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

APPLICATION OF THE CITY OF	§	BEFORE THE
SAN ANTONIO TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	PUBLIC UTILITY COMMISSION
AND NECESSITY FOR THE	§	
SCENIC LOOP 138 KV TRANSMISSION	§	OF TEXAS
LINE IN BEXAR COUNTY	§	

**CPS ENERGY'S
REPLY TO EXCEPTIONS**

October 15, 2021

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

APPLICATION OF THE CITY OF SAN ANTONIO TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE SCENIC LOOP 138 KV TRANSMISSION LINE IN BEXAR COUNTY	§ § § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The City of San Antonio, acting by and through the City Public Service Board (CPS Energy) files this reply to exceptions, respectfully showing as follows:

I. INTRODUCTION

This has been a significant contested case proceeding, with much involvement from the local community and many landowners participating. Now, near the end of the process, some things are abundantly clear. First, no parties have challenged the need for the project.¹ In fact, many parties have affirmatively recognized the important need for the project. Even in exceptions, while parties discuss which route should be approved by the Public Utility Commission of Texas (Commission) for the project, no parties argue the application should be denied. This is because the evidence is undisputed that the project is needed to serve, and enhance the reliability of existing service, to a rapidly growing area in the northwest area of Bexar County.

Further, 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 Commission. Some parties assert that 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

¹ The “project” referenced in this reply to exceptions is a new double circuit 138 kilovolt (kV) transmission line proposed by CPS Energy within Bexar County, Texas. The project consists of constructing one new substation (the Scenic Loop Substation) and a new double circuit 138 kV transmission line connecting the new Scenic Loop Substation to the electric grid from CPS Energy’s existing Ranchtown to Menger Creek 138 kV transmission line. The new Scenic Loop Substation is proposed in the area of the intersection of Scenic Loop Road and Toutant Beauregard Road. The new transmission line will be approximately 4.5 to 6.9 miles long, depending on the route selected. CPS Energy’s response to Question No. 4 of the Commission’s CCN application, which was filed on July 22, 2020, provides further details regarding the project.

Commission's rules. There is no dispute that all required notice was provided in accordance with the Commission's rules.

Finally, as noted in CPS Energy's closing briefing, CPS Energy's application is clearly sufficient and has a sufficient number of reasonably-differentiated routes for the Commission to consider. The Administrative Law Judges (ALJs) conducted a route adequacy hearing and found the application sufficient as to routing.

Given that there is no genuine dispute on the need for the project, the sufficiency of the application or notice, or the sufficiency of the routes, it is clear that CPS Energy's application should be approved, with the primary issue centering on the route to be selected by the Commission. There are 33 alternative routes for which data has been provided by CPS Energy. In exceptions, some parties have made inaccurate or misleading statements about the evidentiary record. CPS Energy has no routing preference, but does feel it is important for the Commission to make its decision on an accurate understanding of the evidence. Therefore, CPS Energy finds it necessary to file this reply to exceptions.

II. REPLY TO EXCEPTIONS OF STRAIT/ROSE PALACE/JAUER/ANAQUA

Intervenors The San Antonio Rose Palace, Inc. and Strait Promotions, Inc., Brad Jauer and BVJ Properties, LLC, and Anaqua Springs Homeowners Association (collectively, "Filing Parties") filed joint exceptions. These exceptions take issue with a number of the conclusions of the ALJs. CPS Energy's reply to those exceptions are set out below. For ease of reference, CPS Energy's reply follows the same topic headings used in the Filing Parties' exceptions.

A. Community Values

The Filing Parties argue that the ALJs incorrectly analyzed community values because the PFD "disproportionately weighs some factors to the detriment of others." The Filing Parties categorize the ALJs' various determinations as being "erroneous" and/or "arbitrary or capricious" yet cite no legal basis for such arguments. In fact, the Filing Parties are mistaken as to the law regarding community values and their arguments merely reflect their desire to have the Commission re-weigh certain factors above others in a manner different than the ALJs. Such does not reflect error by the ALJs, but simply represents a different valuation of the relevant considerations. While the Commission may choose to weigh factors differently than the ALJs, the

ALJs did not commit any error in their analysis and the Filing Parties point to no precedent demonstrating any error by the ALJs.

While the Public Utility Regulatory Act (PURA) requires the Commission to consider “community values” when evaluating a proposed transmission line project,² it does not formally define “community values”—leaving application and balancing of this routing criteria with the Commission. For many years, the Commission has utilized a definition of community values that it applies when considering proposed transmission line projects. Specifically, the Commission has determined that community values is not simply intended to be a reflection of an individual landowner’s interests, but is a collection of the voices in the community. As the Commission has stated for many years:

[T]he Commission has viewed community values as a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community. Adverse effects upon community values consist of those aspects of a proposed project that would significantly alter the use, enjoyment, or intrinsic value attached to an important area or resource by a community.³

Thus, contrary to the Filing Parties’ arguments, there is no clear standard the ALJs supposedly violated when they considered and weighed the evidence presented by the parties regarding community values. The Filing Parties’ disagreement with such weighing by the ALJs does not reflect any legal or factual error in the record.

Turning to the actual issues the Filing Parties take with the PFD, they essentially raise five main arguments: (1) CPS Energy should have had a second public meeting when it added additional substations for consideration; (2) CPS Energy did not provide notice to all landowners in proximity to Substation Site 7; (3) the ALJs erred by looking at the “nature of impact to habitable structures” rather than simply the number of habitable structures; (4) the ALJs erred by not properly considering a school as a recreational area; and (5) the ALJs did not correctly assess visibility impacts. Each of these topics is addressed in further detail below.

² PURA § 37.056(c)(4)(A).

³ *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*, Docket No. 45866, Final Order, Finding of Fact No. 37 (June 6, 2017). See also *Application of LCRA Transmission Services Corporation to Amend a Certificate of Convenience and Necessity for a 138-KV Transmission Line in Kerr County*, Docket No. 33844, Final Order, Finding of Fact No. 65 (Mar. 4, 2008).

1. The Public Meeting Held by CPS Energy for the Project Wholly Complied with the Commission’s Rules and Provided the Necessary Project Information Regarding Community Values

The Commission notice rules for CCN applications require an applicant to hold at least one public meeting prior to the filing of the application if 25 or more landowners will be directly affected by the project.⁴ Such a meeting was held for this project on October 3, 2019.⁵ There is no requirement in the Commission’s rules for a second public meeting if any changes are made to the proposed routing following the public meeting. It is common for changes to be made to a project after a public meeting—in fact, one purpose of the public meeting is for the utility to receive community input to shape the application before it is filed. Following a public meeting, landowners can participate in the hearing process and provide additional input. Under the Filing Parties’ approach, a utility would either have to disregard the public feedback and not make any changes to the application, or would have to continue holding additional public meetings after every modification, until no additional feedback is received. This is clearly a nonsensical approach. There is no legal requirement for a second public meeting, and the hearing process provides the second opportunity for landowners to offer input once changes are made after a public meeting. The Filing Parties’ arguments in this regard are without merit or legal support.

In an attempt to bolster their argument on this point, the Filing Parties reference provisions from CPS Energy’s Routing/Substation Siting General Process Manual. Such provisions are clearly not applicable to this proceeding. Those provisions apply to CPS Energy projects wholly in the city limits that do not go through a contested case hearing or seek Commission approval. For those projects, having a second public meeting provides the opportunity for community feedback that the Commission’s CCN hearing process provides here. Thus, there was no need for a second public meeting because the contested case hearing process provided the opportunity for interested landowners to continue to be involved and offer their input, which many did. The Filing Parties’ arguments in this regard are truly comparing apples to oranges.

⁴ 16 TAC § 22.52(a)(4).

⁵ CPS Energy Ex. 1 at 30.

2. Notice was Properly Provided under the Commission's Rules

In accordance with the Commission's notice rules, CPS Energy provided notice to all owners of land as stated on the Bexar County tax rolls who would be directly affected by the requested certificate.⁶ Notwithstanding the undisputed evidence regarding CPS Energy's compliance with the Commission's rules on notice, the Filing Parties make the unsupported and erroneous assertions that "although landowners adjacent to all other substations were provided notice, those near Substation 7 were not" and CPS Energy "made the affirmative effort to notify all landowners around other substations, whether they were within 300 feet of a route's centerline or not" but purportedly failed to provide similar notice to landowners around Substation Site 7.⁷ The record demonstrates no such things. For these statements, the Filing Parties cite only to the following portions of the record: "Tr. at 343:1-24, 345:14-16, 346:10-13, and 402:5-404:3."⁸ A review of those portions of the transcript reveals they do not support the Filing Parties' assertions. The testimony cited merely identified tracts that were outlined in yellow and contained identifying numbers on maps. But the record also clearly demonstrated that one would need to cross-reference a separate document (the notice table) to determine whether those tracts were sent direct mailed notice. The cross-examination did not go further to do such cross-referencing for all of the substations to establish the direct mailed notice related to tracts surrounding each.

While CPS Energy has acknowledged providing direct mailed notice to some landowners around some substation sites who were not otherwise entitled to notice under the Commission's rules, there is no evidence in the record that CPS Energy provided such notice to all landowners around all the other substation sites nor made any intentional effort to do so. In fact, even using the Filing Parties' flawed method for arguing proof of direct mailed notice, the evidence indicates that not all landowners around other substation sites were provided direct mailed notice.⁹

Put simply, there is no evidence in the record that CPS Energy engaged in some concerted effort to provide direct mailed notice to all landowners around every other substation site except for Substation Site 7. Rather, the record reflects that many landowners adjacent to substation sites

⁶ See 16 TAC § 22.52(a)(3); see also Affidavit of Notice (Aug. 11, 2020) (Interchange Filing No. 24) and Order No. 5 Finding Application and Notice Sufficient and Establishing Procedural Schedule (Aug. 21, 2020) (Interchange Filing No. 65).

⁷ *Joint Exceptions to the Proposal for Decision*, at 5-6.

⁸ *Joint Exceptions to the Proposal for Decision*, at 5, fn. 9, and 6.

⁹ See, e.g., Tr. Vol. 3 at 402:11-22. (Identifying two such tracts around substation 4).

received notice because they also were adjacent to a proposed line segment. While some landowners around some substation sites who were not adjacent to proposed line segments also received direct mailed notice, this was not part of an intentional effort but simply the result of CPS Energy providing, in a handful of instances, greater notice than required under the Commission's rules. 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 (APA). This is impermissible and imposing additional notice requirements on a utility apart from the Commission's published notice rules is not permissible under the law. An agency is bound to follow its own rules.¹⁰ As the Texas Supreme Court has noted, "If the Commission does not follow the clear, unambiguous language of its own regulation, we reverse its action as arbitrary and capricious."¹¹ Here, the Commission's notice rule is clear and the evidence conclusively demonstrates that CPS Energy complied with it.¹² Even the Filing Parties do not dispute this—they merely argue for an expansion of the Commission's notice rule in this case.

The Filing Parties' discussion of Mr. Luedke, as an owner of land located near Substation Site 7, is similarly without merit. Mr. Luedke's lack of direct mailed notice is of no legal significance because he is not legally entitled to such notice under the Commission's rules because no easement would be required across his property for any proposed transmission line segment nor

¹⁰ *Flores v. Employees Ret. Sys. of Tex.*, 74 S.W.3d 532, 542 (Tex. App.—Austin 2002, pet. denied); *Southern Clay Prods., Inc. v. Bullock*, 753 S.W.2d 781, 783 (Tex. App.—Austin 1988, no writ) (citing *Gulf Land Co. v. Atlantic Ref. Co.*, 134 Tex. 59, 131 S.W.2d 73, 79 (Tex. 1939)).

¹¹ *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254–255 (Tex. 1999); see also *Bexar Metro. Water Dist. v. Tex. Comm'n on Env'tl. Quality*, 185 S.W.3d 546, 551 (Tex. App.—Austin 2006, pet. denied) ("A reviewing court will reverse an agency when it fails to follow the clear, unambiguous language of its own regulations, that is, when its actions are arbitrary and capricious.").

¹² See *CPS Energy's Initial Post-Hearing Brief* at 5-6, for a recitation of the notice provided and the evidence supporting such. See also Order No. 5 Finding Application and Notice Sufficient and Establishing Procedural Schedule (Aug. 21, 2020) (Interchange Filing No. 65).

does his property have a habitable structure on the property.¹³ As such, he was neither entitled to notice nor entitled to intervene late on the eve of hearing. These facts are undisputed. Accordingly, the Filing Parties' arguments regarding Mr. Luedke are irrelevant and do not reflect any error in the PFD.

3. The ALJs Properly Considered the Nature of Impacts to Habitable Structures

In accordance with significant prior practice and precedent of the Commission, the ALJs carefully considered potential impacts of the project on properties with habitable structures.¹⁴ The Filing Parties, however, contend that the ALJs erred by looking at the “nature of impact to habitable structures” rather than simply counting up the number of habitable structures within 300 feet of the centerline of a proposed transmission line segment. The PFD reflects that the ALJs considered both the number of habitable structures as well as the types of impacts to properties with habitable structures. There is nothing in statute, rule, or prior Commission precedent that would prohibit the consideration of the types of impacts a proposed segment would have on properties with habitable structures when considering “community values.” In fact, prior Commission decisions reflect an examination beyond the statistical numbers of habitable structures into the potential impacts of a proposed transmission line segment.¹⁵ Thus, the ALJs did not adopt any new “ad hoc rule” but, consistent with clear Commission precedent, reasonably examined the types of impacts in addition to the actual number of habitable structures within a certain distance from the proposed line segments.

Further, the ALJs' consideration of the potential impacts to habitable structures is consistent with the community values expressed to CPS Energy at the public meeting. Specifically,

¹³ See 16 TAC § 22.52(a)(3).

¹⁴ See, e.g., *Application of Rayburn Country Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a Transmission Line in Hunt County*, PUC Docket No. 46929, Final Order at Finding of Fact Nos. 135 and 136 (Mar. 8, 2018) (FOF 135: “Route S would have significantly less impact on Mr. Lynch's properties than route T. There is no evidence in the record of whether or how the transmission line would impact other properties with habitable structures on routes S and T.”) (FOF 136: “The record evidence favors accommodating Mr. Lynch's preference for route S, because route S would have a less negative impact on Mr. Lynch's property than route T with relatively little difference in cost.”).

¹⁵ See, e.g., *Application of Electric Transmission Texas, LLC to Amend its Certificate of Convenience and Necessity for the Riley to Edith Clarke to Cottonwood 345-KV CREZ Transmission Line in Wilbarger, Hardeman, Foard, Knox, Cottle, King, Motley, and Dickens Counties*, PUC Docket No. 38562, Final Order at Finding of Fact No. 220 (Mar. 7, 2011) (“The settlement route impacts a low number of habitable structures compared to all the proposed routes and avoids the more extreme impacts to the landowners near the Cottonwood substation.”) (Emphasis added).

as noted by the ALJs in the PFD, the concern identified the most on public meeting attendees' questionnaire responses was "proximity of the routes and substation locations to their residences" (identified by 58% of respondents).¹⁶ Considering the "impact on habitable structures" includes a consideration of proximity to residences, which is more relevant to the concern expressed by the community than simply considering the total number of habitable structures within the 300 foot notice distance. For example, it is reasonable for one to conclude that the consideration of the "proximity" of a route to residences might result in a finding that a proposed transmission line segment that is identified 100 feet from seven residences could be more "impacting" than a proposed transmission line segment that is identified 300 feet from nine residences. A reasonable application of community values does not mean just adding up the numbers of structures within the direct mail notice distance of a proposed transmission line segment. While the Commission may take the raw numbers into account, community values as historically applied by the Commission does not dictate such a rote formula. The ALJs in this proceeding properly considered the broad view of impacts to habitable structures when considering community values. There is no error in their analysis.

The Filing Parties incorrectly state that the ALJs' recommended route, Route Z2, "crosses almost 2.5 times more habitable structures as Route R1 (13) and almost 2 times more than Route P (17)."¹⁷ While the Filing Parties may not have intended a literal read of their statement, it is important to clarify that such statement is wholly incorrect as written. No routes proposed by CPS Energy in the application in this proceeding cross over any habitable structures. Rather, the numbers referenced by the Filing Parties are the number of habitable structures within 300 feet of the centerline of a particular proposed transmission line route. The Filing Parties also portray Route Z2 as having "far more" habitable structures than Routes P or R1. In the context of this project, that assertion is also potentially misleading. Route Z2 has fewer habitable structures within 300 feet of the route centerline than the project average, and the majority of routes proposed by CPS Energy have more habitable structures within 300 feet of the route centerlines than Route Z2.¹⁸

¹⁶ PFD at 27, fn. 124 (citing CPS Energy Ex. 1 at 6-3).

¹⁷ *Joint Exceptions to the Proposal for Decision*, at 9.

¹⁸ *See* CPS Energy Ex. 17.

4. The ALJs Properly Considered the Dr. Sara B. McAndrew Elementary School

The CPS Energy application identified the Dr. Sara B. McAndrew Elementary School, owned and operated by the Northside Independent School District (NISD), and the proximity of various proposed route alternatives to the school.¹⁹ The record evidence and the PFD reflect significant consideration of the school in this proceeding.²⁰ Evidence in the record considered by the ALJs included evidence of other school facilities owned and operated by NISD that were constructed by NISD immediately adjacent to existing transmission line facilities with playgrounds and recreation fields next to the transmission line right of way.²¹ It is certainly reasonable to assume that NISD'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. Such evidence supports the ALJs' conclusion that the presence of Segment 42a in the vicinity of the school property is not inconsistent with community values.

Remarkably, the Filing Parties argue that the ALJs did not properly consider impacts to schools, which, as the Filing Parties argue, "is another community value that was identified as the third most important concern on the open house questionnaire."²² The Filing Parties argue that Route Z2 (via Segment 42a) is approximately 150 to 280 feet from the school's sports and recreation areas, yet the ALJs failed to consider the school as a recreational area despite the alleged use of its sports fields by the school community and the public at large. While the reliable record evidence does indicate that the centerline of proposed Segment 42a is within 300 feet of the closest playground areas of the school, there is no evidence in the record regarding the use of such fields by the community and there is no evidence of football or track facilities yet existing on the property.²³

Additional exceptions by the Filing Parties regarding the McAndrew school require clarification from the record. First, only two percent of public meeting questionnaire responses

¹⁹ CPS Energy Ex. 1, EA at 3-36; *see also* CPS Energy Ex. 15 at 17-18 (Rebuttal Testimony of Lisa B. Meaux).

²⁰ PFD at 52-54; CPS Energy Ex. 15 at 17-18 (Rebuttal Testimony of Lisa B. Meaux).

²¹ CPS Energy Ex. 12 at 15, and attached exhibit ARM-6R; Tr. Vol. 4 at 629-32.

²² *Joint Exceptions to the Proposal for Decision*, at 9.

²³ Rather, the middle school proposed to be built at some point in the future adjacent to the McAndrew Elementary School has design plans for a track and football field; but such have not been built yet. *See, e.g.*, NISD Ex. 1 at 5 and attached Exhibit 2 (a design rendering and a hand drawn map depicting where future middle school facilities are proposed to be located, including athletic facilities).

identified “proximity to schools, places of worship, and cemeteries” as a concern.²⁴ Second, the ALJs clearly considered the school, and did not discount the uses of its property, but merely noted that its primary use was as a school and therefore it was properly categorized by CPS Energy as a school and not a “park and recreational area.”²⁵ Such classification of the school was clearly proper.

5. The ALJs Properly Assessed Visibility Impacts

The ALJs considered the impact of the project on the Toutant Beauregard roadway. The Filing Parties disagree with the ALJs’ conclusion that Toutant Beauregard has already fragmented the visual landscape and, thus, a route that runs along the roadway has less visual impact. They contend that Toutant Beauregard is not a “major thoroughfare” but a two-lane road with substantial historical significance. While CPS Energy agrees that Toutant Beauregard Road is not a highway, the record reflects that it is one of the main thoroughfares in the study area.²⁶ Moreover, as noted by the Filing Parties, there is an existing above ground electric distribution line that runs along the roadway. Therefore, there is a clear evidentiary basis for the ALJs’ conclusion that a route running along the roadway corridor would be less visually impacting than one that traverses currently undisturbed land. The Filing Parties also acknowledge that “Substation 7 may be more vegetated, offering ‘greater visual shielding’ than other substations,” which supports the ALJs consideration of the visual impact of routing in this area.²⁷

B. Prudent Avoidance

The Commission’s substantive rules define “prudent avoidance” as “the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”²⁸ All routes presented in the Application conform to the policy of prudent avoidance in that they reflect reasonable investments of money and effort in order to limit exposure

²⁴ CPS Energy Ex. 1 at 6-3.

²⁵ PFD at 59.

²⁶ *See, e.g.*, SHLAA Ex. 1 at 8 (“[Toutant Beauregard] road is one of the major thoroughfares serving the study area.”); SHLAA Ex. 4 at 8 (“Toutant Beauregard Road is a paved, main corridor into the area.”).

²⁷ *Joint Exceptions to the Proposal for Decision*, at 10.

²⁸ 16 TAC § 25.101(a)(6).

to electric and magnetic fields.²⁹ Commission Staff recognized that CPS Energy complied with the Commission’s prudent avoidance policy and that CPS Energy’s proposed alternative routes are all viable and constructible, after evaluating them in light of the factors of PURA, the Commission’s substantive rules, and the Preliminary Order.³⁰ The record conclusively demonstrates that CPS Energy has complied with the Commission’s policy of prudent avoidance.³¹

Despite the evidence, the Filing Parties excepted to the PFD’s analysis on prudent avoidance “because it disproportionately favors the cost per structure to the exclusion of other important factors.”³² Namely, the Filing Parties object to the fact that the ALJs considered the cost per habitable structure that would be incurred if the Commission were to choose a route with fewer habitable structures. However, the ALJs’ approach is more consistent with the Commission’s rule than the Filing Parties’ position that such costs should be ignored. As noted, the rule requires a limiting of exposure to EMF “that can be avoided with reasonable investments of money and effort.”³³ Thus, the rule explicitly requires a balancing of the benefit of limiting exposure against the cost to do so. Accordingly, the ALJs’ decision to look at the additional cost of the routes that avoided more habitable structures compared to the number of habitable structures avoided represents a direct application of the language of the Commission’s prudent avoidance rule. While the Commission may choose to analyze these factors differently, the ALJs did not err in their application of the Commission’s prudent avoidance rule.

C. Recreational and Park Areas

The Filing Parties except to the PFD’s consideration of recreational and park areas to the extent it dismisses the McAndrew Elementary School as a recreational area. The record reflects, however, that the ALJs did not dismiss the school’s recreational features. Rather, they determined, based on the testimony of CPS Energy’s witness, that the school was reasonably classified as a school and not a “park and recreational area.”³⁴ Such classification was based upon its primary use as an educational facility. But the ALJs acknowledged the recreational activities that would occur

²⁹ CPS Energy Ex. 2 at 21; CPS Energy Ex. 7 at 7.

³⁰ Staff Ex. 1 at 10 and 40-42; Tr. Vol. 4 at 796:3-11 and 802:22-24.

³¹ CPS Energy Ex. 15 at 4:10-24.

³² *Joint Exceptions to the Proposal for Decision*, at 10.

³³ 16 TAC § 25.101(a)(6).

³⁴ PFD at 59.

at the school. Specifically, the ALJs noted that they agreed with the testimony of Ms. Lisa Meaux that the Commissioners “are familiar with recreational activities that occur on school properties,” but the primary purpose of the school was educational. It is clear that, as Ms. Meaux noted and the ALJs agreed, the primary purpose of the school is education; recreational activities are secondary. Thus, this exception is without merit as the ALJs properly considered the nature of the McAndrew Elementary School in conducting their analysis.

The Filing Parties also except to the PFD’s decision to not include the High Country Ranch preserve and the Anaqua Springs informal parkland within the formal designation of “park and recreational” areas. In its environmental assessment, CPS Energy did not explicitly tabulate the High Country Ranch preserve or the Anaqua Springs informal parkland within its classification of “park and recreational areas.” The ALJs did not find fault with this decision to exclude private property from the definition of park and recreational areas in this case.³⁵ The ALJs noted that the High Country Ranch area is not generally available for public recreational use at any time, and remains a privately-held, privately-controlled resource. As for the contention by Anaqua Springs that the “acreage on either side of the guardhouse is dedicated parkland,” the ALJs found there was no evidence that such property was open to the public for recreational activities; rather, they found it was still a private asset.³⁶

The evidentiary record supports the ALJs determinations. But, more importantly, the Filing Parties’ exceptions are a distinction without a difference. There is no prohibition against siting a transmission line within proximity to a park or recreational area; rather, the Commission simply requires such areas to be identified. In this case, these areas in issue, whether classified as park and recreational areas or not, have been identified and discussed at length in the hearing and in briefing. Thus, the Commissioners can consider what, if any, impact these properties should have on the selection of a route. Whether they were formally classified as “park and recreational areas” or merely considered informally for their recreational uses has no impact upon the ultimate outcome of this case. The Commissioners may consider these properties’ uses when making their routing decision in this matter. Therefore, the Filing Parties’ exceptions in this regard do not represent any error by the ALJs.

³⁵ PFD at 59.

³⁶ PFD at 59.

D. Historical and Cultural Values

The Filing Parties point out that the San Antonio Rose Palace (Rose Palace) is a destination venue holding numerous equestrian and other events in its 100,000 square-foot equestrian center, two covered arenas and over 200 horse stalls with seating for 4,500 spectators, thus making it an historic resource. While CPS Energy agrees that the Rose Palace is a significant commercial enterprise in the study area, there is no record evidence of any particular cultural or historic designation of the facility. Thus, while CPS Energy does not necessarily agree with the characterization of the Rose Palace, it would also note that the facility's property will not be crossed by Route Z2 (the route recommended by the ALJs), it will not be across the road from Route Z2, nor will the transmission facilities if constructed on Route Z2 likely even be visible from the Rose Palace.³⁷

With respect to cultural and historic features of the study area, it is important to note that the routes favored by the Rose Palace use Substation Site 6, which is located on Scenic Loop Road—the first road mentioned in the Scenic Loop-Boerne Stage-Toutant Beauregard Historic Corridor (SBT Historic Corridor) name, and a part of the SBT Historic Corridor.³⁸ 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, CPS Energy does not believe that either the existence of the SBT Historic Corridor or the presence of the Rose Palace facility on Toutant Beauregard Road are significant distinguishing factors in selecting routes. But, if the Commission disagrees, it has sufficient information regarding both to take that into account when making the routing decision.

The Filing Parties also make the assertion that the PFD “puts its thumb on the scale favoring lack of development and preserving ‘undisturbed land [that] will likely be sanctuaries for wildlife,’ not heretofore codified in any rule or statute . . .”³⁹ While not necessarily agreeing with the Filing Parties’ analysis of the PFD in this regard, CPS Energy notes that PURA § 37.056(c)(4)(D) explicitly requires the Commission to consider “environmental integrity.” The preservation of land to serve as sanctuaries for wildlife appears to fall squarely within that mandated consideration.

³⁷ See, e.g., CPS Energy Ex. 18, Inset Map 2; see also CPS Energy Ex. 16.

³⁸ Although given a historical designation, the area is rapidly developing, including significant commercial and residential development, and there exists distribution lines and other utility infrastructure along the roadways that are part of the SBT Historic Corridor.

³⁹ *Joint Exceptions to the Proposal for Decision*, at 12. (Emphasis added).

Therefore, CPS Energy disagrees that the ALJs' consideration in this regard is "not heretofore codified in any rule or statute" as alleged by the Filing Parties.

E. Engineering Constraints

The Filing Parties assert that CPS Energy has not properly accounted for engineering constraints along Toutant Beauregard Road, arguing that it moved structures on the eve of hearing. While CPS Energy notes the shock value and vigor of the assertions of the Filing Parties, the claims are wholly contrary to the record evidence. CPS Energy did not move or relocate any segments of the project after December 22, 2020, the date of CPS Energy's application amendment in this proceeding, and nearly five months before the eve of the hearing. Furthermore, the segments that were added and modified through the amendment are not parallel to Toutant Beauregard Road. None of the segments parallel to Toutant Beauregard Road have been modified since the filing of the application on July 22, 2020.

What CPS Energy did file shortly before the hearing on the merits in this proceeding was an errata to clarify whether some portions of existing segments were within roadway right-of-way (ROW) or private ROW. Moreover, despite CPS Energy witnesses continuing to testify that the locations of pole structures have not been decided and will not be decided until later during the design and construction phase of the project (see testimony discussed in the next paragraph), the Filing Parties continue to argue about the locations of such structures as if they have already been determined. For example, the Filing Parties assert that CPS Energy has indicated an "angle structure within road right-of-way aside the entrance to Serene and Scenic Hills Estates and in front of Habitable Structure 88."⁴⁰ However, the explicit testimony of CPS Energy at the hearing was that, while the routes will be set by the Commission's order, the placement of angle structures and other pole structures along those routes will depend upon considerations arising during the design and construction phase of the project.

As CPS Energy explained in discovery responses months before the hearing, "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."⁴¹ And CPS Energy's engineering witness, Mr. Scott Lyssy, testified at the hearing with

⁴⁰ *Joint Exceptions to the Proposal for Decision*, at 16.

⁴¹ *See, e.g.*, Jauer Ex. 8 at 4 (emphasis added); Tr. Vol. 4 at 833:22-23; 834:20-25.

respect to the Anaqua Springs HOA entrance that, because the line has not been designed, CPS Energy cannot guarantee anything regarding pole locations.⁴² Later, when questioned about pole locations, 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 . . .”⁴³ 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.”⁴⁴ As Mr. Lyssy testified:

“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.”⁴⁵

Yet despite this clear evidence, the Filing Parties inexplicably continue to make assertions predicated on the notion that structure locations have been definitively decided. All such arguments should be disregarded because they are founded upon a faulty foundation—one not supported by the evidence.

The Filing Parties argue that the PFD ignores evidence in the record regarding significant engineering constraints uniquely associated with Route Z2 and other routes along Toutant Beauregard Road, providing a bullet point list of supposed constraints. Those alleged constraints are identified below, along with CPS Energy’s response to each:

⁴² Tr. Vol. 4 at 834:20 – 835:5.

⁴³ Tr. Vol. 3 at 396:21-25. *See also* 397:4-8.

⁴⁴ Tr. Vol. 4 at 841:20-23.

⁴⁵ Tr. Vol. 3 at 514:10-17.

Allegation: Substation Site 7 is within the recently elevated 100-year floodplain of immediately adjacent and flood-prone Leon Creek.

CPS Energy Response: The record evidence clearly shows Substation Site 7 is not located within the 100 year floodplain.⁴⁶ There has not been any flooding on the property for the entire 38 years the current landowner has owned the property.⁴⁷ 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).⁴⁸ Mr. Lyssy, a professional engineer licensed in the State of Texas with extensive training in hydraulic engineering,⁴⁹ was the only witness in this proceeding 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.”⁵⁰ Mr. Lyssy further testified that, having reviewed Jauer Exhibit 3, and having performed similar modelling to that presented in Jauer Exhibit 3,⁵¹ 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.”⁵² The Filing Parties’ assertions in this regard are not supported by the evidence.

Allegation: The “line of sight” microwave communications of the region’s emergency response system on Communications Tower No. 501 are at a height and an azimuth that are blocked by the angle structure where Segments 20 and 36 meet.

CPS Energy Response: As discussed in significant detail above, 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

⁴⁶ 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.

⁴⁷ Tr. Vol. 4 at 652:1-9.

⁴⁸ Tr. Vol. 4 at 626:3-4.

⁴⁹ CPS Energy Ex. 11 at Exhibit SDJ-1; Tr. Vol. 4 at 650:18-19.

⁵⁰ Tr. Vol. 4 at 654:5-7.

⁵¹ Tr. Vol. 4 at 649:5-10.

⁵² Tr. Vol. 4 at 624:17-20.

“line of sight” microwave communications.⁵³ 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.⁵⁴ The photo attached to Mr. Marin’s rebuttal testimony visually depicts such elevation.⁵⁵ Regardless, 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 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.⁵⁶

Allegation: Via last-minute errata on the eve of hearing, CPS moved the transmission line and an angle structure into the road right-of-way immediately adjacent to the entrance to Serene and Scenic Hills Estates, posing a safety hazard to residents entering and exiting Toutant Beauregard’s most dramatic curve.

CPS Energy Response: This allegation is discussed above. CPS Energy made no such changes to any route segment and never indicated the location of any structures for the project. Prior to the hearing, CPS Energy provided clarifications regarding anticipated roadway and private ROW usage. More importantly, as noted above, structure placements have not been decided. Therefore, the Filing Parties’ arguments regarding an angle structure “immediately adjacent to the entrance to Serene and Scenic Hills Estates” is simply without merit and speculative. Final structure placements will not occur until the design and construction phase of the project.

Allegation: Gas and water pipelines run along Toutant Beauregard and are an unaddressed issue for angle and other structures in the road right-of-way.

CPS Energy Response: 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

⁵³ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.*, at 21.

⁵⁴ CPS Energy Ex. 6 at Figure 2-4 Amended (Constraints).

⁵⁵ CPS Energy Ex. 12 at Exhibit ARM-2R (visually showing 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 discussed by the Filing Parties).

⁵⁶ The standard ordering language of the Commission requires such coordination.

road right of way that will impact proposed segments.⁵⁷ Specifically, neighborhood distribution level service facilities will generally be at least 25-50 feet from the proposed transmission line centerline along roadways.⁵⁸ 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 low pressure natural gas distribution facilities located throughout Bexar County.⁵⁹

Allegation: Segment 54, which is a part of Route Z2, may be impacted by necessary widening of Toutant Beauregard.

CPS Energy Response: 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 and therefore no evidence of any future impact to any portion of the Project.⁶⁰ Inexplicably, the Filing Parties make the wholly false assertion that “CPS Witness Lyssy conceded that currently two-lane Toutant Beauregard will likely require expansion, which will undoubtedly impact Segment 54 and its poles.”⁶¹ That is not what Mr. Lyssy testified. Rather, Mr. Lyssy testified:

“As far as expansion goes, I mean, you can agree with me that we don’t know how it’s going to look. We did plan for the poles to be outside of the right-of-way in most cases. So, in those cases, it -- any kind of expansion most likely won’t impact our poles. And for segment, I believe it’s the one that does -- Segment 54, it may or may not have -- be impacted by any kind of widening, but the rest -- anything else around -- along Toutant I can’t see it being impacted by any kind of widening in the future because -- just because the poles are wide enough -- I mean, I’m sorry, the poles are outside the right-of-way enough, the roadway right-of-way enough, to – they’ll be

⁵⁷ CPS Energy Ex. 14 at 10-11.

⁵⁸ CPS Energy Ex. 14 at 10-11.

⁵⁹ 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.

⁶⁰ *Initial Post-Hearing Brief of Brad Jauer and BVJ Properties, L.L.C.*, at 24.

⁶¹ *Joint Exceptions to the Proposal for Decision*, at 16.

clear whenever the road is widened. And I do have some contingency cost built into my estimates that could cover such a relocation in the future.”⁶²

The record evidence upon which the ALJs relied is clear that Mr. Lyssy did not agree the road would have to be widened—he merely indicated that if it occurred, it was not likely to impact any structures. Thus his testimony is not at all consistent with what the Filing Parties contend. Moreover, any concerns regarding road widening are purely speculative by the Filing Parties and are not expected to impact the project in any meaningful way.

Allegation: CPS Energy has not considered engineering constraints or significant costs involved with adding new circuits out of Substation Site 7.

CPS Energy Response: The significant testimony of CPS Energy’s expert witnesses is that they have fully evaluated and considered Substation Site 7 and, in their expert opinion, determined the site is suitable for the operation of the substation and there are no engineering constraints associated with building the substation at that site. It is, frankly, silly to suggest that CPS Energy is willing to propose a substation site for a needed multi-million dollar reliability project for which it has not “considered engineering constraints or significant costs.” The concerns raised by the Filing Parties are unfounded and speculative and not supported by the significant testimony of the engineering witnesses presented. A more detailed discussion of this issue is found in CPS Energy’s Post-Hearing Reply Brief at pages 29-31.

F. Costs

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.⁶³ Because Mr. Lyssy is an engineer, and not a real estate professional, the 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.⁶⁴ The real estate estimates for each tract were based on a per square foot cost based on the size, location, and type of property.⁶⁵ For a

⁶² Tr. Vol. 3 at 591:15 - 592:6.

⁶³ CPS Energy Ex. 11 at Exhibit SDL-1.

⁶⁴ CPS Energy Ex. 11 at 10.

⁶⁵ CPS Energy Ex. 11 at 10.

transmission line project of this size and voltage, CPS Energy typically requires 100 feet of operational clearances to safely operate the facilities. Although CPS Energy generally estimated real estate acquisition costs for the project based upon a 100-foot ROW, along roadways CPS Energy anticipates that it will be able to use 25 feet of roadway ROW without cost, based upon its prior experience with the governing bodies responsible for the roadways in the study area. Therefore, for all segments running along roadways, CPS Energy's cost estimates are based on acquiring only 75 feet of private ROW, with the other 25 feet of operational clearances necessary for the project coming from the roadway ROW.

The Filing Parties either misunderstand or misrepresent the evidence regarding CPS Energy's cost estimates. The Filing Parties conflate the evidence regarding the ROW costs associated with routes that run along Toutant Beauregard Road and other roadways. They argue that the cost estimates are contradictory and inconsistent because they are based upon only a 75-foot ROW whereas CPS Energy has indicated it will use a 100-foot ROW. The answer—which is set out above and which the ALJs clearly understood—is simple: CPS Energy will require 100 feet of operational clearances for nearly all segments of the project, including the vast majority of segments along Toutant Beauregard Road,⁶⁶ to safely operate and maintain the project facilities. For route locations along all roadways for the project, CPS Energy reasonably anticipates having to acquire only 75 feet of private easements (ROW) because it reasonably anticipates being able to use approximately 25 feet of roadway ROW for the remaining clearance needs. Because CPS Energy can use the estimated 25 feet of roadway ROW for the necessary project clearances without incurring an acquisition cost, the cost estimates for each segment along a roadway is based upon only a 75-foot private easement cost (ROW), which is the estimated amount of private ROW that CPS Energy reasonably anticipates having to pay for. However, even when paying for only 75 feet of private ROW, the overall clearance needs for the project are still expected to be 100 feet—namely, 75 feet of private ROW (for which acquisition costs are incurred) plus 25 feet of roadway ROW (for which no acquisition cost is anticipated to be incurred).

Although this is a relatively straightforward concept, the Filing Parties misrepresent the evidence as being contradictory. Nearly all of the supposed cost “inconsistencies” in the Filing Parties' exceptions are based upon this fundamental misunderstanding or misrepresentation. For

⁶⁶ There may be very small lengths where less than 100 feet of ROW is anticipated to be used, but these overall are insignificant and do not meaningfully impact cost estimates or engineering issues.

example, the Filing Parties argue there is a contradiction in the fact that CPS Energy estimates the same ROW costs for the entire length of Segment 54 even though CPS Energy indicated that less than 100 feet of total ROW would be utilized for approximately 1,300 feet of that segment. This is entirely consistent, because the total safety clearances required (i.e., 100 feet) and the ROW for which a cost is estimated to be needed (i.e., 75 feet) are different. When one understands the fact that the 75-foot private ROW needs used to determine acquisition cost estimates is different from the total clearance needs (100 feet) anticipated for the safe and reliable operation and maintenance of the facilities, the alleged contradictions are resolved. This was explained during the hearing, and the ALJs understood this concept and correctly found that the cost estimates are reliable for purposes of comparing routes against one another.

The Filing Parties also complain about other supposed errors in the cost estimates. Each is discussed below, with CPS Energy's response to each set out after:

Allegation: CPS Energy incorrectly valued some property as undeveloped when it clearly should be treated as developed property.

CPS Energy Response: The study area is rapidly developing, hence the need for new transmission infrastructure. However, this means that some areas that were considered "undeveloped" at the time cost estimates were prepared might be undergoing some level of development today. In a rapidly changing area, it is impossible to precisely capture every parcel's precise value, when estimates are based upon a moment in time. The important factor, which the ALJs found, was that CPS Energy's methodology was consistently applied for each route, making a cost comparison between routes reasonable. There are no deficiencies in CPS Energy's cost methodology and the cost estimates are reliable for purposes of comparing one route against another.

Allegation: CPS Energy has inconsistent cost data for Substation Site 7, varying between \$2.00 and \$3.00 per square foot.

CPS Energy Response: The spreadsheet workpapers do show different numbers in certain spots on the page noted by the Filing Parties. This was a typographical error. The cost projections for Substation Site 7, as reflected in the record evidence for each route, were based upon \$2.00 per square foot, which is the same valuation for Substation Site 6. Therefore, the cost data presented in the record is accurate. However, even if the Filing Parties were to contend that the higher valuation is more appropriate (which CPS Energy does not support), it results in an increase of approximately \$313,632 to the cost projections

associated with Substation Site 7. CPS Energy disagrees that the typographical error in the workpapers should have any impact on a decision in this proceeding.⁶⁷

Allegation: CPS Energy’s cost estimates for Substation Site 7 fail to account for its topography or unique characteristics.

CPS Energy Response: As discussed above, the record evidence demonstrates that there are no unusual features about Substation Site 7 that would result in a greater cost for the site.

Therefore, while the Commissioners may choose to weigh factors differently than the ALJs and may select a route other than that recommended by the ALJs, CPS Energy strongly disagrees with any contention that CPS Energy’s cost estimates are unreliable for purposes of comparing routes or that the ALJs failed to properly consider all appropriate factors in the PFD.

III. REPLY TO THE EXCEPTIONS OF OTHER PARTIES

A. Patrick Cleveland’s Exceptions

In his exceptions, Mr. Cleveland argues that “Route Z2 does not meet the Commission’s standards of prudent avoidance as it affects 37 habitable structures” First, Mr. Cleveland is mistaken, as Route Z2 has only 32 habitable structures within 300 feet of its centerline.⁶⁸ But, more importantly, the Commission’s policy of prudent avoidance is not merely a matter of numbers. In fact, the Commission has approved many transmission line projects with more than 32 habitable structures within 300 feet of the centerline of the route approved. The record evidence is clear that all routes in consideration comply with the Commission’s policy of prudent avoidance.⁶⁹ The Commission may certainly choose to give weight to lines that have fewer habitable structures, but no route presented for consideration is inconsistent with the Commission’s prudent avoidance policy.

Mr. Cleveland excepts to the determination that the High Country Ranch preserve was not characterized as a “park and recreational area.” As discussed above, this is a distinction without a difference. The Commission has ample information to consider the property and may assign whatever weight to it in the routing decision it chooses. Whether the property is formally

⁶⁷ See CPS Energy Ex. 17.

⁶⁸ CPS Energy Ex. 17.

⁶⁹ CPS Energy Ex. 2 at 8-9, 21; CPS Energy Ex. 7 at 5-7.

characterized as a park and recreational area is of no meaningful significance to the Commission's ability to consider it fully.

B. Dr. Lauren Pankratz's Exceptions

Dr. Pankratz continues to express concerns regarding the health effects from EMF. As the testimony in the record amply demonstrates, there is no evidence that EMF will present any adverse health risks to people, whether children or adults.⁷⁰ Importantly, while Dr. Pankratz is a physician, her testimony was admitted not as expert testimony regarding EMF, but only as a "statement of concern" to be "considered under the category of community values."⁷¹ 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. Attached to Mr. Marin's rebuttal testimony is a report demonstrating the expected EMF levels from the transmission lines proposed in this project.⁷² 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.⁷³ There simply is no evidence in this case that EMF exposure is a concern that would impact the selection of any route.

C. Michael and Beatriz Odom's Exceptions

In their exceptions letter, the Odoms make the incorrect assertion that Route Z2 "affects more habitable structures than any other route considered in this proceeding." This is not true, as Route Z2 has only 32 habitable structures within 300 feet of its centerline, compared to 72 for Route A. In fact, the majority of routes presented have more habitable structures within 300 feet of their centerlines than Route Z2.⁷⁴ They also contend that the substation associated with Route Z2 is located in a floodplain, which is not correct, as discussed previously in this reply.

IV. NEED

As noted in the introduction section, no parties have challenged the need for the project and many intervening landowners have affirmatively acknowledged the project's need. Therefore,

⁷⁰ CPS Energy Ex. 12 at 11 (Rebuttal Testimony of Adam Marin).

⁷¹ SOAH Order No. 10, at 2.

⁷² CPS Energy Ex. 12, attached exhibit ARM-5R.

⁷³ CPS Energy Ex. 12 at 13, and attached exhibit ARM-5R at 2-5.

⁷⁴ *See* CPS Energy Ex. 17.

the need for the project appears undisputed at this point. Recently, in Docket No. 50812, the Commission provided guidance on the type of evidence the Commissioners would like to see supporting need in certain types of CCN projects. Although the record was closed in this proceeding before the Commission's discussion in Docket No. 50812 and although need has been amply demonstrated in this case and no parties have contested it, for the benefit of the Commission's consideration of this proceeding, CPS Energy provides the following general responsive discussion to the Commission's recent guidance in transmission line certification proceedings.

In Docket No. 50812, the Commission considered a CCN application that was proposed by Rayburn Country Electric Cooperative, Inc. (Rayburn) to serve a specific, identified new load (a new water treatment facility) that would have significant demand requirements, as well as general load growth in the area. In that docket, Commissioner McAdams issued a memo dated July 14, 2021, which expressed concerns regarding whether the need associated with a specific new load could better be addressed through a distribution alternative rather than new transmission facilities. Accordingly, Commissioner McAdams issued a memo to "send a clear signal" of what the Commission wanted in "factually similar proceedings to the present matter." The memo proposed a listing of items Commissioner McAdams would like to see in the evidentiary record in "future matters like this one."

As is clear from the memo, Commissioner McAdams was addressing cases where the primary driver of the transmission project was a new specific load associated with a particular customer. He indicated he was giving guidance for the handling of "factually similar proceedings to the present matter," and then went on to state "In the present matter, Rayburn, a transmission-only electric cooperative, requests our approval to construct a short, radial transmission line to serve a new concentrated load *associated with a water treatment plant* and to address general load growth within the service area of one of its member distribution cooperatives." His focus on such situations is demonstrated by some of the evidence he indicates he would like to see. For example, Commissioner McAdams indicated that he would like to see a comparative cost analysis between distribution options and the proposed transmission facilities that "isolates the distribution alternatives costs to support the new or additional load from general load growth."

CPS Energy does not believe this case is factually similar to Docket No. 50812. In this case, there is no specific new load that is driving the need, but rather the need is driven by a combination of significant general load growth in the area, as well as reliability concerns from the

lengthy distribution lines necessitated by the absence of a substation in the local area. Accordingly, this case is distinguishable from Docket No. 50812 and some of the evidence Commissioner McAdams discusses would not be applicable nor relevant in a case like this.

However, CPS Energy is cognizant of the Commission's concerns regarding the demonstration of need and finds it appropriate to direct the Commissioners to portions of the evidentiary record in this docket that address the types of concerns raised by Commissioner McAdams. As noted previously, CPS Energy commissioned a detailed need study by the consulting firm of Burns McDonnell, and this study is in the record as Attachment 13 to the Application.⁷⁵ Moreover, that study noted that some of the data came from the City of San Antonio's Comprehensive SA Tomorrow Plan, an exhaustive plan designed to study and address the growth throughout the San Antonio area in a comprehensive manner. The detailed testimony of Mr. George Tamez discusses the need for the project and the various alternatives that were considered.⁷⁶ To the extent the Commissioners have any questions regarding need, those items in the record should provide clarity on the project's need.

V. 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.

⁷⁵ CPS Energy Ex. 1, Attachment 13.

⁷⁶ CPS Energy Exs. 10 and 13.

Respectfully submitted,

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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