***Prudent Avoidance***

59. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance. There are no habitable structures within 300 feet of the centerline of Route 5.

***Coastal Management Program***

60. The proposed transmission line is not located within the inland boundary of the Coastal Management Program.

***Engineering Constraints***

61. For purposes of this Notice of Approval, an "engineering constraint" shall be construed as any physical condition or physical obstacle to construction along the Commission-approved route that would be impossible, unsafe, or unreasonably cost-prohibitive to overcome with design and construction solutions alone.

62. Using the best information available to it without access to the subject properties, SPS has not identified any engineering constraints along the approved route that cannot be resolved with additional consideration during the design and construction phase of the proposed transmission line project.

***TPWD Written Comments and Recommendations***

63. TPWD reviewed the EA for the proposed project and filed a letter in this docket on July 9, 2014 with comments and recommendations.

64. In the letter, TFWD provided mitigation recommendations to minimize impacts to state listed and federally-listed animal species. SPS has committed to comply with all environmental laws and regulations independent of any language included by the Commission in an Order.

65. In addition to obtaining a CCN from the Commission, SPS may need additional permits, and may be required to make additional notification in order to construct the project.

66. After a transmission line route has been selected and approved by the Commission, qualified individuals will, if necessary, conduct a field assessment of the entire length of the project to identify water resources, cultural resources, potential migratory bird issues,

and threatened or endangered species habitat that may be impacted as a result of the project. As a result of these assessments, SPS will identify additional permits that are necessary, will consult any required agencies, will obtain all necessary environmental permits, and will comply with the relevant permit conditions during construction and operation of the transmission line.

67. It is appropriate that SPS will utilize permitted biological monitors to ensure compliance with the Endangered Species Act.

68. SPS will implement construction practices that are sufficient to avoid the need for additional permitted biological monitors during clearing and construction activities for state-listed species.

69. It is proper that SPS undertake measures necessary to comply with the Migratory Bird Treaty Act.

70. The standard mitigation requirements included in the ordering paragraphs in this Order, coupled with SPS's construction and mitigation practices are reasonable measures for SPS to undertake when constructing a transmission line.

71. It is appropriate that SPS use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.

72. To the extent Lesser Prairie Chicken habitat is in the immediate proximity of the route, SPS shall implement TPWD and USFWS approved measures for avoiding and minimizing habitat loss and fragmentation, collision and other direct and indirect sources of mortality and disturbance of breeding, nesting, and brood rearing activities.

73. This Notice of Approval addresses only those TPWD recommendations and comments for which there is record evidence.

***Informal Disposition***

74. At least 15 days have passed since the completion of all notice requirements.

75. No party intervened by the July 7, 2014 deadline.

76. No party requested a hearing on the CCN application.

77. Commission Staff recommended this application for administrative approval.

## II. Legal Conclusions

1. SPS is an electric utility as defined in PURA §§ 11.004 and 31.002(6) of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 - 66.016 (Vernon 2007 & Supp. 2013) (PURA).

2. SPS is not a participant in the retail competition market under PURA, Chapter 39, Subchapter I.

3. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, and 37.056.

4. Notice of the application was provided in compliance with PURA § 37.054 and P.U.C. PROC. R. 22.52(a).

5. This docket was processed in accordance with the requirements of PURA and Administrative Procedure Act, TEX GOV'T CODE ANN. Chapter 2001 (Vernon 2008 & Supp. 2013) and Commission rules.

6. SPS is entitled to approval of the application described in the findings of fact, having demonstrated that the proposed transmission line facilities are necessary for the service, accommodation, convenience, and safety of the public within the meaning of PURA § 37.056(a), taking into consideration the factors set out in PURA § 37.056(a), taking into consideration the factors set out in PURA § 37.056(c).

7. SPS's proposed project complies with PURA § 37.056 and P.U.C. SUBST. R. 25.101, as well as the Commission's policy of prudent avoidance.

8. This application does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.

9. The requirements for administrative approval pursuant to P.U.C. SUBST. R. 25.101(b)(3)(C) have been met in this proceeding.

10. The requirements for informal disposition under P.U.C. PROC. R. 22.35 have been met in this proceeding.

## III. Ordering Paragraphs

In accordance with these statements of fact and legal conclusions, the Commission issues the following order:

1. SPS's application is approved for construction of approximately 10.9 miles of new 115-kv transmission line in Wheeler County, Texas. SPS will use Route 5 comprised of segments A-E-H-I-J-N-U-CC-FF-GG-HH-II, as described in the application.

2. SPS's CCN No. 30153 is amended to include the construction and operation of the transmission line facilities requested in the application.

3. SPS shall comply with the following measures to mitigate construction impacts:

   (a) In the event SPS or its contractors encounter any archaeological artifacts or other cultural resources during project construction, work shall cease immediately in the vicinity of the resource and the discovery shall be reported to the Texas Historical Commission (THC). SPS shall take action as directed by the THC.

   (b) SPS shall follow the procedures described in the following publications for protecting raptors: *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC), 2006; the *Avian Protection Plan Guidelines* published by APLIC in April 2005; and *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, published by APLIC in October 2012.

   (c) SPS shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way (ROW), and shall ensure that such herbicide use complies with the rules and guidelines established in the Federal Insecticide, Fungicide and Rodenticide Act and with the Texas Department of Agriculture regulations.

   (d) SPS shall minimize the amount of flora and fauna disturbed during construction of the transmission line, except to the extent necessary to establish appropriate ROW clearance for the transmission line. In addition, SPS shall re-vegetate using native species and shall consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, SPS shall avoid adverse

environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and the United States Fish and Wildlife Service (USFWS).

(e) SPS shall implement erosion control measures as appropriate. Also, SPS shall return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner or landowners' representatives. SPS shall not be required to restore original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.

(f) SPS shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.

(g) SPS shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the proposed transmission line. Any minor deviations to the approved route shall directly affect only landowners who were sent notice of the transmission line in accordance with P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation, excluding public right-of-ways. SPS may make minor deviations to the constructed location of the line to safely and reasonably accommodate engineering constraints, but only to the minimum extent necessary. Minor deviations that are caused by engineering constraints do not require landowner consent. Minor deviations that are not caused by engineering constraints shall directly affect only those landowners that have agreed to the minor deviation.

(h) SPS shall be permitted to deviate from the approved route in any instance in which the deviation would be more than the minor deviation, but only if the following two conditions are met. First, SPS shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line and not cause an unreasonable increase in cost or delay the project. Unless these two conditions are met, this paragraph does not authorize SPS to deviate

from the approved route except as allowed by the other ordering paragraphs in this Notice of Approval

4. SPS shall comply with the reporting requirements of P.U.C. SUBST. R. 25.83.

5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS the 1ST day of August 2014.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

Susan E. Goodson

**SUSAN E. GOODSON**
**ADMINISTRATIVE LAW JUDGE**

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