

PUC DOCKET NO. 41334
SOAH DOCKET NO. 473-13-5032

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PUBLIC UTILITY COMMISSION
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APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
PUBLIC SERVICE COMPANY TO §
AMEND A CERTIFICATE OF § OF TEXAS
CONVENIENCE AND NECESSITY FOR §
A 115-KV TRANSMISSION LINE §
WITHIN OCHILTREE AND §
LIPSCOMB COUNTIES §

ORDER

This Order addresses Southwestern Public Service Company's (SPS's) application to amend a certificate of convenience and necessity (CCN) for a proposed 115-kV transmission line within Ochiltree and Lipscomb Counties (Application). A unanimous stipulation (Stipulation) was executed that resolves all of the issues in this docket. Consistent with the Stipulation, SPS's Application is approved.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. SPS is an investor-owned electric utility providing retail electric service in Texas under CCN No. 30153.
2. On May 1, 2013, SPS filed an application for a proposed 115-kV transmission line that begins at the Ochiltree Substation in Ochiltree County, approximately one mile north of State Highway 15 and 3/4 of a mile west of U.S. Highway 83, north of Perryton, Texas (Application). The transmission line ends at the new Lipscomb Substation located in Lipscomb County, approximately 500 feet north of State Highway 15 and west of State Highway 23/Ranch Road 1265 in Booker, Texas. In addition the transmission line will connect to the Wade Substation, located in Ochiltree County, on the northwest corner of

50

County Road 24 and County Road 4. The Wade Substation will require upgrades, including a new 115-12.47 kV, 5.6/7 MVA Power Transformer, and an expansion of the substation to accommodate the connection of the 115-kV transmission line. The project also includes upgrades to the Booker Substation and removal of an existing 66-kV transmission line. The 115-kV transmission line was identified by SPS as needed to improve reliability of the existing transmission line system and to allow new load on the system in the Perryton and Booker areas. The proposed transmission line's length would be approximately 19.2 to 27.3 miles depending on the route selected.

3. On May 1, 2013, SPS provided, by first class mail, written notice of the Application to:
(a) the county governments of Ochiltree and Lipscomb, the counties in which the proposed facility is located; (b) Golden Spread Electric Cooperative, Inc., and North Plains Electric Cooperative, Inc., the neighboring utilities within five miles of the proposed facility; (c) the Cities of Perryton and Booker, the municipalities within five miles of the proposed facility; (d) each landowner, as stated on the county tax rolls, that will be directly affected by the requested CCN amendment; and (e) the Office of the Public Utility Counsel (OPUC).
4. On May 1, 2013, the Commission's Administrative Law Judge (ALJ) filed Order No. 1, requiring information from SPS and a recommendation from Commission Staff regarding the sufficiency of the Application and notice, and addressing other procedural matters.
5. On May 1, 2013, SPS provided a copy of the Application and the Environmental Assessment and Alternative Route Analysis (EA) to the Texas Parks and Wildlife Department (TPWD). SPS included a copy of the transmittal letter to TPWD with the Application.
6. On May 5, 2013, SPS published notice of the Application in *The Perryton Herald*, a newspaper of general circulation in Ochiltree County, Texas. On May 9, 2013, SPS published notice in *The Booker News*, a newspaper of general circulation in Lipscomb County, Texas.
7. On May 10, 2013, SPS filed a response to the issues to be addressed in Order No. 1.

8. On May 13, 2013, SPS filed proof of notice to the affected counties, utilities, municipalities, landowners, and OPUC.
9. On May 20, 2013, Alexandra Davis of Chaparral Energy, LLC, filed a motion to intervene.
10. On May 22, 2013, SPS filed an affidavit attesting to the publication of notice in *The Perryton Herald* and *The Booker News*.
11. On May 24, 2013, Janet Tregellas on behalf of RJT Land LP (f/k/a Tregellas Family Investment Partnership) filed a motion to intervene.
12. On May 28, 2013, Top of Texas Rural Rail Transportation District filed a motion to intervene.
13. On May 28, 2013, Commission Staff filed a recommendation on sufficiency of the Application and notice. Commission Staff recommended that the Application be deemed sufficient and the notice be approved. Commission Staff also proposed a procedural schedule.
14. On May 31, 2013, David Sell filed a motion to intervene.
15. On June 3, 2013, Cindy Lewis filed a motion to intervene.
16. On June 4, 2013, the Commission's ALJ issued Order No. 2, addressing the sufficiency of the Application and notice; establishing a procedural schedule; and granting the motions to intervene of Alexandra Davis, Janet Tregellas on behalf of RJT Land, LP (f/k/a Tregellas Family Investment Partnership), and Top of Texas Rural Rail Transportation District.
17. On June 5, 2013, Byron and LaVeta Mason (Pour Over Trust) filed a motion to intervene.
18. On June 10, 2013, motions to intervene were filed by Sharon Bradshaw and Todd Ansted.
19. On June 12, 2013, motions to intervene were filed by Neal and Janice Flathers and Ryan L. Williams.

20. On June 14, 2013, motions to intervene were filed by Sidney Harris, Danlin Real Estate, LLC, and The Wanda J. Hardy Credit Shelter Trust.
21. On June 18, 2013, the Commission's ALJ issued Order No. 3, granting the motions to intervene of David Sell, Cindy Lewis, Byron and LaVeta Mason (Pour Over Trust), Sharon Bradshaw, and Todd Ansted.
22. On June 24, 2013, RJT Land, LP, Neal and Janice Flathers, Ryan L. Williams, Wanda J. Hardy Credit Shelter Trust (Byrl Hardy, trustee), and Sidney Harris filed a joint request for hearing on the merits.
23. On June 25, 2013, the Commission's ALJ issued Order No. 4, granting the motions to intervene of Ryan L. Williams, Neal and Janice Flathers, Sidney Harris, Danlin Real Estate, LLC, Wanda J. Hardy Credit Shelter Trust (Byrl Hardy, trustee).
24. On June 26, 2013, the Commission issued the Order of Referral and Preliminary Order to the State Office of Administrative Hearings (SOAH).
25. On July 2, 2013, the SOAH ALJ filed Order No. 1, scheduling a prehearing conference and establishing filing and service procedures.
26. On July 5, 2013, Commission Staff filed a letter from TPWD containing comments and recommendations regarding the proposed transmission line.
27. On July 12, 2013, SPS filed a notice of informal technical conference to take place after the prehearing conference.
28. On July 18, 2013, prehearing and technical conferences were held at SOAH.
29. On July 29, 2013, the SOAH ALJ filed Order No. 3, memorializing prehearing conference, establishing a procedural schedule, and giving notice of hearing.
30. On August 28, 2013, SPS filed a motion to abate the procedural schedule.
31. On September 4, 2013, the SOAH ALJ issued Order No. 4, abating the procedural schedule.
32. On September 13, 2013, SPS filed Elizabeth A. Kirkpatrick's testimony in support of the Stipulation.

33. On September 13, 2013, Commission Staff filed a memorandum in support of the Stipulation.
34. On September 13, 2013, SPS filed the Agreed Motion to Admit Evidence and Motion to Remand which included the Stipulation resolving all issues in this docket.
35. On September 24, 2013, the SOAH ALJ issued Order No. 5, admitting evidence, remanding the case to the Commission, and dismissing the SOAH docket.

Description of Agreed Transmission Line and Cost

36. SPS filed seven alternate routes consisting of a combined 36 segments. Parties have agreed to Route No. 1 that is comprised of segments: A, B, F, G, H, J, N, O, S, X, AE, AJ as described in Attachment B to the Stipulation. A map depicting Route No. 1 and the segments that comprise the route is attached to the Stipulation as Attachment C. The length of Route No. 1 is approximately 19.5 miles.
37. The proposed transmission line will be built using primarily single-pole steel structures.
38. The cost to construct Route No. 1 is approximately \$13,413,951 and the cost to construct the new Lipscomb Substation and perform upgrades at the Wade and Booker Substations is approximately \$3,307,791. The total estimated cost of the project is approximately \$16,721,742. This is the least expensive route proposed by SPS. Thus, the estimated cost of the proposed transmission line and substation facilities is reasonable when compared to similar projects and alternative routes for this project.

Need for the Proposed Transmission Line

39. SPS is a member of, and its entire transmission system is located within, the Southwest Power Pool (SPP). The SPP is a regional transmission organization approved by the Federal Energy Regulatory Commission that meets the requirements of § 39.151 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2012) (PURA) § 39.151 as an independent system operator.
40. The proposed transmission line will connect the Ochiltree Substation in Ochiltree County, to the new Lipscomb Substation in Lipscomb County. SPS identified its 66-kV radial (Z66) transmission line between the Perryton Substation and the Booker Substation

as needing upgrade or replacement to improve reliability and increase line capacity. The Z66 line is estimated to be more than 50 years old. Its structures and hardware are deteriorating and therefore require a heightened level of maintenance.

41. For SPS to continue to provide reliable service to the area, particularly in light of continued load growth, the Z66 line requires an upgrade to a standard line rating capacity. Between 2003 and 2012, SPS's Transmission Line Performance Department recorded 43 outage events on the Z66 line. Eleven of those events were sustained outages with a total of 3,383,820 Customer Minutes Out (CMO). The Z66 line is considered one of the low-performing transmission lines on the SPS system in terms of CMO.
42. SPS demonstrated a reasonable need for the proposed project in order to provide more adequate and reliable service. The need for the proposed project was not disputed in this docket.

Resolution of Landowner Concerns

43. All intervenors have agreed to Route No. 1 consisting of segments A, B, F, G, H, J, N, O, S, X, AE, AJ.

Project Alternatives

44. SPS considered distribution, transmission and distributed generation alternatives to the proposed transmission line.
45. SPS considered a complete wreck-out and rebuild of the existing Z66 using the same ROW. SPS would not be able to take the Z66 line out of service while constructing this project, and therefore would need to construct a temporary line for the duration of the project at considerable additional cost. In addition, most of the existing ROW is not sufficient for a new transmission line. This alternative also does not increase the capacity of the line, which is needed for future load growth. Because of the significant additional cost, the lack of sufficient ROW and insufficient capacity, SPS determined that this was not a suitable alternative to the proposed project.
46. SPS needs additional capacity at the 115-kV transmission level in this area. Constructing distribution would not provide the needed reliability. Therefore, SPS determined that additional distribution lines were not suitable alternatives to the proposed project.

47. SPS considered upgrading the voltage level, bundling conductors of existing facilities or adding transformers.
48. The proposed project would provide the needed upgrading of voltage. SPS determined that it was not possible to bundle conductors of the existing facility because the existing structures are not capable of supporting bundled conductors. SPS also determined that adding transformers was not a suitable alternative because additional transformers would not sufficiently increase the transmission capacity needed. SPS considered distributed generation, but determined that additional generation would be cost prohibitive and would not address the need for additional transmission capacity.

Routes

49. SPS considered and submitted a sufficient number of geographically diverse routes for the proposed transmission line.
50. The proposed transmission line complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101.
51. Consistent with the Application and the Stipulation, the proposed transmission line to be constructed along Route No. 1 is comprised of segments A, B, F, G, H, J, N, O, S, X, AE, AJ as described in Attachment B to the Stipulation. The transmission line will begin at the Ochiltree Substation to be located in Ochiltree County, approximately one mile north of State Highway 15 and 3/4 of a mile west of U.S. Highway 83, north of Perryton, Texas. The transmission line will end at the new Lipscomb Substation, in Lipscomb County, Texas, approximately 500 feet north of State Highway 15 and west of State Highway 23/Ranch Road 1265 in Booker, Texas. In addition, the proposed transmission line will connect to the Wade Substation, located in Ochiltree County, on the northwest corner of County Road 24 and County Road F. The proposed line will serve as a replacement for the 66-kV radial line between the Perryton and Booker Substations, which will be removed as a part of this project.
52. Route No. 1 complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101 and is the best alternative weighing the factors contained therein.

Community Values

53. Pursuant to P.U.C. PROC. R. 22.52(a)(4), SPS and Logan Simpson Design (LSD) conducted one open house between the hours of 5:00 and 7:00 PM on October 30, 2012, at the Museum of the Plains in Perryton, Texas.
54. Information received from the public open-house meeting and from local, state, and federal agencies was considered and incorporated into the routing analysis and selection of alternative routes.
55. Commission Staff recommends that SPS cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the proposed transmission line.
56. There are 66 habitable structures located within 300 feet of the proposed transmission line along Route No. 1.
57. There is one AM radio tower within 10,000 feet of the transmission line along all seven routes.
58. There is one FM tower located within 2,000 feet of the transmission line along all seven routes.
59. There is one known FAA registered airport with two runways longer than 3,200 feet within 20,000 feet of the centerlines of all seven routes. There are no known heliports within 5,000 feet of Route No. 1. There are no private airstrips within 10,000 feet of the centerline of Route No. 1.

Park and Recreational Areas

60. There are two recreation areas within 1,000 feet of the proposed centerline of Route No. 1. The recreation areas are the Booker Country Club golf course and a local baseball field.
61. The proposed transmission line will not cross either recreational area, and its impact will be limited to visual impacts.

Historical and Archeological Areas

62. Route No. 1 does not cross any listed or determined-eligible historical or archeological sites, and there are no such sites within 1,000 feet of the route.
63. Route No. 1 does not cross any previously recorded historical or archeological sites. There is one prehistoric site and one historic structure within 1,000 feet of Route No. 1.

Aesthetic Values

64. The aesthetic impacts of the proposed transmission line have been considered and minimized to the extent possible.

Effect of Granting the CCN on Other Utilities

65. The proposed transmission line will not adversely affect service by other utilities in the area and will result in SPS being able to provide more reliable service.

Environmental Impact

66. Construction of the proposed transmission line will not have a significant effect on the geologic or physiographic features of the area.
67. The proposed transmission line will not have a long-term impact on soils. SPS will inspect the right-of-way (ROW) during and after construction to identify problem erosion areas and will take special precautions to minimize vehicular traffic over areas with very shallow soils. SPS will also exercise special care when clearing near waterways.
68. The proposed transmission line will have minimal impact on prime farmland and will be limited to the physical occupation of small areas at the base of support structures.
69. The construction of the proposed transmission line should have little to no impact on surface water.
70. Route No. 1 will cross through one large playa along Segment X. Route No. 1 follows railroad ROW and expects to place the centerline at the top of the berm where the former rail line was located. This berm is elevated approximately five feet above the playa.
71. Although it is likely that some transmission line structures will be located within a floodplain, careful siting should minimize the possible impacts and the structures should

- not significantly affect flooding. SPS will coordinate with the appropriate floodplain administrators for Ochiltree and Lipscomb Counties as necessary.
72. Construction of the proposed transmission line and substation should have little to no impact on the groundwater resources of the area.
 73. The main impact of the transmission line on vegetation will be the removal of woody vegetation along the proposed ROW. When clearing vegetation, SPS will make efforts to retain native ground cover, where possible, to minimize impacts to local vegetation and will reseed as required by this Order.
 74. The transmission line will have only a minor impact; if any, on aquatic/hydric habitat.
 75. The transmission line will have only a minor impact on local wildlife.
 76. The transmission line is not located within the Texas Coastal Management Program Boundary.
 77. No plants currently listed as threatened or endangered by United States Fish and Wildlife Service (USFWS) and TPWD are known to occur along the proposed transmission line routes or on substation sites. No impacts to any federally or state-protected plant species are expected to result from this project.
 78. No significant impacts to unique, sensitive, or protected wildlife habitats are anticipated.
 79. No impacts to federal or state-listed threatened or endangered species are anticipated. SPS will consult with USFWS should any federally listed species be observed during construction.
 80. No impacts are expected to non-listed sensitive species that may occur in the study area. SPS will consult USFWS or TPWD for any required surveys.
 81. Any construction activities should avoid burrows, including prairie dog colonies and mammal burrows to avoid potential impacts to burrowing owls, prairie dogs and the swift fox.
 82. SPS has conducted an adequate evaluation of potential environmental impacts of the proposed transmission line in the impacted area.

Prudent Avoidance

83. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance. There are 66 habitable structures within 300 feet of the centerline of Route No. 1.

TPWD Written Comments, Recommendations, and Procedures

84. SPS has committed to comply with all environmental laws and regulations independent of any language included by the Commission in an Order.
85. In addition to obtaining a CCN from the Commission, SPS may need additional permits and may be required to make additional notifications in order to construct the project.
86. After a transmission line route has been selected and approved by the Commission, qualified individuals will 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.
87. It is appropriate that SPS utilize permitted biological monitors to ensure compliance with the Endangered Species Act.
88. 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. SPS will implement TPWD recommendations that state-listed species observed during construction be allowed to leave the site or be relocated to a suitable nearby area by a permitted individual.
89. It is proper that SPS undertake measures necessary to comply with the Migratory Bird Treaty Act.
90. 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.

91. It is appropriate that SPS use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
92. To the extent prairie dog towns are in the immediate proximity of the route, SPS will undertake the measures described in the letter dated February 13, 2012, from TPWD that is in the record in this docket regarding the Black-Tailed Prairie Dog.
93. This Order addresses only those TPWD recommendations and comments for which there is record evidence.

II. Conclusions of Law

1. SPS is an electric utility as defined in PURA §§ 11.004 and 31.002(6).
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. SPS provided proper notice of the Application 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, the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2008 & Supp. 2012), and Commission rules.
6. SPS is entitled to approval of the Application described in the findings of fact, utilizing Route No. 1, 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(c).
7. Route No. 1 complies with all aspects of 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. Consistent with the Stipulation, the Application is reasonable and should be approved.

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

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Consistent with the Stipulation, SPS's Application is approved.
2. Consistent with the Stipulation, CCN No. 30153 is amended to include the construction and operation of the transmission line facilities requested in the Application. SPS will use Route No. 1, comprised of segments A, B, F, G, H, J, N, O, S, X, AE, AJ as described in Attachment B to the Stipulation. Route No. 1 is approximately 19.5 miles in length.
3. Resolution of this docket was the product of negotiation and compromise between the Parties.
4. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Stipulation. Entry of this Order shall not be regarded as binding precedent as to the appropriateness of any principle underlying the Stipulation.
5. In the event SPS or its contractors encounter any 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). In that situation, SPS shall take action as directed by the THC.
6. 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.
7. SPS shall follow the procedures for raptor protection outlined in in the *Avian Power Line Interaction Commission (APLIC); Suggested Practices for Raptor Protection on Power*

Lines: The State of the Art in 2006 (2006); and in the APLIC and USFWS *Avian Protection Plan Guidelines* (2005). SPS shall take precautions to avoid disturbing occupied nests and will take steps to minimize the impact of construction on migratory birds, especially during nesting season.

8. SPS shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the 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.
9. 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. Additionally, SPS shall re-vegetate using native species and shall consider landowner preferences and wildlife needs 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 USFWS.
10. SPS shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
11. SPS shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviations in the approved route shall only directly affect landowners who were sent notice of the transmission line in accordance with P.U.C. PROC. R. 22.52(a)(3) or have waived notice and agreed to accept the transmission line across their property, and shall directly affect only those landowners that have agreed to the minor deviation, excluding public rights-of-way.
12. 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 Order.

13. SPS shall update the reporting of this project on their monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. SUBST. R. 25.83(b).
14. 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 14th day of ~~October~~ November 2013.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY D. MARTY, COMMISSIONER