34. On March 8, 2012, a notice of appearance was filed on behalf of Brad Sharp and the Claudine Smith Family Trust.

35. On April 3, 2012, a notice of appearance was filed on behalf of Penny McClurg.

36. On April 6, 2012, SPS filed a motion to abate the procedural schedule and amend the procedural schedule.

37. On April 11, 2012, the SOAH ALJ filed Order No. 3, granting SPS's motion to abate the procedural schedule and amend the procedural schedule.

38. On June 6, 2012, the affidavit of Anastasio Aguilera was filed.

39. On June 6, 2012, SPS filed the Motion to Remand and Motion to Admit Evidence, which included the Unanimous Stipulation resolving all issues in this docket. On June 11, 2012, the SOAH ALJ issued Order No. 4, granting the motions.

Description of Agreed Transmission Line and Cost

40. SPS filed 11 alternate routes consisting of a combined 69 segments. Parties have agreed to Settlement Route 12 that is comprised of segments: S2, S73b, S75, S5b, S9, S16, S18, S19, S29, S30, S43, S44, S45, S48, S50, S61, S62, S66a, S67a, S67b and S68a as described in Attachment C to the Stipulation. Segments S66a, S67a, S67b, and S68a are modified segments directly affecting three landowners. Two affected landowners, Mike Mathis and Donald Ebeling, have been noticed, are intervenors, and have requested and agreed to the modifications. The third landowner, Anastasio Aguilera, has received notice of the original route and agreed to the modified route as evidenced by his affidavit attached to the Stipulation as Attachment A. A map depicting Settlement Route 12 and the segments that comprise the route is attached to the Stipulation as Attachment D. The length of Settlement Route 12 is approximately 21.16 miles.

41. The proposed transmission line will be built using primarily single-pole steel structures.

42. The cost to construct Settlement Route 12 is approximately $14,144,389 and the cost for the upgrades to the Swisher County Substation is approximately $4,801,898. The total estimated cost of the project is approximately $18,946,287. This is the third least expensive route proposed by SPS and costs $393,666 more than SPS's recommended

route. 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.

43. 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 39873 for a transmission line connecting the proposed Newhart Substation to SPS's Castro County Substation.[1] On April 26, 2012, the Commission issued a final order in Docket No. 39798 for a transmission line connecting the proposed Newhart Substation to SPS's Kress Substation.[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 Docket No. 39798 and were not included in this docket, Docket No. 39873 or Docket No. 40193.

Need for the Proposed Transmission Line

44. 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.

45. The proposed transmission line will connect the proposed Newhart Substation in Castro County to the existing Swisher County 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 an outage of either the Kress Substation to Swisher County Substation 115-kV line or the Swisher County Substation 230/115-kV transformer.

46. 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

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[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 a Certificate of Convenience and Necessity for a Proposed Transmission Line Within Castro and Swisher Counties,* Docket No. 39798, Order (April 26, 2012).

[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).

Ten-Year Regional Transmission Organization Regional Reliability Assessment (2010-2019).

47. 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

48. All intervenors and Anastasio Aguilera have agreed to Settlement Route 12 consisting of segments S2, S73b, S75, S5b, S9, S16, S18, S19, S29, S30, S43, S44, S45, S48, S50, S61, S62, S66a, S67a, S67b and S68a.

Project Alternatives

49. 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

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

51. The proposed transmission line complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101.

52. Consistent with the Application and the Stipulation, the proposed transmission line to be constructed along Settlement Route 12 is comprised of segments S2, S73b, S75, S5b, S9, S16, S18, S19, S29, S30, S43, S44, S45, S48, S50, S61, S62, S66a, S67a, S67b and S68a as described in Attachment C 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 Swisher County Substation located approximately one mile west of Interstate Highway 27, at the northwest corner of the intersection of CR Y and CR 12, in Swisher County.

53. Settlement Route 12 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

54. 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.

55. 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.

56. 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.

57. There are eight habitable structures located within 300 feet of the proposed transmission line along Settlement Route 12.

58. There are no AM radio towers within 10,000 feet of the transmission line along the Settlement Route 12.

59. There are no known electronic communication towers located within 2,000 feet of the transmission line along Settlement Route 12.

60. There is one known FAA registered airport with a runway longer than 3,200 feet within 20,000 feet of the centerline of Settlement Route 12. There are no known heliports within 5,000 feet of Settlement Route 12. There are no private airstrips within 10,000 feet of the centerline of Settlement Route 12.

Park and Recreational Areas

61. There are no parks within 1,000 feet of the centerline of Settlement Route 12 or any of the Alternate Routes.

62. The proposed transmission line will have no adverse impact on parks and recreational areas.

Historical and Archeological Areas

63. Settlement Route 12 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.

64. Settlement Route 12 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

65. 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

66. 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

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

68. 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.

69. 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.

70. The construction of the proposed transmission line should have little to no impact on surface water.

71. Settlement Route 12 will cross two streams and six playa lakes. SPS expects to span all playa lakes where possible.

72. 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.

73. Construction of the proposed transmission line and substation should have little to no impact on the groundwater resources of the area.

74. 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.

75. The transmission line will have only a minor impact, if any, on aquatic/hydric habitat.

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

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

78. 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.

79. No significant impacts to unique, sensitive, or protected wildlife habitats are anticipated.

80. 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.

81. 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.

82. 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.

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

Prudent Avoidance

84. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance. There are eight habitable structures within 300 feet of the centerline of Settlement Route 12.

TPWD Written Comments, Recommendations, and Procedures

85. SPS has committed to comply with all environmental laws and regulations independent of any language included by the Commission in this Order.

86. 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.

87. 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.

88. If appropriate, SPS will utilize permitted biological monitors to ensure compliance with the Endangered Species Act.

89. 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.

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

91. 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.

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

93. 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.

94. 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 12, 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 12 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 Settlement Route 12, comprised of segments S2, S73b, S75, S5b, S9, S16, S18, S19, S29, S30, S43, S44, S45, S48, S50, S61, S62, S66a, S67a, S67b and S68a as described in Attachment C to the Stipulation. Settlement Route 12 is approximately 21.16 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 ROWs.

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 13th day of July 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER

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