified, “I’m not sure. I don’t have the answer to that.”).

³⁶ See Toutant et al. Ex. 1, attached Exhibit 1

At all times since the filing of the Application in July 2020 through the hearing on the merits, CPS Energy estimated the real estate cost for segments adjacent to all road right of way (not just segments adjacent to Toutant Beauregard Road) with only 75 feet width of private property easements.³⁷ Notably, as clarified in CPS Energy's April 26, 2021 errata filings,³⁸ CPS Energy's response to the motion for continuance,³⁹ and again in this reply brief, CPS Energy has made clear that it has always proposed 100 feet of operational clearance right of way for each segment of the Project, even though in some areas along road rights of way, that 100 feet of right of way may involve use of road right of way for clearances.⁴⁰ Thus, it is internally consistent for CPS Energy to propose both 100 feet of right of way for operational clearance needs for the Project and reasonably estimate the cost for only 75 feet of private easement requirements along road rights of way where less private property will be required.⁴¹ Exhibits SDL-3R and 4R to Mr. Lyssy's Rebuttal Testimony (CPS Energy Ex. 14) show visually how these two concepts both coexist. While the briefing of some parties to this proceeding continues to attempt to challenge, obfuscate, or muddy this point, the evidence is not in dispute:

- CPS Energy has delineated all segments of the Project with 100 feet of operational clearances (right of way), utilizing road right of way for such clearances as appropriate and available to minimize impacts on private property owners.⁴²
- All measurements in this proceeding calculated by CPS Energy are based on the segments delineated as described above with 100 feet of operational clearances for each segment.⁴³
- For all segments and portions of segments adjacent to roadways, CPS Energy cost estimates include 75 feet width of easements.⁴⁴

³⁷ Counsel for Jauer's uncontroversial and unchallenged questions of Mr. Lyssy at the hearing based on CPS Energy's application cost data from July 2020, demonstrated what CPS Energy has been saying all along—that its cost estimates for private property easements for segments or portions of segments adjacent to roadways are for 75 feet of private property. *See* Tr. Vol. 4 at 851:13 – 857:25.

³⁸ Interchange Filing Nos 764, 765, 766, and 767

³⁹ Interchange Filing No. 776.

⁴⁰ CPS Energy Ex. 14 at 9-10.

⁴¹ CPS Energy Ex. 14 at 9-10

⁴² CPS Energy Ex. 14 at 9

⁴³ CPS Energy Ex. 14 at 9.

⁴⁴ CPS Energy Ex. 14 at 9

- For all segments or parts of segments that are not adjacent to roadways, CPS Energy cost estimates include 100 feet width of easements.⁴⁵

Some parties argue that segment costs do not account for potential future road widening. Such is not supported by the record. While some witnesses testified that Toutant Beauregard Road may be widened to some degree in some locations at some unestablished future point in time, there is no actual record evidence of any specific roadway widening project established for Toutant Beauregard Road, nor evidence that any proposed transmission poles will be located within the right of way of Toutant Beauregard Road,⁴⁶ and therefore no evidence of any future need to move any portion of the Project.⁴⁷ All briefing challenging CPS Energy's cost estimates on such a basis must likewise be set aside.

With respect to the estimated cost of Substation Site 7, there is no estimated cost for flood mitigation because there is no mitigation for flooding necessary at that site.⁴⁸ While the total elevation change for Substation Site 7 is slightly more than 50 feet from its highest corner to its lowest corner, even a cursory review of the topography of the site shown in Figure 2-4 Amended of CPS Energy Exhibit 6 shows *the area proposed for the substation facilities has only a gentle slope*.⁴⁹ Having walked and assessed that property, Mr. Lyssy's cost estimates for site clearing and civil activities have taken into account all construction activities necessary at that location. Likewise, CPS Energy is aware of and has included all costs necessary to fully comply with City of San Antonio and Bexar County ordinances associated with clearing and substation construction activities. There is simply no basis to argue that CPS Energy will incur additional costs for complying with ordinances for which it typically and ordinarily complies with in all of its construction activities.

⁴⁵ CPS Energy Ex. 14 at 9.

⁴⁶ To be perfectly clear, CPS Energy's position is not that a pole *will* or *will not* be located within the road right of way near the entrance of Serene and Scenic Hills neighborhoods or any other location in the study area. It is CPS Energy's position that—until the necessary surveys, and geotechnical and engineering work necessary to design the facilities have been undertaken, in coordination with applicable roadway authorities and other utility owners and operators and directly affected landowners—it simply cannot be known definitively where a pole may or may not be located, the dimensions of such a pole, or the potential impacts of such a pole. Accordingly, discussions about specific pole locations and impacts of those locations simply cannot be definitively known and addressed at this stage of the process.

⁴⁷ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L L C.* at 24.

⁴⁸ Tr. Vol. 4 at 654:5-7, 652.2-9, 657:4-19

⁴⁹ CPS Energy Ex. 14 at Exhibit SDL-1R.

Thus, as demonstrated above, the intervenor challenges to CPS Energy's cost estimates are unfounded. The cost estimates prepared by CPS Energy are reliable and may be used for comparing all routes in this case to one another.

C. The Dreiss Agreement is Proper and in Accordance with the Preliminary Order.

In initial briefs, several parties address the agreement between the Dreiss Interests and CPS Energy.⁵⁰ It is important to note at the outset that the route changes proposed by the Dreiss Interests, *including the associated agreement with CPS Energy*, were publicly filed and presented to all parties in this proceeding on November 24, 2020.⁵¹ ***Every party to this proceeding was presented with the opportunity to evaluate and object to the changes proposed by the Dreiss Interests and agreed to by CPS Energy. Not a single party objected to, complained of, or challenged the changes requested by the Dreiss Interests or the agreement that the Dreiss Interests pursued and negotiated with CPS Energy.***

Contrary to the completely unsubstantiated assertions of some parties, the record evidence in this proceeding reflects that CPS Energy did not coerce, force, or pressure the Dreiss Interests to work with or negotiate with CPS Energy about any of the routing alternatives on or near their property.⁵² CPS Energy was approached in several instances by the Dreiss Interests regarding potential or proposed route segments on property the Dreiss Interests controlled or owned.⁵³ As with all landowners in this proceeding, CPS Energy was willing to work with the Dreiss Interests to mitigate the impact of potential or proposed segments on their property. Several facts about CPS Energy's negotiations with the Dreiss Interests are relevant:

1. In each instance, the Dreiss Interests initiated the discussions and negotiations with CPS Energy regarding route modifications involving the Dreiss Interests property.⁵⁴
2. Every segment modification that resulted from CPS Energy's discussions and negotiations with the Dreiss Interests was located wholly on property owned or controlled by the Dreiss Interests and did not directly affect any other landowner.⁵⁵

⁵⁰ See, e.g., *Anaqua Springs Homeowners' Association Initial Post-Hearing Brief* at 16-17; *Initial Post-Hearing Brief of Steve and Cathy Cichowski* at 4 and 7.

⁵¹ See Interchange Filing No. 392.

⁵² Tr Vol. 5 at 908 15-22, 912 21-25 – 913:1-15; 941:3-12, 945:5-14, 961:18-25; 967:20-25

⁵³ Toutant Ranch, et al. Ex. 1 at 5-6 (Direct Testimony of Tom Dreiss).

⁵⁴ Toutant Ranch, et al. Ex. 1 at 5-6.

⁵⁵ Toutant Ranch, et al. Ex. 1 at 5-7; CPS Energy Ex. 12 at 5; Tr. Vol. 4 at 916.10-18

3. The location of Segment 49 as included in CPS Energy’s original application filing on July 22, 2020, was identified around the Dreiss Interests developments and was originally acceptable to the Dreiss Interests.⁵⁶
4. The Dreiss Interests have been and are represented by counsel in this proceeding.⁵⁷
5. The Dreiss Interests were not forced or coerced into any aspect of their agreement with CPS Energy. According to Mr. Dreiss’ testimony:

“I was not forced to buy into it. I agreed to the change to help our development Unit 3 be able to function as a sellable platted development. You know, it was important for us to have the southern route that has the Xs through that consolidated up to 46, and that was – we worked with CPS in a very positive way to – to come up with a good solution that allowed that to happen.”⁵⁸
6. Mr. Dreiss testified that the negotiated price with CPS Energy for right of way across the Dreiss Interests property was fair: “It was fair. Considering the whole business perspective for us, I believe that that was a fair price. And what we determined with CPS as far as the realignment of that segment and elimination of Segment 49 to the south of Helotes Springs Ranch, I believe that the final route with CPS is fair. It’s certainly helped us sustain the developments.”⁵⁹ “I believe it’s – I believe in our scenario that was a fair price.”⁶⁰

The record reflects that CPS Energy worked cooperatively with the Dreiss Interests to develop route modifications that affected only property owned or controlled by the Dreiss Interests.⁶¹ Through its negotiations, CPS Energy ensured that the changes proposed by the Dreiss Interests to accommodate their developments did not increase the cost of the Project for the ratepayers of Texas.⁶² Like any other party to this proceeding, the Dreiss Interests were free to challenge any aspect of CPS Energy’s application and engaged experienced counsel equipped to advise them regarding their legal choices.⁶³ The Dreiss Interests made a different choice—a choice that was fair and agreeable to them⁶⁴—a choice that was fair and agreeable to CPS Energy⁶⁵—and

⁵⁶ Toutant Ranch, et al Ex. 1 at 5.

⁵⁷ Tr. Vol. 5 at 878:5-20

⁵⁸ Tr. Vol. 5 at 908:15-22; *also* Tr. Vol. 5 at 912:21-25 – 913:1-15, 941:3-12; 945:5-14; 961:18-25; 967:20-25.

⁵⁹ Tr. Vol. 5 at 934:22-25 – 935:1-3.

⁶⁰ Tr. Vol. 5 at 935:12-13; *also* Tr. Vol. 4 at 960:1-9.

⁶¹ Toutant Ranch, et al. Ex. 1 at 6.

⁶² Tr. Vol. 5 at 934:4-7

⁶³ Toutant Ranch, et al Ex. 1 at 6, Tr. Vol. 5 at 878:5-20

⁶⁴ Toutant Ranch, et al Ex. 1 at 5-6, 8; Tr. Vol. 5 at 908:15-22, 912:21-25 – 913:1-15, 941:3-12; 945:5-14; 961:18-25; 967:20-25.

⁶⁵ *See* Interchange Filing No. 393.

a choice that was fair to the ratepayers of Texas.⁶⁶ Ultimately, the Dreiss Interests agreement results in approximately two miles of potential routing (nearly 40 percent of some routes) that is not contested by the landowner directly affected by those segments.⁶⁷ It results in absolute cost certainty with respect to the right of way for all or portions of segments without threat of condemnation.⁶⁸ To the extent such evidence is of value to the Commission, 15 routes (Routes B1, C1, D1, G1, I1, J1, M1, T1, X1, Z1, Z2, AA1, AA2, DD, and EE) utilize one or more of the segments addressed by the agreement between the Dreiss Interests and CPS Energy. In contrast, to the extent such evidence is not of value to the Commission, 18 routes (Routes A, E, F1, H, K, L, N1, O, P, Q1, R1, S, U1, V, W, Y, BB, and CC) do not contain segments that cross the Dreiss Interests property.

The agreement between the Dreiss Interests and CPS Energy is entirely consistent with the Commission's Order of Referral and Preliminary Order (Preliminary Order). Specifically, the Preliminary Order identifies, as issues to be addressed, "are there alternative routes or facilities configurations that would have a less negative impact on landowners?" and "If alternative routes or facility configurations are considered due to individual landowner preference: a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?"⁶⁹ Accordingly, the Commission has recognized the propriety of accommodating landowner preferences in routing segments across the landowner's property, and in requiring contributions from landowners when such accommodations are made. The agreement with the Dreiss Interests is completely consistent with the Commission's past precedent and expressed preferences, as well as the issues in the Preliminary Order.

D. Substation Site 7 is a Viable Substation Location for the Project.

Several parties argue that Substation Site 7 has potential problems that cause its viability to be in question. It is nonsensical to think that CPS Energy would invest years and millions of dollars into a Project and then inexplicably include a substation site that is not feasible. In fact, the

⁶⁶ Toutant Ranch, et al Ex. 1, attached Exhibit 1 at paragraphs 7 and 8, Tr Vol. 5 at 934:4-7.

⁶⁷ Toutant Ranch, et al. Ex. 1 at 7, 8.

⁶⁸ Toutant Ranch, et al Ex. 1, attached Exhibit 1 at paragraph 8.

⁶⁹ Order of Referral and Preliminary Order at 4-5, referred issues 5 and 6 (Sep 29, 2020) (Interchange Filing No. 355).

expert testimony conclusively establishes that Substation Site 7 is viable for the Project and presents no unusual concerns, including flooding concerns.⁷⁰

Despite the clear unequivocal expert opinion of CPS Energy's engineering witness to the contrary, Jauer argues that Substation Site 7 may be susceptible to flooding. On what basis does Jauer make such an assertion? It is based on the testimony of a project management professional who resides in Minnesota,⁷¹ who has never visited the study area or Substation Site 7,⁷² who is not a professional engineer in the State of Texas or any other state,⁷³ and who has never managed a transmission line construction project in the State of Texas.⁷⁴ Without sufficient evidentiary basis, Jauer argues potential flooding in the area up to 1250 feet above mean sea level (AMSL). In fact, the report offered into evidence by Jauer actually shows a 100 year flood water surface elevation of 1225.19 feet AMSL.⁷⁵ Further, the information provided on Table 2-7 of the report⁷⁶ is shown for a location 3,200 feet downstream of Substation Site 7 and does not support the "calculations" shown in the Jauer briefing. The weight of the evidence is that Substation Site 7 is a viable location.

The record evidence clearly shows Substation Site 7 is not located within the 100 year floodplain.⁷⁷ There has not been any flooding on the property for the entire 38 years the current landowner has owned the property.⁷⁸ There are no changes to the Federal Emergency Management Agency (FEMA) 100-year floodplain as a result of the U.S. Army Corps of Engineers report (offered into evidence as Jauer Exhibit 3).⁷⁹ Mr. Lyssy, a professional engineer licensed in the state of Texas with extensive training in hydraulic engineering,⁸⁰ was the only witness in this proceeding

⁷⁰ CPS Energy Ex. 14 at 13; Tr. Vol 4 at 654:5-7, 652:2-9, 657:4-19.

⁷¹ Anaqua Springs/Jauer Ex 25 at 1

⁷² CPS Energy Ex 25 at 2.

⁷³ Anaqua Springs/Jauer Ex. 25 at Exhibit MDA-1

⁷⁴ CPS Energy Ex. 25 at 3.

⁷⁵ Jauer Ex. 3 at 11.

⁷⁶ Jauer Initial Brief at 15

⁷⁷ Jauer Ex. 15 at 16. Although Substation Site 7 is not shown on this preliminary mapping, the location of the property in relation to the 100 year floodplain is clearly visible in the southwest corner of the map where Leon Creek bends from the east to the south. Compare also Exhibit SDL-1R attached to the Rebuttal Testimony of Mr. Lyssy showing a potential layout of the substation facilities within that property. CPS Energy Ex 14.

⁷⁸ Tr. Vol 4 at 652 1-9.

⁷⁹ Tr. Vol 4 at 626:3-4.

⁸⁰ CPS Energy Ex. 11 at Exhibit SDJ-1; Tr. Vol 4 at 650 18-19

with qualifications to address hydrology in the area of Substation Site 7. He testified unequivocally that “there’s no risk of [Substation Site 7] flooding. If we put a substation on it, the substation will not be inundated with water.”⁸¹ Mr. Lyssy further testified that, having reviewed Jauer Exhibit 3, and having performed similar modelling to that presented in Jauer Exhibit 3,⁸² the report “does not change my stance on Substation Site 7. Substation Site 7 is still viable and can be built for an electrical substation.”⁸³

Notwithstanding Mr. Lyssy’s explicit expert testimony that it was inappropriate and a misrepresentation to simply add a downstream peak 100 year flood water depth of Leon Creek to the lowest elevation point of the property on which Substation Site 7 is located to argue flooding might occur on that property,⁸⁴ the Jauer initial brief does just that.⁸⁵ As Mr. Lyssy testified, Jauer is “looking at this incorrectly,”⁸⁶ because “that’s not how hydraulics are done.”⁸⁷ Jauer’s arguments regarding flooding and Substation Site 7 have no reasonable evidentiary basis and should be disregarded.

Similarly, Mr. Patrick Cleveland raises concerns about Substation Site 7, regarding the wooded nature, shape, and slope of the site, and the mature homes around it. None of these concerns present any unusual challenges for constructing a substation at that location. The clear engineering testimony from the witness in this case with the most knowledge and experience about CPS Energy’s construction of substations reflects that Substation Site 7 is suitable for a substation and presents no meaningful concerns that separate it from the other substation sites.⁸⁸

E. EMF Does Not Present a Concern of Adverse Health Effects.

Multiple parties, particularly many self-represented intervenors, have expressed concerns regarding electric and magnetic fields (EMF). Specifically, many parties have expressed concerns that EMF presents the potential to cause adverse health effects, and some parties have indicated in

⁸¹ Tr. Vol. 4 at 654:5-7.

⁸² Tr. Vol. 4 at 649:5-10

⁸³ Tr Vol. 4 at 624:17-20.

⁸⁴ Tr. Vol. 4 at 646:22-23, 647:1-2; 647:9-12; 647:20-22; 649:9-10,

⁸⁵ *Jauer Initial Brief* at 15.

⁸⁶ Tr Vol 4 at 647:1-2.

⁸⁷ Tr Vol 4 at 647:11-12.

⁸⁸ CPS Energy Ex. 14 at 13; Tr. Vol. 2 at 196 10-197 17

briefing that there is a 100 foot “potential EMF exposure concern distance” demonstrated by CPS Energy’s testimony.⁸⁹ Intervenors’ concerns and the asserted 100-foot distance of “EMF exposure concern” are both unfounded.

As reflected in the rebuttal testimony of Mr. Adam Marin, there is no scientific basis to conclude that EMF from electric transmission lines like those proposed in this Project causes or contributes to adverse health effects.⁹⁰ While CPS Energy appreciates that EMF exposure is a common concern expressed by landowners, the evidence does not indicate that there will be any potential adverse health effects from this Project. In fact, two CPS Energy employees testified that they either currently live or have lived in the past in close proximity to electric transmission lines and they have no concerns about such.⁹¹

Attached to Mr. Marin’s rebuttal testimony is a report modeling the expected EMF levels from the transmission line proposed in this Project.⁹² Although the report modeled the levels of EMF out to 100 feet, the report does not indicate that 100 feet is a distance of concern. At the edge of the right of way, 50 feet from the centerline, the EMF levels are projected to be consistent with background levels and exposures common to many household appliances on a day to day basis.⁹³ There is nothing in the report that indicates any concerns related to EMF levels out to 100 feet. Rather, by the edge of the right of way, the EMF levels modeled for the Project are comparable to background household appliances. Therefore, the use of a 100 foot distance for “EMF exposure concern” as a basis for distinguishing routes is not supported by the evidence. There simply is no evidence in this case that EMF exposure is a concern that would impact the selection of any route.

F. The 300-Foot Distance Regarding Habitable Structures is Simply a Notice Element.

In their briefing, some parties reference the 300-foot distance contained in the Commission’s notice rule and use it as an indicator that any structures within 300 feet of a proposed transmission line segment are deemed to be adversely impacted by such segment. This conclusion is not supported by the rules or the evidence.

⁸⁹ See, e.g., *Initial Brief of Save Huntress Lane Association* at 9.

⁹⁰ CPS Energy Ex. 12 at 11 (Rebuttal Testimony of Adam Marin).

⁹¹ Tr Vol. 3 at 533-534 (testimony of Scott Lyssy and Adam Marin).

⁹² CPS Energy Ex. 12, attached exhibit ARM-5R.

⁹³ CPS Energy Ex. 12 at 13, and attached exhibit ARM-5R at 2-5.

As noted above, the Commission’s notice rule requires that CPS Energy provide direct mailed notice to all “directly affected” landowners, and indicates that a landowner is directly affected if the landowner’s property is crossed by a proposed transmission line segment or if the landowner has a habitable structure within 300 feet of the centerline of a proposed transmission line segment.⁹⁴ “Directly affected” does not equate to “adversely impacted.” Distance, standing alone, in no way provides a means to determine the specific impact upon a particular habitable structure. One landowner could have a habitable structure within 200 feet of a transmission line segment yet, because of terrain or vegetation, might not even see the line or experience its presence in any meaningful way. In contrast, other landowners might be more than 200 feet away from a transmission line segment yet have it be entirely within their viewshed. The distance of 300 feet is simply a notice requirement and not a measure of adverse impact. Accordingly, arguments that all habitable structures within 300 feet of a transmission line segment are presumed to be adversely impacted by the segment are without foundation.

V. RESPONSE TO SPECIFIC INTERVENOR ARGUMENTS

A. Anaqua Springs HOA

In addition to the arguments discussed above, CPS Energy here addresses additional arguments raised in Anaqua Springs HOA’s initial brief.

Anaqua Springs HOA contends that CPS Energy’s Application lacks routing diversity because it presents only two routing corridors. This is not true as there are multiple potential corridors, as previously noted in the route adequacy briefing. Moreover, the ALJs previously addressed the adequacy of routes in CPS Energy’s Application and found it to be sufficient. While there are limited corridors available for some portions of the Project, given the significant geographic and development constraints in the area, there is no requirement for an Application to contain many different route “corridors” for every segment of the Project⁹⁵ Further, contrary to Anaqua Springs HOA’s assertion that there are really only two realistic substation options, the Application contains seven viable substation sites. There can be many reasons why the Commission might choose a route that bypasses a proposed substation site to connect to another

⁹⁴ See 16 TAC §22.52(a)(3).

⁹⁵ See *Application of Brazos Electric Power Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Collin County, Texas*, Docket No. 46429, Order No 6 Denying Requests for Route Adequacy Hearing and Canceling Hearing at 5 (Mar 20,2017)(finding limited tight routing corridors adequate given the constraints in the area).

proposed substation site. The mere fact that routes that connect to other substation sites may bypass one site does not render them meaningless, superfluous, or infeasible.

Anaqua Springs HOA takes issue with the fact that a second open house was not conducted after changes were made to the Project based on information received from, and after, the first open house. There is no requirement in the Commission's rules for a second open house. It is common for changes to be made to a project after an open house—in fact, one purpose of the open house is for the utility to receive community input to shape the application before it is filed. Once this is done, landowners can participate in the hearing process and provide additional input. There simply is no legal requirement for a second open house, and Anaqua Springs HOA's arguments in this regard are without merit.

Anaqua Springs HOA contends that CPS Energy failed to identify two park and recreational areas: one identified by Patrick Cleveland and one identified by Steve Cichowski. The identification of a park and recreational area is frequently subjective, especially when many private parties use a portion of their land for recreational purposes. The choice by POWER to not formally classify either of the supposed park and recreation areas identified in Anaqua Springs HOA's brief is not an error or omission; it is simply a reflection of a different subjective belief as to the appropriate requirements for designation as a park and recreational area.⁹⁶ With respect to the High Country Ranch, the use of the property is limited to a handful of private parties. With respect to the Anaqua Springs HOA area, there is no testimony or evidence of the extent of any "park" area or any recreational activities that occur in the "parkland" associated with the area. However, if the ALJs or Commission wish to classify these two areas as park and recreational areas, they may do so and evaluate the routes in light of that information. Regardless of the formal classification, the record adequately reflects the uses of such properties and such may be taken into account when selecting a route. But, such classification or non-classification is not an error in CPS Energy's Application.

Anaqua Springs HOA also contends that CPS Energy failed to provide critical right of way data until just before the hearing. This is not true. No additional data was provided by CPS Energy on April 26, 2021. The clarifications were provided because it appeared that some parties were confused regarding the interplay between operational clearances, public road right of way, and easement acquisition costs. The clarifications were intended to help correct any confusion such

⁹⁶ CPS Energy Ex. 15 at 16.

parties had. The clarifications did not change the locations of any segments or the segment data for any route. The information merely clarified how public road right of way would be used for operational clearances instead of private property right of way acquired through easements. It did not change the distances between segments and roadways, nor did it make any alterations to routes or segments whatsoever. It merely clarified an issue that related to cost estimating.

Anaqua Springs HOA requests that if a route using Segments 38, 39, and 43 is chosen, then those segments should be shifted to the south. Past Commission precedent suggests, however, that such a shift cannot be approved over the objections of the landowner on whose property the segments are located.⁹⁷ Therefore, absent a demonstration of consent by such landowner(s), CPS Energy does not believe the ALJs can recommend such a change in routing simply to accommodate Anaqua Springs HOA.

B. Brad Jauer and BVJ Properties (Jauer)

The Jauer property is crossed by a portion of Segment 36 that is identified adjacent to Toutant Beauregard Road and a portion of Segment 32 that is located adjacent to part of the Jauer eastern property line.⁹⁸ Because of the forward progressing direction of the routes proposed in this proceeding, a route approved for the Project would use Segment 36 or Segment 32 or neither, but there are no routes that would utilize both Segment 36 and 32. The Jauer initial post-hearing brief presents a few arguments that merit a specific response from CPS Energy.

1. CPS Energy has provided timely and accurate information in this proceeding.

Unfortunately, rather than focusing on the substantive differences between the routing alternatives proposed for consideration in this proceeding, many of which do not cross or come in proximity to the Jauer property,⁹⁹ Jauer elected to spend a significant amount of its initial post-

⁹⁷ *Application of Oncor Electric Delivery Company, LLC to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line in Crane, Ector, Loving, Reeves, Ward, and Winkler Counties, Texas*, Docket No. 48095, Memorandum from Chairman DeAnn T. Walker, at 1 (Sep. 13, 2018) (“Even though Plains Scurlock Permian LP received notice of Oncor’s original application, I do not believe that the Commission can approve either of the proposed modifications to Inlk F1 without consent from Plains Scurlock Permian LP in accordance with Commission precedent.”) (citing *Application of Oncor Electric Delivery LLC to Amend its Certificate of Convenience and Necessity for the Proposed Bluff Creek to Brown 345-kV CREZ Transmission Line in Taylor, Runnels, Coleman, and Brown Counties, Texas*, Docket No. 37530, Order at 2 (Apr. 26, 2010))

⁹⁸ See CPS Energy Ex. 18 (the Intervenor Map).

⁹⁹ Twenty routes presented in this proceeding (Routes A, B1, E, F1, G1, H, K, L, N1, O, P, Q1, R1, S, U1, V, W, X1, BB, CC) do not cross the Jauer property.

hearing briefing attempting to, at best, miscolor the evidence in this proceeding. The following discussion reflects the clear record evidence in this case upon which the ALJs and the Commission can accurately evaluate the routes proposed for construction and operation of the Project.

a. Plastic natural gas distribution facilities within road right of way have no impact on the Project.

As Jauer is aware,¹⁰⁰ electric utilities work with the owners of *metallic* pipelines in modelling and analyzing potential hazards of alternating-current interference affecting *metallic* pipelines being paralleled. The Commission’s standard ordering language regularly includes language to this effect.¹⁰¹ Such facilities are registered with the Railroad Commission of Texas (RRC) and identified by independent services such as PLATTs.¹⁰² In contrast, local, low pressure natural gas distribution facilities constructed of plastic materials are ubiquitous throughout Texas within road right of way, are not registered with the RRC or listed by PLATTs, and are not a concern to electric utilities (or the Commission) in the construction and operation of electric transmission facilities. Thus, it is disingenuous of Jauer to attempt to discredit CPS Energy for discovery responses regarding “pipelines” in the study area, particularly adjacent to Segment 20.

As is accurately stated in CPS Energy’s initial discovery response to Jauer, “[t]he pipeline information that POWER obtained from PLATTs and the [RRC] in performing the routing assessment for this Project does not show any distribution, transmission, gathering, intrastate, or interstate hydrocarbon pipelines in the study area.”¹⁰³ That information, provided on February 11, 2021, remains true today—there are no pipelines registered with the RRC or listed in PLATTs in the study area. Likewise, CPS Energy’s response on February 11, 2021, that it is not aware of *any* steel natural gas or water pipelines within the study area also remains true today.¹⁰⁴ After further discussions with Jauer, CPS Energy became aware that Jauer was not asking about metallic pipelines that are a consideration to an electric utility such as CPS Energy, but rather was asking about a common plastic low pressure natural gas distribution facility located in the road right of

¹⁰⁰ See Jauer Ex 8 at 11

¹⁰¹ See *Application of AEP Texas Inc to Amend its Certificate of Convenience and Necessity for the Brackettville to Escondido 138-kV Transmission Line in Kinney and Maverick Counties*, Docket No. 50545, Final Order at 24, Ordering Paragraph No. 4 (May 25, 2021)

¹⁰² See Jauer Ex 8 at 19-20

¹⁰³ Jauer Ex 8 at 19-20

¹⁰⁴ Jauer Ex 8 at 11.

way of Toutant Beauregard Road. Thus, in order to clarify its previous discovery response so as to avoid confusion for Jauer, CPS Energy supplemented its discovery to clarify that there are, *as would be expected throughout urban and suburban areas of Bexar County*, plastic local natural gas distribution facilities within road right of way of Toutant Beauregard Road in the vicinity of Segment 20 *and such facilities are expected to exist throughout the study area* (i.e., not just along Toutant Beauregard Road).¹⁰⁵ Further, CPS Energy clarified that it “does not anticipate any interference between the natural gas distribution facilities referenced in this question and the proposed transmission line facilities if approved for construction and operation along Segment 20.”¹⁰⁶

Mr. Lyssy testified that the natural gas distribution lines, water lines, communication lines, and electric distribution lines are not located in an area of the road right of way that will impact proposed segments.¹⁰⁷ Specifically, contrary to Jauer’s assertions, the neighborhood distribution level service facilities will generally be at least 25-50 feet from the proposed transmission line centerline along roadways.¹⁰⁸ The weight of the evidence provided by an expert engineer with significant experience in the construction and operation of transmission lines facilities in Bexar County is that the transmission line segments proposed in this proceeding following any of the roadways of the study area will not be impacted by the typical plastic neighborhood low pressure natural gas distribution facilities located throughout Bexar County.¹⁰⁹ Jauer’s assertions regarding CPS Energy’s discovery responses—clarifying that there are plastic natural gas distribution facilities within roadway rights of way (as would be expected in this area)—have no relevance to the factors on which the ALJs and the Commission should make a decision in this proceeding.

b. CPS Energy’s errata of April 26, 2021, properly clarified previously provided Project information and was not an alteration of any CPS Energy position.

Whether intentionally or as a result of continued misunderstanding of the facts and evidence, Jauer’s initial post-hearing brief continues to address CPS Energy’s errata filing of

¹⁰⁵ Jauer Ex. 9.

¹⁰⁶ Jauer Ex. 9.

¹⁰⁷ CPS Energy Ex. 14 at 10-11

¹⁰⁸ CPS Energy Ex. 14 at 10-11.

¹⁰⁹ CPS Energy Ex. 14 at 10-11. The only additional evidence offered on this issue was from Mr. Mark Anderson who is not a licensed professional engineer within the State of Texas (or any state) and who has never constructed transmission facilities within the State of Texas. *See* CPS Energy Ex. 25.

April 26, 2021, as if it represented some manner of alteration of CPS Energy’s position in this proceeding.¹¹⁰ In contrast to argumentative briefings of counsel, the record evidence clearly shows that CPS Energy’s filings of April 26, 2021, were a clarification of its use of the term “right of way” in an effort to avoid confusion. Not one *data point* in this proceeding was changed on April 26, 2021, contrary to the claims of Jauer, and nothing about the CPS Energy filings of April 26, 2021 implicates the community’s safety. Specifically:

- CPS Energy’s Application in this proceeding, from the date it was filed on July 22, 2020, through the hearing on the merits, *always have and continued to delineate each segment of the routes presented with 100 feet of operational clearance for the proposed transmission line.*¹¹¹ At times, CPS Energy has described this 100 feet of operational clearances as “100 feet of right of way,” which it is.¹¹²
- CPS Energy’s cost estimates in this proceeding, from the date the Application was filed on July 22, 2020, through the hearing on the merits, always have and continue to present *estimated costs for acquiring 75 feet of easement width on private property* for all segments adjacent to roadways. CPS Energy did not hide this fact—it was apparent in the cost tables provided with the Application as filed, and it was consistently described in discovery responses and Mr. Lyssy’s Rebuttal Testimony.¹¹³ At times CPS Energy described the easement areas it will require and obtain from private property owners as “right of way,” which it is.
- Other than the segment modifications approved by the ALJs in Order No. 5, *not one foot of the segments presented in the Application in this proceeding was moved or modified.* The detailed property maps presented as Attachment 6 to the Application and the Attachment 6 Amended maps included in the Application Amendment on December 22, 2020 (reflecting only the segment changes ordered by SOAH Order No. 5) have clearly and unambiguously delineated every foot of every segment presented in the Application in relation to both roadways paralleled and crossed and the private property adjacent to such roadways.¹¹⁴
- Although CPS Energy has continuously sought to evaluate the data presented in the Application and has readily corrected any missing data (*e.g.*, habitable structures or water wells not included in the Application), on April 26, 2021, CPS Energy did not

¹¹⁰ Anaqua Springs HOA echoes these claims on page 12 of its initial brief.

¹¹¹ Operational clearance is the area necessary for a transmission line to be operated safely without obstruction. This right of way area can be secured through easements on private property but can also be achieved by crossing or locating adjacent to roadways and using the roadway as a cleared area without trees, houses, or other aerial obstructions.

¹¹² CPS Energy Ex. 1 at 6

¹¹³ CPS Energy Ex. 14 at 10.

¹¹⁴ Compare, for example, Sheet 8 of Attachment 6 to CPS Energy Ex. 1 with Exhibit SDL-3R of CPS Energy Ex. 14, showing the location of Segment 54 along Toutant Beauregard Road in the exact same location.

change, correct, or adjust a single measurement presented in the Application, testimony, or discovery responses in this proceeding.

- Although CPS Energy supplemented several discovery responses and provided an errata to the Rebuttal Testimony of Mr. Lyssy on April 26, 2021, to clarify its use of the term “right of way,” CPS Energy did not modify or change a single number, measurement, or data point previously provided in the Application, testimony, or discovery responses.

Because CPS Energy can and intends to utilize road right of way for the necessary clearances, it was appropriate for the cost estimates presented in this proceeding to reflect an anticipated acquisition cost of less than 100 feet of right of way *on private property*. CPS Energy’s discovery responses and Mr. Lyssy’s rebuttal testimony were never altered on that point.

Contrary to Jauer’s arguments, CPS Energy *never changed the right of way to 75 feet in some areas*. In fact, Jauer does not and cannot point to a single filing or supplement in which CPS Energy misstated its intentions or changed the right of way width that it anticipates in this proceeding. Rather, the record evidence is clear that in some areas less than the necessary 100 feet of the right of way to operate the proposed facilities will be obtained through private property easements *because CPS Energy will utilize existing road right of way for the remaining clearances necessary to safely operate within 100 feet*. CPS Energy’s response to Jauer’s second set of requests for information is particularly descriptive of CPS Energy’s intentions. As clearly stated in Jauer Ex. 10:

. . . In some areas along road rights-of-way, CPS Energy may be able to utilize narrower than typical rights-of-way or may be able to utilize up to 25 feet of the road right-of-way for the clearances necessary to safely operate the transmission line facilities.¹¹⁵

CPS Energy’s stated intent to use 100 feet of right of way clearances for the proposed transmission line facilities was true in July 2020,¹¹⁶ it was true in January and February 2021 when such information was provided to Jauer,¹¹⁷ and it remains true today.¹¹⁸ Because CPS Energy attempted to *clarify* that a portion of the necessary 100 feet of right of way would be utilized through roadway clearances on April 26, 2021, Jauer continues to claim injustices, prejudices, and

¹¹⁵ Bexar Ranch Ex. 22.

¹¹⁶ CPS Energy Ex. 1 at 6.

¹¹⁷ Bexar Ranch Ex. 22.

¹¹⁸ Bexar Ranch Ex. 23.

material changes to CPS Energy’s Application. The evidence is not unclear and it is not confusing. Jauer’s continued arguments on this point should be disregarded as being entirely without merit.

c. CPS Energy has stated throughout this proceeding that it has not identified, and cannot yet identify, where specific pole structures will be located.

For some reason, notwithstanding CPS Energy’s consistent explicit responses to this issue, Jauer continues to assert that CPS Energy knows certain locations where it will place pole structures for the Project, specifically at one point within road right of way at the entrance of Serene and Scenic Hills.¹¹⁹ Jauer even goes so far in its initial brief to assert that an angle structure is now somehow “proposed at the entrance of the Serene and Scenic Hills Estates neighborhoods.”¹²⁰ As CPS Energy explained in discovery responses to Jauer on February 11, 2021, “the survey geotechnical, and engineering work necessary to design the proposed transmission line facilities has not yet been completed. Thus, CPS Energy cannot yet identify where poles structures will be located.”¹²¹ As Mr. Lyssy explained with respect to the Anaqu Springs HOA entrance, because the line has not been designed, CPS Energy cannot guarantee anything regarding pole locations.¹²² Later, when questioned about the precise pole “location” that Jauer addresses in its brief,¹²³ Mr. Lyssy testified unequivocally about whether a particular pole would be in road right of way, “[w]ell, we haven’t designed this yet, so there’s – it’s not necessarily there’s going to be a structure there, exactly. So, you know, it doesn’t mean there’s going to be a structure there. It could be on the other side of the road actually, so . . .”¹²⁴ Later in the hearing, Mr. Lyssy again testified regarding whether a pole would have to be located in that same location, “[n]o, not necessarily. Let’s remember, this is not the final design. This line hasn’t been designed. So if our final design does – if we don’t put a pole there, it’s possible we don’t have to.”¹²⁵ For the following five to six pages of the transcript, counsel for Jauer then asked Mr. Lyssy *hypothetical* questions about a specific pole location. None of counsel’s hypothetical locational discussions or

¹¹⁹ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 5, 9.

¹²⁰ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 9.

¹²¹ *See, e.g.*, Jauer Ex. 8 at 4; Tr. Vol 4 at 833:22-23; 834:20-25.

¹²² Tr. Vol 4 at 834:20 – 835.5.

¹²³ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 5

¹²⁴ Tr. Vol. 3 at 396:21-25 *See also* 397.4-8

¹²⁵ Tr. Vol. 4 at 841:20-23.

hypothetical impacts from roadway widening projects alter the consistent testimony of Mr. Lyssy and Mr. Marin during the hearing and in discovery responses that the survey, geotechnical, and engineering work necessary to design the proposed transmission line facilities has not yet been completed. CPS Energy cannot yet identify where pole structures will be located.¹²⁶ As Mr. Lyssy stated at the hearing:

“Well, this is the general alignment, but if the exact -- exact locations of each structure, angled structures -- we -- it hasn't been designed yet. I mean, we -- this is a high-level estimate of what we're going to need, and the exacts of it, it's -- they're still unknown until we do all of our survey, our reconnaissance. I mean, there's a lot to be done before I can tell you exactly where it's going to go.”¹²⁷

Based on a hypothetical discussion that was inconsistent with CPS Energy's clear and unambiguous testimony, Jauer attempts to make assertions regarding hypothetical pole locations and the hypothetical impacts of such a hypothetical pole. Jauer's arguments regarding a hypothetical pole location are not evidence that can be relied upon to inform the ALJs' recommendation in this docket.

d. There are no issues regarding the distribution circuits potentially exiting Substation Site 7.

The evidence in the record from the expert witnesses on distribution planning and substation engineering, design, and construction is that Substation Site 7 can be constructed, owned, and operated in a safe and reliable manner by CPS Energy and will provide for immediate efficiency and reliability benefits to CPS Energy and its customers.¹²⁸ CPS Energy explained in detail, in a discovery response sponsored by Mr. George Tamez, Director of Grid Transformation and Planning, that:

It is not CPS Energy's intent to have 10-12 circuits from Substation Site 7 connecting to the intersection of Toutant Beauregard Road and Scenic Loop Road. Based on its preliminary evaluation of Substation Site 7, CPS Energy anticipates the ultimate buildout of a substation at Site 7 could involve up to four overhead circuits to the west along Toutant Beauregard Road (two on each side of the road), up to four overhead circuits to the northeast/east along Toutant Beauregard Road (two on each side of the road), and two or more circuits directly east out of the back of the property along existing easements eventually connecting to Scenic Loop Road. There are no documents responsive to this request showing a sketch of the

¹²⁶ Jauer Ex 8 at 4, Tr Vol 4 at 833:22-23; 834 20-25

¹²⁷ Tr. Vol 3 at 514:10-17.

¹²⁸ CPS Energy Ex. 14 at 13; CPS Energy Ex. 10 at 13.

circuits described above. *Some of the circuits described in this response are in existence today in the locations described.*¹²⁹

In briefing, Jauer complains about a perceived lack of information regarding “confirmation and specifics (or lack thereof) regarding 4 sets of distribution circuits that CPS purportedly intends to bring out of Substation Site 7.”¹³⁰ Likewise, notwithstanding the clear discovery response that “*some of the circuits described in this response are in existence today* in the locations described,”¹³¹ Jauer asserts that 10 *additional* circuits are required from proposed Substation Site 7.¹³² Citation for this apparent confusion is to several pages of the transcript discussing the hypothetical pole location discussed above and the existing distribution easement located in the back of Substation Site 7 and a different discovery response sponsored by Mr. Tamez that does not address distribution access to Substation Site 7. Jauer never asked Mr. Tamez any questions at the hearing regarding either Mr. Tamez’s testimony or Anaqua Springs HOA Ex. 26 regarding how CPS Energy intends to access Substation Site 7 with the necessary distribution circuits. Having not asked CPS Energy’s distribution planning expert regarding the manner of distribution circuits exiting Substation Site 7, it is not clear how Jauer can now claim ignorance regarding how CPS Energy intends to access Substation Site 7. As CPS Energy’s testimony and the record evidence regarding the suitability for Substation Site 7 to meet the need of the Project are unchallenged, it is disingenuous for Jauer to claim in briefing that the record evidence is insufficient.

It is important to note that CPS Energy’s discovery response set forth above described the potential *ultimate* buildout of Substation Site 7 (with three transformers), not the initial buildout with one transformer. Second, with respect to the estimated underground costs for two circuits related to a different substation site than Substation Site 7,¹³³ there is no basis or evidentiary record that such costs have any relevance to operation of a substation at Substation Site 7.¹³⁴ Finally, with respect to the existing easement—in addition to the discovery response sponsored by Mr. Tamez—at the hearing Mr. Marin testified of his knowledge of the location of the existing easement in the

¹²⁹ Anaqua Springs HOA Ex 26 (emphasis added).

¹³⁰ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 5.

¹³¹ Anaqua Springs HOA Ex 26 (emphasis added)

¹³² *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 19.

¹³³ Jauer Ex 15 at 28.

¹³⁴ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 20.

back of Substation Site 7.¹³⁵ The only question on this issue from the record evidence was that Mr. Marin could not recall on the witness stand the exact dimensions of that easement and its current usage¹³⁶ and counsel for Jauer was not interested in having that information provided.¹³⁷ There also is no evidentiary basis to argue that construction and operation of distribution facilities within a floodplain is a concern.¹³⁸ Finally, as a municipally owned utility within the state of Texas, CPS Energy has the ability to construct, own, and operate distribution facilities outside of limited roadway rights of way either within the existing easement in the back of Substation Site 7, in a new easement, or in an expansion of the existing easement.

The testimony of CPS Energy's expert witnesses is that they have evaluated Substation Site 7 and, in their expert opinion, determined the site is suitable for the operation of the substation. Jauer's vague assertions that they do not know how the substation would be accessed and operated on that property, without asking questions of the witnesses designated to answer those questions, rings hollow. The evidence definitively establishes that Substation Site 7, like every other proposed substation site, is suitable to address the needs of the Project.¹³⁹

2. The communication tower located south of Segment 20 will not be impacted by the Project.

Communication Tower 501 can be identified on Exhibit LBM-2R to the Rebuttal Testimony of Ms. Lisa Meaux.¹⁴⁰ As can clearly be seen on that figure, Communication Tower 501 is closer to either Segment 32 or Segment 36 than Segment 20. The distance provided by CPS Energy in evidence in this proceeding is to the *closest* segment to Communication Tower 501 for a potential route.¹⁴¹ As every route that includes Segment 20 also includes either Segment 32

¹³⁵ Tr. Vol. 3 at 419:19-24

¹³⁶ Tr. Vol. 3 at 419:25 – 420:1-4.

¹³⁷ Tr Vol 3 at 420:23 – 421:1.

¹³⁸ See, in contrast, Mr. Lyssy's testimony regarding CPS Energy's experience constructing facilities within floodplains. CPS Energy Ex. 11 at 8.

¹³⁹ CPS Energy Ex 14 at 13; CPS Energy Ex. 10 at 13; Anaqua Springs HOA Ex. 26.

¹⁴⁰ CPS Energy Ex 15 at Exhibit LBM-2R.

¹⁴¹ Thus, Jauer's argument regarding the lack of measured distance from Communication Tower 501 is entirely without merit. See *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L L C.* at 5-6.

or Segment 36, in the data tables the distance of Communication Tower 501 to the nearest segment is measured to either Segment 32 or Segment 36, not Segment 20.¹⁴²

As stated in detail above, the survey, geotechnical, and engineering work necessary to design the proposed transmission line facilities has not yet been completed. Thus, CPS Energy cannot yet identify where pole structures will be located, the exact height of any potential poles, or the dimensions of any potential poles. Accordingly, it is not possible for Jauer, through the testimony of Mr. Carl Huber, to state that the Project, if constructed in proximity to Communication Tower 501, will in any manner interfere with that communication facility.¹⁴³ Because the precise location, height, and dimension of the transmission line poles have not been engineered, designed, and constructed, it simply cannot be true that the facilities will interfere with any “line of sight” microwave communications.¹⁴⁴ Further, a review of the topography of the location of Communication Tower 501 with respect to the location of Segments 20 and 36 shows the significant increase in elevation from the location of the proposed segments and the location of the tower.¹⁴⁵ The photo attached to Mr. Marin’s rebuttal testimony visually depicts such elevation.¹⁴⁶ Finally, based on the alignment of the proposed transmission line facilities either to the southeast of the current entrance (Segment 20 to Segment 32) or to the northwest of the current entrance (Segment 20 to Segment 36),¹⁴⁷ along with the fact that the current entrance to the property is already crossed by existing distribution and communication facilities that are at a lower height than the proposed transmission line,¹⁴⁸ there is no basis to argue that the Project will inhibit access to the property.

As with any other utility, landowner, or facility owner directly affected by an approved project, CPS Energy will work with the owners and operators of Communication Tower 501 whose

¹⁴² For example, compare Table 4-32 Amended and Table 4-34 Amended (showing a distance of Communication Tower 501 to Segment 36 and Segment 32 as 482 feet and 279 feet, respectively) Bexar Ranch Ex. 13 at 50, 53.

¹⁴³ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 21.

¹⁴⁴ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 21.

¹⁴⁵ CPS Energy Ex. 6, Figure 2-4 Amended (Constraints).

¹⁴⁶ CPS Energy Ex. 12 at Exhibit ARM-2R visually shows the significant height of the tower above the roadway on the hillside and the significant height on the tower on which the microwave facilities are attached. Even assuming an average pole height of 70-130 feet for the transmission line poles, the poles will be significantly lower than the microwave facilities addressed by Jauer.

¹⁴⁷ CPS Energy Ex. 15 at Exhibit LBM-2R.

¹⁴⁸ CPS Energy Ex. 12 at Exhibit ARM-2R.

property will be crossed by the Project, if a route containing either Segment 32 or Segment 36 is approved, to design the approved facilities so that no impact to the communication facilities will occur.¹⁴⁹

3. The CPS Energy *Electric Transmission Line Routing/Substation Siting General Process Manual* is not applicable to projects requiring a CCN from the Commission and is, as the title states, a general process manual, not a set of mandated criteria.

In several instances in the Jauer briefing, reference is made to the CPS Energy *Electric Transmission Line Routing/Substation Siting General Process Manual*.¹⁵⁰ Mr. Adam Marin explained in detail in his rebuttal testimony that such manual was not directly applicable to projects for which a CCN is required of the Commission.¹⁵¹ Further, Mr. Marin testified regarding the manner in which the routing guidance contained in the manual was referenced and utilized in this proceeding.¹⁵² There is no basis for Jauer's assertions that any of CPS Energy's routing and siting activities in this proceeding contradict such manual when CPS Energy has clearly stated that its routing and siting in this proceeding was in conformance with the statutes, rules, requirements, and practices of the Commission and is not bound by any guidance contained in the manual.

C. Northside Independent School District

Northside Independent School District (Northside ISD) contends that Segment 41 would negatively impact the proposed plans for a middle school building and also presents EMF concerns for students. As noted above, there is no evidence that EMF will present any adverse health risks to people, whether children or adults.¹⁵³ In fact, as the rebuttal testimony of Mr. Marin demonstrates, Northside ISD has chosen to locate school facilities next to existing transmission lines in several instances.¹⁵⁴ It is reasonable to assume that Northside ISD's decision to build and continue to have school buildings next to existing operational transmission facilities reflects its understanding that such facilities present no potential for harm to its students or staff. Moreover,

¹⁴⁹ The standard ordering language of the Commission requires such coordination.

¹⁵⁰ See, e.g., *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.* at 8, 13.

¹⁵¹ CPS Energy Ex. 12 at 7.

¹⁵² CPS Energy Ex. 12 at 7-8.

¹⁵³ Northside ISD raises similar concerns regarding EMF and adverse impacts regarding Segments 33, 34, and 35. For the same reasons, these concerns are unfounded.

¹⁵⁴ CPS Energy Ex. 12 at 15, and attached exhibit ARM-6R, Tr. Vol. 4 at 629-32.

Mr. Marin testified that the presence of Segment 41 would not preclude the development of a middle school building and related facilities on the Northside ISD property.¹⁵⁵

Northside ISD also expressed concerns regarding the impact of Segment 42a upon a water treatment drain field utilized by Northside ISD. First, there is no evidence in the record that Segment 42a would have any impact upon the water treatment drain field, and Northside ISD cites none in its brief. Second, to the extent such drain field is on the property on which Segment 42a is located, if a route using that segment is chosen, CPS Energy will work with the landowner to minimize the impacts of the Project upon the property.¹⁵⁶ Therefore, there is expected to be no impact upon the Northside ISD water treatment facilities or drain field from Segment 42a.

D. The San Antonio Rose Palace and Strait Promotions

The San Antonio Rose Palace, Inc. and Strait Promotions, Inc. (collectively, “Rose Palace”) have questioned the reliability of cost estimates for routes using Substation Site 7 and Toutant Beauregard Road. As discussed previously in this reply brief, the cost estimates are reliable for purposes of comparing routes. Rose Palace speculates that Substation Site 7 may have additional unknown costs associated with flood mitigation. However, as the evidence at the hearing demonstrates, CPS Energy does not anticipate any flooding concerns for that site.¹⁵⁷ Thus, there is no reason to believe there will be additional expenses associated with flood mitigation activities for Substation Site 7.

Rose Palace claims that the Rose Palace facility, as a historical or cultural feature, would be adversely affected by the operation of a transmission line on Toutant Beauregard Road. However, any routes that terminate at Substation Site 7 would never come in close proximity to the Rose Palace facility, and it is unclear what adverse impact there would be to it from any route terminating at Substation Site 7. Given the curvature of Toutant Beauregard Road in that area, and the fact that Substation Site 7 is nearly a half mile away from the Rose Palace facility, it is quite likely a transmission line terminating at Substation Site 7 would not even be visible from the Rose Palace facility.

¹⁵⁵ CPS Energy Ex. 12 at 15, and attached exhibit ARM-6R; Tr Vol 4 at 622-23.

¹⁵⁶ CPS Energy Ex. 12 at 14. (“CPS Energy will reasonably attempt to work with every landowner directly affected by the route ultimately selected by the Commission to try to accommodate such landowner’s concerns.”).

¹⁵⁷ Tr. Vol. 4 at 654:5-7, 652:2-9, 657:4-19.

Similarly, Rose Palace claims that CPS Energy failed to properly consider the Scenic Loop-Boerne Stage-Toutant Beauregard Historic Corridor (SBT Historic Corridor) and asserts that a transmission line on Toutant Beauregard Road would adversely affect the SBT Historic Corridor. First, the SBT Corridor was identified in the EA and was considered by POWER and CPS Energy. In regard to the SBT Historic Corridor, the EA notes that it is designated by an Official Texas Historical Marker (OTHM), and the EA further states:

The Scenic Loop, Boerne Stage and Toutant Beauregard roads intersect near the marker. According to the marker area treasures such as “the exceptional and historic rural atmosphere, vistas, waterways, wildlife, and natural features” prompted the Texas legislature to bestow historic designation to the roads (THC 2019b).¹⁵⁸

Therefore, it is clear that POWER and CPS Energy understood the historic area was more than just the marker itself, but rather extended to the roads themselves, a fact acknowledged by CPS Energy witness Lisa Meaux in her testimony.¹⁵⁹ But, as can be seen from the marker’s information, the basis for the historic designation is the “rural atmosphere, vistas, waterways, wildlife, and natural features” of the area, not the roadways themselves. In fact, the roadways themselves have evolved into busy corridors that have been recognized as compatible rights of way for a transmission line.¹⁶⁰

As noted by the record evidence, CPS Energy does not believe that routes along Toutant Beauregard Road are inconsistent with the historic nature of the area.¹⁶¹ Moreover, as Rose Palace acknowledges, its favored route uses Substation Site 6, which is located on Scenic Loop Road—the first road mentioned in the SBT Historic Corridor name, and a part of the SBT Historic Corridor. Thus, whether Substation Site 7 or Substation Site 6 is chosen, or whether routes are chosen along Toutant Beauregard Road or along areas closer to Scenic Loop Road, the presence of the SBT Historic Corridor is not a significant distinguishing factor in selecting routes and all proposed routes are consistent with the SBT Historic Corridor.

E. Steve and Cathy Cichowski

It is clear from their initial brief that Steve and Cathy Cichowski feel passionately about this Project. CPS Energy appreciates and values the passion of the parties to this proceeding,

¹⁵⁸ CPS Energy Ex. 1, EA at 3-53

¹⁵⁹ Tr. Vol. 2 at 344:18-25.

¹⁶⁰ Tr. Vol. 4 at 743:15-744:8.

¹⁶¹ CPS Energy Ex. 15 at 13.

because the active involvement of parties brings forth better evidence. For example, the Cichowskis have passionately questioned the nature of the agreement between CPS Energy and the Dreiss Interests, and such questioning resulted in detailed testimony by Tom Dreiss at the hearing demonstrating that it was the Dreiss Interests that pursued the agreement and that CPS Energy did not strong arm, bully, or manipulate anyone.

In their initial brief, the Cichowskis take issue with the manner that CPS Energy evaluated the data in this case and classify CPS Energy's evaluations as "errors or omissions." However, most of the supposed "errors or omissions" are simply a disagreement by the Cichowskis on how CPS Energy subjectively weighed various criteria, and are not reflective of actual errors in data. CPS Energy has no route preference and welcomes the ALJs and the Commission to weigh the data and evaluate routes based on the criteria they find most appropriate and persuasive.

A rigorous evaluation of all of the potential routes and factors for consideration provides a better foundation for the Commission to make a decision in this case. Many routing factors have a subjective element over which reasonable parties might differ. There is no perfect route and, as a result, many of the parties to this proceeding point out reasons for or against various routing alternatives. There are differences regarding estimated costs. There are differences regarding the number of habitable structures within 300 feet of a route centerline. There are differences regarding the amount of potential Golden-cheeked Warbler habitat crossed by the alternative routes. There are differences regarding length of the routes. There are differences regarding the degree to which the alternative routes parallel roadways and property lines. There are differences regarding proximity to cultural and historical features. There are differences in opinions regarding how to interpret what constitutes a park or recreational area. There is an existing elementary school in proximity to some routes but not others. A fair and honest evaluation of the various route differences will lead to different outcomes. To the extent those evaluations are based on actual evidence in the record, CPS Energy agrees that interpreting, valuing, or weighing particular factors will lead to different identifications of alternative "best routes."

The Cichowskis claim the Application contained errors because it failed to identify two additional habitable structures with respect to original Routes P and R and two habitable structures along Toutant Beauregard Road. As noted elsewhere in this reply brief, private landowners are often in possession of more detailed information about their properties and the features and structures on their properties than CPS Energy can obtain via aerial photography, public rights of way, and public records. Thus, when the Cichowskis provided information that what appeared to

be a pool cabana on their property was actually a guest house, CPS Energy included it in the habitable structure count. The same occurred with the Anaqua Springs HOA guard house, once CPS Energy was advised it was manned 24 hours per day. These were not reflective of errors in the Application. Rather, as occurs in nearly every CCN case, updates are made to the data when landowners provide additional information.

The Cichowskis argue that CPS Energy has not presented an adequate number of alternative routes, as demonstrated by the “Focus Map,” CPS Energy Ex. 16. To the contrary, the Focus Map demonstrates the varied alternatives for selection. The routes shown on CPS Energy Exhibit 16 as “focus routes” are not routes selected or focused on by CPS Energy; rather, the routes shown on that exhibit are routes other parties to this proceeding identified as being actively supported.¹⁶² It is customary in a case of this nature for a small handful of routes to emerge as preferred by local landowners. The fact that occurred here as well is not an indication of the inadequacy of CPS Energy’s proposed alternatives. Instead, a quick review of the map demonstrates that there are route options supported by intervenors across all parts of the study area. There are routes supported to the far south, across the middle, and to the north. If anything, CPS Energy Ex. 16 demonstrates the diversity of options available, as well as the diversity of opinions among the parties.

The Cichowskis take issue with Segment 42a, because it is in a floodplain. But, while floodplains may generally be avoided for substation sites,¹⁶³ it is not unusual for transmission lines to go through floodplains. Flooding concerns are different for substations than for transmission poles, and transmission poles are not generally susceptible to damage from flooding. As CPS Energy engineering witness Scott Lyssy noted, all segments are viable and constructible,¹⁶⁴ and he expressed this opinion knowing Segment 42a was in a floodplain.¹⁶⁵ In his testimony, Mr. Lyssy noted CPS Energy’s experience in constructing transmission lines in all types of terrains, including floodplains.¹⁶⁶

¹⁶² Tr. Vol. 1 at 59 18-25 – 60.1-12.

¹⁶³ Tr. Vol. 3 at 413:19-23.

¹⁶⁴ CPS Energy Ex. 14 at 3:24 – 4:1.

¹⁶⁵ Tr Vol 3 at 501 6-7

¹⁶⁶ CPS Energy Ex. 11 at 8 13-16

At the end of their brief, the Cichowskis request that, if Segments 38, 39, or 43 are used, they be moved 100 feet to the south. As noted above, such a modification would require the consent of the landowner(s) crossed by those segments and such cannot be done without their consent.

F. Mark Siegel

In his Post Hearing Brief, intervenor Mark Siegel includes photographs, a visual depiction of a purported CPS Energy outage information sheet, and a newspaper article—none of which are in the evidentiary record. While CPS Energy understands Mr. Siegel is a self-represented party and may not know the procedural rules applicable to a proceeding like this, CPS Energy must object to the photographs, the visual depiction of the purported CPS Energy outage information sheet, and article because they are all outside the evidentiary record. The evidentiary record has closed and the items included in Mr. Siegel’s Post Hearing Brief were not included in it and may not be considered by the ALJs or the Commission. CPS Energy hereby notes its objection to all of the photographs, scanned visual of a CPS Energy outage information sheet, and newspaper article, as well as to any arguments based upon those items contained in Mr. Siegel’s brief. CPS Energy requests that the ALJs include in their Proposal for Decision a notation that such items are not in the evidentiary record and may not be considered in this proceeding.

G. Robert and Leslie Bernsen

In their Post-Hearing Brief, Robert and Leslie Bernsen identify a list of individual landowners who purportedly live in their neighborhood and who filed as either a protestor or intervenor in this case.¹⁶⁷ The Bernsens’ brief implies that these landowners all share the Bernsens’ views in this case. While such individuals may have filed comments, statements of position, or testimony in this docket, there is no basis for concluding that the listed individuals share the Bernsens’ positions in this docket nor that they have authorized the Bernsens to make representations on their behalf. The Commission’s interchange will reflect any filings by landowners, but unless an intervenor on the Bernsens’ list filed testimony in this docket, the record is devoid of evidence as to those landowners’ formal positions in this case. Accordingly, the inclusion of such individuals’ names in the Bernsens’ brief cannot be construed as an agreement by those landowners with the Bernsens’ concerns, views, or positions.

¹⁶⁷ *Post-Hearing Brief of Robert & Leslie Bernsen* at 5-6.

VI. CONCLUSION

CPS Energy presented significant uncontroverted evidence regarding the need for the Project, which was supported by Staff and not controverted by any parties. No party has challenged the need for the Project. In total, 33 alternative routes have been identified for possible consideration in this proceeding. These 33 routes connect the existing Ranchtown to Menger Creek 138 kV transmission line with alternative site options for a new substation to be built (the new Scenic Loop Substation).

All 33 routes address the need for the Project and are viable and constructible. All 33 routes comply with PURA § 37.056 and 16 TAC § 25.101(b)(3)(B), including the Commission's policy of prudent avoidance. Accordingly, CPS Energy's Application to amend its CCN to construct the Project should be approved.

Respectfully submitted,

/s/ Kirk D. Rasmussen

Kirk D. Rasmussen

State Bar No. 24013374

Craig R. Bennett

State Bar No. 00793325

Jackson Walker LLP

100 Congress Avenue, Suite 1100

Austin, Texas 78701

(512) 236-2000

(512) 691-4427 (fax)

Email: krasmussen@jw.com

Email: cbennett@jw.com

ATTORNEYS FOR CPS ENERGY

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on this date via the Commission's Interchange in accordance with SOAH Order No. 3.

/s/ Kirk D. Rasmussen

Kirk D. Rasmussen

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

APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
SAN ANTONIO TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	OF
AND NECESSITY FOR THE	§	
SCENIC LOOP 138 KV TRANSMISSION	§	ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY	§	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF CPS ENERGY

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW City of San Antonio, acting by and through the City Public Service Board (CPS Energy) and files these Proposed Findings of Fact and Conclusions of Law.

I. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

Applicant

1. CPS Energy is a municipally owned utility as defined in PURA §11.003(11) and 16 TAC § 25.5(71), as well a transmission service provider as defined in 16 TAC § 25.5(141) and a distribution service provider as defined in 16 TAC § 25.5(33).
2. CPS Energy owns and operates facilities to transmit electricity in the Electric Reliability Council of Texas (ERCOT) region.
3. CPS Energy provides electric service under Certificate of Convenience and Necessity (CCN) No. 30031.

Application

4. On July 22, 2020, CPS Energy filed with the Public Utility Commission of Texas (Commission) an application (Application) to amend CCN No. 30031 in order to build, own, and operate a new double circuit 138 kilovolt (kV) transmission line in Bexar County connecting a new substation to the electric grid (the Project).¹
5. The Application was assigned Docket No. 51023.
6. CPS Energy retained POWER Engineers, Inc. (POWER) to prepare an Environmental Assessment (EA) and routing analysis for the proposed transmission line, which was included as part of the Application.

¹ CPS Energy Ex. 1.

7. On August 21, 2020, the Commission's Administrative Law Judge (ALJ) issued Order No. 5 finding the Application to be sufficient and materially complete.
8. State Office of Administrative Hearings (SOAH) Order No. 5, issued on December 11, 2020, required CPS Energy to file an amendment to the application on or before December 23, 2020. On December 22, 2020, CPS Energy filed amendments to the Application and the EA (the Amended Application).
9. No party challenged the sufficiency of the Application.

Description of Proposed Transmission Facilities

10. The proposed new transmission line will connect a new load-serving electric substation (Scenic Loop Substation) located in the vicinity of the intersection of Scenic Loop Road and Toutant Beauregard Road in northwestern Bexar County to the existing Ranchtown to Menger Creek 138 kV transmission line to the west.²
11. The Project will be constructed on double circuit 138 kV steel monopole structures for typical tangent, angle, and dead-end structures. The heights of typical structures proposed for the Project range from 70 to 130 feet above ground.³
12. CPS Energy will design, operate, maintain, and own all of the proposed transmission line facilities including conductors, wires, structures, hardware, and easements. CPS Energy will also design, operate, maintain, and own the new electric load-serving Scenic Loop Substation that will be constructed in conjunction with the Project.
13. The Application included 29 primary alternative routes composed from 48 route segments.⁴
14. The Amended Application includes 31 primary alternative routes composed from 49 route segments.⁵
15. During this proceeding, two additional alternative routes configured from route segments proposed by CPS Energy in the Amended Application (Routes Z2 and AA2), were determined to be viable and were proposed and supported by some intervening parties.
16. The primary alternative routes range from approximately 4.46 to 6.91 miles in length.⁶

² CPS Energy Ex. 1 at 3.

³ CPS Energy Ex. 1 at 5.

⁴ CPS Energy Ex. 1 at 29.

⁵ CPS Energy Ex 6 at 12-13

⁶ CPS Energy Ex. 17.

17. The route alternatives under consideration in this proceeding have an estimated total cost ranging between approximately \$37.6 million and approximately \$56.1 million for transmission and substation facilities.⁷
18. In the Application, CPS Energy identified Route Z as the route that best addresses the requirements of PURA and the PUC Substantive Rules.⁸
19. In the Amended Application, Route Z1 functionally replaced Route Z.⁹
20. The routes for the Project are based on a typical right-of-way width for operational clearances of approximately 100 feet.¹⁰

Public Input

21. CPS Energy held the public open house meeting for the Project on October 3, 2019, at the Cross Mountain Church Student Center in the study area.¹¹
22. CPS Energy mailed written notices of the open house meeting to all owners of property within 300 feet of the centerline of each preliminary alternative segment.¹²
23. CPS Energy also mailed or hand delivered notices of the open house meeting to local public officials and various state and federal officials, including the United States Department of Defense Siting Clearinghouse (DOD).¹³
24. In total, CPS Energy mailed 592 meeting notices for the open house.¹⁴
25. Notice of the open house meeting was additionally published in the *San Antonio Express News*, a newspaper of general circulation in the Project area county on September 22, 2019, and September 29, 2019.¹⁵
26. A total of 172 people signed in as attending the open house meeting.¹⁶

⁷ CPS Energy Ex. 17; also Bexar Ranch Ex. 12.

⁸ CPS Energy Ex. 1 at 29.

⁹ CPS Energy Ex. 12 at 5 (Rebuttal Testimony of Adam Marin).

¹⁰ CPS Energy Ex. 1 at 6.

¹¹ CPS Energy Ex. 1 at 30.

¹² CPS Energy Ex. 1 at 30.

¹³ CPS Energy Ex. 1 at 30.

¹⁴ CPS Energy Ex. 1 at 30.

¹⁵ CPS Energy Ex. 1 at 30.

¹⁶ CPS Energy Ex. 1 at 31.

27. Attendees were provided questionnaires, and CPS Energy received a total of 186 completed questionnaires, of which 72 were submitted at the open house and 114 more were submitted after the open house.¹⁷
28. The purpose of the open house meeting was to solicit input from landowners, public officials, and other interested persons about the Project, the preliminary alternative route segments, and the alternative substation sites. Further, the open house meeting was designed to promote a better understanding of the Project, including the purpose, need, potential benefits and impacts, and Commission certification process; inform the public with regard to the routing procedure, schedule, and route approval process; and gather and understand the values and concerns of the public and community leaders.
29. The public feedback received by CPS Energy was evaluated and considered in determining the routes to be included in the Application. Based on input, comments, information received at and following the open house meeting, and additional analyses conducted by CPS Energy and POWER, some preliminary alternative route segments were modified, some preliminary alternative route segments were deleted, and additional alternative route segments were added. One substation alternative was relocated and two additional substation options were added.¹⁸
30. Written information was provided to DOD about the study area and the nature of the Project.
31. On September 11, 2019, DOD reported that the Project will have minimal impact on military operations conducted in the area.¹⁹

Notice of the Application

32. On July 22, 2020, CPS Energy:
 - a. mailed by first class mail or hand-delivered direct written notice of the filing of the Application to each owner of land directly affected by the construction of the Project, as determined by review of the Appraisal District tax data for Bexar County,²⁰
 - b. mailed by first class mail or hand-delivered direct written notice of the filing of the Application to the county government of Bexar County, as well as the municipalities of the City of San Antonio, the City of Fair Oaks Ranch, the City

¹⁷ CPS Energy Ex. 1 at 31.

¹⁸ CPS Energy Ex. 1 at 31; CPS Energy Ex. 1, EA at 192

¹⁹ CPS Energy Ex. 1, EA at 186.

²⁰ CPS Energy Ex. 9 at 7; CPS Energy's Mailer's Affidavit (Interchange filing 24)

of Grey Forest, and the City of Helotes as the municipalities located within five miles of the requested facilities;²¹

- c. mailed by first class mail or hand-delivered direct written notice of the filing of the Application to the following neighboring utilities providing electric utility service within five miles of the requested facilities: Pedernales Electric Cooperative (PEC) and Bandera Electric Cooperative (BEC). CPS Energy also sent notice of the Application to LCRA Transmission Services Corporation (LCRA TSC);²² and
 - d. mailed by first class mail or hand-delivered written notice of the filing of the Application to other interested entities, including the Office of Public Utility Counsel (OPUC), the Texas Department of Transportation (TxDOT), the Northside Independent School District (Northside ISD); and the DOD, and provided a copy of the Application via FedEx to the Texas Parks and Wildlife Department (TPWD).²³
33. Attachment 12 to the Application is a copy of the letter provided to TPWD in conjunction with delivery of the Application.²⁴
34. On July 28, 2020, CPS Energy published public notice of the Application in the *San Antonio Express News*, a newspaper of general circulation in Bexar County, Texas.²⁵
35. On August 11, 2020, CPS Energy filed an affidavit attesting to, among other things, the provision of notice of the Application to OPUC; and notice of the Application to cities, counties, neighboring utilities, the DOD, and directly affected landowners.²⁶
36. On August 11, 2020, CPS Energy filed an affidavit attesting to published notice of the Application in the *San Antonio Express News*, a newspaper of general circulation in Bexar County, Texas.²⁷
37. On August 21, 2020, the Commission ALJ issued Order No. 5 approving CPS Energy's provision of notice of the Application in this proceeding.

²¹ CPS Energy Ex. 9 at 7; CPS Energy's Mailer's Affidavit (Interchange filing 24).

²² CPS Energy Ex. 9 at 8; CPS Energy's Mailer's Affidavit (Interchange filing 24).

²³ CPS Energy Ex. 9 at 8, CPS Energy's Mailer's Affidavit (Interchange filing 24).

²⁴ CPS Energy Ex. 1 at Attachment 12.

²⁵ CPS Energy Ex. 9 at 8; CPS Energy's Publishers' Affidavit (Interchange filing 24).

²⁶ CPS Energy Ex. 5 at 9; CPS Energy's Mailer's Affidavit (Interchange filing 24)

²⁷ CPS Energy Ex. 5 at 8; CPS Energy's Publishers' Affidavit (Interchange filing 25).

Intervenors

38. On August 19, 2020, the Commission ALJ issued Order No. 4 granting the motions to intervene filed by Bexar Ranch L.P., Jerry Rumpf, Monica Gonzalez De La Garza, Patrick Cleveland, Monica Esparza, Lucia Zeevaert, and Clint and Mary Hurst.
39. On August 25, 2020, the Commission ALJ issued Order No. 7 granting the motions to intervene filed by Peter Eick , Jay and Amy Gutierrez and The Gutierrez Management Trust, Clearwater Ranch Property Owners Association (Clearwater POA), Toutant Ranch, Ltd. and ASR Parks, LLC, and Lisa and Clinton Chandler.
40. On September 17, 2020, the Commission ALJ issued Order No. 8 granting the motions to intervene filed by Nick Valenti, Jeff Audley and Darrell Cooper, Islam Hindash, Laura Rendon, Elis Latorre-Gonzalez, Brad Jauer, BVJ Properties LLC, Hamzeh Alrafati, Adrianna Rohlmeier, Anton Shadrock, Byron Eckhart, Carlos Garcia, Casey and Molly Keck, Francis Van Wisse, Kurt and Brenda Ohrmundt, Max and Meg Garoutte, Michael & Rosalinda Sivilli, Paolo Salvatore and Clear Run LLC, Samer and Elizabeth Ibrahim, Lonnie Arbutnot, Gregory Hamon, Miao Zhang, Ronald Meyer, Ed Chalupa, Sophia Polk, The San Antonio Rose Palace, Inc. and Strait Promotions, Inc., Margaret Couch, Sunil Dwivedi, Brandon McCray, Steven Herrera, Gregory Altemose, Mark Dooley, Jesse Delee, Raul and Katie Garcia, Adam Schrage, Adam Sanchez, Lori Espinoza, Vic Vaughan, Primarily Primates, Inc., Clifford Stratton, Scott Lively, Beatriz Odom, Bernd Vogt and Inge Lechner-Vogt, Gail Ribalta, Kenneth Mark and Tawana Timberlake, Thomas Parker, Douglas Comeau for the Comeau Family Trust, Steve and Cathy Cichowski, Olytola Adetona, Vincent Billingham, Alfred and Janna Shacklett, Ruben and Kristin Mesa, Don Durflinger, Robert Ralph, Paul Rockwood, Anaqua Springs Homeowners Association (Anaqua Springs HOA), Layna Biermer, Joan Arbuckle and John Huber, Lawrence Barocas, Roy Barrera III, Brittany Sykes, Aline Knoy, Roy Barrera, Jr., Cynthia Rocha, Charlene Jean Alvarado Living Trust, Robert Barrera, Brian Woods for Northside ISD, Eric and Laurie White, Sanjay Kumar, Martin Salinas, Jr., Lynn Ginader, Lauren Pankratz, Michael Berry, Guillermo Cantu, Jr., and Amanda Barrella.
41. On September 28, 2020, the Commission ALJ issued Order No. 9 granting the motions to intervene filed by Save Huntress Lane Area Association, Stephen Rockwood, Mark Barrera, Henry and Rosan Hervol, Jennifer Royal, Michael Wilburn, Burdick-Anaqua Homes, Ltd, Armando Valdez, James Lee, Francisco and Barbara Arroyo, Anne Warner, Doug Boazman, Paul Craig, Adrian and Catherine Chavez, Richard Olivarez, Eloy Olivarez, Dora Broadwater, Guajolote Ranch, Inc., Yvette Reyna, Lawrence Kroeger, Mike Swientek, Carmen Ramirez, Roy Barrera Sr., Robert and Leslie Bernsen, Russell and Brook Harris, Raul Martinez, Chip and Pamela Putnam, John Taylor, Brian Lee, Linda Hansen, Charles Rockwood, Melissa and Michael Rosales, Philip and Yajaira Paparone, Alejandro Medina, Robert Freeman, Duaine and Joann Smith, Kristy Woods, John Jared Phipps, Charlie Zimmer, and Andrew and Yvonne Krzywonski.
42. On December 1, 2020, the SOAH ALJs issued SOAH Order No. 3 granting the motions to intervene filed by Chris and Michelle Booth, Geoffrey Grant, Kristina and Christopher

Stroud, Kim Ury, Monica and Chris Casady, James Brigham, Mike Leonard, David Burke, Elizabeth and John Kupferschmid, Rodolfo Santoscoy, Joy and Michael Escriva, Mark and Marciela Siegel, James Galusha, Marlin Sweigart, Suzan Corral, James Gillingham, Scott Streifert, Donna Balli, Judith Catalon, Carrie Clayton, David Walts, Michael and Maria Roxana Hope-Jones, Gregory Godwin, Roberto Sanchez, Chandler Mross, Jim Flores, Joel and Cortney Comp, Daniel Lonergan, James Middleton, Alan Hibberd, Richard Hauptfleisch, Ronald Schappaugh, The Deitchle Family Trust, Joshua and Kristi-Marie Standing Cloud, Raul Figueroa, Betsy Omeis, Anupama Atluri, Barbara and Ernie Centeno, Jordan and Donna Reed, Peter Eick,²⁸ Mary Ebensberger, and Pinson Interests Ltd LLP, Crighton Development Co.

43. On March 26, 2021, the SOAH ALJs issued SOAH Order No. 10 dismissing the following intervenors for failing to file direct testimony or a statement of position: Olytola Adetona, Francisco and Barbara Arroyo, Anupama Atluri, Denise Baker, Donna Balli, Amanda Barrella, Mark Barrera, Vincent Billingham, Doug Boazman, Dora Broadwater, Burdick-Anaqua Homes, Ltd, Guillermo Cantu, Carrie Clayton, Joel and Cortney Comp, Douglas Comeau, Joy and Michael Escriva, Monica Esparza, Lori Espinoza, Raul and Katie Garcia, Linda Hansen, Henry and Rosan Hervol, Islam Hindash, Lawrence Kroeger, Andrew and Yvonne Krzywonski, Inge Lechner-Vogt, Brian Lee, Mike Leonard, Kenneth Mark, Brandon McCray, Eloy and Raquel Olivarez, Thomas Parker, Robert Ralph, Bruce Reid, Evangelina Reyes, Gail Ribalta, Cynthia Rocha, Ryan and Jennifer Royal, Adam Sanchez, Roberto Sanchez, Alfred and Janna Shacklett, Duaine and Joann Smith, Joshua and Kristi-Marie Standing Cloud, Marlin Sweigart, Mike Swientek, John and Renee Taylor, The Deitchle Family Trust, Tawana Timberlake, Armando Valdez, Vic Vaughan, Bernd Vogt, Anne Warner, Michael Wilburn, Kristy Woods, Miao Zhang, and Charlie Zimmer.
44. On May, 4 2021, the SOAH ALJs issued SOAH Order No. 14 dismissing the following intervenors for failing to file direct testimony or a statement of position: Hamzeh Alrafati, Michael and Kenya Berry, Chris and Michelle Booth, Monica and Chris Casady, Barbara and Ernie Centeno, Dooley Properties, LLC - Mark Dooley, Mary Bensberger, James Galusha, Geoffrey Grant, Richard Hauptfleisch, Michael and Maria Roxana Hope-Jones, Elis Latorre-Gonzalez, James Lee, Scott Lively, Daniel Lonergan, Ronald Meyer, Chandler Mross, Richard Olivarez, Philip and Yajaira Paparone, John Jared Phipps, Jordan and Donna Reed, Laura Rendon, Rodolfo Santoscoy, Adam Schrage, Scott Streifert, Kim Ury, and David Walts; granting the late-filed motion to intervene filed by Maria Concepcion Uriarte-Azcue; and denying the late-filed motion to intervene of Scott Luedke.

²⁸ The Commission ALJ had previously granted the intervention of Peter Eick on August 25, 2020 in Order No. 7

Alignment of Intervenors

45. Except to the extent that parties with similar interests chose to be represented jointly by the same legal counsel when making an appearance, no parties were formally aligned by the ALJs for purposes of the hearing.

Route Adequacy

46. Patrick Cleveland (Cleveland) and Anaqua Springs HOA and Brad Jauer/BVJ Properties, LLC (Jauer), filed pleadings challenging whether the Application provided an adequate number of reasonably differentiated routes to conduct a proper evaluation or seeking to have modifications made to the routes in the Application, and requesting a hearing on route adequacy. Clearwater Ranch POA filed a response in opposition to the challenges to route adequacy and also requested a route adequacy hearing.
47. Toutant Ranch LTD, Pinson Interests LTD, LLP, and Crighton Development Co. (Developers) filed a statement on route adequacy and request for approval of proposed agreed amendments to CPS Energy's Application.
48. In SOAH Order No. 4 filed on December 4, 2020, the SOAH ALJs granted Developers request and ordered CPS Energy to amend the Application in accordance with the request and ordered a hearing on route adequacy, which was held on December 10, 2020.
49. On December 11, 2020, the SOAH ALJs issued Order No. 5 denying the Cleveland and Anaqua Springs HOA and Jauer challenges to route adequacy, finding that the CPS Energy had proven that the Application proposed an adequate number of reasonably differentiated routes in order for the ALJs and the Commission to conduct a proper evaluation.
50. The Amended Application provides an adequate number of reasonably differentiated routes to conduct a proper evaluation.

Testimony

51. On November 6, 2020, CPS Energy filed the direct testimonies of Mr. Adam Marin, Mr. George Tamez, Ms. Lisa Meaux, and Mr. Scott Lyssy in support of the Application. The testimony of Ms. Meaux was admitted at the route adequacy hearing and the remaining testimony was admitted at the hearing on the merits.
52. On December 22, 2020, CPS Energy filed the supplemental direct testimony of Lisa Meaux as Attachment 6 to the Application Amendment. This testimony was subsequently admitted at the hearing.
53. The direct testimony of the following witnesses was filed by intervening parties: Steve and Cathy Cichowski, on behalf of themselves; Steve Cichowski, Sunil Dwivedi, and Lauren Pankratz, on behalf of Anaqua Springs HOA; Mark Anderson on behalf of Anaqua Springs HOA and Jauer; Roy R. Barrera, Sr., Carmen Barrera Ramirez, Roy R.

Barrera III, Robert J. Barrera, and Roy R. Barrera, Jr., on behalf of themselves; Mark Turnbough, Michael Bitter, Sarah Bitter, Stephen Bitter, and Vincent Terracina, on behalf of Bexar Ranch L.P.; Brad Jauer and Carl Huber, on behalf of Jauer; Brian Andrews, on behalf of Lisa Chandler, Clinton R. Chandler, and Chip and Pamela Putnam; Rosemarie Alvarado, on behalf of the Charlene Jean Alvarado Living Trust; Joe R. Acuna/Villa Strangiato, LLC, L.W. Abuthnot, Jeffrey Audley and Darrell Cooper, Byron and Gina Eckhart, Carlos Garcia and Christina Garcia, Max and Peggy Garoutte, Gume Garza, Robert Gume Garza/Loredo Sol Investments, Carlos and Rosa Guzman/CRG Properties LLC, Gregory Hamon, Russell Harris and Brook Harris, Samer Ibrahim and Elizabeth Ibrahim, Casey and Molly Keck, Alejandro Medina, Peter and Melanie Morawiec, Kurt Ohrmundt and Brenda Ohrmundt, Kurt Rohlmeier and Adrianna Rohlmeier, Paolo Salvatore/Clear Run LLC, Michael and Rosalinda Sivilli, Mariana and Francis Vanwisse, Michael and Shawn Stevens, Michael Stevens, on behalf of Clearwater Ranch POA and Michael Stevens on behalf of Sven and Sofia Kusterman and Clearwater Ranch POA; Paul Craig, on behalf of himself; Jay A. Gutierrez, on behalf of himself; Patrick Cleveland, on behalf of himself; Jacob Villareal, on behalf of Northside ISD; Brooke Chavez, on behalf of Primary Primates; Jason Buntz, on behalf of San Antonio Rose Palace and Strait Promotions; Cynthia Grimes, David Clark and Jerry Rumpf, and Harold L. Hughes Jr, on behalf of the Save Huntress Lane Area Association; Joan Arbuckle, Robert Bernsen, Laura Biemer, Steven Gomez Herrera, Betsy Omeis, and Yvette Reyna, on behalf of Serene Hills Pro Se Intervenors; Brittany Sykes, on behalf of herself; Tom Driess, on behalf of Developers; Robert C. Freeman and Rachel M. Freeman, on behalf of themselves; and Lucia Zeevaert on behalf of herself. With the exception of the Freeman testimony, the remaining testimony was admitted at the hearing on the merits. The Freemans did not appear at the hearing on the merits and their testimony was not offered.

54. On March 22, 2021, Commission Staff filed the direct testimony of its witness, Mr. John Poole. Commission Staff filed errata to Mr. Poole's testimony on April 26, 2021, and April 27, 2021. This testimony was subsequently admitted at the hearing.
55. Cross-rebuttal testimony of the following witnesses was filed by intervening parties and subsequently admitted at the hearing: Mark Turnbough, Michael Bitter, and Sarah Bitter on behalf of Bexar Ranch L.P.; and Cynthia Grimes, David Clark, Jerry Rumpf, and Harold L. Hughes Jr, on behalf of the Save Huntress Lane Area Association. This testimony was subsequently admitted at the hearing.
56. On April 7, 2021, CPS Energy filed rebuttal testimony from Mr. Adam Marin, Mr. George Tamez, Ms. Lisa Meaux, and Mr. Scott Lyssy. CPS Energy filed errata to Mr. Lyssy's rebuttal testimony on April 26, 2021. This testimony was subsequently admitted at the hearing.

Referral to SOAH for Hearing

57. On August 5, 2020, Clearwater Ranch POA filed a request for hearing at SOAH. Subsequently, Anaqua Springs HOA and Bexar Ranch L.P. also requested a hearing.

58. On September 14, 2020, Commission Staff requested that the docket be referred to SOAH for a hearing.
59. On September 29, 2020, the Commission referred this case to SOAH and identified a number of issues to be addressed.²⁹
60. In SOAH Order No. 1 filed on October 2, 2020, the SOAH ALJs provided notice of a prehearing conference, described jurisdiction, and provided other information.
61. On October 22, 2020, the SOAH ALJs convened a virtual prehearing conference.
62. In SOAH Order No. 2 filed on November 23, 2020, the SOAH ALJs memorialized the prehearing conference held on October 22, 2020, and provided notice of the virtual hearing on the merits set to begin on March 29, 2020.
63. In SOAH Order No. 6 filed on January 6, 2021, the SOAH ALJs adopted amendments to the procedural schedule and noted that the virtual hearing on the merits would begin on May 3, 2021, and that a virtual prehearing conference would be held beginning at 10:00 a.m. on April 30, 2021.
64. The hearing on the merits convened before SOAH ALJs Holly Vandrovec and Pratibha Shenoy on May 3, 2021, and concluded on May 7, 2021. The following parties made appearances, either personally or through their representatives, and participated in the hearing on the merits: CPS Energy; Lisa and Clinton R. Chandler; Chip and Pamela Putnam; the Charlene Jean Alvarado Living Trust; Maria Concepcion Uriarte-Azcue; Roy Barrera, III; Roy Barrera, Jr.; Roy R. Barrera, Sr.; Robert Barrera; the Save Huntress Lane Area Association; Jay and Amy Gutierrez; the Gutierrez Management Trust; Primarily Primates, Inc.; Bexar Ranch, LP; Guajalote Ranch, Inc.; the Clearwater Ranch POA;³⁰ Patrick Cleveland; Northside ISD; the San Antonio Rose Palace, Inc. and Strait Promotions, Inc.; Anaqua Springs HOA; Jauer; Steven and Cathy Cichowski; Robert and Leslie Bernsen; Laura Biemer; James Brigham; Paul Craig; Peter Eick; Raul Figueroa; Steven Herrera; John Huber and Joan Arbuckle; Betsy Omeis; Yvette Reyna; Paul Rockwood; Stephen Rockwood; Mark Siegel; Brittany Sykes; Developers; Melissa Rosales; Ronald Schappaugh; Kristina Stroud; and Commission Staff.
65. The evidentiary record closed on May 7, 2021, and the hearing record closed on May 28, 2021, after the filing of closing written arguments and proposed findings of fact and conclusions of law.

²⁹ Order of Referral and Preliminary Order (September 29, 2020) (Preliminary Order).

³⁰ This group consists of the following individual intervenors: Casey and Molly Keck; Francis and Mariana VanWisse; Michael and Shawn Stevens; Kurt and Adrianna Rohlmeier; Samer and Elizabeth Ibrahim; Max and Meg Garoutte; Byron and Gina Eckhart; Kurt and Brenda Ohrmundt; Gume Garza, Russell and Brook Harris; Alejandro Medina; Paolo Salvatore on behalf of Clear Run, LLC; Joe Acuna on behalf of Villa Strangiato, LLC, Robert and Sofia Garza for Laredo Sol Investments, LLC; Carlos and Christina Garcia, Michael and Rosalinda Sivilli; Sven and Sofia Kuestermann; L W Arbuthnot; Greg Hamon, Jeff Audley; and Darrell Cooper.

66. The ALJs issued a proposal for decision on _____, 2021, recommending approval of the application, utilizing Route _____, connecting to proposed Scenic Loop Substation Site ____.

Adequacy of Existing Service and Need for the Project

67. CPS Energy retained Burns & McDonnell Engineering Company, Inc. to prepare an independent need analysis for the Project, which was included as part of the Application.
68. The Project is needed to meet the existing and forecasted retail electric service demand of customers in northwest Bexar County and to address reliability risks and improve reliability in the area.
69. Load growth at a compound annual growth rate of approximately 4 to 7 percent in northwest Bexar County is currently served by the existing La Sierra and Fair Oaks Ranch substations. The forecasted load growth for the La Sierra and Fair Oaks Ranch substations is expected to exceed the planning capacity for the area by 2025.³¹
70. The existing distribution circuits within the La Sierra Substation and some of the circuits originating at the Fair Oaks Ranch Substation are up to eight times longer than the average distribution circuit within CPS Energy's system and serve thousands of customers.³²
71. The average length of the eight distribution circuits primarily serving the Scenic Loop area from the La Sierra and Fair Oaks Ranch substations is approximately 36.13 miles.³³ Following the construction of the proposed Scenic Loop Substation, the length of the circuits connected to La Sierra, Fair Oaks Ranch, and Scenic Loop will decrease to an average of approximately 24 miles.³⁴
72. The length and loading on these La Sierra and Fair Oaks Ranch circuits have equated to lower reliability to the customers served by those circuits.³⁵
73. CPS Energy's analysis shows that even with system reconfiguration improvements on the existing distribution facilities immediately prior to the filing of this Application, without a new substation in northwest Bexar County, the CPS Energy customers served from the La Sierra and Fair Oaks Ranch substations will continue to experience lower reliability than CPS Energy's system averages.³⁶

³¹ CPS Energy Ex. 1 at 11.

³² CPS Energy Ex. 1 at 16.

³³ CPS Energy Ex. 1 at 14.

³⁴ CPS Energy Ex. 1 at 14.

³⁵ CPS Energy Ex. 1 at 14.

³⁶ CPS Energy Ex. 1 at 14.

74. The Project's proposed Scenic Loop Substation provides CPS Energy with a load serving substation geographically intermediate to the Fair Oaks Ranch and La Sierra substations in a manner that will cut the average length and loading of distribution circuits serving end-use customers by 50 percent or more.
75. The Project is needed to address local reliability needs of existing and future end-use consumers based on actual and forecasted electric load and identified system limitations in meeting this electric load.
76. The Project is a Tier 4 Neutral project pursuant to the classifications established by the Electric Reliability Council of Texas (ERCOT).³⁷ Therefore, the Project is not required to be, and was not, submitted to the ERCOT Regional Planning Group for review and comment.³⁸
77. The Project will not result in any violation of North American Electric Reliability Corporation (NERC) or ERCOT performance requirements.³⁹
78. No party substantively challenged the need for the Project.
79. All of the 33 routes under consideration in this docket, including the 31 presented in the Amended Application and the two additional routes identified by the parties, will satisfy the need for the Project.
80. Electric customers within the Project area will benefit from the improved transmission system reliability and capacity provided by the Project.
81. CPS Energy considered a distribution-only alternative.⁴⁰
82. Distribution alternatives are not adequate to resolve the need for the Project in a cost effective manner.⁴¹
83. A distribution-only alternative would only delay the need for the Project by a few years at most or would cost significantly more than the Project and would not address the reliability concerns of the lengthy circuits currently existing in the area because of the lack of a substation in the vicinity.⁴²
84. No party has argued that a distribution alternative would resolve the need for the Project.

Routing of the Transmission Facilities

³⁷ CPS Energy Ex 10 at 8.
³⁸ CPS Energy Ex 10 at 8.
³⁹ CPS Energy Ex. 10 at 8-9
⁴⁰ CPS Energy Ex 1 at 19-20.
⁴¹ CPS Energy Ex. 1 at 22-24.
⁴² CPS Energy Ex 1 at 19-22

85. The POWER project team included professionals with expertise in different environmental and land use disciplines (geology and soils, hydrology and water quality, terrestrial ecology, wetland ecology, land use and aesthetics, and cultural resources) who were involved in data acquisition, routing analysis, and environmental assessment for the transmission facilities.
86. To identify preliminary alternative route segments for the transmission facilities, POWER delineated a study area, sought public official and agency input, gathered data regarding the study area, performed constraints mapping, identified preliminary alternative route segments and alternative substation sites, and reviewed and adjusted the preliminary alternative route segments and alternative substation sites following field reconnaissance and the public meetings.
87. POWER examined potential routes taking into consideration the factors in PURA § 37.056(c)(4)(A) through (D), 16 Texas Administrative Code (TAC) § 25.101, and the Commission's CCN application form.
88. From the preliminary alternative route segments, POWER and CPS Energy identified 29 reasonable, feasible alternative routes. In identifying these, POWER considered a variety of information, including input from the public and public officials, geographic diversity within the study area, and an inventory and tabulation of a number of environmental and land use criteria. The Amended Application identifies 31 reasonable, feasible alternative routes.
89. CPS Energy reviewed the alternative routes with regard to cost, construction, engineering, and right-of-way maintenance issues and constraints, and conducted field reviews.
90. At the time it filed its application, CPS Energy identified Route Z as the route that best addressed the Commission's routing criteria. Route Z was functionally replaced by Route Z1 with the filing of the Amended Application.
91. CPS Energy's Application, Amended Application, and testimony confirm that all proposed routes are viable and constructible.
92. Commission Staff submitted evidence supporting the choice of Route P as the route that best meets the statutory and regulatory criteria and best addresses the concerns raised by the Texas Parks and Wildlife Department and the parties.
93. Based on the evidence presented, Route ____ best meets the regulatory and statutory criteria, based on the following considerations _____.
94. Route ____ is comprised of the following segments: _____ and connects to Substation Site ____.

Effect of Granting Certificate on the Applicant and Other Utilities and Probable Improvement of Service or Lowering of Cost

95. Electric utilities serving the proximate area of the Project include PEC and BEC. LCRA TSC interconnects with the CPS Energy transmission line that serves as the tap point for the Project.⁴³
96. The Project taps into an existing CPS Energy transmission line and is proposed to provide service wholly within CPS Energy's existing service territory.
97. CPS Energy has coordinated with LCRA TSC on the Project, and LCRA TSC has not raised any concerns with the Project other than identifying protective relay setting changes at the Menger Creek Substation.⁴⁴
98. PEC and BEC did not intervene or otherwise express any concern or opposition to the Project.⁴⁵
99. The Commission does not expect the proposed transmission facilities to adversely affect service by other utilities in the area.
100. With the new transmission facilities, CPS Energy will be able to continue to provide reliable service.

Estimated Costs

101. CPS Energy prepared cost estimates for all 31 alternative routes presented in the Amended Application, as well as two additional routes presented for consideration in this proceeding.
102. Route Z2 is estimated to be the lowest cost route, with an estimated cost of \$37.6 million, which includes the cost of the new Scenic Loop Substation.⁴⁶
103. Route O is estimated to be the most expensive route, with an estimated cost of \$56.1 million, which includes the cost of the new Scenic Loop substation.⁴⁷

⁴³ CPS Energy Ex. 1 at 9.

⁴⁴ CPS Energy Ex. 10 at 12-13; CPS Energy Ex. 1 at 9.

⁴⁵ CPS Energy Ex. 1 at 9; CPS Energy Ex. 9 at 8.

⁴⁶ CPS Energy Ex. 11 at 9-11, CPS Energy Ex. 17, CPS Energy Ex. 1, Attachment 3; CPS Energy Ex. 6, Attachment 3 Amended; Bexar Ranch Exs. 12 and 14.

⁴⁷ CPS Energy Ex. 17

Prudent Avoidance

104. Prudent avoidance is defined in 16 TAC § 25.101(a)(6) as the “limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”
105. Whenever possible, CPS Energy and POWER avoided identifying alternative route segments near habitable structures.
106. Alternative Route A has the greatest number of habitable structures located within 300 feet of its centerline at 72.⁴⁸
107. Alternative Routes U1 and Q1 have the least number of habitable structures located within 300 feet of their centerline at 12 each.⁴⁹
108. All the alternative routes presented in the Amended Application, as well as the additional routes presented in the course of this proceeding, conform to the Commission’s policy of prudent avoidance.

Community Values

109. To ascertain community values for the transmission facilities, CPS Energy held a public open house meeting on October 3, 2019.⁵⁰
110. The more common concerns or issues presented by the landowners at the open house meeting and afterward were proximity of the routes and substation locations to homes; the proposed substation site locations, health impacts, property values, aesthetics, and impact to the history of the area.⁵¹
111. POWER’s routing analysis and CPS Energy’s eventual selection of the routes filed in the application incorporated information received from the public meeting and from local, state, and federal agencies.
112. POWER, in consultation with CPS Energy, used information received from the public meeting to add, modify, and remove several preliminary route segments.⁵²
113. The Project adequately addresses the expressed community values.

⁴⁸ CPS Energy Ex. 17.

⁴⁹ CPS Energy Ex. 17.

⁵⁰ CPS Energy Ex. 1, EA at 6-1.

⁵¹ CPS Energy Ex. 1, EA at 6-4.

⁵² CPS Energy Ex. 2 at 12; CPS Energy Ex. 1, EA at 6-5 through 6-46; CPS Energy Ex. 6.

Using or Paralleling Compatible Rights-of-Way and Paralleling Property Boundaries

- 114. In developing alternative routes, CPS Energy and POWER took into account the use or paralleling of existing rights of way (e.g., public roads and highways, railroads, and telephone utilities), apparent property boundaries, and natural or cultural features.
- 115. The highest percentage of paralleling of compatible rights of way or property boundaries is on Route A, at 83 percent.⁵³
- 116. The lowest percentage of paralleling of compatible rights of way or property boundaries is on Route S, at 49 percent.⁵⁴

Engineering Constraints

- 117. There are no significant engineering constraints along any of the alternative routes that cannot be adequately addressed by utilizing design and construction practices and techniques usual and customary in the electric utility industry.⁵⁵
- 118. All alternative routes are viable, feasible, and reasonable from an engineering perspective.⁵⁶

Other Comparisons of Land Uses and Land Types

a. Radio Towers and Other Electronic Installations

- 119. No known AM radio transmitters were identified within the study area or within 10,000 feet of the primary alternative routes.⁵⁷
- 120. The number of FM radio transmitters, microwave towers, and other electronic communication towers located within 2,000 feet of any of the primary alternative routes ranges from zero for numerous routes to one for multiple other routes.⁵⁸
- 121. The number of electronic installations within 2,000 feet of a primary alternative route centerline are shown in Table 4-3 of the EA and Appendix C, Tables 4-6 Amended through 4-36 Amended, along with general descriptions of the installations and their distances from the nearest primary alternative route segment.⁵⁹

⁵³ CPS Energy Ex. 17.

⁵⁴ CPS Energy Ex. 17.

⁵⁵ CPS Energy Ex. 11 at 8 (Direct Testimony of Scott Lyssy), Staff Ex. 1 at 33.

⁵⁶ CPS Energy Ex. 14 at 3:24 – 4.1; Staff Ex. 1 at 10 and 40-42; Tr. Vol. 4 at 796:3-11 and 802:22-24.

⁵⁷ CPS Energy Ex. 17.

⁵⁸ CPS Energy Ex. 17.

⁵⁹ Bexar Ranch Ex. 13 at 9-55.

122. No routes or segments in this case are expected to create any concerns related to communications towers, including access to such, and no communications facilities present any concerns related to any routes or segments.⁶⁰

b. Airstrips and Airports

123. There is one FAA registered public or military airport with a runway longer than 3,200 feet within 20,000 feet of the routes (the Boerne Stage Field Airport) located north of the study area.⁶¹

124. No private airstrips were identified within 10,000 feet of the centerline of any of the alternative routes.⁶²

125. There are no FAA registered heliports located within 5,000 feet of the centerline of any of the alternative routes, and no FAA registered public or military airports with runways shorter than 3,200 feet within 10,000 feet of the routes.⁶³

126. CPS Energy has identified the approximate distance from the centerline of each of the primary alternative routes to the Boerne Stage Field Airport in the following portions of the EA, as amended: Appendix C, Tables 4-6 Amended through 4-36 Amended, and Amended Figure 2-4 (Appendix D) and Amended Figure 4-1R.⁶⁴

c. Irrigation Systems

127. None of the alternative routes presented in the Application or proposed by other parties cross land irrigated by traveling irrigation systems.⁶⁵

128. The Commission does not expect the presence of transmission facilities along the approved route to adversely affect any agricultural lands with known traveling irrigation systems.

Recreational and Park Areas

129. CPS Energy and POWER properly identified and described parks and recreational areas.⁶⁶

⁶⁰ CPS Energy Ex. 12 at 8.

⁶¹ CPS Energy Ex. 1, EA at 3-38; CPS Energy Ex. 17.

⁶² CPS Energy Ex. 1, EA at 3-38, CPS Energy Ex. 17.

⁶³ CPS Energy Ex. 1, EA at 3-38; CPS Energy Ex. 17.

⁶⁴ See CPS Energy Ex. 6; Bexar Ranch Ex. 13 at 9-55; and CPS Energy Ex. 15 at Exhibit LBM-2R.

⁶⁵ CPS Energy Ex 17

⁶⁶ CPS Energy Ex. 17; See CPS Energy Ex. 15.

130. None of the alternative routes or segments directly cross, or are located within the visual foreground of, any park or recreational areas as defined by the Commission's Standard Application for a CCN.⁶⁷
131. The Commission does not expect the presence of transmission facilities along the approved route to adversely affect the use or enjoyment of parks or recreational areas.

Historical and Archaeological Areas

132. CPS Energy has identified and summarized the number of known or recorded historic or prehistoric sites within 1,000 feet of the right of way of each proposed route.⁶⁸
133. The minimum number of known archaeological sites crossed by any route is zero, while the maximum is five.⁶⁹
134. The minimum number of additional known archaeological sites within 1,000 feet of the centerline of any route is zero, while the maximum is twelve.⁷⁰
135. The Commission does not expect the construction of the approved route to adversely affect archaeological or historical resources.

Aesthetic Values

136. One measure of aesthetic values is the length of right of way that is within the foreground visual zone of U.S. and state highways, FM roads, and parks and recreational areas.
137. CPS Energy and POWER determined and presented the lengths of each primary alternative route segment and primary alternative route within the foreground visual zone of U.S. and State highways, FM roads, and parks or recreational areas.⁷¹
138. None of the routes or segments were found to have any portion within the foreground visual zone of U.S. and State highways, FM roads, or parks or recreational areas.⁷²

Environmental Integrity

139. CPS Energy and POWER evaluated the impacts on environmental integrity from the Project, and set out such impacts in detail in the EA and summarized them in Section 3.0 of the EA.

⁶⁷ CPS Energy Ex 17; *See* CPS Energy Ex 15

⁶⁸ CPS Energy Ex. 1, EA at 3-53 to 3-55, Tables 3-12 and 3-13; CPS Energy Exs. 6 and 8; CPS Energy Ex 17.

⁶⁹ CPS Energy Ex. 1, EA at 5-38 to 5-40, Table 5-1, and Table 5-46; CPS Energy Ex. 15.

⁷⁰ CPS Energy Ex 1, EA at 4-25 to 4-29, as amended by CPS Energy Exs. 6 and 8; CPS Energy Ex 17.

⁷¹ CPS Energy Ex. 15, attached Ex. LBM-1R; CPS Energy Ex. 17.

⁷² CPS Energy Ex 15, attached Ex. LBM-1R; CPS Energy Ex. 17.

140. Correspondence with the Texas Natural Diversity Database (TXNDD), TPWD, and the United States Fish and Wildlife Service (USFWS) indicates 40 animal species as federally- and/or state listed or have candidate status, for Bexar County.⁷³
141. None of the primary alternative routes has any length of right of way across designated habitat of federally-listed endangered or threatened species.⁷⁴
142. The Project is not anticipated to significantly adversely impact populations of any federally-listed endangered or threatened species.⁷⁵
143. The Commission does not expect any significant effects on wetland resources, ecological resources, endangered and threatened species, or land use as a result of constructing the proposed transmission facilities.
144. CPS Energy will mitigate any effect on federally listed plant or animal species according to standard practices and measures taken in accordance with the Endangered Species Act.
145. It is appropriate that CPS Energy protect raptors and migratory birds by following the procedures outlined in the following publications: *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, Edison Electric Institute and Avian Power Line Interaction Committee, Washington, D.C. 2012; *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*, Edison Electric Institute, Avian Power Line Interaction Committee, and the California Energy Commission, Washington, D.C. and Sacramento, CA 2006; and *Avian Protection Plan Guidelines*, Avian Power Line Interaction Committee and United States Fish and Wildlife Service, April 2005.
146. It is appropriate that CPS Energy minimize the amount of flora and fauna disturbed during construction of the proposed transmission line.
147. It is appropriate that CPS Energy revegetate cleared and disturbed areas using native species and consider landowner preferences and wildlife needs in doing so.
148. It is appropriate that CPS Energy avoid causing, to the maximum extent possible, adverse environmental burdens on sensitive plant and animal species and their habitats as identified by TPWD and the USFWS.
149. It is appropriate that CPS Energy implement erosion control measures and return each affected landowner's property to its original contours unless otherwise agreed to by the landowners. It is appropriate that CPS Energy not be required to restore original contours and grades where different contours or grades are necessary to ensure the safety or stability of the proposed transmission line's structures or the safe operation and maintenance of the transmission line.

⁷³ CPS Energy Ex 2 at 18; See Table 3-6 in Section 3.1 11 of the EA

⁷⁴ CPS Energy Ex. 2 at 18.

⁷⁵ CPS Energy Ex 2 at 18

150. It is appropriate that CPS Energy exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within rights-of-way. The use of chemical herbicides to control vegetation within rights-of-way must comply with the rules and guidelines established in the Federal Insecticide, Fungicide, and Rodenticide Act and with the Texas Department of Agriculture regulations.
151. It is appropriate that CPS Energy use best management practices to minimize the potential burdens on migratory birds and threatened or endangered species.
152. The Commission does not expect the presence of the transmission facilities along the approved route to adversely affect the environmental integrity of the surrounding landscape.

TPWD's Comments and Recommendations

153. TPWD provided information and recommendations regarding the preliminary study area for the Project to POWER on August 1, 2019.⁷⁶
154. On September 16, 2020, after the Application had been filed, TPWD filed a letter (dated September 10, 2020) containing its comments and recommendations regarding the Project. The letter primarily addressed the mitigation of potential burdens on wildlife and natural resources.
155. On March 1, 2021, after the Amended Application had been filed by CPS Energy, TPWD filed a second letter containing its comments and recommendations regarding the Project.
156. In its subsequent comments, TPWD recommended Route DD for the Project.
157. POWER and CPS Energy have taken into consideration the recommendations offered by TPWD.
158. It is appropriate that, before beginning construction, CPS Energy undertakes appropriate measures to identify whether a potential habitat for endangered or threatened species exists and to respond as required.
159. The standard mitigation requirements included in the ordering paragraphs in this Order, coupled with CPS Energy's current practices, are reasonable measures for a utility to undertake when constructing a transmission line and are sufficient to address TPWD's comments and recommendations.
160. This Order addresses only those TPWD recommendations and comments for which there is record evidence.

⁷⁶ CPS Energy Ex. 1, EA, Appendix A at 186

161. No modification to the proposed transmission facilities is required as a result of the recommendations and comments made by TPWD.

Permits

162. Before beginning construction of the proposed transmission facilities, CPS Energy will obtain any necessary permits from TxDOT if the facilities cross state-owned or maintained properties, roads, or highways.
163. Before beginning construction of the proposed transmission facilities, it is appropriate for CPS Energy to conduct a field assessment to identify water resources, cultural resources, potential migratory bird issues, and threatened and endangered species' habitats impacted as a result of the Project. As a result of these assessments, CPS Energy will identify any additional permits that are necessary, will consult any required agencies, will obtain all necessary permits, and will comply with the relevant permit conditions during construction and operation of the Project.
164. Before beginning construction of the proposed transmission facilities, CPS Energy will obtain any necessary permits or clearances from federal, state, or local authorities.
165. Before commencing construction, CPS Energy will obtain a general permit to discharge under the Texas pollutant discharge elimination system for stormwater discharges associated with construction activities as required by the Texas Commission on Environmental Quality. In addition, because more than five acres will be disturbed during construction of the transmission facilities, CPS Energy will prepare the necessary stormwater-pollution-prevention plan, to submit a notice of intent to the Texas Commission on Environmental Quality, and to comply with all other applicable requirements of the general permit.
166. Before construction, CPS Energy will obtain all permit or regulatory approvals that are required from the United States Army Corps of Engineers, the USFWS, the Texas Commission on Environmental Quality, the Texas Historical Commission, the state historic preservation offices, and any county in which the Project is built.
167. After designing and engineering the alignments, structure locations, and structure heights, CPS Energy will make a final determination of the need for FAA notification based on the final structure locations and designs. If necessary, CPS Energy will use lower-than-typical structure heights, line marking, or line lighting on certain structures to avoid or accommodate FAA requirements.

Coastal Management Program

168. Under 16 TAC § 25.102(a), the Commission may grant a certificate for the construction of transmission facilities within the coastal management program boundary only when it finds that the proposed facilities comply with the goals and applicable policies of the Coastal Management Program or that the proposed facilities will not have any direct and

significant effect on any of the applicable coastal natural resource areas specified in 31 TAC § 501.3(b).⁷⁷

169. No part of the proposed transmission facilities is located within the coastal management program boundary as defined in 31 TAC § 503.1(b).⁷⁸

Effect on the State's Renewable Energy Goal

170. The Texas Legislature established a goal in PURA § 39.904(a) for 10,000 megawatts of renewable capacity to be installed in Texas by January 1, 2025. This goal has already been met.
171. The proposed Project cannot adversely affect the goal for renewable energy development established in PURA § 39.904(a).

Limitation of Authority

172. It is reasonable and appropriate for a CCN order not to be valid indefinitely because it is issued based on the facts known at the time of issuance.
173. Seven years is a reasonable and appropriate limit to place on the authority granted in this Order for CPS Energy to construct the transmission facilities.

B. Conclusions of Law

1. CPS Energy is a municipally owned utility as defined in PURA § 11.003(11) and 16 TAC § 25.5(71).
2. CPS Energy must obtain the approval of the Commission to construct the proposed transmission facilities and provide service to the public using those facilities. PURA § 37.051(g).
3. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, and 37.056.
4. SOAH exercised jurisdiction over this proceeding under PURA § 14.053 and Texas Government Code §§ 2003.021 and 2003.049.
5. The Application is sufficient under 16 TAC § 22.75(d).
6. Notice of the Application and the hearing were provided in compliance with PURA § 37.054 and 16 TAC § 22.52(a).

⁷⁷ 16 TAC § 25.102(a).

⁷⁸ CPS Energy Ex 2 at 15

7. Additional notice of the approved route is not required under 16 TAC § 22.52(a)(2) because it is wholly composed of properly noticed segments contained in the original CCN application or modifications agreed to by all affected landowners.
8. CPS Energy provided notice of the public open house meeting in compliance with 16 TAC § 22.52(a)(4).
9. The hearing on the merits was set and notice of the hearing was provided in compliance with PURA § 37.054 under Texas Government Code §§ 2001.051 and 2001.052.
10. The Commission processed this docket in accordance with the requirements of PURA, the Administrative Procedure Act,⁷⁹ and Commission rules.
11. The proposal for decision's recommended route is necessary for the service, accommodation, convenience or safety of the public within the meaning of PURA § 37.056(a).
12. The Texas Coastal Management Program does not apply to any of the transmission facilities proposed in the Application and the requirements of 16 TAC § 25.102 do not apply to the Application.

C. Ordering Paragraphs

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

1. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, except as discussed in this order.
2. The Commission amends CPS Energy's CCN No. 30031 to include the construction and operation of the Scenic Loop Substation, a new load-serving electric substation in northwestern Bexar County to the existing Ranchtown to Menger Creek 138 kV transmission line to the west. The new Scenic Loop Substation will be located at proposed substation site ___ and the new transmission line shall be built using segments _____.
3. CPS Energy must consult with pipeline owners or operators in the vicinity of the approved route regarding the pipeline owners' or operators' assessment of the need to install measures to mitigate the effects of alternating current interference on existing natural gas pipelines paralleled by the proposed electric transmission facilities.
4. CPS Energy must conduct surveys, if not already completed, to identify metallic pipelines that could be affected by the transmission line and coordinate with pipeline owners in modeling and analyzing potential hazards because of alternating current interference affecting metallic pipelines being paralleled.

⁷⁹ Tex. Gov't Code §§ 2001.001-.902.

5. CPS Energy must obtain all permits, licenses, plans, and permission required by state and federal law that are necessary to construct the proposed transmission facilities, and if CPS Energy fail to obtain any such permit, license, plan, or permission, they must notify the Commission immediately.
6. CPS Energy must identify any additional permits that are necessary, consult any required agencies (such as the United States Army Corps of Engineers and United States Fish and Wildlife Service), obtain all necessary environmental permits, and comply with the relevant conditions during construction and operation of the transmission facilities approved by this order.
7. Before commencing construction, CPS Energy must obtain a general permit to discharge under the Texas pollutant discharge elimination system for stormwater discharges associated with construction activities as required by the Texas Commission on Environmental Quality. In addition, because more than five acres will be disturbed during construction of the transmission facilities, CPS Energy must, before commencing construction, prepare the necessary stormwater-pollution-prevention plan, submit a notice of intent to the Texas Commission on Environmental Quality, and comply with all other applicable requirements of the general permit.
8. In the event CPS Energy encounters any archeological artifacts or other cultural resources during construction, work must cease immediately in the vicinity of the artifact or resource. CPS Energy must report the discovery to, and take action as directed by, the Texas Historical Commission.
9. Before beginning construction, CPS Energy must undertake appropriate measures to identify whether a potential habitat for endangered or threatened species exists and must respond as required.
10. CPS Energy must use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
11. CPS Energy must follow the procedures to protect raptors and migratory birds as outlined in the publications: *Reducing Avian Collisions with Power Lines: State of the Art in 2012*, APLIC, 2012, Edison Electric Institute and Avian Power Line Interaction Committee (APLIC), Washington, D.C. 2012; *Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006*, Edison Electric Institute, APLIC, and the California Energy Commission, Washington, D.C. and Sacramento, CA 2006; and *Avian Protection Plan Guidelines*, APLIC and USFWS, 2005. CPS Energy must take precautions to avoid disturbing occupied nests and take steps to minimize the impact of construction on migratory birds during the nesting season of the migratory bird species identified in the area of construction.
12. CPS Energy must exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way, and must ensure that such herbicide use complies with rules and guidelines established in

the Federal Insecticide, Fungicide and Rodenticide Act and with Texas Department of Agriculture regulations.

13. CPS Energy must minimize the amount of flora and fauna disturbed during construction of the transmission line project, except to the extent necessary to establish appropriate right-of-way clearance for the transmission line. In addition, CPS Energy must revegetate using native species and must consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practical, CPS Energy must avoid adverse environmental impact to sensitive plant and animal species and their habitats, as identified by TPWD and the USFWS.
14. CPS Energy must implement erosion control measures as appropriate. Erosion control measures may include inspection of the right-of-way before and during construction to identify erosion areas and implement special precautions as determined reasonable to minimize the impact of vehicular traffic over the areas. CPS Energy must return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner or the landowner's representative. CPS Energy will not be required to restore original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.
15. CPS Energy must cooperate with directly affected landowners to implement minor deviations from the approved route to minimize the disruptive effect of the proposed transmission line project. Any minor deviations in the approved route must only directly affect the landowners who were sent notice of the transmission line in accordance with 16 TAC § 22.52(a)(3) and landowners who have agreed to the minor deviation.
16. The Commission does not permit CPS Energy to deviate from the approved route in any instance in which the deviation would be more than a minor deviation without further amending its CCN.
17. If possible, and subject to the other provisions of this Order, CPS Energy must prudently implement appropriate final design for this transmission line so as to avoid being subject to the FAA's notification requirements. If required by federal law, CPS Energy must notify and work with the FAA to ensure compliance with applicable federal laws and regulations. CPS Energy is not authorized to deviate materially from this Order to meet the FAA's recommendations or requirements. If a material change would be necessary to comply with the FAA's recommendations or requirements, then CPS Energy must file an application to amend its CCN as necessary.
18. CPS Energy must include the transmission facilities approved by this Order on its monthly construction progress reports before the start of construction to reflect the final estimated cost and schedule in accordance with 16 TAC § 25.83(b). In addition, CPS Energy must provide final construction costs, with any necessary explanation for cost variance, after completion of construction when all costs have been identified.

19. The Commission limits the authority granted by this Order to a period of seven years from the date this Order is signed unless the transmission facilities are commercially energized before that time.
20. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

Respectfully submitted,

/s/ Kirk D. Rasmussen

Kirk D. Rasmussen
State Bar No. 24013374
Craig R. Bennett
State Bar No. 00793325
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
(512) 691-4427 (fax)
Email: krasmussen@jw.com
Email: cbennett@jw.com

ATTORNEYS FOR CPS ENERGY

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on this date via the Commission's Interchange in accordance with SOAH Order No. 3.

/s/ Kirk D. Rasmussen

Kirk D. Rasmussen