

PUC DOCKET NO. 39798
SOAH DOCKET NO. 473-12-4008

12 APR 26 PM 3:56
PUBLIC UTILITY COMMISSION
FILED CLERK

APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY TO §
AMEND A CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
FOR A PROPOSED TRANSMISSION §
LINE WITHIN CASTRO AND §
SWISHER COUNTIES §

PUBLIC UTILITY COMMISSION
OF TEXAS

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 Castro and Swisher 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 October 6, 2011, under the authority of Chapter 37 of the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. Title 2 (Vernon 2007 & Supp. 2011), SPS filed an application for a proposed 115-kV transmission line that begins at the proposed Newhart Substation to be located at the northeast corner of the intersection of County Roads 620 and 527 in Castro County and ends at the existing Kress Substation located about four miles west of Interstate 27 in the southeast corner of Section 15 on the west side of County Road 10 in Swisher County. The proposed transmission line would be approximately 18.75 to 25.95 miles depending on the route selected.

54

3. On October 6, 2011, pursuant to P.U.C. PROC. R. 22.52(a), SPS provided, by first class mail, written notice of the Application to: (a) the county governments of Castro and Swisher, the counties in which the proposed facility is located; (b) Golden Spread Electric Cooperative, Inc., Swisher Electric Cooperative, Inc., and Sharyland Utilities, L.P., the neighboring utilities within five miles of the proposed facility; (c) the Cities of Kress and Dimmitt, two of 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). On October 24, 2011, SPS provided, by first class mail, written notice of the Application to the City of Hart, the other municipality within five miles of the proposed facility.
4. On October 6, 2011, SPS provided a copy of the Application and the Environmental Assessment and Alternative Route Analysis (EA) to the Texas Parks and Wildlife Department (TPWD).
5. On October 7, 2011, 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.
6. On October 12, 2011, pursuant to P.U.C. PROC. R. 22.52(a)(1), SPS published notice of the Application in *The Swisher County News*, a newspaper of general circulation in Swisher County, Texas. On October 13, 2011, SPS published notice in the *The Castro County News*, a newspaper of general circulation in Castro County, Texas.
7. On October 15, 2011, SPS filed a response to issues to be addressed in Order No. 1.
8. On October 25, 2011, SPS filed proof of notice to the affected counties, utilities, municipalities, landowners, and OPUC.
9. On October 26, 2011, SPS filed an affidavit attesting to the publication of notice in the *The Swisher County News* and the *The Castro County News*.
10. On October 26, 2011, SPS filed an affidavit attesting to the provision of the Application and EA to TPWD.

11. On October 31, 2011, Johnie Reed filed a motion to intervene in this proceeding.
12. On November 1, 2011, Commission Staff filed a recommendation on sufficiency of application and notice; addressing other procedural matters and recommended that the Application be deemed sufficient. However, Commission Staff requested that SPS be required to republish the notice in *The Swisher County News* with a larger, more legible map. Commission Staff also proposed a procedural schedule.
13. On November 2, 2011, BG Farms, Ltd. filed a motion to intervene in this proceeding.
14. On November 3, 2011, SPS responded to Commission Staff's recommendation on sufficiency of Application and notice; addressing other procedural matters. SPS stated that the notice was republished in *The Swisher County News* with a larger, more legible map, on November 2, 2011.
15. On November 4, 2011, the Commission's ALJ issued Order No. 2, addressing the sufficiency of the Application, acknowledging that Commission Staff had identified a deficiency in the notice and that SPS had affirmed that the notice was republished. The Commission's ALJ set a procedural schedule with an extended intervention date of December 19, 2011, due to the re-publication, and required Commission Staff to file a supplemental recommendation on sufficiency of re-publication of notice according to the procedural schedule.
16. On November 10, 2011, SPS filed an affidavit of proof of re-publication in *The Swisher County News*.
17. On November 10, 2011, the Commission's ALJ issued Order No. 3, granting the motions to intervene of Johnie Reed and BG Farms, Ltd.
18. On November 14, 2011, John Walker filed a motion to intervene in this proceeding.
19. On November 16, 2011, motions to intervene in this proceeding were filed by: Ruth Elaine Maples as Executrix of the Ruth Mary Conrad Maples Estate; Richard & Linda Tye; Anita Woods on behalf of the Lucille Anderson Estate; Mary Herring; and, Glenn Ann Schoen.

20. On November 16, 2011, Commission Staff recommended that SPS's notice be deemed sufficient.
21. On November 17, 2011, the Commission's ALJ issued Order No. 4, deeming SPS's notice in this proceeding sufficient.
22. On November 21, 2011, Denise Watts and Mendi Awtry, d/b/a DMT Farms, LLC, filed a letter requesting to intervene in this proceeding.
23. On November 22, 2011, Nell Rains filed a motion to intervene in this proceeding.
24. On November 23, 2011, motions to intervene in this proceeding were filed by: Triangle Cattle; Coy and Gayla Myrick; Coy and JD Myrick; and JD Myrick.
25. On November 29, 2011, Gayle Becker filed comments in this proceeding.
26. On November 29, 2011, the Commission's ALJ issued Order No. 5, granting the motions to intervene of John Walker; Ruth Elaine Maples (Executrix of the Ruth Mary Conrad Maples Estate); Richard & Linda Tye; Anita Woods on behalf of the Lucille Anderson Estate; Mary Herring; and, Glenn Ann Schoen.
27. On December 2, 2011, Denise Watts and Mendi Awtry, d/b/a DMT Farms, LLC, filed a motion to intervene supplementing the letter filed on November 21, 2011.
28. On December 5, 2011, Camille Simpson Redding on behalf of the Estate of Irene McCasland, filed a request to intervene in this proceeding.
29. On December 6, 2011, Commission Staff filed a letter from TPWD containing comments and recommendations regarding the proposed transmission line.
30. On December 12, 2011, the Commission's ALJ issued Order No. 6, granting the motions to intervene of Denise Watts and Mendi Awtry, d/b/a DMT Farms, LLC; Nell Rains; Triangle Cattle; Coy & Gayla Myrick; Coy & JD Myrick; JD Myrick; and, Camille Simpson Redding on behalf of the Estate of Irene McCasland.
31. On December 19, 2011, Ferman McBeth filed a motion to intervene in this proceeding.
32. On January 3, 2012, Ferman McBeth and Denise Watts and Mendi Awtry, d/b/a DMT Farms, LLC, filed requests for a Hearing on the Merits.

33. On January 4, 2012, the Commission's ALJ issued Order No. 7, granting the request to intervene of Ferman McBeth.
34. On January 9, 2012, Commission Staff filed a letter stating that the proceeding no longer qualified for informal disposition, and therefore Commission Staff would not be filing a recommendation on final disposition.
35. On January 13, 2012, the Lucile Anderson Estate and Richard & Linda Tye filed requests for a Hearing on the Merits.
36. On January 17, 2012, Marie Vaughn filed a request to intervene in this proceeding.
37. On January 17, 2012, SPS filed a motion for referral to the State Office of Administrative Hearings (SOAH).
38. On January 17, 2012, the Commission issued the Order of Referral to SOAH.
39. On January 23, 2012, the SOAH ALJ issued Order No. 1, scheduling prehearing conference, ruling on requests for intervention, and establishing filing procedures.
40. On January 28, 2012, SPS filed objection to Marie Vaughn's request to intervene.
41. On February 2, 2012, a prehearing conference was held at SOAH.
42. On February 3, 2012, the SOAH ALJ issued Order No. 2, memorializing prehearing conference, denying Marie Vaughn's motion to intervene, establishing a procedural schedule, and establishing filing and service procedures.
43. On March 9, 2012, SPS filed the Agreed Motion to Admit Evidence and Motion to Remand which included the Unanimous Stipulation resolving all issues in this docket.

Description of Agreed Transmission Line and Cost

44. SPS filed 10 alternate routes consisting of a combined 46 segments. Parties have agreed to Settlement Route 11 that is comprised of segments that were originally proposed in SPS's Application as part of Routes 1 and 6. The segments that comprise Settlement Route 11 are: K2, K5a, K5b, K12, K22a, K23, K24, K29, K33, K35, K38, K42 and K44 as described in Attachment B to the Stipulation. The length of Settlement Route 11 is approximately 20.05 miles.

45. The proposed transmission line will be built using primarily single-pole steel structures.
46. The cost to construct Settlement Route 11 is approximately \$9,645,290 and the cost for the Newhart Substation facilities and upgrades to the Kress Substation is approximately \$15,759,906. The total estimated cost of the project is approximately \$25,405,196. The estimated cost of the proposed transmission line and substation facilities is reasonable when compared to similar projects and alternative routes for this project.
47. The proposed transmission line is one of four proposed lines connecting the Newhart Substation to other SPS substations. On January 30, 2012, the Commission's ALJ issued a notice of approval in Docket 39873¹ for a transmission line connecting the proposed Newhart Substation to SPS's Castro County Substation. A proposed transmission line connecting the Newhart Substation to SPS's Swisher County Substation is pending in Docket No. 39982.² A proposed transmission line connecting the Newhart Substation to SPS's Lamton Substation is pending in Docket No. 40193.³ All of the estimated costs of the Newhart Substation are included in this docket and were not included in Docket Nos. 39873, 39982 or 40193.

Need for the Proposed Transmission Line

48. 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 PURA § 39.151 as an independent system operator.
49. The proposed transmission line will connect the proposed Newhart Substation in Castro County to the existing Kress Substation in Swisher County. The proposed transmission line was identified by SPP as needed for reliability to address an overload of the Happy Substation to Palo Duro Substation 115-kV transmission line which could occur during

¹ *Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed 115-kV Transmission Line Within Castro County*, Docket No. 39873, Notice of Approval (Jan. 30, 2012).

² *Application of Southwestern Public Service Company to Amend its Certificate of Convenience and Necessity for a 230-kV Transmission Line Within Swisher and Castro Counties*, Docket No. 39982 (pending).

³ *Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 115-kV Transmission Line Within Lamb, Castro, and Hale Counties*, Docket No. 40193 (pending).

an outage of either the Kress Substation to Swisher County Substation 115-kV line or the Swisher County Substation 230/115-kV transformer.

50. The proposed transmission line is the result of the 2009 SPP Transmission Expansion Plan (STEP) study of the SPP Open Access Transmission Tariff which is part of the Ten-Year Regional Transmission Organization Regional Reliability Assessment (2010-2019).
51. 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

52. All intervenors have agreed to Settlement Route 11 consisting of segments K2, K5a, K5b, K12, K22a, K23, K24, K29, K33, K35, K38, K42 and K44.

Project Alternatives

53. SPS did not analyze distribution alternatives, upgrading voltage or bundling of conductors of existing facilities, adding transformers, or distributed generation alternatives because those alternatives would not satisfy the reliability requirements of the STEP study to address overloads and low voltage violations during contingency outages in the SPS Central Service Area.

Routes

54. SPS considered and submitted a sufficient number of geographically diverse routes for the proposed transmission line.
55. The proposed transmission line complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101.
56. Consistent with the Application and the Stipulation, the proposed transmission line to be constructed along Settlement Route 11 is comprised of segments K2, K5a, K5b, K12, K22a, K23, K24, K29, K33, K35, K38, K42 and K44 as described in Attachment B to the Stipulation. The transmission line will begin at the Newhart Substation to be located at the northeast corner of the intersection of County Roads 620 and 527 in Castro County and end at the existing Kress Substation located about four miles west of Interstate 27 in

the southeast corner of Section 15 on the west side of County Road 10 in Swisher County.

57. Settlement Route 11 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

58. Pursuant to P.U.C. PROC. R. 22.52(a)(4), SPS and Atkins North America, Inc. (Atkins) conducted two open-house meetings. The meetings were conducted between the hours of 5:30 and 7:30 PM on June 7 and 9, 2011 at the Hart Golden Group Building in Hart, Texas.
59. Information received from the public open-house meetings and from local, state, and federal agencies was considered and incorporated into the routing analysis and selection of alternative routes.
60. 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.
61. There are three habitable structures located within 300 feet of the proposed transmission line along Settlement Route 11.
62. There are no AM radio towers within 10,000 feet of the transmission line along the Settlement Route 11.
63. There are is one electronic communication tower located within 2,000 feet of the transmission line along Settlement Route 11.
64. There are no known FAA registered airports with runways longer than 3,200 feet within 20,000 feet of the centerline of Settlement Route 11. There are no known heliports within 5,000 feet of Settlement Route 11. There are no private airstrips within 10,000 feet of the centerline of Settlement Route 11.

Park and Recreational Areas

65. There are no parks within 1,000 feet of the proposed centerline of Settlement Route 11 or any of the Alternate Routes.
66. The proposed transmission line will have no adverse impact on parks and recreational areas.

Historical and Archeological Areas

67. Settlement Route 11 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.
68. Settlement Route 11 does not cross any previously recorded historical or archeological sites, and there are no such sites within 1,000 feet of the route.

Aesthetic Values

69. 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

70. 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

71. Construction of the proposed transmission line will not have a significant effect on the geologic or physiographic features of the area.
72. 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.
73. 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.
74. The construction of the proposed transmission line should have little to no impact on surface water.

75. Settlement Route 11 will cross no streams and four playa lakes. SPS expects to span all playa lakes where possible.
76. 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 Castro and Swisher Counties as necessary.
77. Construction of the proposed transmission line and substation should have little to no impact on the ground water resources of the area.
78. 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.
79. The transmission line will have only a minor impact, if any, on aquatic/hydric habitat.
80. The transmission line will have only a minor impact on local wildlife.
81. The transmission line is not located within the Texas Coastal Management Program Boundary.
82. 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 significant impacts to any federally or state-protected plant species are expected to result from this project.
83. No significant impacts to unique, sensitive, or protected wildlife habitats are anticipated.
84. No impacts to federal or state-listed threatened or endangered species are anticipated. SPS will consult with USFWS should any federally listed threatened species be observed during construction.
85. No significant impacts are expected to non-listed sensitive species that may occur in the study area. SPS will consult USFWS for any required surveys.

86. 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.
87. SPS has conducted an adequate evaluation of potential environmental impacts of the proposed transmission line in the impacted area.

Prudent Avoidance

88. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance. There are three habitable structures within 300 feet of the centerline of Settlement Route 11.

TPWD Written Comments, Recommendations, and Procedures

89. SPS has committed to comply with all environmental laws and regulations independent of any language included by the Commission in an Order.
90. 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.
91. 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.
92. If appropriate, SPS will utilize permitted biological monitors to ensure compliance with the Endangered Species Act.
93. SPS's construction practices are sufficient and thus no additional permitted biological monitors are necessary 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.

94. It is proper that SPS undertake measures necessary to comply with the Migratory Bird Treaty Act.
95. The standard mitigation requirements included in the ordering paragraphs in this Order, coupled with SPS's construction and mitigation practices are reasonable measures for a utility to undertake when constructing a transmission line.
96. It is appropriate that SPS use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
97. To the extent prairie dog towns are in the immediate proximity of the route, SPS will undertake the measures described in the letter dated December 1, 2011, from TPWD that is in the record in this docket regarding the Black-Tailed Prairie Dog.
98. 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 2011), and Commission rules.

6. SPS is entitled to approval of the Application described in the findings of fact, utilizing Settlement Route 11, 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. Settlement Route 11 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. 9. Consistent with the Stipulation, the Application is reasonable, in the public interest, and should be approved.
10. 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 Settlement Route 11, comprised of segments K2, K5a, K5b, K12, K22a, K23, K24, K29, K33, K35, K38, K42 and K44 as described in Attachment B to the Stipulation. Settlement Route 11 is approximately 20.05 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.

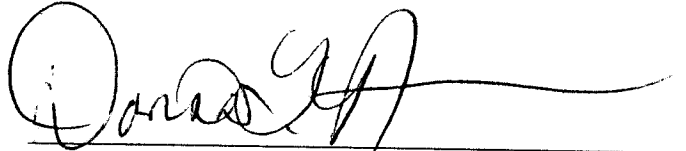
4. In the event SPS or its contractors encounter any artifacts or other cultural resources during project construction, work shall cease immediately in the vicinity of the resource and the discovery shall be reported to the Texas Historical Commission (THC). In that situation, SPS shall take action as 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 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.
6. SPS shall follow the procedures for raptor protection outlined 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 in the *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.
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, 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.
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 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.

9. SPS shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
10. 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.
11. 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.
12. 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).

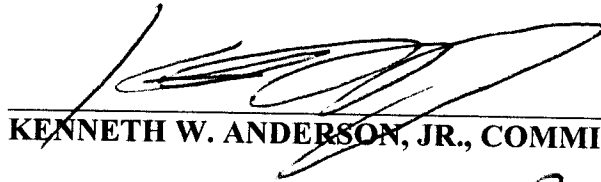
13. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 26th day of April 2012.

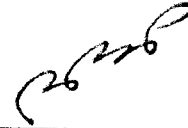
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER