



## Filing Receipt

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

**CPS ENERGY’S RESPONSE TO THE  
NOVEMBER 8, 2021 LETTER OF SCOTT J. LUEDKE**

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 8, 2021, by Scott J. Luedke. As seen below, many of the statements in Mr. Luedke’s letter are inconsistent with the record evidence and the law.

**I. DISCUSSION**

In his letter, Mr. Luedke alleges that CPS Energy employed an “approach and method” to “effectively exclude certain affected landowners, including myself from this process.” He further takes issue with the fact that Substation Sites 6 and 7 were added after the initial open house meeting and he complains that the “community was not afforded any opportunity to consider these new sites and routes, to ask questions of CPS, or to voice concerns.” Such assertions are simply not true.

As noted at the open meeting, the contested case hearing process provides a meaningful opportunity for the community to voice their concerns and issues, and the hearing process allows intervening landowners the opportunity to question CPS personnel presented as witnesses at the hearing. Moreover, even prior to the hearing, CPS Energy was engaged with the community and answered questions regarding the process and the routes proposed. Throughout the entire process, CPS Energy has maintained a public website with information about the project, as well as contact information so that members of the public could reach out to CPS Energy for information or answers to questions regarding the project: <https://www.cpsenergy.com/en/about-us/new-infrastructure/scenic-loop-project.html>.

The record demonstrates that the community has weighed in meaningfully through this process, through comments, statements of position, and testimony during the hearing process, as

well as in public comments and oral arguments offered to the Commissioners. The Administrative Law Judges (ALJs) considered the community feedback when making a recommendation, just as the Commissioners may consider such feedback when selecting the route for the project. To contend that the community has been denied the opportunity to weigh in on Substation site 7 and the routes in the application is simply not accurate.

Mr. Luedke also contends that CPS Energy's siting processes require a second open house meeting. However, as CPS Energy pointed out in reply to exceptions, those siting process manual provisions are clearly not applicable to this proceeding. Those provisions apply to CPS Energy projects wholly in the city limits that do not require Commission approval. For those projects, there is no contested case hearing process, so having a second public meeting for projects located within the city limits provides the opportunity for community feedback that the Commission's CCN hearing process provides here. Thus, there was no need for a second public meeting because the contested case hearing process provided the opportunity for interested landowners to continue to be involved and offer their input, which many did.

The Commission's notice rules for CCN applications require an applicant to hold at least one public meeting prior to the filing of the application if 25 or more landowners will be directly affected by the project.<sup>1</sup> Such a meeting was held for this project on October 3, 2019.<sup>2</sup> There is no requirement in the Commission's rules for a second public meeting if any changes are made to the proposed routing following the public meeting. It is common for changes to be made to a project after a public meeting—in fact, one purpose of the public meeting is for the utility to receive community input to shape the application before it is filed. Following a public meeting, landowners can participate in the hearing process and provide additional input. Under Mr. Luedke's argument, a utility would either have to disregard the public feedback and not make any changes to the application in response to the public meeting feedback, or would have to continue holding additional public meetings after every modification, until no additional feedback is received to which the utility might make responsive adjustments. This is clearly a nonsensical approach. There is no legal requirement for a second public meeting, and the hearing process provides the second opportunity for landowners to offer input once changes are made after a public meeting. Mr. Luedke's arguments in this regard are without merit or legal support.

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<sup>1</sup> 16 TAC § 22.52(a)(4).

<sup>2</sup> CPS Energy Ex. 1 at 30.

Mr. Luedke also contends that he was denied the right to participate in the hearing process because he never received mailed notice, pointing out that he was denied intervention by the ALJs after he learned of the project. However, the ALJs likely would have viewed Mr. Luedke's request for intervention more favorably had he sought it in a timely manner after he clearly was aware of the project. Mr. Luedke filed a statement of position in the docket dated April 23, 2021 (See interchange filing No. 758),<sup>3</sup> which was a week before the prehearing conference. However, he did not seek to intervene until more than a week later, in a motion filed the morning of the first day of the hearing. At that point, the ALJs deemed his intervention untimely. In contrast, the ALJs admitted an intervenor, Maria Concepcion Uriarte-Azcue, who sought late intervention and appeared at the prehearing conference on April 30, 2021.<sup>4</sup> Had Mr. Luedke diligently sought to intervene, by seeking such at the same time he filed his statement of position, the ALJs likely would have viewed his request more favorably, as they did Ms. Concepcion Uriarte-Azcue's late motion to intervene. Regardless, Mr. Luedke still has had the opportunity to present his comments to the Commissioners and his views are in the administrative record. Thus, there is no showing he has been denied the opportunity to have his views considered and heard by the Commissioners.

Mr. Luedke also argues that landowners around Substation Site 6 received notice of the project, but those around Substation Site 7 did not. This issue was fully addressed in CPS Energy's reply to exceptions in this docket. There is simply no evidence that CPS Energy engaged in any effort to notify landowners around some substations but not others. As noted previously and found by the ALJs, CPS Energy complied with all applicable notice requirements. Mr. Luedke did not receive direct mailed notice because no easement would be required across his property for any proposed transmission line segment nor does his property have a habitable structure on the property.<sup>5</sup> Mr. Luedke does not live on the property, or even in the community. If he did, he undoubtedly would have been familiar with the project. The landowners around Substation Site 6 who received direct mailed notice were in close proximity to proposed segments 8 and 50, which connect at Substation Site 6. Thus, their direct mailed

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<sup>3</sup> Because he filed after 3:00 pm on Friday, April 23, 2021, his filing was deemed filed by the Commission on Monday, April 26, 2021. However, he clearly was aware of the project by April 23, 2021, and could have sought intervention by that date.

<sup>4</sup> See SOAH Order No. 14, at 2. (Interchange Filing No. 818).

<sup>5</sup> See 16 TAC § 22.52(a)(3). Although Mr. Luedke owns property in the study area, he does not reside there and there is no habitable structure on his property.

notice was tied to the presence of the segments, rather than simply Substation Site 6. However, notice was also published in local newspapers, as required by rule, so all members of the community, including Mr. Luedke, received published notice.

## II. CONCLUSION

In this case, CPS Energy has complied with all applicable law, including all requirements in statute and rule related to notice, routing, and public meetings. Mr. Luedke's comments do not accurately depict the evidentiary record and he does not present any legal defect in CPS Energy's application, the ALJs' Proposal for Decision, or this process. His views on the proposed routes and substation sites have been presented in his oral and written comments and the Commissioners may take them into consideration, as a reflection of his routing preferences, when selecting the route in this case.

Respectfully submitted,

/s/ Kirk D. Rasmussen

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**ATTORNEYS FOR CPS ENERGY**

### **CERTIFICATE OF SERVICE**

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

/s/ Kirk D. Rasmussen

Kirk D. Rasmussen