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Chairman Peter Lake
Commissioner Lori Cobos
Commissioner Will McAdams
Commissioner Jimmy Glotfelty

Re: Docket No. 51023; Application of CPS Energy to Amend Certificate of Convenience and Necessity for the Scenic Loop 138 KV Transmission Line in Bexar County

Dear Commissioners:

During the October 28, 2021, Open Meeting, Intervenor Patrick Cleveland suggested that Route Y would be an appropriate compromise for those parties favoring the northern Route Z2 and those parties favoring Routes P and R1, which are in the middle of the study area. Then, in its discussion, the Commission raised various questions relating to Route Y, the route map in general, and associated issues.

This letter is offered to address Route Y, clarify record facts, and address some of the Commission's questions.

1. Route Y is worse than Route Z2, and both are significantly worse than Routes P and R1.

Route Y, like Route Z2, is a northern route that travels up Toutant Beauregard Road from Substation Site 7 and, like Route Z2, Route Y runs along McAndrew Elementary School. However, while Route Z2 runs along the southeast side of the school within 150 feet of the school property,[1] Route Y runs within 214 feet of the school's entrance and carpool area.[2]

It is worth noting that, for purposes of determining proximity to the centerline of Route Z2 (specifically Segment 42a thereof), CPS Energy did ***not*** consider the school's athletic fields and recreation areas to be: i) worthy of consideration as school property for purposes of determining whether the school is within 300 feet;[3] or ii) a "recreational area" for purposes of identifying "parks

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[1] NISD Exhibit No. 1, Direct Testimony and Exhibits of Jacob Villareal, p. 9:6-8.

[2] CPS Energy Exhibit No. 6: Application Amendment dated Dec. 22, 2020, Attachment 2: Amended EA Attachments, Table 4-30: Amended Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Route Y.

[3] **CPS Energy admits that this area is "approximately 280 feet" from Segment 42 (now 42a).** Bexar Ranch LP Exhibit No. 32: *CPS Energy's Response to Patrick Cleveland's First RFI 1-10. See also* AS/Jauer Exhibit No. 25, Revised Direct Testimony of Mark Anderson, p. 28:15-19.

However, in a subsequent discovery response, CPS directly asserts that "Segment 42a . . . is not within 300 feet of the school." Patrick Cleveland Exhibit No. 29: *CPS Energy's Response to Patrick Cleveland's Second RFI No. 2-4.* Relatedly, CPS's table entitled "Amended Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Route Z1," which includes Segment 42a, contains ***no*** reference to the school being within 300 feet of Segment 42a. In contrast, the school ***is*** listed in the corresponding table for Route Y, which is indicated to be 214 feet from the centerline of Segment 35, which is part of Route Y. CPS Energy Exhibit No. 6: *Application Amendment dated Dec. 22, 2020,* Attachment 2: *Amended EA Attachments,* Tables 4-30 & 4-31.

and recreational areas owned by a governmental body or an organized group, club, or church" within 1,000 feet.[4] They must be one or the other, or both, but CPS did not acknowledge either.

Notably, the middle routes, Routes P and R1, do not come anywhere near McAndrew Elementary or the middle school to be built next door.

2. <u>Route Y impacts *25%* more habitable structures than Route Z2, but they impact *2x to 3x* more than Routes P and R1</u>.

Route Y impacts *40* habitable structures and Route Z2 impacts *32*; therefore, Route Y impacts 25% more.

In contrast, the middle routes, Routes P and R1, impact ***vastly*** fewer habitable structures, with Route P impacting only *17*, and Route R1 impacting only *13*. That is a range of 2x to 3x fewer habitable structures impacted by Routes P and R1. (*See highlighted table attached*).[5]

In fact, just one segment of Routes Z2 and Y, Segment 54, impacts more habitable structures (*19*)[6] than the entire length of either Route P or Route R1. And, contrary to the open meeting testimony of Jerome Cohen in opposition to Routes P and R1,[7] *several* homes along Segment 54 will have Segment Z2 or Y running through their front yards and across their driveways[8]-- one within 82 feet of homeowner's front door.[9]

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[4] Tr. pp. 177:10 to 178:24. See also Exhibit LBM-1R, Amended Table 4-2R: Environmental and Land Use Data for Segment Evaluation, Page 4 of 5.

[5] CPS Energy Exhibit No. 17, Scenic Loop Route Cost and Data Summary (relevant routes and habitable structure counts are highlighted; columns pertaining to other routes have been deleted to enable printing on a single 8x10 page). See also Tr. p. 408:21-25 ("**Segment 54, which is a single segment, has more habitable structures than at least three entire routes, those being Route R1, Route P, and Route Q1**").

[6] **Segment 54 impacts 19 habitable structures.** See CPS Energy Exhibit No. 15: Rebuttal Testimony of Lisa Meaux, Exhibit LBM-1R, Amended Figure 4-2R:*Environmental and Land Use data for Segment Evaluation*, Bates 026; Tr. p. 407:21-25; Tr. p. 408:9-17.

[7] At the open meeting, Mr. Cohen suggested that he "is the only homeowner in this case with a route traveling directly through [his] front yard," which is demonstrably false. *See* Infra.

In addition, Mr. Cohen, who supports Route Z2, suggested that his property "has three sides" of Segment 15. This too is demonstrably false, which a review of CPS Energy's *Property and Habitable Structure* map will confirm, along with the fact that Mr. Cohen has no habitable structure within 300 feet of Segment 15 (as evidenced by the fact that, unlike his neighbor to the northwest, he has no green "habitable structure" number located on his property). *See* Parcels F-067 & F-068 along Segment 15 depicted on CPS Energy Exhibit No. 1*: Application dated July. 22, 2020,* Attachment 6: *Property and Habitable Structure Mapping*, Sheet 13 of 17. *See also* Rows 340 & 341 of Jauer Exhibit No. 8: *Landowner Notice List Native,* which confirms Parcels F-067 & F-068 are owned by the "Jerome M & Tammy L Cohen Living Trust".

In contrast, Raul Figueroa, who opposes Route Z2, testified late at the open meeting that he *is* "surrounded on three sides" by Segment 46b and *does* have a home that is within "162 to approximately 300 feet." Mr. Figueroa's home is Habitable Structure No. 16, which can be seen on CPS Energy's map of *Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes*. CPS Energy Exhibit No. 15: Rebuttal Testimony of Lisa Meaux, Exhibit LBM-2R, Amended Figure 4-1R, Bates 027. Such is not the case for Mr. Cohen.

[8] *I.e.*, **Habitable Structure Nos. 178, 81, 85, 86, 88, and 2 additional residential lots between Habitable Structures 81 and 85.** *See* CPS Energy Exhibit No. 15: *Rebuttal Testimony of Lisa Meaux*, Exhibit LBM-2R, Amended Figure 4-1R: *Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes*, Bates 027; Tr. p. 408:20-410:9.

[9] *I.e.*, Habitable Structure 81. *See* CPS Energy Exhibit No. 6, "Application Amendment dated Dec. 22, 2020," Attachment 2: "Amended EA Attachments," Table 4-30: "Amended Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Route Y" (*including, in part, habitable structures impacted by*

Moreover, the number of habitable structures impacted by Routes Z2 and Y has ***increased*** since the application was filed and will continue to increase, as construction of the new Scenic Crest development occurs along Toutant Beauregard Road directly within 300 feet of Segment 20, which CPS acknowledged during the hearing is something "for the Commission to look at and evaluate as part of the testimony and information submitted."[10]

Running a transmission line along Route Z2 or Y through the front yards and within 300 feet of multiple single-family homes implicates one of the major routing factors prescribed in the Commission's rules,[11] unlike the baseless "bisecting" of undisturbed "sanctuaries" concept created in the PFD as a justification to *avoid* the low habitable structure counts of Routes P and R1.

3. <u>Route Y is not an acceptable compromise: it is worse than Route Z2, which is far worse than the middle Routes P and R1</u>.

Routes Y and Z2 are identical along the length of Toutant Beauregard Road from Substation 7 to McAndrew Elementary. Almost all of the impacted habitable structures and other issues unique to the Toutant Beauregard routes (e.g., substation in the floodplain, unique scenic highway, emergency communications interference, inaccurate and inconsistent cost estimates, use of the road right-of-way, impact on the school, etc.) are within this area. As a result, for those who oppose the northern routes, there is nothing about Route Y that makes it a better choice over Route Z2. In fact, Route Y would only make matters worse.

Instead, consideration of Route Y further illustrates how vastly better the middle Routes P and R1 are. They clearly are the better choice that best meet the Commission's routing criteria.

Respectfully submitted,

By: Helen S. Gilbert
BARTON BENSON JONES PLLC
Helen S. Gilbert
State Bar No. 00786263
hgilbert@bartonbensonjones.com
Sydnee R. Garcia
State Bar No. 24092400
sgarcia@bartonbensonjones.com
745 E. Mulberry Ave, Suite 550
San Antonio, Texas 78212
(210) 610-5335
(210) 600-9796 (fax)
ATTORNEYS FOR THE SAN ANTONIO ROSE PALACE, INC. AND STRAIT PROMOTIONS, INC.

By: Lynn Sherman
Lynn Sherman
State Bar No. 18243630
P.O. Box 5605
Austin, Texas 78763
(512) 431-6515
lsherman@h2otx.com
ATTORNEY FOR BRAD JAUER & BVJ PROPERTIES, L.L.C.

Segment 54, which also is part of Route Z2, and their distances from its centerline). See also CPS Energy Exhibit No. 14: *Rebuttal Testimony of Scott Lyssy – Errata,* Exhibit SDL-3R: *Right of Way Proposal for Segment 54.*

[10] Tr. p. 555:7-9.

[11] 16 Tex. Admin Code 25.101(b)(3)(B).

Exhibit 17

Scenic Loop Route Cost and Data Summary Table

Evaluation Criteria

	Land Use	O	P	Q1	R1	S	T1	U1	V	W	X1	Y	Z1	Z2
	Estimated Costs for Transmission Line and Substation Facilities	56.12	43.41	45.89	43.52	55.33	47.26	50.56	54.17	52.87	45.50	42.72	38.48	37.64
1	Length of alternative route (miles)	6.83	4.89	5.56	4.76	6.73	5.93	6.36	6.60	6.25	5.34	5.23	4.53	4.46
2	Number of habitable structures[1] within 300 feet of the route centerline	33	17	12	13	29	37	12	32	29	41	40	31	32
3	Length of ROW using existing transmission line ROW	0	0	0	0	0	0	0	0	0	0	0	0	0
4	Length of ROW parallel and adjacent to existing transmission line ROW	0	0	0	0	0	0	0	0	0	0	0	0	0
5	Length of ROW parallel to other existing ROW (roadways, railways, canals, etc.)	2.91	0.85	1.39	0.85	2.57	0.51	1.20	2.60	2.60	0.79	3.01	1.60	1.60
6	Length of ROW parallel and adjacent to apparent property lines[2]	1.30	2.62	2.44	2.21	0.74	3.96	2.54	2.21	1.03	2.67	1.26	1.49	1.58
7	Sum of evaluation criteria 4, 5, and 6	4.21	3.47	3.83	3.06	3.31	4.46	3.74	4.82	3.63	3.46	4.27	3.09	3.18
8	Percent of evaluation criteria 4, 5, and 6	62%	71%	69%	64%	49%	75%	59%	73%	58%	65%	82%	68%	71%
9	Length of ROW across parks/recreational areas[3]	0	0	0	0	0	0	0	0	0	0	0	0	0
10	Number of additional parks/recreational areas[3] within 1,000 feet of ROW centerline and substation site	0	0	0	0	0	0	0	0	0	0	0	0	0
11	Length of ROW across cropland	0	0	0	0	0	0	0	0	0	0	0	0	0
12	Length of ROW across pasture/rangeland	0.42	0.36	0.24	0.36	0.08	0.28	0.24	0.00	0.08	0.59	0.93	0.54	0.54
13	Length of ROW across land irrigated by traveling systems (rolling or pivot type)	0	0	0	0	0	0	0	0	0	0	0	0	0
14	Length of route across conservation easements and/or mitigation banks (Special Management Area)	0	0	0	0	0	0	0	0	0	0	0	0	0
15	Length of route across gravel pits, mines, or quarries	0	0	0	0	0	0	0	0	0	0	0	0	0
16	Length of ROW parallel and adjacent to pipelines[4]	0	0	0	0	0	0	0	0	0	0	0	0	0
17	Number of pipeline crossings[4]	0	0	0	0	0	0	0	0	0	0	0	0	0
18	Number of transmission line crossings	0	0	0	0	0	0	0	0	0	0	0	0	0
19	Number of IH, US and state highway crossings	0	0	0	0	0	0	0	0	0	0	0	0	0
20	Number of FM or RM road crossings	0	0	0	0	0	0	0	0	0	0	0	0	0
21	Number of cemeteries within 1,000 feet of the ROW centerline and substation site	0	1	1	1	0	2	1	0	0	0	1	1	1
22	Number of FAA registered airports[5] with at least one runway more than 3,200 feet in length located within 20,000 feet of ROW centerline and substation site	1	1	1	1	1	1	1	1	1	1	1	1	1
23	Number of FAA registered airports[5] having no runway more than 3,200 feet in length located within 10,000 feet of ROW centerline and substation site	0	0	0	0	0	0	0	0	0	0	0	0	0
24	Number of private airstrips within 10,000 feet of the ROW centerline and substation site	0	0	0	0	0	0	0	0	0	0	0	0	0
25	Number of heliports within 5,000 feet of the ROW centerline and substation site	0	0	0	0	0	0	0	0	0	0	0	0	0
26	Number of commercial AM radio transmitters within 10,000 feet of the ROW centerline and substation site	0	0	0	0	0	0	0	0	0	0	0	0	0
27	Number of FM radio transmitters, microwave towers, and other electronic installations within 2,000 feet of ROW centerline and substation site	1	0	0	0	1	1	0	1	1	0	1	1	1
28	Number of identifiable existing water wells within 200 feet of the ROW centerline and substation site	3	4	5	5	2	6	5	0	2	2	1	2	2
29	Number of oil and gas wells within 200 feet of the ROW centerline (including dry or plugged wells) and substation site	0	0	0	0	0	0	0	0	0	0	0	0	0
	Aesthetics													
30	Estimated length of ROW within foreground visual zone[6] of IH, US and state highways	0	0	0	0	0	0	0	0	0	0	0	0	0
31	Estimated length of ROW within foreground visual zone[6] of FM/RM roads	0	0	0	0	0	0	0	0	0	0	0	0	0
32	Estimated length of ROW within foreground visual zone[6][7] of parks/recreational areas[3]	0	0	0	0	0	0	0	0	0	0	0	0	0
	Ecology													
33	Length of ROW across upland woodlands/brushlands	6.24	4.42	5.27	4.35	6.51	5.46	6.07	6.52	6.03	4.25	3.76	3.60	3.53
34	Length of ROW across bottomland/riparian woodlands	0	0	0	0	0	0	0	0	0	0	0	0	0
35	Length of ROW across NWI mapped wetlands	0	0	0	0	0	0	0	0	0	0	0	0	0
36	Length of ROW across critical habitat of federally listed endangered or threatened species	0	0	0	0	0	0	0	0	0	0	0	0	0
37	Area of ROW across golden-cheeked warbler modeled habitat designated as 3-Moderate High and 4-High Quality (acres)[8]	2.95	25.11	5.52	19.03	4.77	20.39	8.31	4.28	2.95	11.92	11.12	11.12	8.92
38	Area of ROW across golden-cheeked warbler modeled habitat designated as 1-Low and 2-Moderate Low Quality (acres)[8]	16.59	12.04	17.59	13.33	18.57	15.87	22.81	18.34	16.59	13.18	12.34	11.02	11.78
39	Length of ROW across open water (lakes, ponds)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0
40	Number of stream and river crossings	10	4	11	8	10	8	12	9	9	3	6	8	8
41	Length of ROW parallel (within 100 feet) to streams or rivers	0.24	0.15	0.21	0.15	0.11	0.10	0.08	0.24	0.24	0.00	0.07	0.10	0.10
42	Length of ROW across Edwards Aquifer Contributing Zone	6.83	4.89	5.56	4.76	6.73	5.93	6.36	6.60	6.25	5.34	5.23	4.53	4.46
43	Length of ROW across FEMA mapped 100-year floodplain	0.07	0.09	0.16	0.16	0.24	0.97	0.40	0.00	0.00	0.03	0.38	1.03	1.03
	Cultural Resources													
44	Number of recorded cultural resource sites crossed by ROW	1	1	2	2	1	1	2	1	1	0	0	0	0
45	Number of additional recorded cultural resource sites within 1,000 feet of ROW centerline	1	10	12	12	1	12	12	0	1	2	2	2	2
46	Number of NRHP listed properties crossed by ROW	1	1	1	1	1	0	1	1	1	0	0	0	0
47	Number of additional NRHP listed properties within 1,000 feet of ROW centerline	0	0	0	0	0	1	0	0	0	1	2	1	1
48	Length of ROW across areas of high archeological site potential	2.94	2.49	3.13	2.65	4.07	3.72	4.77	2.85	2.75	1.44	2.26	3.01	3.16

[1] Single-family and multi-family dwellings, and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis within 300 feet of the centerline of a transmission project of 230-kV or less.

[2] Apparent property boundaries created by existing roads, highways, or railroad ROWs are not "double-counted" in the length of ROW parallel to apparent property boundaries criteria.

[3] Defined as parks and recreational areas owned by a governmental body or an organized group, club, or church within 1,000 feet of the centerline of the project.

[4] Only steel pipelines six inches and greater in diameter carrying hydrocarbons were quantified in the pipeline crossing and paralleling calculations.

[5] As listed in the Chart Supplement South Central US (FAA 2019b formerly known as the Airport/Facility Directory South Central US) and FAA 2019a.

[6] One-half mile, unobstructed. Lengths of ROW within the visual foreground zone of interstates, US and state highway criteria are not "double-counted" in the length of ROW within the visual foreground zone of FM roads criteria.

[7] One-half mile, unobstructed. Lengths of ROW within the visual foreground zone of parks/recreational areas may overlap with the total length of ROW within the visual foreground zone of interstates, US and state highway criteria and/or with the total length of ROW within the visual foreground zone of FM roads criteria.

[8] From Model C by Diamond et al. 2010

All length measurements are shown in miles unless noted otherwise.