17. On January 28, 2010, the Texas Parks and Wildlife Department (TPWD) filed a letter containing comments and recommendations regarding the proposed transmission line.

18. On February 16, 2010, Commission Staff filed the direct testimony of Allen Boling, PE.

19. On March 9, 2010, SPS filed the rebuttal testimonies of Jeff Stebbins and Sean Frederickson.

20. On March 30, 2010, a hearing on the merits was held at SOAH before ALJ Hunter Burkhalter. SPS, Commission Staff, and Debra Brennen, on behalf of Nevada Porter, attended the hearing. James Hutchinson did not attend. The SOAH ALJ admitted the following exhibits at the hearing:

- SPS Exhibit 1 – Application
- SPS Exhibit 1A – Second Errata to CCN Application
- SPS Exhibit 2 – Direct Testimony of John S. Fulton,
- SPS Exhibit 3 – Direct Testimony of Kelli D. Boren
- SPS Exhibit 4 – Direct Testimony of Jeffrey B. Stebbins
- SPS Exhibit 5 – Rebuttal Testimony of Jeffrey B. Stebbins
- SPS Exhibit 6 – Rebuttal Testimony of Sean L. Frederiksen
- SPS Exhibit 7 – Dallam to Sherman Map
- SPS Exhibit 8 – Map
- SPS Exhibit 9 – Additional Cost for Distribution for Nevada Porter Property, and
- PUC Staff Exhibit 1 – Direct Testimony of Allen S. Boling, PE

21. During the hearing on the merits, SPS announced that a settlement had been reached. All the parties in attendance announced their consent to the settlement on the record. The parties agreed to support the selection of SPS's preferred route as described by Alternative No. 5 in SPS's application and as modified by the parties at the hearing.

22. On April 19, 2010, Mr. Hutchinson withdrew his intervention in this docket.

23. On April 19, 2010, SPS, Commission Staff, and Debra Brennen, on behalf of Nevada Porter, filed a stipulation resolving all of the issues in this docket, a motion to remand this case to the Commission, and a motion to grant Mr. Hutchinson's request to withdraw from this proceeding. On May 4, 2010, the SOAH ALJ admitted the stipulation into the record.

Description of SPS's Proposed Transmission Line and Cost

24. The proposed transmission line consists of a single-circuit, 115-kV transmission line extending from the Dallam County Substation near Dalhart, Texas, to the Sherman County Substation, approximately two miles east of Stratford, Texas. The length of the proposed transmission line is approximately 37 to 47 miles long.

25. SPS filed five alternate routes from the Dallam County Substation to the Sherman County Substation in the application. SPS's preferred route is Alternative #5 (composed of segments XX-VV-TT-OO-NN-RR-H-QQ-M-N-P-T-Y-CC-HH-II). The length of SPS's preferred route is 37.4 miles.

26. This line will be built using single- and double-pole, self-supporting steel structures.

27. The cost of the preferred route (including needed substation enhancements), as modified by the stipulation, is $10,529,986. The estimated cost of the proposed transmission line is reasonable when compared to that of similar projects.

Need for the Proposed Transmission Line

28. The proposed transmission line is necessary to provide reliable transmission service to existing and growing loads in Dallam and Sherman Counties. This line will provide an alternate source of electricity to the communities of Dalhart and Stratford, will provide additional transmission capacity supporting backup transmission services in Hartley and Moore Counties, and will help support local voltage conditions.

29. The current transmission service to Dallam and Sherman Counties is provided through three 115-kV lines originating out of the Moore County Substation. These lines supply

power to the Dallam County, Sherman County, Dalhart, Etter-Rural, and Rita Blanca Electric Cooperative (RBEC)-Hogue Substations.

30. The critical conditions for this area are the loss of the Moore County to Etter-Rural 115-kV line or the loss of the Moore County to RBEC-Hogue 115-kV line.

31. The electrical load in this area has increased an average of 2.78% per year over the last eight years, and is expected to continue to grow.

32. SPS is a member of the Southwest Power Pool (SPP) and does not operate in the Electric Reliability Council of Texas region. The SPP is an independent organization as defined by the Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA) § 39.151(b). On January 29, 2008, the SPP issued a notice to construct the proposed transmission line to SPS.

33. SPS demonstrated a reasonable need for the proposed transmission line in order to provide more adequate and reliable service. The need for the proposed transmission line was not disputed in this docket.

Resolution of Landowner Concerns.

34. During the hearing on the merits of this matter, the parties resolved all disputed issues related to the proposed transmission-line route across the Porter property, per the terms of the stipulation.

Project Alternatives

35. SPS considered six distribution, transmission, natural-gas-generation, and distributed-generation alternatives to the proposed transmission line.

36. SPS considered upgrading existing 115-kV transmission lines to 230-kV to increase the power capacity of the transmission. However, because the existing structures would be

structurally inadequate to support the 230-kV facilities, this alternative would require the complete wreck-out and rebuild of the existing line and is prohibitively expensive.

37. SPS considered re-conductoring sections of the existing 115-kV transmission lines to mitigate contingency overloads. However, the re-conductor of the line would be insufficient to mitigate the contingency low-voltage conditions and would require the complete wreck-out and rebuild of the existing line with new conductors, and is prohibitively expensive.

38. SPS considered constructing a new natural-gas-generation plant near Dalhart to provide the necessary power to meet the growth in load. However, the capital cost of this alternative is prohibitively expensive.

39. SPS considered a distributed-generation alternative using 200-kW micro-turbine generators grouped together at appropriate locations to mitigate overload and low-voltage conditions. However, the capital cost is prohibitive.

40. SPS considered a distribution alternative. However, the current loads in the Dalhart area are served by SPS and RBEC's substations, and the load cannot be reliably served during critical contingencies on the existing transmission, and thus is not feasible.

41. SPS considered adding transformers to existing facilities to mitigate critical voltage conditions, but because there is no other source voltage to transform to in the Dalhart area, this alternative is not feasible.

Routes

42. SPS retained PBS&J to prepare an environmental assessment and alternative route analysis for the proposed transmission line.

43. SPS considered and submitted a sufficient number of geographically diverse routes for the proposed transmission line.

44. Consistent with the application and amendments/errata thereto, as modified by the stipulation, the proposed transmission line shall be constructed along SPS's preferred route, Alternative #5 (composed of segments XX-VV-TT-OO-NN-RR-H-QQ-M-N-P-T-Y-CC-HH-II).

45. SPS's preferred route 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.

46. Of the five alternatives for the proposed transmission line, the preferred route is the shortest, includes the second-shortest distance across mobile irrigation systems, crosses the least amount of endangered or threatened species habitat, and crosses the least amount of area with a high probability for cultural-resource sites.

47. The preferred route parallels the greatest percentage of roads and highways of all the alternatives.

48. No party to this docket contests SPS's preferred route, as modified by the stipulation.

49. SPS's application, consistent with the stipulation, is reasonable, is in the public interest, and should be approved.

Community Values

50. A public open-house meeting for the proposed transmission line was held at the Allyn Finch Intermediate School cafeteria in Dalhart, Texas, on June 24, 2008.

51. Information received from the public open-house meetings and from local, state, and federal agencies was considered and incorporated into both PBS&J's routing analysis and SPS's selection of preferred and alternative routes.

52. Commission Staff recommended that SPS cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the proposed transmission line.

53. There are 30 habitable structures located within 300 feet of the proposed transmission line along SPS's preferred route.

54. There is a single AM radio tower (KXIT) located within 10,000 feet of each route of the proposed transmission line. There are two electronic-communication towers located within 2,000 feet of SPS's preferred route.

55. One private airstrip is located within 10,000 feet of the centerline of the preferred route, in addition to the centerlines of alternate routes 2 and 3. There are three FAA-listed airfields within 20,000 feet of the centerline of each route in the proposed transmission line. There are no heliports located within 5,000 feet of the centerline of any proposed route. There are no significant impacts to any airports, airstrips, or heliports anticipated from construction of the proposed transmission line.

56. A portion of each alternative route in the proposed transmission line crosses cropland irrigated by a center-pivot irrigation system. Alternate route 4 has the greatest length of right-of-way (ROW) crossing such cropland.

57. The proposed transmission line will have no adverse impacts on community values.

Park and Recreational Areas

58. There are no parks or recreational areas owned by a governmental body or an organized group, club, or church within 1,000 feet of the centerline of the proposed route.

59. The transmission-line project will have no adverse impact on parks and recreational areas.

Historical and Archeological Areas

60. No known historical or archeological sites are located within 1,000 feet of the centerline of the preferred route.

61. The preferred route will have little or no impact on historical or archeological values.

Aesthetic Values

62. The aesthetic impacts of the proposed transmission line have been considered and minimized to the extent possible. Of the total length of SPS's preferred route, 80.2% is located within the foreground visual area of the study area's U.S. and state highways. The new construction for this project will have minimal impact on aesthetic values.

Effect of granting the CCN on other utilities

63. The proposed transmission line will not adversely affect service by other utilities in the area and will result in SPS's being able to provide reliable service to SPS's customers in Dalhart and Stratford, Texas. Specifically, the proposed transmission line should increase the operational reliability of the RBEC, the only other retail provider in the subject area, as a result of the additional transmission provided to the Dallam County Substation.

Environmental Impact

64. SPS contracted with PBS&J to perform an Environmental Assessment and Alternative Route Analysis of the proposed transmission line.

65. Construction of the proposed transmission line will not have a significant effect on the geologic or physiographic features of the area.

66. The proposed transmission line will cause only short-term impacts to soil, water, and ecological resources.

67. The land uses in the area are primarily farming, open rangeland, and natural-gas and oil exploration and drilling. No significant adverse effects on land use by the proposed transmission line are anticipated.

68. TPWD found that route 5 appears to have the least potential impact on natural resources in the project area. TPWD recommended the following: (a) seeding areas along the ROW subject to erosion with native grasses and forbs; (b) using existing bridges and culverts where possible to avoid disturbing stream substrates and riparian vegetation, and avoiding destruction of inert microhabitats; (c) minimizing direct impact to wetland ecosystems; (d) being informed of the presence of the Texas horned lizard; (e) avoiding impacts to prairie-dog towns and the wildlife species that depend on these towns; (f) surveying burrows for the presence of nesting burrowing owls, and dealing with any such owls in accordance with the requirements of the Migratory Bird Treaty Act; (g) where transmission lines are installed in the vicinity of playa lakes, installing bird-flight diverters; and (h) avoiding impacts to the Rita Blanca National Grassland. These recommendations are addressed in findings of fact 58, 68A, and 89-97, and ordering paragraphs 2, 5, 6, and 8.

68A. The preferred route crosses no wetlands, lakes, ponds, or open waters, and will span all streams. During the construction of the preferred route, SPS will use existing bridges and culverts whenever possible, and will use best management practices to avoid destruction of inert microhabitats.

69. No modifications to the proposed transmission line are required as a result of the recommendations submitted by TPWD on January 28, 2010.

70. SPS must comply with all environmental laws and regulations governing endangered species.

71. Impacts on prime farmland will be insignificant and limited to the physical occupation of small areas at the base of support structures.

72. Construction of the proposed transmission line should have little adverse impact on the surface or ground-water resources of the area. None of the proposed routes intersect known floodplains.

73. The main impact of the proposed transmission line on vegetation will be the removal of herbaceous vegetation along the proposed ROW.

74. The proposed transmission line will have only a minor impact on local wildlife.

75. The proposed transmission line is not located within the Texas Coastal Management Program Boundary.

76. SPS must utilize best management practices to avoid, minimize, or mitigate potential impacts to all federally protected plant and animal species.

77. Wetlands affected by the proposed transmission line are minor due to the ephemeral nature of most of the surface water in the region.

78. No federal-or state-listed endangered or threatened plant species occur in Dallam or Sherman Counties.

79. Of the five alternative routes, the route with the least amount of vegetation clearing, wetlands to be crossed, and threatened/endangered species habitat to be crossed, is the preferred route.

80. Construction of the proposed transmission line could result in some temporary erosion or short term disturbance, but impacts will be minimal because of the intermittent nature of the majority of any crossed streams.

81. The proposed transmission line will cause only short-term impacts to soil, water, and ecological resources.

82. PBS&J's biological evaluation identified no threatened, endangered, or sensitive plant species during the pedestrian survey of the project area. The project is expected to have minimal adverse impacts on any threatened or endangered animal species identified by PBS&J, as described in the application.

83. SPS has conducted an adequate evaluation of potential environmental impacts of the proposed transmission line in the impacted area.

84. The mitigation requirements included in the ordering paragraphs in this Order are reasonable measures for SPS to undertake when constructing the proposed transmission line.

Prudent Avoidance

85. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance.

Route Modifications

86. SPS, Commission Staff, and Debra Brennen, on behalf of Nevada Porter, have agreed to a modification of SPS's preferred route. The modifications are reflected in the stipulation, filed on April 19, 2010.

87. No landowners would be directly affected by SPS's preferred route, as modified by the stipulation, who were not previously provided notice of this proceeding.

88. SPS, Commission Staff, and Debra Brennen, on behalf of Nevada Porter, support SPS's preferred route, as modified by the stipulation.

TPWD's Written Comments and Recommendations

89. TPWD determined that, of the five alternate routes proposed by SPS in its application, the preferred route maximizes the use of or parallel alignment with existing ROW along US 54

and the adjacent railroad, and appears to have the least potential impact on natural resources in the project area. Ordering paragraph 2 addresses the TPWD's preference.

90. TPWD recommended that SPS seed with native grasses and forbs to create habitat beneficial to wildlife and promote biodiversity in areas where the ROW will be seeded for erosion control. Ordering paragraphs 5 and 8 address this recommendation.

91. TPWD recommended that SPS use existing bridges and culverts whenever possible and avoid destruction of inert microhabitats. Finding of fact 68A addresses this recommendation.

92. TPWD recommended that the proposed transmission line span isolated and jurisdictional wetlands to minimize direct impacts to these ecosystems. Finding of fact 68A addresses this recommendation.

93. TPWD recommended that SPS personnel involved in the construction of the transmission lines be informed of the potential presence of the Texas horned lizard, and instructed to avoid impacts to them and avoid disturbance to colonies of the harvester ant. SPS will instruct its employees involved in the construction of the preferred route to use best management practices to avoid impacts to the Texas horned lizard and the harvester ant.

94. TPWD recommended that SPS avoid impacts to prairie-dog towns and use non-harmful exclusion methods for removal. SPS, or a qualified third party employed by SPS, will use best management practices to avoid disturbance of prairie-dog towns during the construction of the preferred route and, where practical, shall use non-harmful methods to remove prairie dogs.

95. TPWD recommended that burrows should be surveyed for nesting burrowing owls prior to disturbance. SPS, or a qualified third party employed by SPS, will inspect burrows for nesting owls and will use best management practices prior to construction to avoid

disturbance.

96. TPWD recommended that SPS install bird-flight diverters if aerial transmission lines would be installed in the vicinity of playa lakes. Finding of fact 68A and ordering paragraph 6 address this recommendation.

97. TPWD recommended that SPS verify the location of the Rita Blanca National Grassland boundaries and avoid impacts to this property during siting and construction. The preferred route does not cross or impact the Rita Blanca National Grassland.

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 his matter pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054 and 37.056.

4. SOAH exercised jurisdiction over this proceeding pursuant to PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2008 & Supp. 2009).

5. SPS provided proper notice of the application in compliance with PURA § 37.054 and P.U.C. SUBST. R. 22.52(a).

6. 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. 2009).

7. SPS is entitled to approval of the application described in this Order, utilizing the preferred route, as modified by the stipulation, 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).

8. SPS's preferred route 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.

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

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 and all amendments/errata thereto are approved.

2. SPS's CCN No. 30153 is amended to include the construction and operation of the transmission-line facilities requested in the application, with all amendments/errata thereto, and as further modified by the stipulation, for the preferred route described in the application as Alternative #5 (composed of segments XX-VV-TT-OO-NN-RR-H-QQ-M-N-P-T-Y-CCHH-II), a single-circuit, 115-kV transmission line extending from the Dallam County Substation to the Sherman County Substation, approximately 37.4 miles in length.

3. Resolution of this docket was the product of negotiation and compromise between the parties. 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.

4. 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.

5. 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.

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

7. SPS shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW.

8. 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 revegetate 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.

9. SPS shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the transmission line. Any minor deviation to the approved route shall only directly affect landowners who received 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.

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

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

SIGNED AT AUSTIN TEXAS on the 3rd day of June 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER