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November 2, 2021

Chairman Peter Lake
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Public Utility Commission of Texas
PO Box 13326
Austin, Texas 78701

RE: PUC Docket No. 51023; *Application of the City of San Antonio to Amend Its Certificate of Convenience and Necessity for Scenic Loop 139-KV Transmission Line in Bexar County*; Letter in Lieu of Oral Argument in CPS Scenic Loop CCN Proceeding.

Letter to Correct Record

Dear Chairman and Commissioners:

On Thursday, October 29, 2021, a public hearing was convened with respect to the ALJ's Recommendation for Decision in the above matter. At that time the Commission heard oral argument from the interested parties available to attend on the notice provided. The undersigned, Steve Cichowski, gave a statement requesting that the Commission deny the above Application without prejudice to refiling. During my statement, I inadvertently provided incorrect information with respect to specific cost aspects of the proposed project. Because cost was the single most pervasive and recurring factor in the ALJ's Proposal for Decision, I write to correct the record by providing the correct information.

With respect to estimated right of way cost I stated that CPS had utilized a value of about $6,000.00 per acre for raw undeveloped agricultural/rangeland on Bexar Ranch, and the same amount for Pecan Springs (i.e., the Dreiss property) where land was actively selling for $100,000.00 per acre[1]. In fact, CPS's representative, Mr. Scott Lyssy, testified that the number used was $.50 (fifty cents) per square foot for segment 43 on Bexar Ranch, and .50 (fifty cents) per square foot for segments 42a, 43, and 46a through the development of Pecan Springs.[2] This equates to $21,780.00 per acre for both

[1] I believe the $6,000.00 number came from documents produced in discovery which are not in the record but nevertheless became lodged in my mind.
[2] Tr. at 522:9-17

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properties – one a 3200-acre undeveloped ranch (Bexar Ranch); the other a high end subdivision in active development.

In addition, I stated that Mr. Dreiss testified that land was selling for about $100,000.00 per acre in Pecan Springs. In fact his exact testimony was "165,000 to 225,000 per acre."[3]

I apologize for any confusion these misstatements may have caused, but respectfully submit that the correct numbers prove the point. CPS utilized a cost estimate for right of way acquisition through Pecan Springs that was off by a factor of between **7.6** and **10.3**. Multiply by **10** the right of way acquisition cost of ***any*** route going across Pecan Springs and the entire analysis utilized by the ALJ's, especially the unique "cost per structure avoided" criteria, is turned on its head. (See Proposal for Decision, page 57 *et al*)

Finally, I would be remiss if I did not respond to closing statements made by CPS's representative with respect to encouraging the type of deals made between CPS and the Pecan Springs developer. What the Commission has before it is CPS Energy's amended application with a series of proposed routes. Germane to this issue however, is Figure 4-2 of the Original Application showing the routes as originally proposed. This figure is already in the record so I have included a blow up of the relevant portion of it herein for convenience. Segment 49, as originally proposed, cuts through the heart of the Pecan Springs development. It is this segment and any route utilizing this segment, that the developer testified was a "business ending" event. This segment does not appear among the potential routes in the final amended application, having been removed entirely from consideration by CPS as a result of the deal it made with the Pecan Springs developer. In its concluding remarks issued by its attorney Kirk Rasmussen, CPS made much of the fact that the deal it made was not "coercive", and in fact should be encouraged, because *it was Mr. Dreiss who approached CPS about doing a deal.* As Inigo Montoyo said in the movie *The Princess Bride*, "I don't think you know what that word means."

In civil cases coercion occurs if someone is compelled to perform an act by force or threat. ***In re D.E.H.***, 301 S.W.3d 825, 828-29 (Tex. App.—Fort Worth 2009, pet. denied). In common usage it is defined as the practice of persuading someone to do something by using force or threats. See OXFORD ENGLISH DICTIONARY. The location of Segment 49 posed not just an inconvenience to the developers of Pecan Springs, it represented a financial disaster threatening the very survival of the business.[4] The developers were facing losses in the millions of dollars.[5] The deal made with CPS was entered into *only* as a last resort to keep the development in business.[6] Threatened with the financial ruin of their business, the developers entered into an agreement that they normally would not have entertained.[7] This is the very definition of coercion.

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[3] Tr. at 933:13
[4] Tr. at 927:21-25, 924:24 – 925:2.
[5] Dreico Companies Ex.1 at 3:14 – 4:13 Dreiss Direct.
[6] TR. at 916:10-15, 944:21-25.
[7] Tr. at 877:21-878:2, 916:24-917:6, 968:11-17.

That Mr. Dreiss, on behalf of the developers, approached CPS is totally irrelevant to the issue of public trust before the Commission. It was not Mr. Dreiss that proposed routing a business ending transmission line through the Pecan Springs development. Mr. Dreiss approached CPS *in response to* a financially fatal threat to an ongoing business. It is significant to note that this was not a hypothetical or mere potential threat, but an existing and continuing threat to the viability of the Pecan Springs development. Mr. Dreiss testified that he had been trying to sell lots in Units 1 since the Open House in the fall of 2019.[8] Despite spending millions of dollars in infrastructure improvement and actively marketing those lots, he had been unable to sell a single lot between the Open House and the date of CPS Energy's initial Application.[9] The sole reason: the existence of a potential route segment going through the middle of Pecan Springs on the map distributed at the Open House.[10] This testimony, which includes confirmation that Mr. Dreiss approached CPS about Pecan Springs in the weeks following the Open House, cast considerable doubt on CPS Energy's position that it was not aware of the extent of development on the property at the time it submitted its original Application (and cost estimates) *almost a year after the referenced discussions took place.*[11] As a result, CPS Energy's incorrect cost estimates for the segments going through Pecan Springs and the deal made with its developers cannot be considered in a vacuum. For CPS, the latter was the perfect solution to the former. To use another iconic movie reference, CPS made the Developers *a deal they couldn't refuse.*

The most troubling aspect of the agreement entered into between CPS and the developers of Pecan Springs, is the requirement that the developers support no other route except the routes that utilize segments over their property. In other words, CPS leveraged the prospect of financial ruin to deprive these landowners the full right to participate in this process and argue for routes that do not cross their property at all. This is highly offensive to public policy and encourages CPS to choose its preferred route by design. If the Commission countenances these types of deals, CPS has the go ahead to surreptitiously choose which route it prefers, as it did here. Make no mistake, CPS was not and did not act as a neutral party in this proceeding. If CPS had no preference of Routes, what was its motivation for requiring the Pecan Springs developers to waive their right to argue for Routes that did not cross their property while simultaneously surrendering millions of dollars in right of way acquisition fees and remainder damages? The financial concessions alone are sufficient consideration to support the elimination of a segment (49) that was longer, more expensive, and offered no added benefit to CPS. The evidence suggests that without that requirement, the Developers would have joined their voices with other interested parties and sought to have a different route recommended by the ALJ's: a route without the enormous concessions coerced from them by the threat of a line running right through Pecan Springs.

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[8] Tr. at 889:23 – 892:9.

[9] Id.

[10] Id.

[11] Lest there be any mistake, CPS was aware of the actual on the ground status of the Pecan Creek subdivision approximately ten months before submitting its Application and did nothing to amend its erroneous right of way acquisition cost from undeveloped ranchland to luxury subdivision.

To be clear, it is not agreements between parties to these types of proceedings that is at issue here. It is the coercive use of routing locations to encourage agreements that prohibit the affected landowner from arguing for routes other than those that cross their property. In summary, this type of agreement should not be encouraged for the following reasons:

1. This type of agreement removes the utility from being a neutral party to an active participant with a preferred route by allowing it to orchestrate routes to achieve a preferred outcome and silencing opposition to that route. The utility, here CPS, cannot claim that it is a neutral observer while requiring a party to support a specific line to that party's detriment.

2. This type of agreement tips the balance of power in this proceeding by allowing the utility to exert disproportionate pressure on the citizen parties by manipulating route selection.

3. This type of agreement erodes citizen participation, and thus citizen confidence in the process, by allowing the utility and the largest/wealthiest landowner to contract into a "preferred route" to the detriment of upstream or downstream landowners.

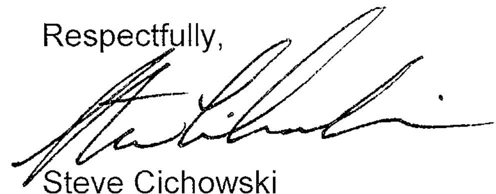
4. This type of agreement encourages the utility to target projects like Pecan Springs with potentially devastating consequences in order to leverage cost and land acquisition concessions from them.

5. This type of agreement can be used to shift the burden of construction cost errors from the utility to private landowners as it did here.

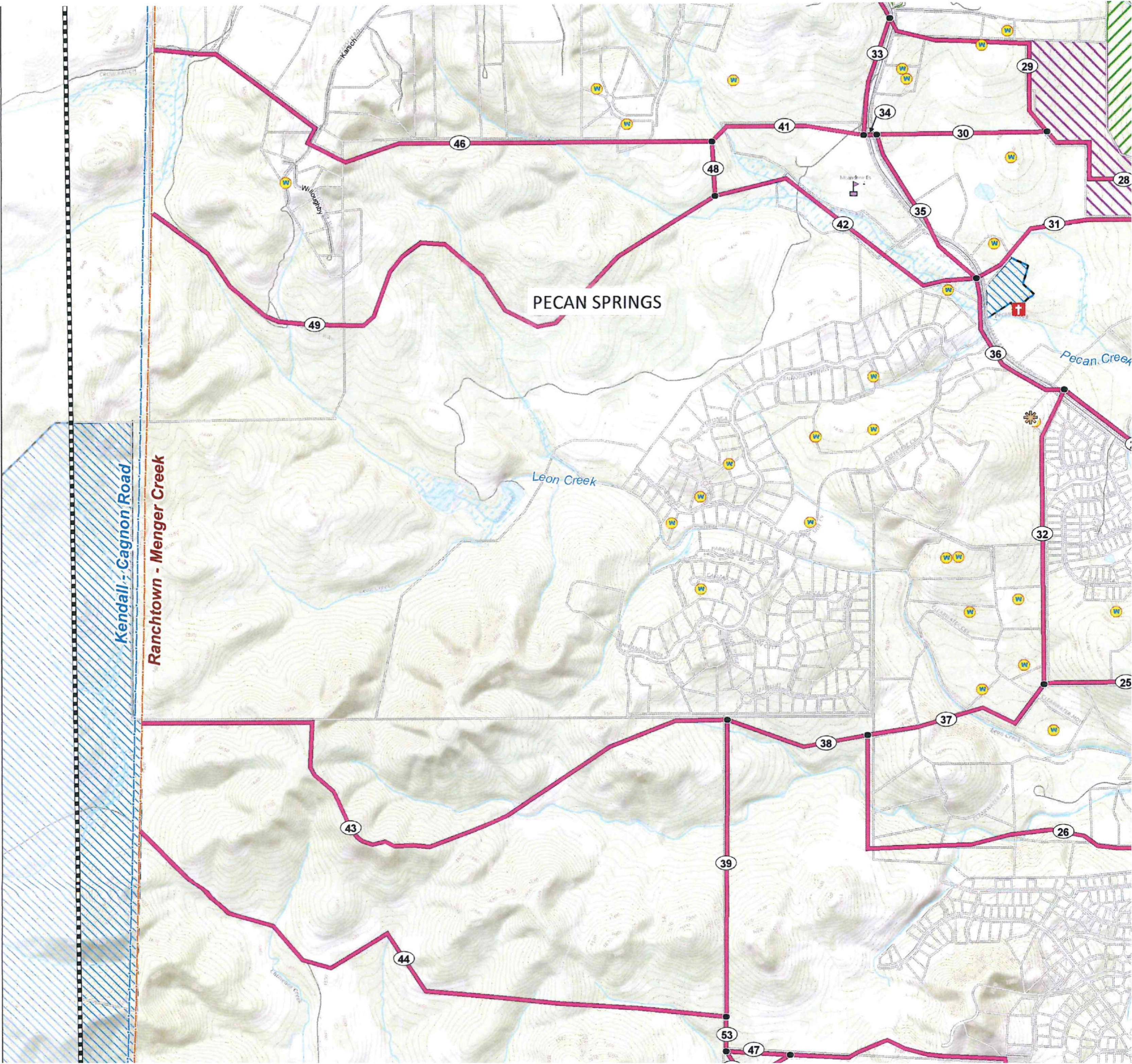
6 Ultimately, these proceedings involve a taking, whether it be voluntary or involuntary. The type of agreement at issue here improperly forces a citizen to waive his/her constitutional right to contest that taking by leveraging his/her acquiescence against potential financial ruin.

The problems identified above involving cost errors in evaluating route selection and the use of individual agreements to drive route selection are but two of the many ways this process has failed the public. I respectfully renew my request that the Commission deny this application without prejudice to refiling, and send CPS back to start over.

Respectfully,



Steve Cichowski


PECAN SPRINGS
Pecan Creek
Leon Creek
Willoughby
Ranchtown - Menger Creek
Kendall - Cagnon Road
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