



## Filing Receipt

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

**CPS ENERGY’S RESPONSE TO THE  
“CLARIFYING” LETTER OF STEVE CICHOWSKI**

COMES NOW the City of San Antonio, acting by and through the City Public Service Board (CPS Energy) and files this response to the letter filed on November 4, 2021, by Steve Cichowski supposedly “clarifying” his comments at the open meeting of October 28, 2021. As seen below, many of the statements in Mr. Cichowski’s letter are clear distortions of the evidence and represent patently false allegations against CPS Energy.

**I. DISCUSSION**

**A. The Dreiss Agreement was Not Coerced**

In his letter, Mr. Cichowski again attacks the agreement between the Dreiss Interests and CPS Energy as being coerced. It is important to note at the outset that the route changes proposed by the Dreiss Interests, *including the associated agreement with CPS Energy*, were publicly filed and presented to all parties in this proceeding on November 24, 2020.<sup>1</sup> *Every party to this proceeding was presented with the opportunity to evaluate and object to the changes proposed by the Dreiss Interests and agreed to by CPS Energy. Not a single party objected to, complained of, or challenged the changes requested by the Dreiss Interests or the agreement that the Dreiss Interests pursued and negotiated with CPS Energy.* Mr. Cichowski, although he was a party to this proceeding at that time, did not object to or challenge the Dreiss Agreement or the amendments proposed to CPS Energy’s application at that time.

Contrary to the completely unsubstantiated assertions of Mr. Cichowski, the record evidence in this proceeding reflects that CPS Energy did not coerce, force, or pressure the Dreiss Interests to work with or negotiate with CPS Energy about any of the routing alternatives on or

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<sup>1</sup> See Interchange Filing No. 392.

near their property.<sup>2</sup> Following CPS Energy’s reasonable alternative transmission line routing in accordance with the applicable statutes, rules, and orders of the Public Utility Commission of Texas (“Commission”), CPS Energy was approached in several instances by the Dreiss Interests regarding potential or proposed route segments on property the Dreiss Interests controlled or owned.<sup>3</sup> As with all landowners in this proceeding, CPS Energy was willing to work with the Dreiss Interests to mitigate the impact of proposed segments on their property. When questioned at the hearing, Mr. Dreiss was clear in his testimony:

*“I was not forced to buy into it. I agreed to the change to help our development Unit 3 be able to function as a sellable platted development. You know, it was important for us to have the southern route that has the Xs through that consolidated up to 46, and that was – we worked with CPS in a very positive way to – to come up with a good solution that allowed that to happen.”<sup>4</sup>*

Mr. Cichowski alleges that CPS Energy forced Mr. Dreiss into this situation by its routing choices. The record reflects, however, that CPS Energy followed Commission-established routing practices in developing routes for the project and there is no evidence that CPS Energy proposed routes across the Dreiss Interests’ property in any manner other than using Commission-established routing criteria.<sup>5</sup> Perhaps as importantly, Mr. Cichowski ignores the fact that the route segment that he complains was forced upon the Dreiss Interests—Segment 49—was actually specifically identified by the Dreiss Interests as a preferable route location *across their property* after the open house and prior to the filing of the application.<sup>6</sup> The original location presented at the open house (Segment 42) was across what CPS Energy understood was open ranch land avoiding development to the south (Anaqua Springs Ranch).<sup>7</sup> As the requested changes were *wholly on property the Dreiss Interests owned and controlled*, CPS Energy accommodated the Dreiss Interests and included Segments 42 and 49 in the original application

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<sup>2</sup> Tr. Vol. 5 at 908:15-22; 912:21-25 – 913:1-15; 941:3-12; 945:5-14; 961:18-25; 967:20-25.

<sup>3</sup> Toutant Ranch, et al. Ex. 1 at 5-6 (Direct Testimony of Tom Dreiss; Interchange Filing No. 557).

<sup>4</sup> Tr. Vol. 5 at 908:15-22 (emphasis added); *see also* Tr. Vol. 5 at 912:21-25 – 913:1-15; 941:3-12; 945:5-14; 961:18-25; 967:20-25.

<sup>5</sup> *See, e.g.*, CPS Energy Exs. 2, 7, 9, 12, and 15 (the direct, supplemental, and rebuttal testimonies of Ms. Lisa Meaux (with over 20 years of transmission line routing experience in Texas) and Mr. Adam Marin).

<sup>6</sup> Toutant Ranch, et al. Ex. 1, at 4-6 (Direct Testimony of Tom Dreiss; Interchange Filing No. 557).

<sup>7</sup> CPS Energy Ex. 1 at Attachment 1, Figure 2-2. As can easily be seen from Figure 2-2, Segment 42 was originally identified on what appeared to be open ranchland to provide geographic route diversity and not in a manner to attempt to cross a particular landowner—the Dreiss Interests.

in the location identified by the Dreiss Interests. However, subsequently, the Dreiss Interests determined that the location of the segments they had identified as in a preferable location on their property was no longer preferable for their business purposes. Thus, the Dreiss Interests again approached CPS Energy and presented further route changes—wholly on their property—that were ultimately approved by the Administrative Law Judges.<sup>8</sup>

In each instance, the Dreiss Interests initiated the discussions and negotiations with CPS Energy regarding route modifications involving the Dreiss Interests property.<sup>9</sup> Every segment modification that resulted from CPS Energy’s discussions and negotiations with the Dreiss Interests was located wholly on property owned or controlled by the Dreiss Interests and did not directly affect any other landowner.<sup>10</sup> The Dreiss Interests have been and are represented by Commission-experienced counsel in this proceeding.<sup>11</sup> Mr. Dreiss testified that the negotiated price with CPS Energy for right of way across the Dreiss Interests property was fair and that the route itself was fair:

“It was fair. Considering the whole business perspective for us, I believe that that was a fair price. And what we determined with CPS as far as the realignment of that segment and elimination of Segment 49 to the south of Helotes Springs Ranch, I believe that the final route with CPS is fair. It’s certainly helped us sustain the developments.”<sup>12</sup>

Through its negotiations, CPS Energy ensured that the changes proposed by the Dreiss Interests to accommodate their developments did not increase the cost of the project for the ratepayers of Texas.<sup>13</sup> Like any other party to this proceeding, the Dreiss Interests were free to challenge any aspect of CPS Energy’s application and engaged experienced counsel equipped to advise them regarding their legal choices.<sup>14</sup> The Dreiss Interests made a different choice—a choice that was fair and agreeable to them<sup>15</sup>—a choice that was fair and agreeable to CPS

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<sup>8</sup> Toutant Ranch, et al. Ex. 1, at 4-6 (Direct Testimony of Tom Dreiss; Interchange Filing No. 557).

<sup>9</sup> Toutant Ranch, et al. Ex. 1 at 5-6 (Direct Testimony of Tom Dreiss; Interchange Filing No. 557).

<sup>10</sup> Toutant Ranch, et al. Ex. 1 at 5-7; CPS Energy Ex. 12 at 5; Tr. Vol. 4 at 916:10-18.

<sup>11</sup> Tr. Vol. 5 at 878:5-20.

<sup>12</sup> Tr. Vol. 5 at 934:22-25 – 935:1-3.

<sup>13</sup> Tr. Vol. 5 at 934:4-7.

<sup>14</sup> Toutant Ranch, et al. Ex. 1 at 6; Tr. Vol. 5 at 878:5-20.

<sup>15</sup> Toutant Ranch, et al. Ex. 1 at 5-6, 8; Tr. Vol. 5 at 908:15-22; 912:21-25 – 913:1-15; 941:3-12; 945:5-14; 961:18-25; 967:20-25.

Energy<sup>16</sup>—and a choice that was fair to the ratepayers of Texas.<sup>17</sup> Ultimately, the Dreiss Interests agreement results in approximately two miles of potential routing (nearly 40 percent of some routes) that is not contested by the landowner directly affected by those segments.<sup>18</sup> It results in absolute cost certainty with respect to the right of way for all or portions of segments without threat of condemnation.<sup>19</sup>

## **B. The Dreiss Agreement is Consistent with the Preliminary Order**

The agreement between the Dreiss Interests and CPS Energy is entirely consistent with the Commission’s Order of Referral and Preliminary Order (Preliminary Order). Specifically, the Preliminary Order identifies, as issues to be addressed, “are there alternative routes or facilities configurations that would have a less negative impact on landowners?” and “If alternative routes or facility configurations are considered due to individual landowner preference: a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?”<sup>20</sup> Accordingly, the Commission has recognized the propriety of accommodating landowner preferences in routing segments across the landowner’s property, and in requiring contributions from landowners when such accommodations are made. The agreement with the Dreiss Interests is completely consistent with the Commission’s past precedent and expressed preferences, as well as the issues identified by the Commission in the Preliminary Order.

## **II. CONCLUSION**

CPS Energy prepared its application with the utmost integrity, using the proper criteria established in PURA and the Commission’s rules for routing such projects. For each landowner that approached CPS Energy about the adverse impacts of proposed routing, CPS Energy attempted to work with that landowner to come up with reasonable solutions. Had CPS Energy entirely avoided the Dreiss Interests’ property, Mr. Cichowski or other directly affected landowners would undoubtedly now be accusing CPS Energy of showing favoritism. But, it did

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<sup>16</sup> See Interchange Filing No. 393.

<sup>17</sup> Toutant Ranch, et al. Ex. 1, attached Exhibit 1 at paragraphs 7 and 8; Tr. Vol. 5 at 934:4-7.

<sup>18</sup> Toutant Ranch, et al. Ex. 1 at 7, 8.

<sup>19</sup> Toutant Ranch, et al. Ex. 1, attached Exhibit 1 at paragraph 8.

<sup>20</sup> Order of Referral and Preliminary Order at 4-5, referred issues 5 and 6 (Sep. 29, 2020) (Interchange Filing No. 355).

not show favoritism and merely routed according to proper routing criteria and then worked with an affected landowner to accommodate that landowner when the landowner approached CPS Energy. This is exactly the type of cooperative efforts that utilities should be lauded for, and not falsely accused of wrongdoing. The Commission should see Mr. Cichowski's letter for exactly what it is: a last ditch effort to avoid having a transmission line anywhere near his property. His allegations of coercion and impropriety are not supported by the record, were rejected by the ALJs, and should be rejected by this Commission.

Respectfully submitted,

/s/ Craig R. Bennett

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**ATTORNEYS FOR CPS ENERGY**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record on this date via the Commission's Interchange in accordance with SOAH Order No. 3.

/s/ Craig R. Bennett

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Craig R. Bennett