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

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

**CLEARWATER RANCH POA'S
REPLY BRIEF**

COMES NOW, Clearwater Ranch POA Intervenors (“Clearwater Ranch”) files its Reply Brief in the above-captioned Application and in support thereof shows the following:

I. SUMMARY

Parties wrongly argue the *only* reason to select Z1 or Z2 as the best-meets route is because is the least expensive route of all the alternative routes. Unlike proponents of Routes P, R1, and W, Clearwater Ranch believes cost is an important factor that should at least be considered in selecting the transmission line route. However, in addition to cost, Route Z1 and Z2 outperforms Route P in many other factors, use of compatible right-of-way, environmental integrity, aesthetic values, community values, and prudent avoidance. On balance, Routes Z1 and Z2 best meet all the routing factors in PURA 37 and 16 TAC 25.101. Furthermore, Route Z1 or Z2 takes advantage of a negotiated agreement between CPS and the Dreico Companies¹ that saves the ratepayers of Texas

¹ The Dreico Companies are Toutant Ranch, Ltd., ASR Parks, LLC, Pinson Interests Ltd. LLP, and Crighton Development Co., on whose behalf Tom Dreiss provided written and live testimony.

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money, while allowing an impacted property owner to minimize the effects of the transmission line on their property.

II. ROUTE P IS NOT THE BEST-MEETS ROUTE

Route P's Problematic Paralleling

As part of its routing analysis, Staff selected Route P due to its 71% paralleling of existing compatible Right-of-Way and apparent property boundaries and noted that other higher paralleling routes were more expensive and directly impacted more habitable structures.² Nevertheless, missing from this analysis is any discussion of the differences types of paralleling or use of compatible ROW and their effect on routing criteria.

As a preliminary matter to this discussion, no route utilizes or parallels existing transmission line ROW.³ This focuses the analysis on Evaluation Criteria “Length of ROW parallel to other existing ROW (roadways, railways, canals, etc.)” and “Length of ROW parallel and adjacent to apparent property lines,” along with the paralleling percentages.⁴ The following table breaks down these criteria for three of the Focus Routes:

	ROUTE P	ROUTE Z1	ROUTE Z2
Length of ROW parallel to other existing ROW (roadways, railways, canals, etc.)	0.85	1.60	1.60
Length of ROW parallel and adjacent to apparent property lines ²	2.62	1.49	1.58
Percentage of ROW Paralleling	71%	68%	71%

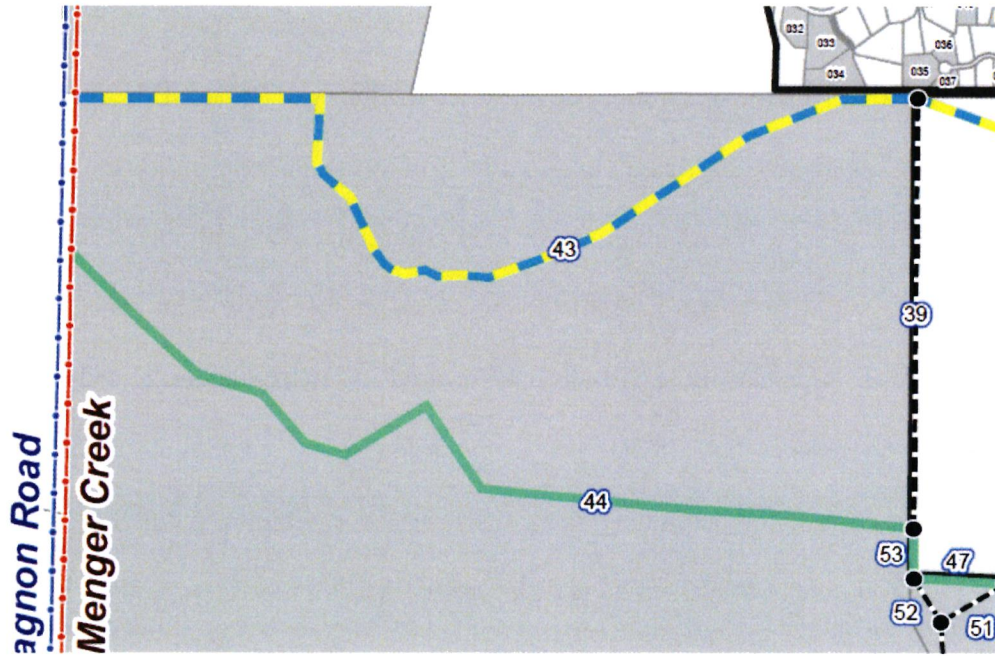
Route P's entire 0.85 miles of paralleling existing ROW is accounted for in Segment 43, which divides Bexar Ranch. What CPS has deemed a roadway under this criteria is in fact a “very rough

² *Commission Staff's Initial Brief* at p.9-10.

³ CPS Energy Ex. 17.

⁴ *Id.*

trail” that is “not really two-track road” and in some of the “steepest, roughest country.”⁵ Segment 43 runs along an apparent property boundary for 0.65 miles of its length, and then deeply cuts into Bexar Ranch, as seen below:⁶



If the 0.85 miles of Segment 43 that is not paralleling an existing ROW is subtracted from the total amount of paralleling compatible ROW, Route P’s true paralleling percentage is 53.6%.⁷ This puts Route P in the bottom half of range in use of compatible rights-of-way.⁸ All of Route P’s paralleling comes from running along apparent property lines. Because of this, Route P splits neighborhoods apart and makes no use of existing road ROW where land has already been cut through and developed.

⁵ HOM Transcript 754:3-8, 753:10-14.

⁶ CPS Energy Ex. 6, Table 4-1; CPS Energy Ex. 16.

⁷ CPS Energy Ex. 17.

⁸ *Id.*

Based on PUC precedence and the facts of this case, the ALJs should give greater weight to paralleling road ROW over apparent property lines. In Docket No. 38354, the Commission favored the paralleling of a road over following the property lines of “large tracts of relatively unfragmented and undeveloped land.”⁹ Clearwater Ranch acknowledges that case dealt with paralleling Interstate 10, which is a more developed corridor than Toutant Beauregard; however, the concept and analysis remains the same. Here, the Commission has the option to parallel Toutant Beauregard Road, a major thoroughfare with distribution lines, a cellphone tower, and active construction along it.¹⁰ In contrast, Route P cuts through the 3,200 acre Bexar Ranch,¹¹ the Clearwater Ranch large lot neighborhood with wildlife management,¹² and the SHLAA neighborhoods. In Docket No. 38354, the Commission found paralleling a road the “more compatible right-of-way for paralleling purposes than the alternative paralleling opportunities available.”¹³ A developed road with existing distribution lines is a more compatible right-of-way to parallel than apparent property lines that bisect ranches and neighborhoods. For these reasons, Route P’s is not a superior route in use of compatible right-of-way.

Environmental Integrity

Staff argues “Route P is acceptable and comparable to the other routes from an environmental perspective,” but the evidence before the ALJs paints a different picture.

Route P crosses the highest amount of Golden Cheeked Warbler modeled habitat at Moderate High to High at 25.11 acres.¹⁴ Route P also crosses 4.42 miles of upland woodlands and

⁹ Docket No. 38354, *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Mccamey D to Kendall to Gillespie 345-Kv CREZ Transmission Line In Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties*, Final Order (Jan. 24 2011), p.10.

¹⁰ SHLAA Ex. 3, at p.13, 15.

¹¹ Bexar Ranch Ex. 2 at 10:5.

¹² See generally Clearwater Ranch Exs. 1-23.

¹³ Docket No. 38354, para. 52a.

¹⁴ CPS Energy Ex. 17.

brushlands.¹⁵ These two quantitative ecological criteria from the Environmental Assessment Data Table present the most significant range between the routes.¹⁶ As acknowledged by CPS in the Application and consistent with PUC precedence, clearing trees and shrubs from woodland areas generates a degree of habitat fragmentation.¹⁷ However, the “magnitude of habitat fragmentation... typically [can be] minimized by paralleling an existing linear feature with some degree of prior clearing such as a transmission line, roadway, railway, or pipeline.”¹⁸ Here, paralleling Toutant Beauregard would reduce habitat fragmentation, particularly for the Golden Cheeked Warbler. As noted in Docket No. 38354, “[a]voiding additional fragmentation of wildlife habitat [was] one of the most important environmental considerations for the project. Land fragmentation, and its consequence, is one of the greatest statewide challenges to wildlife management and conservation in Texas.”¹⁹

The owners of Bexar Ranch and neighbors in Clearwater Ranch have dedicated their properties to conservation and wildlife management.²⁰ Segment 43 on Bexar Ranch and Segment 37 on Clearwater Ranch account for 53% of the length of Route P.²¹ This means more than half of Route P fragments habitat that these landowners have purposely protected and stewarded. For these reasons, Route P is not “acceptable” nor “comparable” to other routes in environmental integrity, particularly when considered the environmental benefits of Routes Z1 and Z2 along Toutant Beauregard.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Docket No. 46234, *Joint Application Of AEP Texas North Company and Electric Transmission Texas, LLC to Amend their Certificates of Convenience and Necessity for the AEP TNC Heartland To ETT Yellowjack 138-Kv Transmission Line in McCulloch and Menard Counties*, Final Order, (Aug. 31, 2017) p. 21.

¹⁸ *Id.*

¹⁹ Docket No. 38354, p.13.

²⁰ Bexar Ranch R Ex. 7 at MB-5 Rebuttal at 74.

²¹ CPS Energy Ex. 6, Table 4-1.

Aesthetics

None of the alternative routes has right-of-way within the foreground visual zone categories in the Environmental Assessment.²² This leads the ALJs to consider more qualitative aspects of the project in terms of aesthetic values. The PUC has previously opined, “[a]esthetic impacts to visual resources exist when the right-of-way, lines and/or structures of a transmission line system create an intrusion into, or substantially alter, the character of the existing view.”²³ In determining this impact, the PUC advises, “[t]he significance of the impact is directly related to the quality of the view in natural scenic areas, [and] the importance of the existing setting in the use and enjoyment of an area.”²⁴ Based on this guidance, the ALJs should analyze and compare the current view versus one with a transmission line in terms of aesthetics.

Route P creates a substantial intrusion into the existing view for Clearwater Ranch (and that of Bexar Ranch and SHLAA), particularly because Segment 37 completely bisects the neighborhood. Clearwater Ranch went to great lengths to bury their distribution lines in order to lessen the disturbance to the wildlife. In contrast, running a 138-kV line along Toutant Beauregard, where there is already a distribution line, does not substantially alter the existing view. As noted in Docket No.47192, the Commission held a route “primarily being built within the exact same corridor as the existing 69-kV transmission line...and other linear corridors, including...distribution lines” would not be “inconsistent with existing features in the area.”²⁵ Certainly a transmission line will have an aesthetic impact, but when it parallels an existing linear

²² CPS Energy Ex. 17.

²³ Docket No. 45866, *Application of LCRA Transmission Services Corporation to Amend a Certificate of Convenience and Necessity for the Round Rock - Leander 138-Kv Transmission Line in Williamson County*, Final Order (June 6, 2017) at 29, para. 60.

²⁴ *Id.*

²⁵ Docket No. 47192, *Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for the Highway 32 to Wimberley Transmission Line Rebuild and Upgrade Project in Hays County*, Final Order (Jan.30, 2018) at 16, para.77-78.

corridor, which has already been cleared because of a road and distribution lines, that impact is less than cutting through neighborhoods and undeveloped ranch land. By paralleling Toutant Beauregard, Routes Z1 or Z2 “will not present a view dissimilar to other linear rights-of-way throughout the area following completion of construction and restoration activities.”²⁶

Community Values

Staff argues Route P comports with community values because there are only 17 habitable structures within 300 feet of the centerline. Staff stated the most important criterion to members of the community was “maximizing distances from residences.”²⁷ Staff assumed this from the responses that “impact to residences” was the highest ranked concern.²⁸ However, Staff left the other results from the survey completely unacknowledged. In the survey, respondents were asked to identify the most preferred and least preferred route segments. The least preferred were Segments 15, 26, 16.²⁹ Of these least preferred segments, Route P utilizes two of them - 15 and 26.³⁰ Clearwater Ranch understands the desire to limit the amount of habitable structures impacted by the transmission line route, but to do so by utilizing the *least desirable segments* demonstrates that Route P does not comport with community values. Even more so, none of the segments along Toutant Beauregard ranked in the least preferred segments.³¹

Various parties have argued utilizing Segment 42a goes against community values due to its proximity to Sara McAndrew Elementary. First and foremost, Segment 42a does not cross Northside Independent School District property.³² However, when asked to rank the importance

²⁶ Docket No. 47192 at p.16, para 78.

²⁷ Commission Staff Initial Brief at p. 5.

²⁸ CPS Energy Ex.1, Attachment 1 at 000302.

²⁹ CPS Energy Ex. 1, Attachment 1 at 189-191.

³⁰ *Id.*; CPS Energy Ex. 16.

³¹ *Id.*

³² CPS Energy Ex. 16.

of transmission lines' proximity to schools, places of worship, cemeteries, in the surveys conducted by CPS, only 2% (4 out 186) of the of the respondents indicated it was the "most important factor."³³ Additionally, Segment 41 --which crosses Northside Independent School District's property-- and Segment 35 across from the school on Toutant Beauregard did not receive any negative concerns in the survey.³⁴ Route Z1 or Z2 best balances the values of all the community member in the study area, including limiting the impacts to residences and avoiding the least favorable segments.

Prudent Avoidance

The policy of prudent avoidance dictates routes selected should limit exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.³⁵ As part of its analysis, Staff selected Route P due to its impacts to 17 habitable structures. But missing from Staff's analysis is any discussion of whether selecting this route with fewer habitable structures is a reasonable investment of money and effort. Prudent avoidance is not simply picking the route with fewest habitable structures. If that were the case, only routes with the fewest number of habitable structures would comply with the policy.

While the habitable structure count can serve as an easy data point to measure prudent avoidance, these numbers do not account for the electro-magnetic field range from the transmission line. The 300-foot distance from the centerline of the transmission line is a notice requirement under § 25.101(b)(3)(B), not a scientific measurement of the risks of EMF exposure. As CPS testified, the EMF range is approximately 100 feet on each side of the transmission line.³⁶

³³ CPS Energy Ex. 1, Attachment 1 at 189-191.

³⁴ *Id.*; CPS Ex. 16.

³⁵ 16 TAC § 25.101(a)(6).

³⁶ CPS Energy Ex. #12 at ARM-5R; HOM Transcript at p. 815-17.

This means habitable structures further than 100 feet away from the centerline are at little risk of electric and magnetic exposure. Route P only has one single-family residence within 100 feet of its centerline.³⁷ But also, Routes Z1 and Z2 only have one single-family residence within 100 feet of its centerline.³⁸ The most impacted neighborhood by Route Z1 or Z2 is Scenic Hills.³⁹ This is mainly due to the 18 habitable structures that face onto and are accessed by Toutant Beauregard on Segment 54.⁴⁰ Of those residences, only one property owner intervened in these proceedings, Mr. Steven Herrera.⁴¹ With Routes P, Z1, and Z2 all only having one home within 100 feet of the centerline, the main difference between these routes is cost. For approximately \$5 million more, Route P is not limiting any EMF exposure to homes.⁴² This is not a reasonable investment of money under the policy of prudent avoidance.

Cost

Cost should not be ignored when determining a route, as it is one of the routing factors under § 25.101(b)(3)(B). As a part of this Application, the ALJs have the opportunity to minimize cost by selecting a route that uses the agreement between CPS and Dreico Companies. Many intervenors mischaracterized the Dreico Agreement to donate Segment 42a and discount other segment portions as manipulative⁴³ and continue to argue over due process concerns.⁴⁴ They paint CPS as coercing Mr. Dreiss into the agreement.⁴⁵ The reality is every landowner has the

³⁷ CPS Energy Ex. 16; CPS Energy Ex.12 at ARM-6R; SHLAA Ex. #8.

³⁸ *Id.*

³⁹ While Serene Hills enters through Scenic Hills, there are no properties within 300 feet of the centerline of Route Z1 or Z2.

⁴⁰ CPS Energy Ex. 16; CPS Energy Ex. 17.

⁴¹ CPS Energy Ex. 16.

⁴² CPS Energy Ex. 17.

⁴³ Anaqua Springs Homeowner's Association Initial Post-Hearing Brief, at p.17.

⁴⁴ Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, LLC, at p.5.

⁴⁵ Initial Post-Hearing Brief of Steve and Cathy Cichowski at p.7.

opportunity to negotiate with the utility to minimize impacts of proposed segments and Mr. Dreiss took advantage of that opportunity.

Mr. Dreiss is a sophisticated businessman with over 20 experience as a developer.⁴⁶ When confronted with a risk to his development by the original proposed segments, he took the initiative to solve the problem. He contacted CPS to negotiate modifications to segments to mitigate the impact to his development project.⁴⁷ Like every agreement, each side gave up something to gain another. Ultimately, both sides came to an agreement they could support. To this day, Mr. Dreiss supports his decision.

The PUC encourages utilities and property owners to cooperate in transmission line routing cases. Type of agreements, like the one between CPS and Dreico Companies, are good public policy: it generates cost savings for the ratepayers of Texas, allows landowners to modify routes to their benefit, gives utilities assurances in the application, and creates certainty in a process that is anything but. The ALJ should take advantage of this opportunity.

CONCLUSION

FOR THESE REASONS, Route P is not the best-meets route under and PURA § 37.056(c)(4) and 16 TAC § 25.101(b)(3)(B). Routes Z1 and Z2, cost less, are shorter, have better use of compatible right-of-way, preserve environmental integrity, maintains aesthetic and community values, and comports with prudent avoidance. Clearwater Ranch respectfully requests that the Proposal for Decision recommend Route Z2, or alternatively Route Z1, Route AA1, or Route AA2 as the route(s) that best meet(s) the overall routing criteria.

⁴⁶ HOM Transcript 949: 15-18.

⁴⁷ HOM Transcript 542:14 – 543:2 (“So, no the developer approached us to modify route segments that were on their property.”).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on May 28, 2021 in accordance with SOAH Order No. 3 issued in this docket.

/s/Patrick L. Reznik
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