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Received - 2021-10-15 02:39:44 PM
Control Number - 51023
ItemNumber - 895

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

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

**BEXAR RANCH, L.P. AND GUAJALOTE RANCH, INC.'S REPLY
TO THE EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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NOW COME BEXAR RANCH, L.P. and GUAJALOTE RANCH, INC., Intervenors, and together file this, their Reply to the Exceptions to the Proposal for Decision, fully **supporting the Proposal for Decision**, which recommends **Route Z2**, the least costly route that excels on all applicable routing factors.

Bexar Ranch, L.P. and Guajalote Ranch, Inc. are two large, undeveloped properties located in the southern and middle portions of the study area. These two large ranches lie quietly and peacefully immediately adjacent to the neighborhoods known in these proceedings as SHLAA (which includes over 700 individual landowners) and Clearwater Ranch (a large-acre neighborhood with several residents).¹ Opponents of the Proposal for Decision would have CPS Energy's transmission line cut through these large undeveloped ranches and through these established but still growing neighborhoods rather than along Toutant Beauregard Road, a major utility corridor in the Study Area that has already been impacted by electric distribution lines, gas and water pipelines, traffic crossing systems, art-deco, and a highly-visible communications tower.² The Proposal for Decision is a thorough and well-reasoned recommendation that fully adheres to the applicable routing factors. The Administrative Law Judges are correct in recommending Route Z2.

¹ SHLAA Ex. 1 at p. 1; Clearwater Ranch Ex. 1-23, including Exhibit A to each.

² CPS Energy Ex. 15, Rebuttal Testimony of Lisa B. Meaux, at 13:8-15; 14:24-28; 19:25-29.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY.

The Administrative Law Judges correctly stated, “No party challenged the sufficiency of CPS Energy's notice or asserted that a directly affected landowner had not been properly noticed in this proceeding.”³ Now the complaint is that CPS Energy did not provide *additional notice not required under the law*. While they explicitly state they do not except to Notice⁴ the Joint Exceptions still claim that notice requirements were not met because an intervenor not entitled to notice was denied intervenor status when he requested it at the hearing on the merits.⁵ The Joint Exceptions then claim that this alleged failure of notice “demonstrate[s] that the PFD’s related findings and conclusions are arbitrary and capricious.”⁶ As fully explained in the PFD, this claim is without merit.⁷ And, given all the forms of notice provided by CPS Energy, it was correct to conclude that CPS Energy complied with the notice requirements of 16 Tex. Administrative Code §22.52.⁸ Exceptions calling for additional notice or a second open house are without merit and should be disregarded.⁹

³ Proposal for Decision at pages 2-5.

⁴ See Footnote 1 to Joint Exceptions filed by Anaqua Springs HOA, Brad Jauer, BVJ Properties, LLC, Strait Promotions, Inc. and Rose Palace, Inc.

⁵ Joint Exception at 5-6; see also Proposal for Decision at Footnote 5.

⁶ Joint Exceptions at 6.

⁷ See Proposal for Decision at page, Footnote 5 (emphasis added). Specifically, the Administrative Law Judges explained: “Some intervenors claimed that CPS Energy unfairly provided mailed notice of the Application to landowners who were not required to receive notice, and did not provide notice to other similarly-situated landowners. Specifically, intervenors assert that landowners adjacent to proposed Substation 6 were notified, but landowners adjacent to Substation 7 were not. One landowner, Scott Luedke, with property adjacent to Substation 7 (but outside the required notice distance) made a motion to intervene during the hearing on the merits, which was denied by the ALJs. 16 Texas Administrative Code (TAC) § 22.52(a)(3) requires that mailed notice be provided to owners of land containing a habitable structure within 300 feet of the centerline of a transmission line of 230 kV or less and to owners of land over which an easement or other interest would be obtained. According to CPS Energy, some of the landowners adjacent to Substation 7 were not within 300 feet of the centerline of any segment, so they did not receive mailed notice. All landowners required by rule to receive mailed notice received it. In addition, Anaqua Springs Ranch Homeowners' Association (Anaqua Springs) and BVJ Properties, LLC and Brad Jauer (Jauer) complain that a second open house meeting was not held after Substations 6 and 7 were added and Segment 12 was eliminated. 16 TAC § 22.52(a)(4) requires that at least one public meeting (i.e., open house) be held prior to the filing of an application that requires 25 or more people to receive mailed notice of the application. CPS held the required open house meeting. Subsequently, the additional landowners affected by the changes to the routes that were ultimately included in the Application and who were required to receive notice received mailed notice. Therefore, the ALJs conclude that CPS Energy met all requirements with respect to notice and public meetings.”

⁸This included mailing notices to each owner of land directly affected by the construction of the project, to county and city governments, to neighboring utilities, and to other interested entities, as well as to newspaper publication. See Proposal for Decision at pages 2-5.

⁹ Lauren Pankratz, M.D., filed exceptions and claimed without any supporting data that the parents of children who attend the school should have also received notice. While there is no evidence that these parents did not receive

II. APPLICABLE LAW AND FOCUS ROUTES.

The Administrative Law Judges properly considered the applicable routing factors to determine that Route Z2 is the best meets route.¹⁰

III. APPLICATION.

Preliminary Order Issue No. 1: Is CPS Energy's Application adequate?

The Administrative Law Judges correctly concluded that CPS Energy's Application is adequate as it contains an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation.¹¹

Patrick Cleveland excepted to route adequacy.¹² His exception refers to three documents he filed related to the route adequacy hearing held on December 10, 2020 (which resulted in a finding that the application was adequate).¹³ These three documents illustrate that Mr. Cleveland did not contest whether there was "an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation" but rather that he took issue with the configuration of certain segments and advanced his desire for a new proposed route.¹⁴ This new proposed route would travel along Toutant Beauregard Road, **following much of what is Route Z2**, with a turn toward Balcones Creek (to the north). Mr. Cleveland touted the benefits of his proposed route as follows:¹⁵

notice directly from CPS Energy or by the local newspaper, Dr. Pankratz puts forth no evidence that such notice was required here. See Exceptions of Lynn Ginader and Lauren Pankratz at 1. Mr. Steven Herrera excepted to the Proposal for Decision because no second open house was held, claiming people were not able to participate. However, there were over 150 intervenors in these proceedings and numerous protesters. There is no evidence of record to support his claim that the absence of a second open house would have caused additional intervention or participation by these un-identified individuals.

¹⁰ Proposal for Decision ("PFD") at 8. Route Z2 is the shortest (at 4.46 miles) and the least costly route (\$37,638,580) of all proposed routes.

¹¹ Proposal for Decision at 9-10 and footnote 31.

¹² Cleveland Exception at 1-2, 11 (citing Document Nos. 390, 402, and 416).

¹³ See Item No. 425 (SOAH Order No. 5); At the time of the hearing, the Application included 29 alternative routes, 57 segments, 5 tap-in locations (on the west) and 7 substation sites (on the east), all in a relatively compact study area measuring approximately 31 square miles, or 5.2 miles long by 6.1 miles wide. At the time of the hearing 14 of the 29 routes crossed Bexar Ranch.

Cleveland Exception at 1-2, 11 (citing Item Nos. 390, 402, and 416).

¹⁴ See Item Nos. 390, 402, and 416.

¹⁵ See Item No. 402 at page 4.

7	Code § 25.101. This obvious route is one that follows Toutant Beauregard Road to Balcones
8	Creek. First, such a route would follow Toutant Beauregard Road, a two lane highway. Second,
9	there are existing electrical distribution lines along the entire length of such route. Third, such a
10	route would follow property lines. Finally, such a route would adhere to prudent avoidance. In
11	

While a route to Balcones Creek is not advanced by Bexar Ranch or Guajalote Ranch, it is noted that in advancing the benefits of a proposed route that resembles Route Z2, Mr. Cleveland confirmed the rationale of the PFD as to (1) route adequacy and (2) the selection of Route Z2.

IV. ROUTES/PRELIMINARY ORDER ISSUE NO. 4.

Preliminary Order Issue No. 4: Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 Tex. Admin. Code (TAC) § 25.101(b)(3)(B)?

The Administrative Law Judges recommend **Route Z2** for many reasons, including that it:

- takes advantage of donations by landowners (the “Dreiss Agreement”);
- is the shortest and least expensive of all proposed routes;
- reduces the visual disturbance to the study area by using an existing transportation and utility corridor (i.e., Toutant Beauregard Road);
- has limited impact on the nearby school;
- it does not enter significantly into private property except with landowner agreement;
- uses Substation 7, which has potential to be shielded from view (larger, heavily vegetated lot);
- meets the Commission's standards for prudent avoidance;
- does not cross within 1,000 feet of any parks and recreational areas;
- satisfies the TPWD recommendations by using PUC Staff's proposed ordering paragraphs;
- reduces the impact to modeled Golden Cheeked Warbler (GCW) habitat and upland woodlands/brushlands, and protects environmental integrity;
- has moderate impact to historic and cultural values;
- has no unmanageable engineering constraints; and
- parallels existing ROW and property lines for 71% of its length.¹⁶

¹⁶ Proposal for Decision at 22-23 (emphasis added).

A. Background.

CPS Energy initially identified Route Z as the route that best addressed the Commission's routing criteria.¹⁷ After CPS Energy amended its Application, Route Z was "functionally replaced" by Route Z1.¹⁸ Route Z2 is an intervenor-identified route that shortens Route Z1 by using Segment 46 instead of Segment 46a.¹⁹ Route Z2 is the shortest (4.46 miles) and least costly route (\$37,638,580), and Z1 is the second shortest and third least costly route.²⁰

B. Community Values.

The Administrative Law Judges conducted an extensive analysis of Community Values. However, as will be shown, the Joint Exceptions filed by Anaqua Springs HOA, Brad Jauer, BVJ Properties, LLC, San Antonio Rose Palace, Inc., and Strait Promotions (the "Joint Exceptions") mischaracterize the Administrative Law Judges' analysis in significant ways. Mr. Cleveland's exceptions on this factor include a "bisect" argument; take issue with SHLAA's alliance of neighborhoods (although Cleveland admits he has no legal basis to dispute this group); dispute CPS Energy's definition of "parks" (to addressed in the "Recreational and Park Areas" factor below); take issue with the Administrative Law Judges stating that Bexar Ranch and Guajalote Ranch are the "largest remaining rural properties in the study area" (which they are, but Mr. Cleveland wants High Country Ranch and the Barrera properties to round out the list as third and fourth); and illustrate confusion about which segments cross the school property.²¹

The Administrative Law Judges explained that information reflecting Community Values was gathered by CPS Energy from comments from state and federal agencies and local officials,

¹⁷ Proposal for Decision at 24 and 26 (citing CPS Energy Exs. 1, 2 and 9).

¹⁸ Proposal for Decision at 26 (citing CPS Energy Ex. 12).

¹⁹ CPS Energy Ex. 16; Dreico Companies Brief at 2-3.

²⁰ B.R. Ex. 12.

²¹ Cleveland Exceptions at 2-9, 11, 12.

as well as from the public via an open house, letters, emails, and 186 questionnaire responses.²²

In terms of Community Values, the top three responses from those questionnaires were:

- Impact to residences: 108 (58%)
- Visibility of structures: 11 (6%)
- Proximity to schools, places of worship, cemeteries: 4 (2%)

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000189

1. Maximizing Distances from Residences: Habitable Structures.

The Joint Exceptions argue that the Administrative Law Judges applied a new standard of analysis – this is false. The Joint Exceptions take issue with the Administrative Law Judges studying the “nature of the impact” of the project on neighborhoods.²³ To be clear, CPS Energy’s questionnaire data tabulated “impact to residences,” generally, not “impact to habitable structures” as the community’s top concern.²⁴ The Joint Exceptions contend that “impact to residences” can only be studied by counting habitable structures and not by looking at neighborhoods (like SHLAA and Clearwater Ranch) that have residences within them. The Joint Exceptions’ analysis falls flat for many reasons, including because (1) that is not what the questionnaires measured; (2) “habitable structures” are included and accounted for under the “Prudent Avoidance” factor (although as will be seen, the Administrative Law Judges also considered habitable structures when considering Community Values);²⁵ and (3) there is substantial evidence of record that the SHLAA and Clearwater Ranch neighborhoods’ residences

²² Proposal for Decision at 27.

²³ Joint Exceptions at 5.

²⁴ CPS Energy Ex. 1 at 6-2, page 000189.

²⁵ Compare Proposal for Decision at Section IV.B with Section IV.C.

would be impacted by Routes P and R1 as those routes would indeed run through these neighborhoods for substantial lengths.²⁶

Even if the analysis of Community Values should only be “impact to *habitable structures*,” which is denied, the Joint Exceptions do not explain the location of the habitable structures on Route Z2, namely that 21 of the 32 habitable structures associated with Route Z2 are located on the other side of Toutant Beauregard Road and on the other side of existing distribution lines on properties that would not get the transmission line.²⁷ Thus the “1-in-5” front yard reference in the Joint Exceptions is misleading at best. The Joint Exceptions also do not address that Routes P and R1 have no major roadway like Toutant Beauregard or Scenic Loop Road to provide a buffer between homes. and that Routes P and R1 actually run across the interior of these neighborhoods for a significant distance and in a non-linear, jagged manner where there are over 700 residents.²⁸

While the Joint Exceptions seems to argue that neighborhoods like Serene Hills and Scenic Hills are equivalent to SHLAA and Clearwater Ranch, they fail to mention that many of the homes in Serene Hills and Scenic Hills (1) already face Toutant Beauregard Road and its existing distribution line in that section (which is not the case for SHLAA and Clearwater Ranch residents); (2) that Route Z2 borders but does not cut into the interior portions of Serene Hills and Scenic Hills (which is not the case for SHLAA and Clearwater Ranch); and (3) that residents of SHLAA and Clearwater Ranch went to great expense to bury their distribution lines.²⁹

²⁶ CPS Energy Ex. 16. Ronald Schappaugh takes exception to Route Z2 because he erroneously claims that Z2 “is the only route that literally runs through the front yards of private homes.” Schappaugh Exception at 1. This statement is not accurate and ignores the testimony of the residents of the Clearwater Ranch and SHLAA subdivisions and the description of route segments included in the Application.

²⁷ Tr. pg. 231, Ln. 13 – pg. 232, Ln. 19; see also Bexar Ranch Ex. 13, page 44 (Table 4-28).

²⁸ CPS Energy Ex. 16.

²⁹ SHLAA Initial Brief at 7 and Clearwater Initial Brief at 4; Clearwater Ex. 21 (Stevens Direct) at 7. PFD at 44.

Despite allegations to the contrary by the Joint Exceptions, the Administrative Law Judges did in fact consider habitable structures as well, which seems to be the Joint Exceptions chief complaint.³⁰ The Administrative Law Judges described the land use in the area as “primarily residential, mostly suburban, and some rural” and noted that “all routes have habitable structures within 300 feet of the route centerline, ranging from a low of 12 to a high of 72” with an average of 37 habitable structures per route.³¹ Thus, Route Z2’s habitable structure count is below the average. Furthermore, allegations in the Exceptions of Michael and Beatriz Odom that “Route Z2 affects more habitable structures than any other route” is incorrect.³²

After discussing the various positions of the intervenors, the Administrative Law Judges noted that “no route selection will satisfy all intervenors’ interests” and that “[i]n the context of tough choices, the ALJS conclude that community values require the *nature* of the impact to habitable structures to be scrutinized as well as the sheer *number* of structures affected.”³³

In this regard, the Administrative Law Judges’ analysis correctly determined that while Routes P and R1 affect fewer habitable structures than other routes, Routes P and R1 “are far more damaging to the habitable structures they do affect, cutting through and bisecting existing neighborhoods.”³⁴ The Administrative Law Judges correctly noted that the northern routes (like Route Z2) typically follow property lines while the southern routes “cut through” SHLAA and Clearwater Ranch subdivisions and “cut deeply into” Bexar Ranch and Guajalote Ranch.³⁵

³⁰ Proposal for Decision at 41.

³¹ Proposal for Decision at 29 (citing CPS Energy Ex. 1; Transcript at 125).

³² Exceptions of Michel and Beatriz Odom at 1.

³³ Proposal for Decision at 41.

³⁴ Proposal for Decision at 41.

³⁵ Proposal for Decision at 41. In the section entitled “ALJ’s Analysis” the Administrative Law Judges also discussed the inappropriate request by Anaqua Springs HOA (“Anaqua”) and Brad Jauer and BVJ Properties, LLC (“Jauer”) that the positions of Save Huntress Lane Area Association (“SHLAA”), made up of three residential subdivisions (Altair, Canyons and Huntress Lane) be given “less weight” because of the (erroneous) contention that SHLAA is “geographically disparate.” Proposal for Decision at 40. (Anaqua and Jauer are wrong. These subdivisions are contiguous.) Noting the inconsistency - that Anaqua Springs and Jauer made arguments in support of other subdivisions that those subdivisions did not make for themselves (and that those other subdivisions are

While the Joint Exceptions point to the residence of Raul Figueroa (who advances Route AA1) to illustrate an impacted resident,³⁶ they ignore the residences of Mariana and Francis Van Wisse, Joe Acuna, the Davilas, and the Cohens who each have modest homesites that will be crossed by Routes P and/or Route R1, or the Garcias whose home will be very close.³⁷

Notably, Mr. Cleveland acknowledges that these families will in fact have their properties crossed (along with the Keustermanns),³⁸ but he avoids the additional point which is that Routes P and R1 go into these neighborhoods for substantial lengths, and not in a linear way – rather, Routes P and R1 each run horizontally, vertically, and jaggedly through these neighborhoods.³⁹ Then, Mr. Cleveland’s exceptions inexplicably claim that Route Z2 “bisects” a multitude of tracts.⁴⁰ While Mr. Cleveland criticizes the Administrative Law Judges use of the term “bisect” (insisting it only means to “cut in two equal parts”), the majority of the tracts he erroneously claims are “bisected” by Route Z2 follow property lines.⁴¹ Indeed, these are the same tracts that he claimed “followed property lines” at the Route Adequacy Hearing referenced above.

located on different segments than Anaqua Springs and Jauer) – the Administrative Law Judges rejected Anaqua and Jauer’s request and instead stated they gave “due weight” to all arguments made. Proposal for Decision at 40.

³⁶ As noted in his Exceptions, Mr. Figueroa’s property is not crossed by Route Z2, although Segment 46b crosses behind his property. He recommends use of Route AA1, which is very similar to Route Z2. There is no evidence that this project will compromise cell phone or internet coverage or cross Mr. Figueroa’s water well. By way of information, Route AA1 is the second least costly route. BR Ex. 12; CPS Energy Ex. 17.

³⁷ See Clearwater Brief at 7. CPS Energy Ex. 1 at 204 (Figure 6-5); CPS Energy Ex. 1 at Attachment 7; Transcript at 184:14 – 186:9. Segment 15 was modified from its original configuration and now running “partially on the interior” of property owned by the Cohen Living Trust. Transcript at 184:14 – 186:10. CPS Energy Exhibit 1 at Figure 6-5, at 000204 and 6-7, at 000208 (showing further bisecting on the Davila Trust and Cohen Trust properties, for example). See CPS Energy Ex. 1, at Figure 6-2 and Page 2-11 (Figure 2-3) (emphasis added); *see also* CPS Energy Ex. 16. CPS Energy Ex. 1 at Figure 6-7; CPS Energy Ex. 1 at 208 (Figure 6-7); CPS Energy Ex. 1 at Attachment 7 (Landowner Notice List); Transcript at 683:18 – 684:5. Segment 26 was modified and is no longer routed along the property boundaries of a pipe-shaped property and instead routed “sort of in a semi-curved fashion through the stem of the pipe.” Transcript at 187:10-23.

³⁸ Cleveland Exception at 11.

³⁹ See CPS Ex. 16.

⁴⁰ Cleveland Exception at 3 and 5.

⁴¹ See CPS Energy Ex. 1 at Attachment 6 (Amended) and Attachment 8 (amended).

For example, Cleveland references the tracts owned by the parties filing the Joint Exceptions as being “bisected” – which they are not.⁴²

- Anaqua Springs HOA (C011): (boundary line along Toutant Beauregard Road; habitable structure is a guardhouse; existing distribution line on property);
- Brad Jauer/BVJ Properties (C014): (boundary line along Toutant Beauregard Road; no habitable structures; existing communication tower; existing distribution line on property); and
- Strait Promotions (A079): (boundary line along Toutant Beauregard Road; no habitable structure; existing distribution line on property).

Mr. Cleveland also claims the following tracts are “bisected”, which is also incorrect.

- ASR Parks, LLC (B010, C013, C016): (boundary line along Toutant Beauregard Road; no habitable structure); and
- Investments DE MF Group, LP (C026, C027, A80): (boundary line along Toutant Beauregard Road; no habitable structure; existing distribution line on property)(non-intervenor).

Mr. Cleveland also excepts to these findings because he contends that “the number of properties affected” should have been analyzed and that the Administrative Law Judges placed too much weight on whether a neighborhood was “bisected.”⁴³ Mr. Cleveland is incorrect that there is a routing standard that would look to “the number of properties affected.”

With respect to the substation sites at issue (Substations 6 versus 7) and their impact, both are near residential subdivisions – and both abut SHLAA.⁴⁴ The Administrative Law Judges found it persuasive that “the SHLAA members whose properties will be affected by Substation 7 still prefer Substation 7 to Substation 6, as Substation 6 connects to routes that will then cut

⁴² Although Rose Palace is one of the parties filing the Joint Exceptions, Rose Palace is not located on Route Z2.

⁴³ Cleveland Exception at 3.

⁴⁴ CPS Energy Ex. 16.

through their neighborhood and bisect some residents' properties.”⁴⁵ Route Z2 uses Substation 7, the route preferred by residents impacted by both Substations 6 and 7.

The Administrative Law Judges concluded their analysis of this Community Values subset by noting that they found Mr. Harold Hughes' testimony to be persuasive, notably, “that in these circumstances of rapid growth, the precise number of habitable structures is not stable and closer attention should be given to factors such a route length, cost and paralleling.”⁴⁶ As such the Administrative Law Judges found “the nature of the disruption to habitable structures – regardless of the exact count – is worse for the habitable structures that are affected if a southern route is chosen.”⁴⁷ These “southern routes” are the routes that cut into and run within the SHLAA and Clearwater Ranch residential subdivisions. Thus, the Administrative Law Judges correctly found that Route Z2 best comports with Community Values in these proceedings.

In summary, none of the exceptions presented competent evidence to refute the analysis of the Administrative Law Judges as it relates to this subset of Community Values, much less as to the overall selection of Route Z2. There was no “impact to habitable structures” test that was required, and a “new *ad hoc* legal standard” was not used. The Administrative Law Judges were not “arbitrary, capricious, incomplete or inaccurate” as the Joint Exceptions claim. Instead, the Administrative Law Judges thoroughly and correctly analyzed “impact to residences” and found the impact on Route Z2 was less than on others, to include Routes P and R1.

⁴⁵ Proposal for Decision at 42.

⁴⁶ The notion of rapid growth is prevalent in the record. For example, Betsy Omeis of Serene Hills near Toutant Beauregard Road described how the area has changed due to “light pollution, commercial development, increased traffic, and ‘expansive homes’” and complained that CPS Energy’s project was to “fuel the newer, larger houses and neighborhoods, quickly multiplying by the hundreds and thousands of people demanding electricity.” Proposal for Decision at 30-31 (citing Omeis Initial Brief).

⁴⁷ Proposal for Decision at 42.

2. Visibility of Structures.

The visual impact of the line was the community's second-ranked concern (6% of responses). As to the visibility of Substation 7, the Joint Exceptions admit that Substation 7 is more vegetated and offers "greater visual shielding."⁴⁸ (Route Z2 uses Substation 7.) The evidence also shows Substation Site 6, which is highly visible and smaller than Substation Site 7, has no documented shielding opportunities.⁴⁹ The Joint Exceptions do not dispute that Routes P and R1 would be visible by Bexar Ranch, Clearwater Ranch and SHLAA.⁵⁰

Notably, in one breath, the Joint Exceptions dispute existing visual fragmentation along Toutant Beauregard Road, while in the next breath, they described a variety of public infrastructure existing alongside Toutant Beauregard Road.⁵¹ Indeed, some of the Joint Exceptions' Intervenor (Anaqua Springs HOA, Brad Jauer, and BVJ Properties) testified that Toutant Beauregard is a highly "congested" roadway that already hosts within its right of way natural gas and water pipelines and electric distribution lines, and a recently added microwave transmission corridor.⁵² Toutant Beauregard also has traffic crossing systems in place.⁵³ While the Joint Exceptions claim "only" the distribution lines along Toutant Beauregard are above ground (ignoring the existing, highly visible microwave/communication tower discussed later), the Joint Exceptions fail to mention that the residents of SHLAA and Clearwater Ranch went to great expense to bury their distribution lines so they would not be visible.⁵⁴ Furthermore, the Segment 43 on Bexar Ranch (a component of Routes P and R1) follows "the path of a sightseer

⁴⁸ Joint Exceptions at 10.

⁴⁹ BR Ex. 6 at 11:17-12:2 and 17:5-6; BR Ex. 7 at 25:3-7; Transcript at 741:15-22; CPS Energy Ex. 16.

⁵⁰ Joint Exception at 7.

⁵¹ Joint Exceptions at 10 (admitting to water and gas pipelines, the existing distribution line, and road). See also testimony of Mark Anderson on behalf of several of the Joint Exception Intervenor, at AS Jauer Ex. 1, Direct Testimony of Mark D. Anderson, at 8:1-3.

⁵² AS Jauer Ex. 1, Direct Testimony of Mark D. Anderson, at 8:1-3.

⁵³ Hearing Transcript at 921:4-10.

⁵⁴ SHLAA Initial Brief at 7; Clearwater Initial Brief at 4; Clearwater Ex. 21 (Stevens Direct) at 7. Proposal for Decision at 44.

trying to take in as many of the most spectacular natural features and scenic views as possible” including two of Michael Bitter’s favorite spots: “the saddle” between the twin peaks and “the ridge.”⁵⁵ Segment 43 crosses some of the highest points and would be very visible.⁵⁶

Here, the Administrative Law Judges correctly noted that “Toutant Beauregard [which Z2 parallels for most of its length] is an *existing roadway* that hosts distribution lines, a cell phone tower, and natural gas and water pipelines. The environment and visual landscape have already been fragmented along the road ... [and] clustering visual disturbances on an *already-used thoroughfare* limits the harm caused, by following neighborhood boundaries rather than cutting into neighborhoods and going on to land *with no existing above-ground lines*.”⁵⁷ “Route Z2 limits the visual impact of the lines by using an *existing corridor*; does not introduce visual disturbance into the center of neighborhoods; preserves the largest tracts of undisturbed rural land; reduces the harm to High Country Ranch by following the northern boundary of the property instead of cutting through the recreation area; and presents an opportunity to visually screen the substation if Substation 7 is used. It also avoids the visual impact to homes along Route P, including Mr. Cichowski’s residence [who lives in the Anaqua Springs subdivision and has views toward Clearwater Ranch, Bexar Ranch, and SHLAA where Routes P and R1 would run] and the residences in Clearwater Ranch.”⁵⁸

3. Proximity to Schools.

“Proximity to schools, places of worship and cemeteries” was noted as the community’s third-ranked concern (2% of responses) – ***only 4 responses***.⁵⁹ With respect to this concern, once

⁵⁵ BR Ex. 2 at 17:10-15.

⁵⁶ BR Ex. 2 at 19:1-2. BR Ex. 3 at 21:8-9.

⁵⁷ Proposal for Decision at 50 (emphasis added).

⁵⁸ Proposal for Decision at 50-51 (emphasis added).

⁵⁹ CPS Energy Ex. 1 at pages 6-2 through 6-3 (original application) as described in footnote 33 to Anaqua Brief.

again, the Administrative Law Judges thoroughly reviewed and considered the record evidence and the competing arguments.⁶⁰

The Evidence. Here, it is undisputed that the evidence⁶¹ shows that schools “regularly locate and develop school properties adjacent or in close proximity to existing transmission lines” and that as shown in photographs entered into the record, Northside Independent School District has at least eight elementary schools that have electric transmission lines near them, with at least one having a substation next door to it as well.⁶²

According to Dr. Mark Turnbough who testified on behalf of Bexar Ranch, the McAndrews School is not atypical of tracts dedicated or donated to governmental entities in which new housing subdivisions are being developed, and in this instance, the school is adjacent to and/or houses drainage easements and a wastewater treatment plant.⁶³ The school’s playground is fenced, has layers of perimeter fencing to include barbed wire, and there is a thicket of trees, a bus loop, and a sizable drainage ditch between the school and Segment 42a.⁶⁴ In fact, there are two very large drainage easements on the campus.⁶⁵

⁶⁰ Proposal for Decision at 51-54.

⁶¹ Mr. Marin of CPS Energy testified that CPS Energy owns and safely operates a number of transmission facilities that are on or in close proximity to school properties, including several campuses operated by the Northside Independent School District. Mr. Marin also testified indicated that he is personally aware of numerous other instances throughout the CPS Energy service territory of both public and private school campuses located adjacent to and even operating facilities (such as parking areas, driveways, athletic fields, and running tracks) within CPS Energy transmission line rights of way. Mr. Marin noted that in his experience, “school districts regularly locate and develop school properties adjacent or in close proximity to existing transmission facilities. In many cases, the areas along the perimeter of a school property, in which transmission facilities are located, are used by the school for recreational areas, parking, drainage, utilities, and driveways, all of which are land uses highly compatible with transmission lines. Mr. Bitter and Dr. Turnbough provided photographs of 8 NISD elementary schools with electric transmission lines on or near the school property, and one school was next door to a substation. Ex. 7 at 26:6-13 and MB-18 (photographs of schools). Ex. 6 at 13:20-14:13; Exhibit Rebuttal MT-1 (schools). Transcript at 763:17-764:1 (Ms. Keck explained the basis for her support of segment 42a, which “does not cross the entrance/exit, is behind the school, and away from where the children play” stating, “It’s along the border of the property, but it doesn’t cross. ... I mean we go to the school all the time, but it still is not across the property.”)

⁶² Proposal for Decision at 53 (citing CPS Energy Ex. 12 and Bexar Ranch Ex. 6).

⁶³ BR Ex. 6 at 13:15-19.

⁶⁴ BR Ex. 7 at 25:18-26:1.

⁶⁵ BR Ex. 7 at 26:1-2 (emphasis added); *see also* photographs included in BR Ex. 7. Ronald Schappaugh takes exception to Route Z2 because he claims the “school will literally be in the shadow of the powerline.” Schappaugh

Thus, while the parties to these proceedings vary in the distances they claim separate the school and Segment 42a, the evidence shows that the school and Segment 42a are on different properties with different owners and are currently separated by a number of obstacles. Relatedly, the Joint Exceptions brought forth zero evidence to support their attractive nuisance theory, as evidenced by no citation to any evidence of record. Mr. Cleveland states that Route Z2 would increase the impact to the school and a future middle school.⁶⁶ Mr. Cleveland is confusing segments. Route Z2 uses **Segment 42a** which does not cross the Northside Independent School District (NISD) property. NISD identified **Segment 41** as one that may impact a future middle school, and Segment 41 is not part of Route Z2.

Ultimately, it should not be overlooked that NISD would not have any of its property crossed by Route Z2, and that Route Z2 would not cross in front of the school either.⁶⁷ Furthermore, residents **throughout the study area** have children who attend the existing school, including families living the SHLAA and Clearwater Ranch neighborhoods, who did not take issue with Route Z2.⁶⁸ The Administrative Law Judges found it credible that there are numerous instances of NISD schools being located close to transmission lines and even a substation near one of its school, and found “no record evidence of children attempting to play on or being injured by those structures.”⁶⁹ They added, “[t]he fact that parents of children currently attending the school are comfortable with Segment 42a is an indication that Route Z2 (as well as AA1, AA2, and Z1) would address the community’s legitimate concerns about the school.”⁷⁰

Exception at 1. Given the distance and several obstacles between the school and Segment 42a, including a thicket of trees, Mr. Schappaugh’s assertions are unfounded.

⁶⁶ Cleveland Exception at 3.

⁶⁷ CPS Energy Ex. 16.

⁶⁸ Proposal for Decision at 54.

⁶⁹ Proposal for Decision at 54.

⁷⁰ Proposal for Decision at 54. See Exceptions of Lynn Ginader and Lauren Pankratz at 1. Lauren Pankratz, M.D. is a resident of Anaqua Springs HOA. Her exception focuses on her concerns about Segment 42a, which is not on the school grounds or on Anaqua Springs property, and potential EMF from 42a. Dr. Pankratz specifically identified herself as not being an expert in EMF and thus her testimony and/or concerns should not be given any additional

NISD's position in its briefing was that it opposed specific segments which are not included in Route Z2.⁷¹ Exceptions filed by Toutant Ranch, Ltd. and ASR Parks, LLC (the "Dreiss Interests," discussed in the "Costs" section below) who own the property that Segment 42a would cross, do not oppose Route Z2 insofar as the current alignment of Segment 42a is not moved closer to their remaining property.⁷² Of course, the Dreiss Interests' consent is required for such a modification, and their position is reasonable.

A Second Open House Was Not Required. The Joint Exceptions admit that only one "open house" (public meeting) is required under the Commission's Rules.⁷³ Still, some exceptions⁷⁴ claim that Route Z2 should not be chosen because there was not a second open house, erroneously claiming there was "no meaningful public participation" without the second open house.⁷⁵ These arguments are without merit. As the Proposal for Decision states, after the open house, twenty-five additional landowners were given notice of the project, and thereafter, over 150 parties were granted intervenor status in these proceedings.⁷⁶ Notice was given because

weight now. See CPS Ex. 25, pages 59-61 and page 64 and BR Ex. 40, 41, 42, 43, 44 (Dr. Pankratz and admits that she is not providing testimony as an expert regarding electric and magnetic fields, that she is not providing testimony as a medical expert regarding potential health effects of electric and magnetic fields, and that she is not providing expert testimony regarding any issue in these proceedings). Michael and Beatriz Odom also filed Exceptions. Their criticism of the PFD focuses on EMF. Odom Exception at 1. Ginader, Pankratz and the Odoms do not resolve or address the issue of the impact of EMF within the residential neighborhoods of Clearwater Ranch and SHLAA should Route P or R1 be chosen.

⁷¹ See NISD Brief at 1. In her Exceptions, Lauren Pankratz, M.D., cites NISD's testimony as further reason to oppose Segment 42a (which is not on NISD's property). However, as shown in its testimony and clarified in its briefing, NISD's concerns predominantly hinge on not having their property crossed, which Segment 42a accomplishes. Exceptions of Lynn Ginader and Lauren Pankratz at 1.

⁷² Toutant Ranch, Ltd. and ASR Parks, LLC Exceptions at 2-3.

⁷³ Joint Exception at 5, citing 16 TAC § 22.52(a)(4).

⁷⁴ Mr. Steven Herrera excepted to the Proposal for Decision because no second open house was held, claiming people were not able to participate. However, there were over 150 intervenors in these proceedings and numerous protesters. There is no evidence of record to support his claim that the absence of a second open house would have caused additional intervention or participation by these un-identified neighbors. Notably, Mr. Herrera's actual property is not crossed by Route Z2 and there are existing distribution lines on both sides of Toutant Beauregard Road where his property is located. In his Exception, Mr. Herrera advocates for Route AA1. See Exception of Steven G. Herrera at 1.

⁷⁵ Joint Exception at 5.

⁷⁶ CPS Energy Ex. 1 at Figures 6-2, 2-2, 2-3; CPS Energy Ex. 18.

after the open house, as explained below, CPS Energy added and revised certain segments and added two substation sites: Substations 6 and 7.⁷⁷

It is unclear whether a second open house would have led to the exclusion of Substation 7. Questionnaire data collected by CPS Energy shows Substation Site 5 received the **most negative comments** (22).⁷⁸ Substation Site 5 was, at the time, the closest substation site to SHLAA and Clearwater Ranch.⁷⁹ After the open house, CPS Energy removed some segments, but, despite the high opposition to Segments 26, 15 and 16, those segments remained, in modified form, with new bisects to residential tracts within SHLAA and Clearwater Ranch.⁸⁰ Segment 26, now “semi-curved,” entered further into the interior of the Davila Trust property where they have a home, and ⁸¹ Segment 15 moved further into the interior of the Cohen Trust property where they have a home.⁸² The new Segment 16 forked, leading to three new Segments that reconvened with Segment 27.⁸³ Substation 6 was added, with a prominent location right outside of the entrance to Huntress Lane into SHLAA.⁸⁴

Therefore, CPS Energy did not use data collected at the first open house to lessen the impact on residents of SHLAA and Clearwater Ranch – quite the opposite – and just like the public could not complain about Substation 7 at an open house, the public could not complain about Substation 6 at an open house either. In other words, even with all this feedback against

⁷⁷ CPS Energy Ex. 1 at Figures 6-2, 2-2, 2-3; CPS Energy Ex. 18.

⁷⁸ CPS Energy Ex. 1, at 000190.

⁷⁹ See CPS Energy Ex. 1, at Figure 6-2 and Page 2-7 (Figure 2-2) (emphasis added); *see also* CPS Energy Ex. 18.

⁸⁰ See CPS Energy Ex. 1, at Figure 6-2 and Page 2-11 (Figure 2-3) (emphasis added); *see also* CPS Energy Ex. 18.

⁸¹ CPS Energy Ex. 1 at Figure 6-7; CPS Energy Ex. 1 at 208 (Figure 6-7); CPS Energy Ex. 1 at Attachment 7 (Landowner Notice List); Transcript at 683:18 – 684:5. Segment 26 was modified and is no longer routed along the property boundaries of a pipe-shaped property and instead routed “sort of in a semi-curved fashion through the stem of the pipe.” Transcript at 187:10-23.

⁸² CPS Energy Ex. 1 at 204 (Figure 6-5); CPS Energy Ex. 1 at Attachment 7; Transcript at 184:14 – 186:9. Segment 15 was modified from its original configuration and now running “partially on the interior” of property owned by the Cohen Living Trust. Transcript at 184:14 – 186:10. CPS Energy Exhibit 1 at Figure 6-5, at 000204 and 6-7, at 000208 (showing further bisecting on the Davila Trust and Cohen Trust properties, for example).

⁸³ See CPS Energy Ex. 1, at Figure 6-2 and Page 2-11 (Figure 2-3) (emphasis added); *see also* CPS Energy Ex. 16.

⁸⁴ CPS Energy Ex. 16.

these segments within SHLAA and Clearwater Ranch and against Substation 5, CPS Energy's post-open house layout was worse for these property owners. Given the foregoing, there is no credible basis to discount the Proposal for Decision due to the absence of a second open house.

Conclusion on Community Values. The Administrative Law Judges did not err in finding Route Z2 comports with Community Values in these proceedings. In addition to appropriately considering the impact to residences, to habitable structures, and to visibility, it does not use Segments 35 or 41 that would cross in front of or on the NISD property; it does not use Segments 26, 15 or 16, which received the most negative comments per the questionnaires (as those would run through the SHLAA and Clearwater Ranch neighborhoods for significant lengths and in non-linear paths); and it uses Substation 7 which has documented visual shielding abilities, while avoiding Substation Site 6 which has no documented shielding opportunities.⁸⁵

C. Prudent Avoidance.

Prudent avoidance is the practice of limiting of exposure to electric and magnetic fields ("EMF") with reasonable investments of money and effort.⁸⁶ The Administrative Law Judges noted that intervenors across the study area shared similar concerns regarding EMF.⁸⁷ The Administrative Law Judges correctly analyzed the incremental investment required per habitable structure, noting "[t]he Commission's definition of prudent avoidance is not to avoid EMF exposure at all costs; rather, it requires avoidance to be achieved through 'reasonable investments' of money."⁸⁸ By analyzing the focus routes that had more habitable structures than Route Z2, the Administrative Law Judges reasoned that spending **\$5.88 Million more, or \$309,000 per structure** for Route R1 or **\$5.77 Million more, or \$385,000 per structure** for

⁸⁵ Routes Z2, Z1, AA1, AA2 do not use Segments 26, 15, 16, 35 and 41. CPS Energy Ex. 15 at LBM-2R Amended, Figure 4-1R, at 027; CPS Energy Ex. 16.

⁸⁶ See 16 TAC § 25.101(a)(6).

⁸⁷ Proposal for Decision at 56.

⁸⁸ Proposal for Decision at 57.

Route P is not reasonable or prudent under the circumstances.⁸⁹

In response, the Joint Exceptions ignore this substantial and significant incremental investment of money required to avoid each habitable structure on Route Z2. The Joint Exceptions ignore that 21 of the habitable structures tabulated for Route Z2 are on the other side of the road, meaning these habitable structures are not on properties that would even receive the transmission line. Instead, the Joint Exceptions focus on (1) an unknown number of homes that “may be built” in the Scenic Crest subdivision in the future; (2) an intervenor who specifically stated she was not providing expert testimony on any issue, including on EMF;⁹⁰ and (3) an unsubstantiated claim that CPS Energy’s costs are “unreliable and wholly irreconcilable.”⁹¹ None of these reasons provide a basis to depart from the traditional analysis used to evaluate prudent avoidance, and as will be shown in the Costs section below, none affect the determination that the incremental costs to use Routes P or R1 instead of Z2 are simply not reasonable.⁹²

Patrick Cleveland excepts to the Administrative Law Judges’ finding on prudent avoidance because of the reasons he raised in Exception 1 (route adequacy) and because he believes “how many properties a route crosses” should be considered (which is not a routing factor, but even if it was, would dictate avoiding SHLAA and Clearwater Ranch).⁹³ As mentioned above, Mr. Cleveland proposed a route at the route adequacy hearing that followed Toutant Beauregard Road (like Route Z2), a proposed route he represented and touted “would adhere to prudent avoidance”.⁹⁴

⁸⁹ Proposal for Decision at 57-58.

⁹⁰ See BR Ex. 40, 41, 42, 43, 44 (Dr. Pankratz and admits that she is not providing testimony as an expert regarding electric and magnetic fields, that she is not providing testimony as a medical expert regarding potential health effects of electric and magnetic fields, and that she is not providing expert testimony regarding any issue in these proceedings.)

⁹¹ Joint Exception at 10-11. See discussion in “Costs” section below.

⁹² The costs allegations are addressed in Section IV.J. below.

⁹³ Cleveland Exception at 4, 13.

⁹⁴ Cleveland Exception at 1-2, 11 and 13 (citing Document Nos. 390, 402, and 416).

7	Code § 25.101. This obvious route is one that follows Toutant Beauregard Road to Balcones	
8	Creek. First, such a route would follow Toutant Beauregard Road, a two lane highway. Second,	
9	there are existing electrical distribution lines along the entire length of such route. Third, such a	
10	route would follow property lines. Finally, such a route would adhere to prudent avoidance. In	
11		

D. Parks and Recreation Areas.

CPS Energy’s Application did not identify any parks and recreation areas crossed by or within 1,000 feet of any alternative route.⁹⁵ The Joint Exceptions and Patrick Cleveland claim that Anaqua Springs HOA and High Country Ranch’s properties are parks even if they are private and not open to the public, and the Joint Exceptions claim the school is a park because it is a “genuine recreation area.”⁹⁶

To the extent that these locations are parks because they are “genuine recreation areas” and/or “private and not open to the public,” then the testimony of record confirms that Clearwater Ranch and SHLAA, which have documented undeveloped areas used for recreation, are also “parks.”⁹⁷ Arguably so is Bexar Ranch, which is used extensively for recreation activities by the many members of the Bitter Family. Indeed, Michael Bitter described Bexar Ranch as a “true escape from the city” and explained that the Bitter Family enjoys recreational activities on the property like hiking, mountain biking, hunting, fishing, fossil-hunting, water activities, and sightseeing.⁹⁸ Bexar Ranch is the perfect property to see by horseback or by foot, “depending on your level of adventure.”⁹⁹

Here, the Administrative Law Judges did not err in accepting CPS Energy’s reasoning

⁹⁵ Proposal for Decision at 58 (citing CPS Ex. 2).

⁹⁶ Joint Exceptions at 11; Cleveland Exception at 6-9, 13. Cleveland admits that Route Z1 (like Route Z2) does not fragment the recreation area on High Country Ranch because it follows a property line. Cleveland Ex. 28 at 13.

⁹⁷ Transcript at 766:21-24; 780:19-24; 781-4-18.

⁹⁸ BR Ex. 2 at 10:8-10.

⁹⁹ BR Ex. 3 at 10:19-21.

that “private property” like Anaqua Springs HOA and High Country Ranch (and by implication, Bexar Ranch, Clearwater Ranch, and SHLAA) are not parks because “it would be virtually impossible to build a transmission line of any length in Texas without crossing private property that is used for some type of private recreation.”¹⁰⁰ As to the school, the Administrative Law Judges did not err in accepting CPS Energy’s specific identification of the school as a “school,” instead of a “park,” finding “the primary purpose of the facility is educational” although some recreational activity occurs on it.¹⁰¹ Notably, Route Z2 does not cross the school grounds, and there is substantial evidence in the record of transmission lines operating very close to schools.

E. Preliminary Issue 7: Texas Parks and Wildlife Department.

The Administrative Law Judges appropriately considered the TPWD’s recommendation of Route DD, finding TPWD’s goals in selecting Route DD can also be met by using Route Z2, which is “superior on other measures.”¹⁰² No party excepted to this section.

F. Environmental Integrity.

The Administrative Law Judges correctly determined that Route Z2 performs best on this factor, noting Route Z2’s relatively limited impact to environmental integrity in the study area.¹⁰³ Here, the Administrative Law Judges considered CPS Energy’s Environmental Assessment, a comprehensive analysis of the environmental effects of the construction, operation and maintenance of the project; the 2010 Diamond Model C Report, which provided Golden Cheeked Warbler (“GCW”) habitat modeling for the study area; and the 2008 CPS Energy Golden Cheeked Warbler Study Habitat Report, which identified specific GCW *sightings* on

¹⁰⁰ Proposal for Decision at 58 (citing CPS Energy Ex. 15 (Meaux Rebuttal) at 16).

¹⁰¹ Proposal for Decision at 59.

¹⁰² Proposal for Decision at 63.

¹⁰³ Proposal for Decision at 70.

Bexar Ranch.¹⁰⁴ The Administrative Law Judges also considered the length of ROW across upland woodlands/brushlands, as this data point relates not only to the impact to modeled GCW habitat, but to “all wildlife species.”¹⁰⁵ The Administrative Law Judges considered two of the reasons for the TPWD’s recommendation of Route DD to be particularly important, namely its limited impact on GCW modeled habitat and that Route DD was the fourth shortest route across upland woodlands/brushlands.

Taken together, the Administrative Law Judges correctly found that “in an area that is becoming increasingly populated, it is important to preserve the remaining intact areas of wildlife habitat in general, and high-quality GCW modeled habitat of the endangered GCW in particular.”¹⁰⁶ They found that Route P had the worst impact of all routes (not just of the 8 Focus Routes) on modeled moderate-high quality GCW habitat, while Route W (the most expensive Focus Route) had the worst impact among focus routes (some 6.03 miles) across upland woodlands/brushlands, which “affects all wildlife.”¹⁰⁷ Routes P and R1 fragment the largest tract of undisturbed land in the study area by crossing Bexar Ranch, while Route W is worse because it crosses both Bexar Ranch and Guajalote Ranch.¹⁰⁸

Ultimately, the Administrative Law Judges found “Route Z2 favorable because it has the second-lowest impact on moderate-high quality GCW habitat and the second-lowest length of ROW across upland woodland/brushlands in addition to the positive attributes discussed previously (avoids cutting into established neighborhoods, presents the possibility of shielding

¹⁰⁴ Proposal for Decision at 63-70

¹⁰⁵ Proposal for Decision at 67-68 (emphasis added).

¹⁰⁶ Proposal for Decision at 68 (emphasis added).

¹⁰⁷ Proposal for Decision at 69-70 (emphasis added).

¹⁰⁸ Proposal for Decision at 70. Michael and Beatriz Odom’s Exceptions claim the pristine undeveloped nature of ranch properties and the desire to leave these properties undisturbed is not a statutory or regulatory factor. While Bexar Ranch and Guajalote Ranch disagree with this interpretation of the Environmental Integrity factor, it is worth noting that the Odoms seek to use “the number of residents impacted by a route” as a criteria instead. While not a statutory or regulatory factor, the Odom’s argument nevertheless works to protect the SHLAA and Clearwater Ranch neighborhoods that would be crossed by Routes P and R1.

Substation 7 from view, and reduces visual impact by using an established corridor).”¹⁰⁹



Bexar Ranch at Segment 43

Patrick Cleveland excepted, arguing the Administrative Law Judges placed too much emphasis on the Golden Cheek Warbler habitat to the exclusion of all other environmental factors.¹¹⁰ Mr. Cleveland then claims there are other “environmental categories” that should have been included in the environmental integrity analysis, including habitable structures within 300 feet; percent length parallel to existing ROW; pasture land; low Golden Cheeked Warbler Habitat; Edwards Aquifer; length; and archeological potential area.¹¹¹ As several of these alleged “environmental categories” are in and of themselves other routing factors, this claim is meritless.

¹⁰⁹ Proposal for Decision at 70

¹¹⁰ Cleveland Exceptions at 9-10.

¹¹¹ Cleveland Exceptions at 9-10 (referring to categories from CPS Energy’s Table 4-1. See, e.g., BR Ex. 72.

Still, in terms of “length” Route Z2 is the shortest of all routes.¹¹² And, in terms of the “Edwards Aquifer,” although the entire study area is over the Edwards Aquifer Recharge Zone, only Bexar Ranch is involved in significant efforts to strengthen the Edwards Aquifer. Specifically, the Bitter Family’s commitment to the preservation of the 3,200 acre Bexar Ranch allows it to be in a position to do something important for the community: protect the Edwards Aquifer – San Antonio’s principal source of water.¹¹³ Bexar Ranch’s intricate web of springs, streams, creeks and creek beds carry incredible amounts of water after hard rains.¹¹⁴ Aside from the obvious aesthetics it plays, the rugged topography of Bexar Ranch helps manage this water.¹¹⁵ Consistent with their desire to protect the environmental integrity of the Edwards Aquifer, the Bitter Family has been working to place Bexar Ranch’s 3,200 acres of undeveloped land into a conservation easement with the City of San Antonio’s Aquifer Protection Program.¹¹⁶ The purpose of the APP is to prevent the development of properties like Bexar Ranch that are still in pristine condition.¹¹⁷ Bexar Ranch is identified as the top property in San Antonio under consideration by APP.¹¹⁸

Given the foregoing, and considering the Administrative Law Judges’ analysis on this factor, to include the additional information set forth herein regarding the significant efforts by Bexar Ranch to support the environment via nondevelopment, conservation, and preservation of the Edwards Aquifer, it is clear that the Administrative Law Judges’ reasoning is correct that Route Z2 is a superior choice.

¹¹² CPS Energy Ex. 17.

¹¹³ BR Ex. 25:5-16.

¹¹⁴ BR Ex. 3 at 10:11-13.

¹¹⁵ BR Ex. 3 25:1-5; BR Ex. 2 at 25:5-10.

¹¹⁶ BR Ex. 7 at MB-5 Rebuttal at 74.

¹¹⁷ BR Ex. 7 at 7:4-10 and MB-5 Rebuttal at 74.

¹¹⁸ BR Ex. 7 at 7:4-10 and MB-5 Rebuttal at 74.

G. Historical and Cultural Values.

The Administrative Law Judges described the various resources used by CPS to analyze the study area for historic and cultural considerations, and they considered the testimony of Jason Buntz (for Rose Palace/Strait Promotions), Mark Anderson (for Anaqua Springs HOA), Mark Turnbough, PhD (for Bexar Ranch) and Harold L. Hughes, Jr., P.E. (for SHLAA).¹¹⁹

Mr. Buntz called for an exclusion of any route that used Toutant Beauregard Road (although Scenic Loop where Substation Site 6 would be located is also designated a Texas Historic Highway). Mr. Anderson stated Toutant Beauregard Road should be avoided because the northern routes travel much too close to the Heidemann Ranch. Mr. Hughes pointed out that the testimony of Mr. Buntz and Mr. Anderson conflicted, as Mr. Buntz characterized Toutant Beauregard Road as “rural” while Mr. Anderson characterized it as “a narrow, constrained transportation and utility corridor.”¹²⁰ Dr. Turnbough reconciled the opinions by stating that, “in Mr. Buntz’s own words, designation as a historic highway ‘does not prevent development along the route.’”¹²¹ Mr. Hughes testified that the Historic Corridor was designated in 2009 and included Scenic Loop (the location of Substation 6) and the Boerne Stage Corridor, but not Toutant Beauregard Road (the location of Substation 7), and explained that Toutant Beauregard was not added until 2011.¹²² Mr. Hughes’ point was the historical impact on both roads in the study area should be of equal historical importance to Mr. Buntz. Dr. Turnbough added that Bexar Ranch used to be part of the same ranch as the NRHP-designated R.L. White Ranch.¹²³

Here, the Administrative Law Judges determined that Route Z2, with its “existing distribution line in the same sightline,” present-day tourism, and multiple contemporary yard art

¹¹⁹ Proposal for Decision at 70-77.

¹²⁰ Proposal for Decision at 72-75

¹²¹ Proposal for Decision at 74 (citing Bexar Ranch Ex. 6).

¹²² Proposal for Decision at 75.

¹²³ Proposal for Decision at 74 (citing Bexar Ranch Ex. 6).

pieces/art-deco on the Heidemann Ranch already experiences a visual impact to its historic nature.¹²⁴ The Administrative Law Judges determined that a transmission line along Toutant Beauregard Road would not be unexpected “given the existing visual and environmental fragmentation.”¹²⁵ Furthermore, in terms of cultural considerations, the Administrative Law Judges noted that Route Z2 crossed 0 recorded cultural sites and 0 NRHP-listed properties, while routes not using Toutant Beauregard Road (P, R1 and W) each crossed at least one recorded cultural site and at least one NRHP-listed property.¹²⁶

Despite this analysis in the Proposal for Decision, the Joint Exceptions argue that Route Z2 should not be chosen on historical grounds for several reasons, that as will be shown, are easily refuted. First, the Joint Exceptions claim that the San Antonio Rose Palace should be protected.¹²⁷ However, the San Antonio Rose Palace is not located on Route Z2. It is located at the intersection of Toutant Beauregard Road and Scenic Loop.¹²⁸ Second, the Joint Exceptions claim that Heidemann Ranch should not be impacted.¹²⁹ However, Route Z2 does not cross Heidemann Ranch, and this property has existing distribution lines and guy wires located very close to it, is flanked with dozens of large pieces of contemporary yard art, and has large trees that can shield the view toward Route Z2.¹³⁰ Finally, the Joint Exception points to protecting the SBT Corridor, but fails to mention that (1) Scenic Loop Road is included in the SBT corridor and

¹²⁴ Proposal for Decision at 77.

¹²⁵ Proposal for Decision at 77.

¹²⁶ Proposal for Decision at 75. Further, the Administrative Law Judges found that use of Staff’s witnesses request for language in the Ordering Paragraphs (relating to encountering archeological artifacts or cultural resources during construction) would be appropriate. *Id.* At 77.

¹²⁷ Joint Exception at 11-12.

¹²⁸ CPS Energy Ex. 16.

¹²⁹ The Joint Exceptions correctly point out that Segment 36 does not cross the Barreras’ property. In fact, no segment of Route Z2 would cross the Barreras’ property at all. However, the Joint Exceptions suggest that the Barreras oppose Route Z2. This is not true. Nowhere in the Barreras’ testimonies do they state that they oppose Routes Z2, or Routes Z1 and AA1 for that matter. In fact, in their testimonies, the Barreras list various segments that they do oppose, but do not list Segments 54, 36, 20, 42a and 46 (which make up Route Z2) as segments that they oppose. See Barrera Ex. Nos. 1-5. Tellingly, the Barreras have not filed any exceptions to the PFD which recommends Route Z2.

¹³⁰ See CPS Energy Ex. 15 at 014 and 030-035.

(2) Substation 6 is located on Scenic Loop Road.¹³¹

In addition, Sarah Bitter provided ample testimony regarding historical import of Bexar Ranch, describing the original relationship between the historically-designated R.L. White Ranch and Bexar Ranch, which were one-and-the same up until the late 1970s.¹³² She detailed the Bitter Family’s efforts to “preserve an era and area of historical significance.”¹³³ Sarah described the interconnectedness of the properties – linking the historic stagecoach inn on the west of the White Ranch (i.e., the Thompson Property) to the historic early Texas settler homestead, ranching facilities and cemetery dating back to the 1800s on the east of the White Ranch (i.e., Bexar Ranch.).¹³⁴ She concluded her testimony by poignantly stating the reality: is difficult to imagine that the historic significance of the White Ranch stops at the relatively recent border of the White and Bexar ranches.¹³⁵

Given the record evidence, the Administrative Law Judges were correct in determining Route Z2 best complies with the historic/cultural factor.

H. Engineering Constraints.

In this section, the Joint Exceptions lob significant speculation and unsubstantiated allegations of “compelling evidence” and “unaddressed issues.” This is a continuation of Brad Jauer/BVJ Properties and Anaqua Springs HOA’s assertions at trial, all of which were fully and flatly refuted by CPS Energy at the hearing on the merits and then again in CPS Energy’s Reply Brief.¹³⁶ As an important initial matter, CPS Energy presented several witnesses, including

¹³¹ Joint Exception at 12; see also CPS Energy Ex. 16.

¹³² BR Ex. 8 at 9:1-3.

¹³³ BR Ex. 8 at 9:7-9.

¹³⁴ BR Ex. 8 at 9:1-17.

¹³⁵ BR Ex. 6 at 19:16-17.

¹³⁶ See CPS Energy Reply Brief, at 17-19, 21-33. CPS Energy’s Reply Brief is incorporated herein by reference.

engineers, with actual experience in building electric transmission lines and electric substation facilities in Texas – those filing the Joint Exceptions **did not**.¹³⁷

Flooding Allegations. The Joint Exceptions allege that Leon Creek is “flood-prone.” There has not been any flooding on the Substation 7 property for the entire 38 years the current landowner has owned the property.¹³⁸ The evidence shows Substation Site 7 is not located within the 100 year floodplain.¹³⁹ There are no changes to the Federal Emergency Management Agency 100-year floodplain as a result of the U.S. Army Corps of Engineers report (offered into evidence as Jauer Exhibit 3).¹⁴⁰ Mr. Lyssy, a professional engineer licensed in the state of Texas with extensive training in hydraulic engineering was the only witness in this proceeding with qualifications to address hydrology in the area of Substation Site 7.¹⁴¹ 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.”¹⁴² Mr. Lyssy further testified that, having reviewed Jauer Exhibit 3, and having performed similar modelling to that presented in Jauer Exhibit 3, 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.”¹⁴³ Dr. Mark Turnbough, whose resume shows experience with substation site analysis, testified any concerns can be mitigated by normal grading and drainage management practices.¹⁴⁴

¹³⁷ Brad Jauer/BVJ Properties and Anaqua Springs HOA presented Mark Anderson, who is not a professional engineer, has not visited the site or the study area, and has never managed a transmission line project in Texas. Anaqua Springs/Jauer Ex. 25 at 1, 2 and Exhibit MDA-1; CPS Energy Ex. 25 at 3.

¹³⁸ See Transcript at 652:1-9. Michael and Beatriz Odom took exception to the PFD due to the mistaken conclusion that Substation Site 7 is in the floodplain. The evidence of record shows that it is not in the floodplain.

¹³⁹ See Jauer Ex. 15 at 16. As noted in CPS Energy’s Reply Brief, “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 [CPS Energy] 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.”

¹⁴⁰ Transcript at 626:3-4.

¹⁴¹ CPS Energy Ex. 11 at Exhibit SDJ-1; Transcript at 650:18-19.

¹⁴² Transcript at 654:5-7.

¹⁴³ Transcript at 649:5-10 and 624:17-20.

¹⁴⁴ BR Ex. 6 at 15:1-4.

The Joint Exceptions also speculate that “increasing impervious cover will only exacerbate this problem” and incorrectly claim that Mr. Anderson’s testimony verifies existing flooding has already occurred, which his testimony does not state.¹⁴⁵ This speculation and misstated evidence is insufficient to negate the extensive competent testimony offered by CPS Energy’s witnesses who have extensive experience in the relevant area, to include hydrology.

Given the foregoing, the Administrative Law Judges rightly found that the report that Brad Jauer/BVJ Properties provided, and to which the Joint Exceptions continue to cite, was “of little utility in determining the risk or extent of flooding to the Substation Site 7.”¹⁴⁶ This was in large part because no witness was presented by Jauer/BVJ Properties to specifically interpret the report and its mapping.¹⁴⁷ They found relevant that on re-direct, CPS Energy’s engineer testified that he reviewed the report and that it did not change his mind that Substation 7 site is a viable location for a substation, and further, that FEMA maps and his own research lead him to conclude that there is “no risk of flooding” to the Substation 7 site.¹⁴⁸ And, as CPS Energy explained, 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 shows the area proposed for the substation facilities has only a gentle slope.¹⁴⁹

Ronald Schappaugh takes exception to Route Z2 because he claims it crosses more floodplain than any other route.¹⁵⁰ Mr. Schappaugh, however, provides no specific basis to support why this is a problem.¹⁵¹ CPS Energy’s Scott Lyssy testified that he is not aware of any engineering constraints that would prohibit CPS Energy from safely and reliably constructing,

¹⁴⁵ Joint Exceptions at 14; Anaqua Springs HOA/Jauer Exhibit 25.

¹⁴⁶ Proposal for Decision at 78-79.

¹⁴⁷ Proposal for Decision at 78-79.

¹⁴⁸ Proposal for Decision at 78 (citing Transcript at 624 and 654).

¹⁴⁹ CPS Energy Ex. 14 at Exhibit SDL-1R; CPS Energy Ex. 6 (Figure 2-4).

¹⁵⁰ Schappaugh Exception at 1.

¹⁵¹ Cichowski Brief at 10.

operating and maintaining the proposed transmission line facilities, to include within floodplain, and that CPS Energy has “significant experience with designing, permitting, constructing, and operating transmission lines” in various environments, including floodplains.¹⁵² CPS Energy also discussed floodplain in its Environmental Assessment.¹⁵³ Specifically, the EA confirmed that construction of any of the alternative routes is not anticipated to impact the overall function of a floodplain within the study area or adversely affect adjacent or downstream properties; engineering design should alleviate the potential of construction activities to adversely impact flood channels; proper structure placement will minimize any flow impedance during a major flood event; and the small footprint of pole structures proposed for the project does not significantly alter the flow of water within a floodplain.¹⁵⁴

Communication Towers. The Joint Exceptions claim that CPS Energy’s project will interfere with Communication Tower 501, namely by creating “line of sight” issues.¹⁵⁵ While Mr. Carl Huber, on behalf of Brad Jauer/BVJ Properties, worried of potential “line of sight” issues, his testimony on this issue was far from “uncontroverted.”¹⁵⁶ Specifically, CPS Energy’s witness, Adam Marin a professional engineer, controverted Mr. Huber’s testimony, explaining that CPS Energy safely operates transmission facilities that are collocated with or in close proximity to communications facilities, including cellular and microwave facilities, and that he does not have concerns regarding the proximity of the tower to any proposed transmission facilities.¹⁵⁷ And, as CPS Energy explained in their Reply Brief, given that the survey, geotechnical, and engineering work necessary to design the proposed transmission line facilities has not yet been completed on this project and that as such CPS Energy cannot yet identify

¹⁵² CPS Energy Ex. 11 at 8:10-16.

¹⁵³ CPS Energy Ex. 1, at 0163 (EA at Section 4.1.5).

¹⁵⁴ *Id.*

¹⁵⁵ Joint Exceptions at 15-23.

¹⁵⁶ Joint Exceptions at 15.

¹⁵⁷ Proposal for Decision at 81 (citing CPS Energy Ex. 12).

where pole structures will be located, the exact height of any potential poles, or the dimensions of any potential poles, 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.¹⁵⁸ CPS Energy also explained that the topography of the location of Communication Tower 501 with respect to the location of Segments 20 and 36 (Components of Route Z2) shows the significant increase in elevation from the location of the proposed segments and the location of the tower.¹⁵⁹ Furthermore, the Joint Exceptions fail to mention that an electric distribution line currently crosses over Jauer's entrance road and there is no evidence that these structures impact the operation of the communication tower.¹⁶⁰ Finally, CPS Energy explained that it can and regularly does design the approved facilities so that no impact to the communication facilities will occur, adding, "[t]he standard ordering language of the Commission requires such coordination."¹⁶¹

Given the foregoing, the Administrative Law Judges correctly concluded that CPS Energy's project, if built on Segments 20, 32 and 36, will not interfere with the operation of Tower 501 (or with access to the Jauer property, a previous criticism).¹⁶²

Other Alleged "Engineering Constraints." Finally, the Joint Exceptions claim that CPS Energy "abdicated" its responsibilities when it filed a "last-minute extension" of Route Z2.¹⁶³ This false assertion was fully briefed by CPS Energy in its response to a joint motion for continuance filed by the same parties now filing the Joint Exceptions (and by another party,

¹⁵⁸ CPS Energy Reply Brief at 32-33.

¹⁵⁹ CPS Energy Ex. 6, Figure 2-4 Amended (Constraints). CPS Energy Ex. 12 at Exhibit ARM-2R (photograph) 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 on Jauer's property.

¹⁶⁰ BR Ex. 7 at MB-10 at page 19 (showing distribution lines over Jauer entrance).

¹⁶¹ CPS Energy Reply Brief at 33 at footnote 149.

¹⁶² Proposal for Decision at 81. Segments 20 and 36 are components of Route Z2. Proposal for Decision at 30.

¹⁶³ Joint Exceptions at 16-17.

Steve Cichowski)(together, the “Movants”).¹⁶⁴ Here, CPS Energy filed an errata in an attempt to clarify information that the Movants’ expert and attorneys did not understand. Below is the introduction to CPS Energy’s response to the motion for continuance and similar allegations:

I. DISCUSSION

No good deed goes unpunished. It is regrettable and disappointing that Movants elected to proceed in the manner presented in their motion. At best, the pleading represents a fundamental misunderstanding of CPS Energy’s recent clarifying filings. At worst, it represents a deliberate attempt to mislead the Administrative Law Judges (ALJs) as part of Movants’ ongoing efforts throughout this proceeding to use any effort whatsoever to delay this case. Such efforts should not be rewarded by the ALJs.

CPS Energy’s recent clarifications to previously filed discovery responses and the rebuttal testimony of Mr. Scott Lyssy are very simple—they *clarify* CPS Energy’s use of the phrase “right of way” in this docket. CPS Energy’s filings were made out of an abundance of caution and to attempt to avoid confusion at the upcoming hearing on the merits. As was described in the cover pleading to CPS Energy’s April 26, 2021 filing, during preparation of discovery responses to the Jauer fifth set of requests for information, CPS Energy determined a clarification of its use of the term “right of way” was necessary to avoid confusion. Not one

The Movants’ misunderstanding did not come to light right away, but when it did, CPS Energy acted. In their reply to the Movants’ Motion for Continuance, CPS stated, “Movants misunderstood that CPS Energy’s intention to construct and operate the proposed transmission line facilities with 100 feet of right of way meant that CPS Energy would acquire 100 feet of easement on private property. Movants were incorrect.”¹⁶⁵ The motion for continuance was denied, and the Administrative Law Judges stated that while CPS Energy “was not as clear as it could have been ... it appears that none of the resulting data was erroneous.”¹⁶⁶

¹⁶⁴ See Docket Item No. 776.

¹⁶⁵ CPS Energy’s Reply to Motion for Continuance at Docket No. 776 (emphasis added).

¹⁶⁶ Order No. 13.

To be clear, Route Z2 was not “extended” as the Joint Exceptions allege. Route Z2 was not moved into the road right-of-way nor was an angle tower “confirmed” as being located in the road right-of-way as the Joint Exceptions assert. And, as the Joint Exceptions’ citations to the testimony of Mr. Lyssy on these issues show, Mr. Lyssy did not confirm these assertions.¹⁶⁷

The Joint Exceptions also allege that the project represents “an obvious vehicular safety issue” exacerbated by gas and water lines that “may hinder” the construction, maintenance, repair and operations of the line – yet there is no evidence to support these allegations and plenty to refute them. For example, CPS Energy’s engineer, Scott Lyssy, explained the poles would be placed outside of the existing road right of way and further apart than the existing distribution lines *which are located in the road ROW*.¹⁶⁸ Mr. Lyssy explained that the proposed project will not pose any greater risk to vehicles than the existing distribution poles.¹⁶⁹ Mr. Lyssy added that CPS Energy’s project will be outside of the road ROW, but even if that was not the case, CPS Energy has experience in accommodating adjacent projects.¹⁷⁰ CPS Energy’s engineers testified as to the spacing of utility infrastructure; that it is common for gas, water and electric facilities to be located within road ROW; and that in their opinion there would be no interference between the plastic lines and the proposed transmission line facilities.¹⁷¹

Moreover, Mr. Lyssy never confirmed that Toutant Beauregard Road “will likely require expansion” and no party agreed that this *hypothetical* road expansion would “undoubtedly” impact Segment 54 and its poles.¹⁷² There is simply no 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, and

¹⁶⁷ Transcript at 396-397.

¹⁶⁸ Proposal for Decision at 83.

¹⁶⁹ Proposal for Decision at 83.

¹⁷⁰ Proposal for Decision at 83 (citing CPS Ex. 14).

¹⁷¹ Proposal for Decision at 81-82 (citing CPS Energy Ex. 12 and Ex 14).

¹⁷² Transcript at 591-592.

therefore no evidence of any future need to move any portion of the Project. This hypothetical line of questioning by Jauer/BVJ Properties at the hearing, and unsupported allegations, thereafter, are simply not competent evidence of any engineering constraints.

Without explaining why, the Joint Exceptions claim that CPS Energy's alleged plan to extend multiple distribution circuits out of Substation 7 is "problematic."¹⁷³ In addition to being cryptic, what the Joint Exceptions fail to mention is that CPS Energy's George Tamez, Director of Grid Transformation and Planning, explained in detail, in a discovery response sponsored by Mr. Tamez, that a certain number of circuits would extend from the substation, but that some of the circuits described in this response *are in existence today in the locations described*.¹⁷⁴ Therefore, none of these allegations rise to the level of competent evidence.

CPS Energy's General Process Manual. To the extent the Joint Exceptions allege the CPS Energy *Electric Transmission Line Routing/Substation Siting General Process Manual* was not followed, Mr. Adam Marin explained in detail in his rebuttal testimony that this manual was not directly applicable to projects for which a CCN is required by the Commission.¹⁷⁵ 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.¹⁷⁶

Documented Engineering Constraints on Bexar Ranch. No party disputes the ruggedness of Bexar Ranch's terrain. Rather, the testimony is that areas of proposed segments are treacherous, rugged, steep and rough.¹⁷⁷ Bexar Ranch is described as "treacherous in many

¹⁷³ Joint Exceptions at 16.

¹⁷⁴ See Anaqua Springs HOA Ex. 26 (emphasis added).

¹⁷⁵ CPS Energy Ex. 12 at 7-8.

¹⁷⁶ CPS Energy Ex. 12 at 7-8.

¹⁷⁷ Dr. Turnbough described the property as having a deep drops, as being "some of the steepest, roughest country I've tried to drive across" and "at the top" of any ranking with respect to its status as rugged and undeveloped.

areas, with high climbs and steep drops throughout,” and as “challenging” to maneuver.¹⁷⁸ Notably, the Bitter Family has experience with how Bexar Ranch fares in the electric transmission line construction context, given they have witnessed the upgrade of the 138 kV line running north/south on Bexar Ranch’s western border, and given their experience with the construction of the CPS powerline on the R.L. White Ranch immediately next door. Michael Bitter testified regarding construction he’s witnessed over the years and how CPS Energy hasn’t been able to access towers “because of the terrain being so difficult.”¹⁷⁹ In contrast, a route like Route Z2 along the flat Toutant Beauregard Road has many engineering advantages.¹⁸⁰

In summary, the Administrative Law Judges rightly found the testimony of CPS Energy’s engineers to be credible, and those witnesses refuted, via testimony and documentary evidence, all the allegations that form the basis of the Joint Exceptions’ concerns as to engineering constraints. Moreover, the evidence also shows that Routes like P and R1 require crossing Bexar Ranch, a property known to be difficult for CPS Energy to traverse given its topography and few of roads.

I. Routing Along Existing Corridors.

The Administrative Law Judges stated that their recommended route, Route Z2 is “tied” with Route P for the highest percentage of paralleling. Mr. Cleveland excepts, and he claims

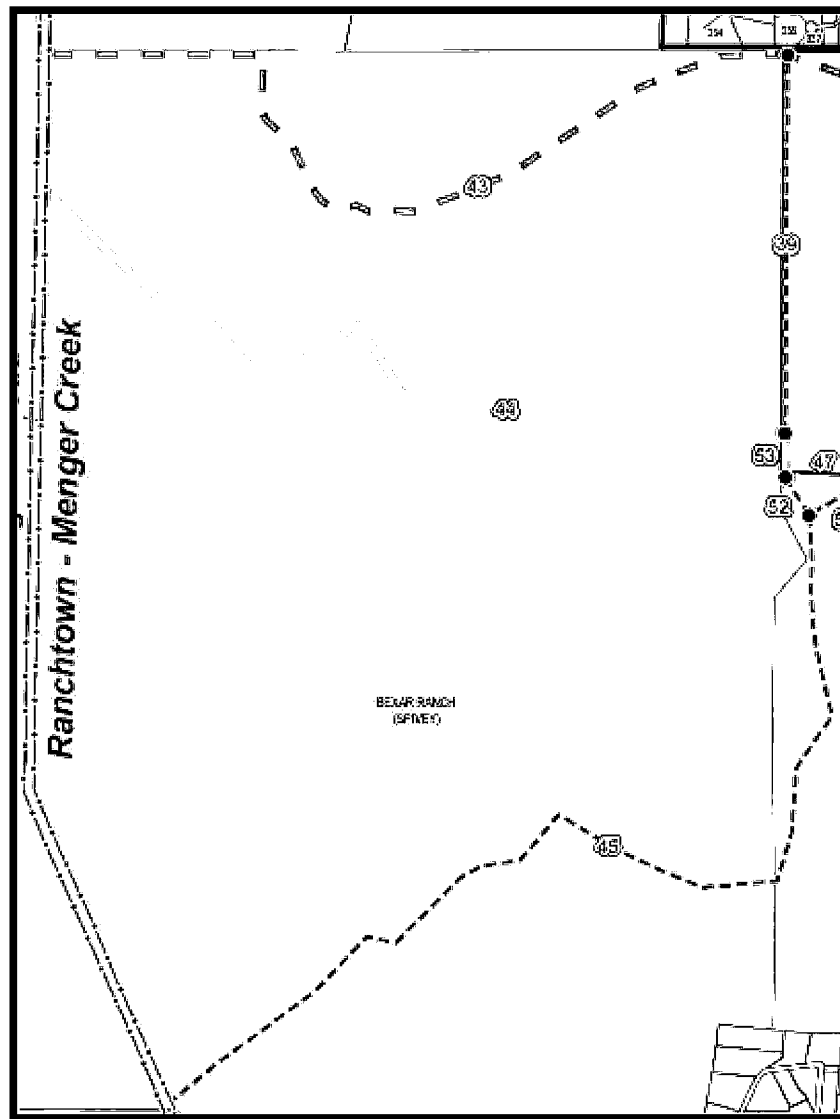
Transcript at 753:6-14; 754:13-18. BR Ex. 2 at 21:6, 9-10; *see also* BR Ex. 3 at 14:5-6. “The [Segment 43] path is treacherous, steep and winding, which makes its use more confounding.” BR Ex. 2 at 17:17-18.

¹⁷⁸ When asked how CPS Energy would reach each proposed segment, Michael, who has witnessed an upgrade of the western transmission line, stated, “This is unknown but it could be particularly challenging” describing the property as “steep and rough with drop offs.” BR Ex. 2 at 21:6, 9-10; *see also* BR Ex. 3 at 14:5-6.

¹⁷⁹ Transcript at 734:17 to 735:5 (describing additional easements needed on Bexar Ranch to access towers due to “terrain being so difficult”).

¹⁸⁰ BR Ex. 2 at 23:5-10 and at 24 (photographs of Toutant Beauregard Road). Mr. Lyssy, on behalf of CPS Energy, confirmed that Routes Z2, Z1, AA1 and AA2 all have the benefit of the donated land, public road sharing, and less habitat fragmentation. Transcript at 195:10-196:8. Mr. Lyssy, on behalf of CPS Energy, testified that “in areas where we are along the road we probably won’t even clear a path between the structures. We’ll access the poles from the right-of way, from the roadway. Transcript at 476:2-5. Mr. Lyssy also testified that if a line is paralleling a public roadway, access would be right from the roadway to the structure. Transcript at 244:4-13; 245:4-22

Segment 43, shown below in yellow and blue on Bexar Ranch, does not “bisect” Bexar Ranch and instead “follows the norther[n] property line for much of its length.”¹⁸¹



Bexar Ranch, CPS Ex. 16

Mr. Cleveland’s description of Segment 43 is clearly wrong. It is unclear why he would make such an assertion, especially given the only data that Bexar Ranch has disputed in these proceedings is CPS Energy’s data regarding paralleling on Bexar Ranch, and in particular, that categorizes 0.85 miles of Segment 43 as paralleling “other existing ROW (roadways, railways,

¹⁸¹ Cleveland Exceptions at 12 (Exception 15); CPS Energy Ex. 16 (showing the 3200-acre Bexar Ranch).

canals, etc.).¹⁸² While portions of Segment 43 are obviously along the northern property line, the significant dip to the south made by Segment 43 does not parallel any discernable feature.

There is extensive testimony of record on this issue. Dr. Mark Turnbough testified about the picture (shown below) at the hearing after describing his visit to the ranch.

I drove a fairly burly vehicle that's well-prepared to drive in this terrain and was unable to continue in several locations and had to get out and walk. I remember the walking, because it was all uphill.... [This picture is] a fairly typical view of the best part of the road I saw ... what that picture doesn't give justice is the depth of that drop that just up there about two-thirds of the way up on the picture. That's some of the steepest, roughest country I've tried to drive across."¹⁸³

Dr. Turnbough's testimony explained how his visit to Bexar Ranch confirmed, that based on his expert opinion, other than the portion of Segment 43 on the northern property line, Segments 43, 44 and 45 do not follow any road or natural or cultural feature that would qualify as a compatible right of way.¹⁸⁴ PUC Staff witness, Mr. Pool agreed and stated "None of the proposed alternative routes parallel natural or cultural features."¹⁸⁵ Poole testified that if 0.85 miles of compatible right-of way is removed from Route P, the percentage of length parallel to right of way for Route P would be 53.62%.¹⁸⁶ Therefore, Bexar Ranch's response to Mr. Cleveland is that the paralleling percentages on both Routes P and R1 are significantly misstated, and that Routes P and R1 should be tabulated at 54% and 46% paralleling.¹⁸⁷ In other words, Route P is not comparable, much less equal, to Route Z2 in terms of total paralleling percentages, and certainly Mr. Cleveland's view is inconsistent with the evidence. For these

¹⁸² CPS Energy Ex. 15, LBM Amended Table 4-2R at 024-026. Ms. Meaux, on behalf of CPS Energy, testified that she has not been on the property and agreed that there is a disagreement as to CPS Energy's assertion that Segment 43 paralleled a two-track dirt road on the property for approximately 0.85 miles. Transcript at 238:24-239:12.

¹⁸³ Transcript at 751:7-754:18; BR Ex. 57 (Turnbough's response to question about natural or cultural features).

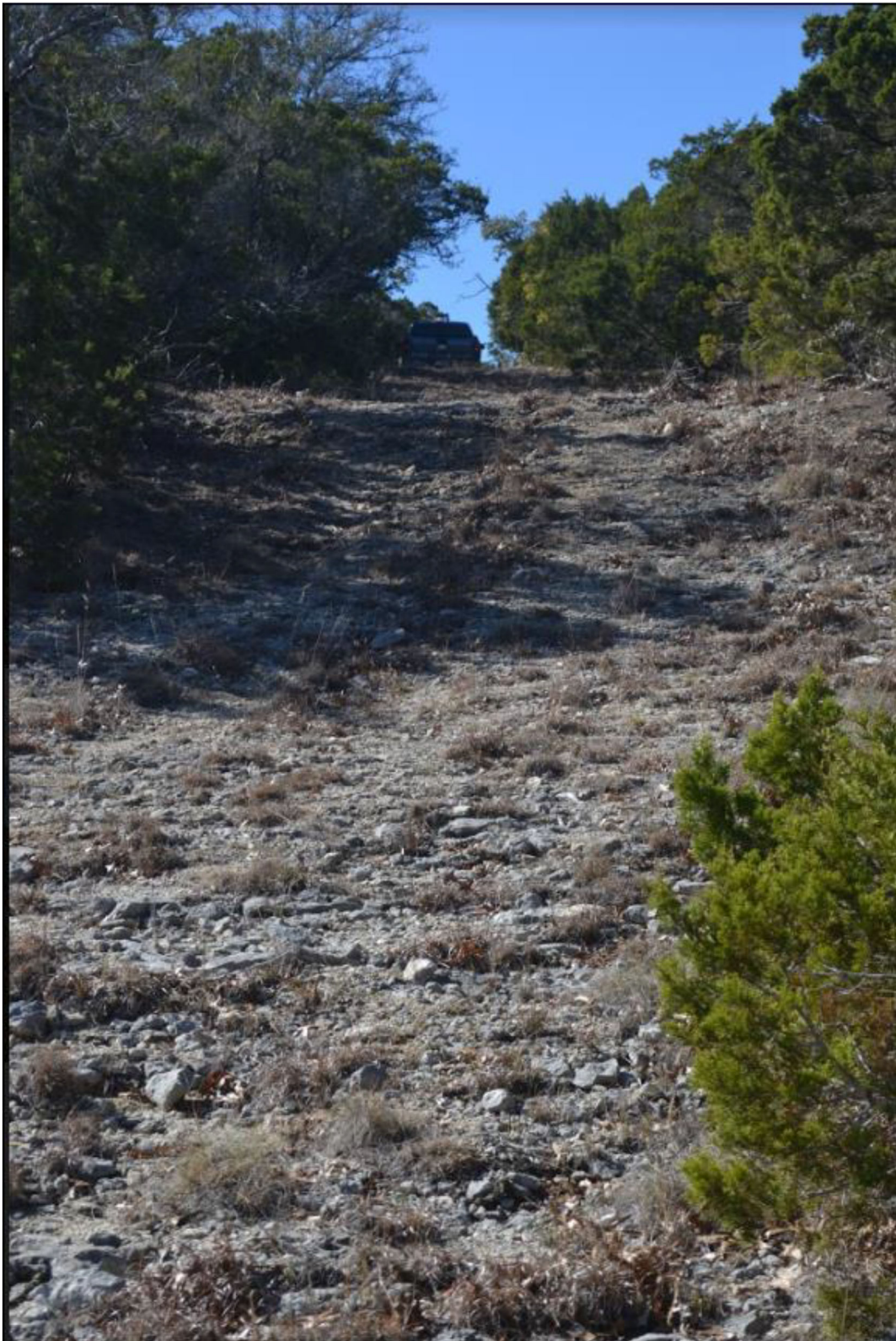
¹⁸⁴ *Id.*

¹⁸⁵ Staff Ex. 1 at 38:13-15.

¹⁸⁶ BR Ex. 36 at p. 17 (RFI 1-15).

¹⁸⁷ CPS Energy Ex. 15 at Ex. LBM 1R at 024-026; CPS Energy Ex. 17.

reasons, Route Z2 in reality fares better on paralleling than Routes P and R1, further supporting the Administrative Law Judges' recommendation of Route Z2 as the best route.



J. Costs.

Route Z2 is the least costly of all of the proposed Routes, with an estimated cost of \$37,638,580, while Routes P and R1 rank 14th and 15th in terms of cost and are \$5,770,162 and \$5,884,278 more costly than Route Z2, respectively.¹⁸⁸ While some intervenors disputed the reliability of CPS Energy's costs, the Administrative Law Judges rightfully concluded that the cost estimates were reasonable for this stage of the process.¹⁸⁹

Continued Misunderstanding of Cost Data. In seven progressive bullet points on pages 17-19, the Joint Exceptions illustrate a continued misunderstanding of CPS Energy's cost data and the difference between width for operational clearance for the proposed easements and the width of right of way that CPS will need to acquire (and thus pay for) from private landowners.¹⁹⁰ 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.¹⁹¹ Notably, as clarified in CPS Energy's April 26, 2021 errata filings, CPS Energy's response to the motion for continuance, and again in their reply brief (and discussed in the Engineering Constraints Section above), CPS Energy 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*. 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 acquisitions along road rights of way where less private

¹⁸⁸ CPS Energy Ex. 17; Dreico Companies Ex. 2; CPS Energy Ex. 14 (Lyssy Rebuttal) at 018.

¹⁸⁹ Proposal for Decision at 87.

¹⁹⁰ Joint Exceptions at 17-18.

¹⁹¹ Tr. Vol. 4 at 851:13 – 857:25.

property will be required.¹⁹² Exhibits SDL-3R and 4R to Mr. Lyssy's Rebuttal Testimony (CPS Energy Ex. 14) show visually how these two concepts both coexist.

The Administrative Law Judges appropriately refuted any notion that CPS Energy's estimates were inaccurate because right of way acquisition costs along roadways were based on a 75-foot easement instead of a 100-foot easement used for easements not along roadways.¹⁹³ Highlighting that this information was not a "surprise" as Anaqua Springs HOA and Jauer claimed (noting their expert cited the 75-foot easement in his direct testimony months before trial), the Administrative Law Judges found these estimates to also be reasonable.¹⁹⁴ It should be noted that Routes like Route W (which is \$15 M more costly than Route Z2) and parallels Scenic Loop Road is also based on a 75-foot right of way acquisition cost along roadways.¹⁹⁵ In other words, CPS treated roads consistently and fairly across the study area. Thus, the Joint Exceptions allegations in this regard continue to be without merit.

Use of Appraisal Data. CPS Energy's witness, Mr. Scott Lyssy, who has significant experience in preparing engineering cost estimates, having done so for nearly 15 years,¹⁹⁶ but who is an engineer and not a real estate professional, relied on real estate cost estimates for the Project 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.¹⁹⁷ The Joint Exceptions criticize CPS Energy for using a real estate professional and disagree with decisions the real estate professional made – however, none of the parties filing the Joint Exceptions provided a competing real estate professional to refute the land acquisition cost estimates that were prepared for this project. A key criticism by the Joint Exceptions is that

¹⁹² CPS Energy Ex. 14 at 9-10.

¹⁹³ Proposal for Decision at 87.

¹⁹⁴ Proposal for Decision at 87-88.

¹⁹⁵ Proposal for Decision at 87-88.

¹⁹⁶ CPS Energy Ex. 11 at Exhibit SDL-1.

¹⁹⁷ CPS Energy Ex. 11 at 10.

certain land should not have been valued at raw land because it was somehow “slated” for development.¹⁹⁸ However, a closer look at the testimony cited by the Joint Exceptions shows that the land at issue was bought by Brad Jauer “to preserve the land from development.”¹⁹⁹

The Joint Exceptions also manufactured a claimed “disparity” in cost data that CPS allegedly confirmed with respect to development or non-development in the area, going so far as to say that CPS acknowledged this “disparity as something to look at and evaluate.”²⁰⁰ However, to be clear, the testimony at issue had to deal solely with potential future habitable structures and whether the Commission should consider counting houses that may be built in the future as habitable structures for purposes of these proceedings.²⁰¹ Mr. Marin was not testifying as to costs, he was trying to explain to a *pro se* intervenor questioning him that CPS Energy was not going to adjust its habitable structure count because homes might be built two years from now in a certain location.²⁰²

Given the foregoing, the Administrative Law Judges properly relied on the testimony of CPS Energy’s witness, Mr. Lyssy, who in turn relied on real estate professionals and an outside real estate appraiser, to develop the estimated right of way acquisition costs for the project. The Administrative Law Judges also properly refuted any notion that full appraisals were required at this stage, noting “the appropriate compensation for the ROW acquired was specifically listed by the Commission as an issue not to be addressed in this proceeding because the Commission does not have the authority to adjudicate or set such values.”²⁰³

¹⁹⁸ Joint Exceptions at

¹⁹⁹ Jauer Exhibit No. 1 at page 3:15-20.

²⁰⁰ Joint Exception at 20.

²⁰¹ Transcript at 554-555.

²⁰² Transcript at 554-555.

²⁰³ Proposal for Decision at 87 (referring to Preliminary Order dated September 29, 2020). The Administrative Law Judges also refuted other arguments made by parties regarding developed versus non-developed property. Jauer argued that land along Segment 20 should not have been valued as “raw land” but provided no evidence as to when development began and to what stage it has progressed. Jauer also claims, without supporting evidence, that his own land that he holds for conservation purposes was somehow “undervalued.” Mr. Ronald Schappaugh by way of

No Underground Circuitry Costs Apply. The Joint Exceptions also revived a previously refuted argument, namely that Substation Site 7 includes \$2,920,000 of “possible” underground construction for two circuits.²⁰⁴ To be clear, this expense does NOT relate to Substation 7.²⁰⁵ Had the Joint Exceptions read page 003 (and not just page 004) of Jauer Exhibit 15 and/or CPS Energy’s Reply Brief on this issue, they would have seen clearly that this expense relates to a *potential substation* near Segment 17 at the far north of the Study Area.²⁰⁶ This is not Substation Site 7. Although there is a discussion of the distribution lines that would need to be built from the *potential substation* to the intersection of Toutant Beauregard Road and Scenic Loop Road, that discussion only referred to Substation 7 to orient the reader as to where the underground circuitry would be needed for the *potential substation*, not for Substation 7.²⁰⁷ Thus, the allegation of this unaccounted cost is wholly without merit and should be disregarded in full.

Costs for “Other Issues.” The Joint Exceptions also claim that CPS Energy should have accounted for costs related to the “engineering issues” noted in the Engineering Constraints Section above. But, there is no competent evidence that mitigation for flooding is necessary at that site.²⁰⁸ Figure 2-4 Amended of CPS Energy Exhibit 6 shows the area proposed for the substation facilities has only a gentle slope.²⁰⁹ 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. 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. Finally, the Joint Exceptions cite an

exception claims portions of Segment 46 should not have been characterized as raw land because it was platted land; however, the Administrative Law Judges explained that there was no evidence in the record to persuade them that platted land should be considered “developed land.” Proposal for Decision at 86. Schappaugh Exception at 2.

²⁰⁴ Joint Exceptions at 20.

²⁰⁵ See Jauer Ex. 15 at 003-004.

²⁰⁶ See Jauer Ex. 15 at 003.

²⁰⁷ See Jauer Ex. 15 at 004.

²⁰⁸ Tr. Vol. 4 at 654:5-7, 652:2-9, 657:4-19.

²⁰⁹ CPS Energy Ex. 14 at Exhibit SDL-1R

alleged inconsistency in the per square foot data used for Substation Site 7, which if correct, results at most in a difference in cost estimate for Route Z2 of \$313,632. Notably, the Joint Exceptions characterize this amount as “significant.”²¹⁰ If true, then the \$5 Million + difference between estimated costs for Routes Z2 versus Routes P and R1 is “beyond significant.”²¹¹

The Dreiss Agreement. Mr. Cleveland’s exception argues the Pecan Springs area should have reflected a higher cost. However, what Mr. Cleveland fails to address is that this land is part of the Dreiss Agreement. Here, Tom Dreiss, the principal and key witness for the Dreiss Interests, and developer of Pecan Springs, approached CPS Energy with the goal of moderating the impact of CPS Energy’s proposed segments on the Dreiss Interests’ properties.²¹² The Dreiss Interests requested a reconfiguration of Segments 42, 46, 48 and 49 on their property. The resulting agreement altered these segments, except for 48, which it eliminated, and necessitated the re-naming of several Routes. For example, Route Z became Route Z1. Therefore, the Dreiss Agreement includes use of modified segments to which the Dreiss Interests have consented.²¹³

The agreement included donations of right of way, **a set value** for non-donated right of way, a waiver of the right to contest value at the condemnation level, and a mechanism to donate additional right of way to keep the modifications cost neutral. As a result, the Dreiss Agreement caps CPS Energy’s cost estimates in material ways.

Following the addition of Route Z2 to the mix of routes, the Dreiss Interests voiced support for use of Segment 46, a component of Route Z2, which captures the cost-savings and benefits of the Dreiss Agreement, and then-some, namely: (1) \$840,000 cost saving associated

²¹⁰ Joint Exceptions at 21.

²¹¹ CPS Energy Ex. 17; Dreico Companies Ex. 2; CPS Energy Ex. 14 (Lyssy Rebuttal) at 018. Routes P and R1 rank 14th and 15th in terms of cost and are \$5,770,162 and \$5,884,278 more costly than Route Z2, respectively.

²¹² See Transcript Pg. 542, Ln. 14 – Pg. 543, Ln. 2 (“So, no the developer approached us to modify route segments that were on their property.”) The Dreiss Interests (sometimes referred to as the “Companies” or the “Dreico Companies”) are Toutant Ranch, Ltd., ASR Parks, LLC, Pinson Interests Ltd. LLP, and Crighton Development Co., on whose behalf Tom Dreiss provided written and live testimony.

²¹³ Dreico Companies’ Ex. 1 at 013-017.

with using the 42a→46→46b combination (i.e., Segment 46 instead of Segment 46a, which is the only difference between Routes Z2 and Z1) **and** (2) the ability to avoid bisecting some of the Dreiss Interest's property by using Segment 46 instead of 46a.²¹⁴ The Administrative Law Judges noted additional benefits of using Route Z2, including it requires fewer turning structures, is shorter, has better paralleling characteristics, and contains 2.2 fewer acres of moderate to high quality GCW habitat.²¹⁵ Given the foregoing, the Administrative Law Judges were correct in selecting Route Z2 as the route they recommend the Commission order for these proceedings.

As CPS Energy's Scott Lyssy testified, 38% of the right-of-way acquisition costs are "set" for Route Z2, meaning these costs will not go up²¹⁶ (and they could be less under the terms of the Dreiss Agreement). That Mr. Dreiss then agreed to a discounted value for segments that crossed the Dreiss Interests – sometimes that was a 100% discount in the case of a pure donation, and sometimes it was a 20% discount – is of no moment.²¹⁷ In reality, Mr. Dreiss could have donated all segments that crossed the Dreiss Interests. It just doesn't matter what Cleveland thinks Pecan Springs land should be selling for – what matters is that Mr. Dreiss has removed all uncertainty as to the right of way acquisition cost associated with any route (like Z2) that uses segments that cross the Dreiss Interests. Even if there was no agreement to fix the cost of the Dreiss right-of-way acquisitions and waive remainder damages, which is denied, Mr. Dreiss has designed his subdivision around these proposed segments (that he chose and consented to), further limiting any possible remainder damages claim that he ***could have made***.²¹⁸ Notably, Bexar Ranch has ***not*** waived damages to its nearly 3,200-acre remainder.

²¹⁴ Dreico Companies Brief at 6.

²¹⁵ Proposal for Decision at 90.

²¹⁶ Transcript at 261:8-17; see also Agreement at Dreico Companies' Ex. 1 at 013-017.

²¹⁷ Dreico Companies Ex. 1 at 013-017 (Dreiss Agreement).

²¹⁸ Dreico Companies' Ex. 1 at 013-017.

V. ADDITIONAL ISSUES: REPLY TO PUC COMMISSION STAFF (“STAFF”).

Staff’s witness, John Poole, selected Route P. Ultimately, instead of selecting a route that “best meets” the applicable routing criteria, Poole selected a middle-of-the road route whose three allegedly “positive” attributes (14th least costly; tied for 4th fewest habitable structures, and 9th shortest) simply do not outweigh the favorable attributes of Route Z2.²¹⁹ For reasons explained below, Route P should not be selected.

As an initial matter, Poole admits that his initial opinion did not include consideration of Route Z2 because he didn’t have the information for that route at the time.²²⁰ Poole admits that he did not know of 2008 CPS Energy Warbler Survey.²²¹ This is important because Route P is the worst route in terms of areas across golden-cheeked warbler modeled habitat designated as 3-Moderate and 4-High Quality acres.²²² Poole acknowledged that Route P crosses over 25 acres of golden cheeked warbler habitat – this is far more than Route Z2.²²³ Poole also admitted that he selected a route with seven bisects.²²⁴ Indeed, Route P would run through existing neighborhoods for significant lengths, in a nonlinear way, running both vertically, horizontally, and jaggedly. Route Z2 parallels Toutant Beauregard Road for a significant portion of its length.²²⁵ Poole did not visit the study area to determine if the conclusions he made about Route P were valid.²²⁶ Poole confirmed that there are *eight* routes that would have less visual impact than Route P – including Route Z2.²²⁷ Route P uses Substation Site 6, which is smaller than Substation Site 7 and provides less shielding from public view.²²⁸ Route P does not parallel any

²¹⁹ Staff Brief at 3.

²²⁰ Transcript at 789:4-12.

²²¹ BR Ex. 36 at p. 11 (RFI 1-9).

²²² CPS Ex. 17.

²²³ Transcript at 794:14-17.

²²⁴ BR Ex. 36 at p. 64 (RFI 1-62)(Tracts F-006, F-021, K-014, K-015, F-073, F-068, and F-67).

²²⁵ CPS Energy Ex. 16.

²²⁶ Transcript at 791:11-13.

²²⁷ Transcript at 794:24-795:3.

²²⁸ BR Ex. 6 at 11:17-12:2; CPS Energy Ex. 16.

major roadway like Toutant Beauregard Road or Scenic Loop Road, and thus, none of the habitable structures identified within 300 feet of this route would have a major roadway between the homes and proposed transmission line.²²⁹ Poole also stated that he would not oppose any route on the basis of failing to minimize, to the extent reasonable the number of habitable structures – this includes Route Z2.²³⁰ Poole has not stated that he opposes the Dreiss Agreement. Of course, Route P is \$43,408,742, which is \$5,770,162 more expensive than Route Z2. Poole even stated, “If 0.85 miles of compatible right-of way is removed from Route P, the percentage of length parallel to right of way for Route P would be 53.62%.”²³¹ This means that Routes P would not be tied with Route Z2 for total paralleling percentages.

Given this, there is no rational reason to choose Route P, a route that is more costly, that bisects in this manner, that has questionable paralleling, is so visible, and that has such high golden cheeked warbler habitat. This is particularly true when such an unusually great route exists, Route Z2, that has a direct benefit to the ratepayer (i.e., lowest estimated cost and the Dreiss Agreement).

²²⁹ Transcript at 234:11-19.

²³⁰ Transcript at 797:11-19.

²³¹ BR Ex. 36 at p. 17 (RFI 1-15).

VI. SUMMARY OF THE ALJ'S ANALYSIS AND RECOMMENDATION.

Route Z2 is the best route for many reasons, including but not limited to because it:

- avoids cutting through neighborhoods for significant lengths;
- uses Substation 7, which has potential to be shielded from view because it is on a larger, heavily-vegetated lot;
- reduces the visual disturbance to the study area by using an existing transportation and utility corridor;
- has limited impact on the nearby school;
- meets the Commission's standards for prudent avoidance;
- satisfies the TPWD recommendations with the inclusion of Staff's proposed ordering paragraphs;
- reduces the impact to modeled GCW habitat and upland woodlands/brushlands, and otherwise protects environmental integrity;
- has moderate impact to historic and cultural values;
- has no unmanageable engineering constraints;
- parallels existing ROW and property lines for 71% of its length;
- takes advantage of ROW consent and donations via the Dreiss Agreement;
- is the least expensive of all proposed routes; and
- is the shortest of all proposed routes.


The impact of Route Z2 is moderated or avoided as follows with respect to the following parties:

- Rose Palace Dance Hall (by avoiding intersection of Toutant Beauregard Road and Scenic Loop);
- Pro se intervenors on Routes 17 (by not using that Segment);
- Primarily Primates (by not using Substation Site 1);
- NISD (by avoiding Segment 35 and 41);
- Dreiss (by accommodating his preferred routing and providing the community with a donation);
- High Country Ranch (by avoiding Segment 49a);
- Pro se intervenors on Segment 54 (by using narrower rights of way, spanning, limiting encroachment to minor levels, and offering a substation site with a visual buffer);
- Brad Jauer/BVJ Properties (by using Segment 36 instead of Segment 32);
- Anaqua Springs HOA (by working with CPS Energy to span its frontage, which CPS Energy states is possible, and by not crossing any residential tracts);
- Steve and Cathy Cichowski (by avoiding use of Segment 43 which is near one of his homes);
- Heidemann Ranch and Barrera/Ramirez interests (by avoiding Segment 35 and all family tracts);
- Maria Concepcion Uriate-Azcue (by avoiding Segment 2 and related substations);
- Chandlers and Putnams and adjacent pro se intervenors (by avoiding Segment 40);
- Alvarado Living Trust (by avoiding Substation Site 3 and Segments 4 and 5); and
- Pro se intervenors in Sundance Ranch (by routing across the road along Segment 20).

CONCLUSION AND PRAYER

Here, the record strongly supports the selection of Route Z2 which excels on all routing criteria, and which offers substantial means by which to moderate the impact to the vast majority of the participants in these proceedings by following an established utility corridor. Accordingly, BEXAR RANCH, L.P. and GUAJALOTE RANCH, INC. respectfully pray that the Commission accept the Proposal for Decision and Order Route Z2 or any route that does not cross BEXAR RANCH, L.P. and GUAJALOTE RANCH, INC.


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed in the records of Docket 51023 on this 15th day of October 2021.


Soledad M. Valenciano