



Control Number: 49782



Item Number: 1

Addendum StartPage: 0



PURSUANT TO PUC SUBSTANTIVE RULE § 25.101

## Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes

### Docket Number:

7 copies of the application, including the original, along with one copy of the portable electronic storage medium (such as CD or DVD) containing the GIS data shall be filed with

Public Utility Commission of Texas  
 Attention: Filing Clerk  
 1701 N. Congress Avenue  
 P.O. Box 13326  
 Austin, Texas 78711-3326

No later than seven days after filing the application for the boundary change, provide a copy of each paper map and a portable electronic storage medium (such as CD or DVD) containing complete and identical data to the portable electronic storage medium submitted above to

Texas Natural Resources Information System  
 1700 N. Congress Ave, Room B40  
 Austin, Texas 78701

### Part A – Applicant Information

#### 1. Applicant

**Utility name:** Brownsville Public Utilities Board

**Certificate number:** 30021

**Street address:** 1425 Robin Hood Drive, Brownsville, Texas 78520

**Mailing address:** P.O. Box 3270, Brownsville, Texas 78523

#### 2. Contact information

**Name:** Scott Smyth

**Title:** Attorney for Brownsville Public Utilities Board

**Mailing address:** 919 Congress Avenue, Suite 810, Austin, Texas 78701

**Email:** ssmyth@dtrglaw.com

**Phone:** 512-469-6006

**Alternate:** John W. Davidson

**Title:** Attorney for Brownsville Public Utilities Board

**Mailing address:** 601 NW Loop 410, Suite 100, San Antonio, Texas 78216



|   |                      |
|---|----------------------|
| Email: jdavidson@dtgrlaw.com  | Phone: 210-349-6484  |
| Legal counsel: Scott Smyth  | Bar number: 18779450 |
| Mailing address: 919 Congress Avenue, Suite 810, Austin, Texas 78701  |                      |
| Email: ssmlyth@dtgrlaw.com  | Phone: 512-469-6006  |
| <b>3. Other affected utility (if more than one, submit information for 3 and 4 on separate sheet labeled "Attachment A3")</b> |                      |
| Utility name: AEP Texas Inc.  |                      |
| Certificate number: 30028   |                      |
| Street address: 539 N. Carancahua, Corpus Christi, Texas 78401  |                      |
| Mailing address: P.O. Box 2121, Corpus Christi, Texas 78403   |                      |
| <b>4. Other affected utility contact information</b>  |                      |
| Name: David Hawk  | Title: Manager Rates |
| Mailing address: P.O. Box 2121, Corpus Christi, Texas 78403   |                      |
| Email: <a href="mailto:dahawk@aep.com">dahawk@aep.com</a>   | Phone: 361-881-5317  |
| Alternate:  | Title:               |
| Mailing address:  |                      |
| Email:  | Phone:               |
| Legal counsel: Jerry N. Huerta  | Bar number: 24004709 |
| Mailing address: 400 West 15 <sup>th</sup> Street, Suite 1520, Austin, Texas 78701  |                      |
| Email: <a href="mailto:jnhuerta@aep.com">jnhuerta@aep.com</a>   | Phone: 512-481-3323  |

## Part B – Effects

### 1. Counties

List all counties involved in the proposed boundary change:

Cameron County

### 2. Municipalities

List all municipalities involved in the proposed boundary change. Attach a copy of the franchise, permit, or other evidence (labeled "Attachment B2") of the city's consent held by the utility. If franchise, permit, or other evidence of the city's consent has been previously filed, provide only the docket number of the application in which the consent was filed: All of the proposed area is within the corporate limits of the City of Brownsville. Franchise or other city consent is not applicable as applicant is owned by the City of Brownsville.



### 3. Affected utilities

**Identify any other utility providing electric service whose existing certificated service area boundary would be affected by the proposed change. State whether the applicant(s) has obtained the agreement of the other affected utilities. Attach a copy of any written agreements with the applicant(s) and other affected utilities (labeled**

**"Attachment B3"):** On February 23, 1982, the Brownsville Public Utilities Board (BPUB) and Central Power and Light Company (CP&L) entered into an agreement, a copy of which is attached as Attachment B3-a, whereby CP&L agreed not to contest or oppose applications by the City for dual or multiple certification to be granted by the Public Utility Commissions of Texas to BPUB in areas within the city limits of the City of Brownsville, Texas. The agreement between BPUB and CP&L meets all the requirements set out in Tex. Util. Code § 37.061 regarding Existing Service Area Agreements. The merger between CP&L and AEP was approved November 18, 1999 (Docket No. 19265). See Attachment B3-b. CP&L changed its name to AEP Central Texas Company effective December 23, 2002 (Docket No. 27727). See attachment B3-c. AEP Central Texas Company merged with parent company AEP Utilities, Inc. which changed its name to AEP Texas Inc. effective December 12, 2016 (Docket No. 46050). See attachment B3-d.

**Identify any other utility serving the proximate area and the effect on that utility of granting the certificate to the recipient of the certificate:** Magic Valley Electric Cooperative has been given notice and is not impacted by the granting of this application. AEP Texas Inc. has been given notice and by agreement will not contest or oppose this application.

### 4. §37.056 Criteria

**Describe the effect of the proposed boundary change on the community values, recreational and park areas, historical and aesthetic values, and environmental integrity. Describe the effect of the proposed boundary change as it relates to the improvement of service or the lowering of cost to consumers in the affected area:** BPUB asserts that community values will be positively affected because the Public Utilities Board Consumer Advisory Panel (PUBCAP) provides for direct input by the citizens and ratepayers of the City of Brownsville concerning the decisions made by the BPUB regarding its operation. PUBCAP was organized in 1983 to better inform Board officials and staff as to the needs and concerns of its customers. PUBCAP is comprised of ten members representing a cross-section of the system's service area and one representative from BPUB. There are no recreational, park areas or historical sites within the areas requested. Also, no negative environmental impact is anticipated.

## Part C – Need and Costs

### 1. Justifications

**State the reasons why the proposed boundary change is being requested, including a description of new loads to be served and new facilities to be constructed if the application is granted:** Aina Investments, LLC, has requested service from Brownsville Public Utilities Board (BPUB) to provide service to a proposed new subdivision at FM 1732 and along Summerhill Boulevard in Brownsville, Texas, comprised of a 30.223 acre tract of land out of a 568.836 acre tract. There are no other property owners. Although this property is currently located in the singly certificated service territory of AEP Texas Inc., because the property is located within the city limits of the City of Brownsville, it falls within the scope of the agreement for dual certification between AEP Texas Inc. (successor in interest to Central Power and Light) and BPUB.

### 2. Reasons

**Describe the existing service in the area affected by the application and explain the need for additional service:**

The property in question currently does not have existing electric service. There are existing AEP and BPUB overhead and underground electric distribution lines south of this property. AEP has agreed not to contest the requested change in certification. If the application is granted, the area will be dually certificated for electric service by BPUB and AEP.

### 3. Estimated costs

**State the amount of money expected to be expended on new facilities if the application is granted:**

It is estimated that this project will cost BPUB \$161,957.50 to serve.



## 1. Paper maps

Base maps (labeled "Attachment D1") shall be a full scale (one inch = one mile) highway map of the county or counties involved, a USGS 7-minute topographical map, subdivision plat map, or other map of comparable scale with sufficient cultural and natural features to permit location of the proposed service area amendment in the field. Show all existing boundaries and the proposed boundaries affected by this application. Show any existing or proposed distribution or transmission lines affected by this application.

## 2. GIS maps

Two portable electronic storage media (such as CDs or DVDs) containing complete and identical data shall be submitted with this application.

All shapefiles shall contain at least four files including, at a minimum:

- .shp – shape format; the feature geometry itself;
- .shx – shape index format; a positional index of the feature geometry to allow seeking forwards and backwards quickly;
- .dbf – attribute format; columnar attributes for each shape in dBase IV format; and
- .prj – projection format; the coordinate system and projection information as a plain text file describing the projection using well-known text format.

Service area boundaries shall be submitted as a **polygon**. Polygons shall be closed without breaks. Intersecting polygons shall be snapped at the intersection without gaps or overshoots. Polygons with common borders shall share a border line to avoid slivers and gaps between polygons.

All files shall have **projection information** embedded in the file. This information is stored in the .prj file. The projection file provides a mathematical process that transforms feature locations from the earth's curved surface to a map's flat surface. The projected coordinates system employs a projection to transform locations expressed as latitude and longitude values to X,Y coordinates. Without the projection information, the files may not overlay accurately.

All data shall be provided in a **scale** of 1:24,000 and shall conform to the accuracy standards described in USGS Fact Sheet FS-171-99 or successor Map Accuracy Standards.

Shapefiles shall contain the appropriate attribution to allow the layer to be symbolized according to what the layer is and what it represents. A service area boundary shapefile that is supposed to represent a utility's service territory shall have the appropriate attributes in the file to see the utility's name, for example. The other attributes shall also be included in the file. ***The following attributes for service territory boundaries are required and shall follow these naming conventions exactly, minus the information in the parentheses.***

- Utility name
- Type of utility (investor-owned utility/municipally-owned utility/electric cooperative [whichever term applies])
- RTO/ISO (whichever RTO or ISO applies)
- Customers (the total number of customers the utility serves)
- Counties (list all the counties the utility serves, wholly or in part)



## Part E – Affidavit

### **Affidavit**

Attach a sworn affidavit (labeled "Attachment E") from a qualified individual authorized by the applicant to verify and affirm that, to the best of his/her knowledge, all information provided, statements made, and matters set forth in this application and attachments are true and correct. The affidavit shall also confirm that the paper map and portable electronic storage medium containing the GIS data were sent to TNRIS.



# **ATTACHMENT B3**



04/18/19. (Date)

John S. Bruciak, P.E.  
General Manager & CEO  
Brownsville Public Utilities Board  
P.O. Box 3270  
Brownsville, Texas 78523

Re: Request for electric service: Rosewood Gate (Location)

Dear Mr. Bruciak:


My property is located within the corporate limits of the City of Brownsville, and I would like to request that the Brownsville PUB provide electric service to my development described above.

I understand that my property is in AEP's certified area. It is also my understanding that AEP, by agreement, will not oppose BPUB's application for certification to this area. I believe that it would be in my best interest to have electric service provided by BPUB for both economic and convenience reasons since I will be using BPUB water and wastewater services.

Please notify me as soon as possible if BPUB will be able to provide electric service to this property.

Sincerely,

(Company) AINA INVESTMENTS LLC

  
(Signor)





DAVIDSON  
TROILO  
REAM &  
GARZA PC

ATTORNEYS AT LAW

JOHN W. DAVIDSON ARTHUR TROILO CHEREE TULL KINZIE R. GAINES GRIFFIN  
RICHARD E. HETTINGER PATRICK W. LINDNER RICHARD D. O'NEIL LEA A. REAM  
FRANK J. GARZA JAMES C. WOO DAVID R. RANGEL R. JO RESER PAUL M. GONZÁLEZ  
STEVEN M. PEÑA SCOTT J. SMYTH BRYAN M. KORRI JESSIE LOPEZ RICHARD E. LINDNER  
NICONDRA CHARGOIS-ALLEN AUSTIN R. BECK JUSTIN J. NAIL STEVEN T. NGUYEN ITZEL MARTINEZ  
OF COUNSEL TERRY TOPHAM BETSY J. JOHNSON

[ssmyth@dtgclaw.com](mailto:ssmyth@dtgclaw.com)  
(512) 469-6006

July 16, 2019

**Certified Mail Return Receipt Requested**

Cameron County Commissioners  
c/o Cameron County Courthouse  
1100 E. Monroe Street, #159  
Brownsville, TX 78520

RE: Notice of Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes in Cameron County, Texas Filed with Public Utility Commission of Texas (Subdivision at FM 1732 and Summerhill Boulevard, Cameron County, Brownsville, Texas)

Dear Commissioners:

Please take notice that the Brownsville Public Utilities Board ("BPUB") has filed an application at the Public Utility Commission of Texas for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes to include the below-described area that is within the city limits of the City of Brownsville, Texas. The area is currently certificated to AEP Texas Inc., and is set out on a map filed with the Commission, a copy of which is kept at BPUB's office at 1425 Robinhood Drive, Brownsville, Texas. In addition, a vicinity map is attached to this letter showing the geographic location of the proposed area.

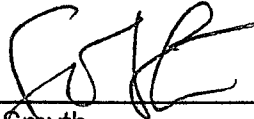
BPUB has received a request from Aina Investments, LLC to provide electric utility service to the property in question. BPUB is seeking the right to provide electric service to this 30.223 acre tract of land.

BPUB and AEP Texas Inc. have existing distribution lines next to the property. BPUB will also serve this project with water and wastewater. Aina Investments, LLC is the only property owner that will be affected by this application and thus no additional notice to other landowners is necessary. Notice of this application has also been provided to AEP Texas Inc., Magic Valley Electric Cooperative, and Aina Investments, LLC.

Cameron County Commissioners  
July 16, 2019  
Page 2

If you have any questions about this project, please contact Eli Alvarez, P.E.,  
Brownsville Public Utilities Board, at (956) 983-6234.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Smyth', is written over a horizontal line.

Scott Smyth  
DAVIDSON TROILO REAM & GARZA, P.C.  
ATTORNEYS FOR THE  
BROWNSVILLE PUBLIC UTILITIES BOARD

Enclosure









cc: Mr. Eli Alvarez, P.E.



## LEGAL DESCRIPTION

BEING A 30.223 ACRE TRACT OUT OF A 568.836 ACRE TRACT AS RECORDED IN CAMERON COUNTY OFFICIAL RECORDS VOLUME 9773, PAGE 310, IN SHARE 14, ESPIRITU SANTO GRANT, CITY OF BROWNSVILLE, CAMERON COUNTY, TEXAS.

## LEGEND

-  PROPOSED BM / AEP CERTIFIED AREA
-  EXISTING AEP CERTIFIED AREA
-  EXISTING BM / AEP CERTIFIED AREA
-  EXISTING AEP TRANSMISSION LINE
-  EXISTING AEP DISTRIBUTION LINE
-  EXISTING BM DISTRIBUTION LINE
-  PROPOSED BM DISTRIBUTION LINE
-  EXISTING BROWNSVILLE CITY LIMITS

DWN BY: Y. LOPEZ

DATE: 04/05/2019

SCALE: 1" = 1000'

**AEP**

PROJECT LOCATION PROPOSED BM & AEP  
CERTIFICATION MODIFICATION FOR:  
ROSEWOOD ESTATES SUBDIVISION  
SECTION I  
(REFERENCE LEGAL DESCRIPTION)  
30.223 ACRE TRACT OF LAND

FM-1732

SHARE

**AEP**

SUMMIT HILL BLVD  
CITY LIMITS

SHARE

14

OLMITO-CAVAZOS RD

PRIVATE ROAD

LAGO VISTA BLVD  
LAGO VIEJO BLVD

**BM/AEP**

**AEP**





DAVIDSON  
TROILO  
REAM &  
GARZA  
ATTORNEYS AT LAW

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OF COUNSEL TERRY TOPHAM BETSY J. JOHNSON

[ssmyth@dtgrlaw.com](mailto:ssmyth@dtgrlaw.com)

(512) 469-6006

July 16, 2019

Certified Mail Return Receipt Requested

David Hawk, Manager Rates

AEP Texas Inc.

P.O. Box 2121

Corpus Christi, Texas 78403

RE: Notice of Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes in Cameron County, Texas Filed with Public Utility Commission of Texas (Subdivision at FM 1732 along Summerhill Boulevard, Cameron County, Brownsville, Texas)

Dear Mr. Hawk:

Please take notice that the Brownsville Public Utilities Board ("BPUB") has filed an application at the Public Utility Commission of Texas for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes to include the below-described area that is within the city limits of the City of Brownsville, Texas. The area is currently certificated to AEP Texas Inc., and is set out on a map filed with the Commission, a copy of which is kept at BPUB's office at 1425 Robinhood Drive, Brownsville, Texas. In addition, a vicinity map is attached to this letter showing the geographic location of the proposed area.

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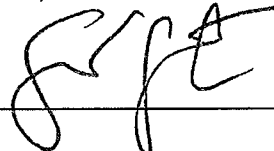
BPUB and AEP Texas Inc. have existing distribution lines next to the property. Aina Investments, LLC is the only property owner that will be affected by this application and thus no additional notice to other landowners is necessary. Notice of this application has also been provided to Cameron County Commissioners, Magic Valley Electric Cooperative, and Aina Investments, LLC.



Mr. David Hawk, Manager Rates  
AEP Texas Inc.  
July 16, 2019  
Page 2

If you have any questions about this project, please contact Eli Alvarez, P.E.,  
Brownsville Public Utilities Board, at (956) 983-6234.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Smyth', written over a horizontal line.

Scott Smyth  
DAVIDSON TROILO REAM & GARZA, P.C.  
ATTORNEYS FOR THE  
BROWNSVILLE PUBLIC UTILITIES BOARD









Enclosure

cc: Mr. Eli Alvarez, P.E.

# LEGAL DESCRIPTION

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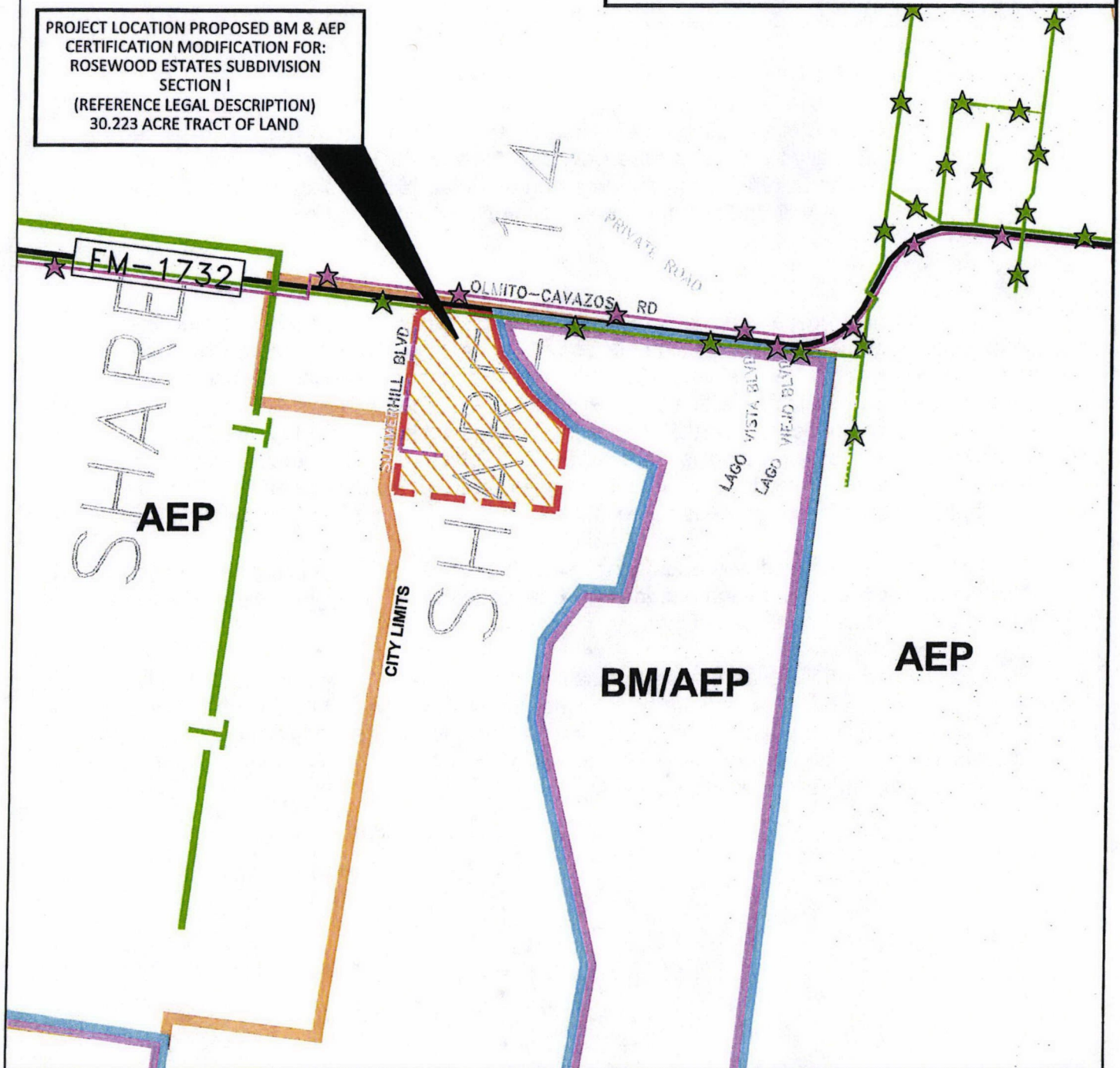
DWN BY: Y. LOPEZ

DATE: 04/05/2019

SCALE: 1" = 1000'



PROJECT LOCATION PROPOSED BM & AEP  
CERTIFICATION MODIFICATION FOR:  
ROSEWOOD ESTATES SUBDIVISION  
SECTION I  
(REFERENCE LEGAL DESCRIPTION)  
30.223 ACRE TRACT OF LAND







DAVIDSON  
TROILO  
REAM &  
GARZA

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OF COUNSEL TERRY TOPHAM BETSY J. JOHNSON

[ssmyth@dtrglaw.com](mailto:ssmyth@dtrglaw.com)  
(512) 469-6006

July 16, 2019

**Certified Mail Return Receipt Requested**

John Herrera, General Manager  
Magic Valley Electric Cooperative  
P.O. Box 267  
Mercedes, Texas 78570

RE: Notice of Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes in Cameron County, Texas  
Filed with Public Utility Commission of Texas (Subdivision at FM 1732 and Summerhill Boulevard, Cameron County, Brownsville, Texas)

Dear Mr. Herrera:

Please take notice that the Brownsville Public Utilities Board ("BPUB") has filed an application at the Public Utility Commission of Texas for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes to include the below-described area that is within the city limits of the City of Brownsville, Texas. The area is currently certificated to AEP Texas Inc., and is set out on a map filed with the Commission, a copy of which is kept at BPUB's office at 1425 Robinhood Drive, Brownsville, Texas. In addition, a vicinity map is attached to this letter showing the geographic location of the proposed area.

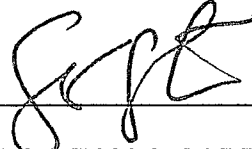
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Mr. John Herrera, General Manager  
Magic Valley Electric Cooperative  
July 16, 2019  
Page 2

If you have any questions about this project, please contact Eli Alvarez, P.E.,  
Brownsville Public Utilities Board, at (956) 983-6234.

Sincerely yours,



---

Scott Smyth  
DAVIDSON TROILO-REAM & GARZA, P.C.  
ATTORNEYS FOR THE  
BROWNSVILLE PUBLIC UTILITIES BOARD

Enclosure









cc: Mr. Eli Alvarez, P.E.



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-  EXISTING AEP DISTRIBUTION LINE
-  EXISTING BM DISTRIBUTION LINE
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-  EXISTING BROWNSVILLE CITY LIMITS

DWN BY: Y. LOPEZ

DATE: 04/05/2019

SCALE: 1" = 1000'

**AEP**

PROJECT LOCATION PROPOSED BM & AEP  
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ROSEWOOD ESTATES SUBDIVISION  
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SHARE

**AEP**

CITY LIMITS

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SHARE

PRIVATE ROAD  
OLMITO-CAVAZOS RD

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**BM/AEP**

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OF COUNSEL TERRY TOPHAM BETSY J. JOHNSON

[ssmyth@dtgrlaw.com](mailto:ssmyth@dtgrlaw.com)  
(512) 469-6006

July 16, 2019

Certified Mail Return Receipt Requested

Aina Investments, LLC  
c/o Shashi Sachdev, Managing Member  
210 Windsor Road  
Laredo, TX 78041

RE: Notice of Application for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes in Cameron County, Texas Filed with Public Utility Commission of Texas (Subdivision at FM 1732 and Summerhill Boulevard, Cameron County, Brownsville, Texas)

Dear Mr. Sachdev:

Please take notice that the Brownsville Public Utilities Board ("BPUB") has filed an application at the Public Utility Commission of Texas for an Amendment to Certificate of Convenience and Necessity for Service Area Boundary Changes.

You have requested electric service from BPUB for a 30.223 acre tract of land within the City of Brownsville. BPUB is requesting dual certification to provide electric service to this site that is located both within the corporate limits of the City of Brownsville and in the certificated service area of AEP Texas Inc. After the Public Utility Commission of Texas approves this application, BPUB will be authorized to provide the electric service to this site. BPUB plans to serve this project with water and wastewater. A vicinity map showing the area that is the subject of BPUB's application is attached hereto. A map of the area has been filed with the Public Utility Commission of Texas and a copy is kept at BPUB's offices at 1425 Robinhood Drive, Brownsville, Texas 78520.

If you have any questions about his project, please contact Eli Alvarez, P.E., Brownsville Public Utilities Board, at (956) 983-6234.

Sincerely yours,

Scott Smyth  
DAVIDSON TROILO REAM & GARZA, P.C.  
ATTORNEYS FOR THE  
BROWNSVILLE PUBLIC UTILITIES BOARD

Enclosure









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DWN BY: Y. LOPEZ

DATE: 04/05/2019

SCALE: 1" = 1000'

**AEP**

PROJECT LOCATION PROPOSED BM & AEP  
CERTIFICATION MODIFICATION FOR:  
ROSEWOOD ESTATES SUBDIVISION  
SECTION I  
(REFERENCE LEGAL DESCRIPTION)  
30.223 ACRE TRACT OF LAND

FM-1732

SHARE

**AEP**

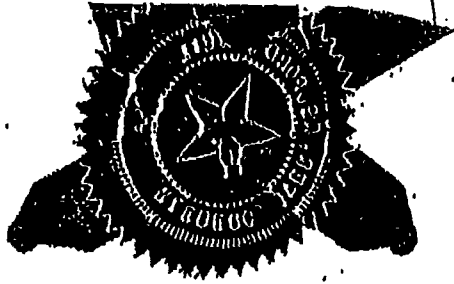
CITY LIMITS

SHARE

**BM/AEP**

**AEP**

# **ATTACHMENT B3-a**



BROWNSVILLE CERTIFICATION OF  
SERVICE AREA AGREEMENT

WHEREAS, both Central Power and Light Company (Company) and the City of Brownsville, Texas, operating by and through the Public Utilities Board of the City of Brownsville, Texas (City), generate, transmit and distribute electricity to citizens of the City of Brownsville and ratepayers outside of the city limits of the City of Brownsville but adjacent thereto pursuant to certificates of convenience and necessity issued by the Public Utility Commission of Texas (PUCT); and

WHEREAS, Company and City have heretofore entered into a Compromise Settlement Agreement dated January 6, 1982, whereby Company has agreed, in part, not to contest applications of City for dual or multiple certification by the PUCT of areas within the current or future city limits of the City of Brownsville certificated for service by Company, and Company and City have agreed as to Company's rights under Section 53 of the PURA and PUCT Rules pertinent to the same (grandfather rights) along Company's facilities in the Brownsville area; and

WHEREAS, the City has, in the past, made application to the PUCT for the right to provide service to areas both within and adjacent to the City of Brownsville, which applications have been vigorously contested by Company in those areas where Company was certificated to provide electric



WHEREAS, the cost and expense of pursuing, through administrative proceedings, the right to provide service in new areas and the cost and expense of contesting these applications has been incurred by both systems; and

WHEREAS, Company recognizes that City claims a legitimate interest in providing electric service to retail customers located within the present and future city limits of the City of Brownsville; and

WHEREAS, Company and City both believe that the Agreement as outlined below is in the public interest and further recognize that applications by City for dual or multiple certification must be approved by the PUOT under the provisions of Section 54 of the Public Utility Regulatory Act; and

WHEREAS, the Company and City desire to clarify the terms of such agreement between the parties;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the parties agree as follows:

I.

CERTIFICATION

1.01 Company agrees not to contest or oppose applications of City for dual or multiple certification to be granted by the Public Utility Commission to the City in areas within the city limits of the City of Brownsville, Texas, as they currently exist or as they may hereafter be extended by annexation or otherwise.

1.02 Nothing contained herein shall be construed as in any manner limiting or restricting Company's right to contest any application by City seeking certification in areas outside the city limits of the City of Brownsville, Texas, or applications, if any, of City to have Company certification to serve any area withdrawn.

II.

DOCKET NO. 3860

2.01 The right of Company to serve customers within a 200 foot corridor of a distribution line traversing the City of Brownsville has been made the subject of Docket No. 3860, presently pending before the Public Utility Commission. Company and City agree to file a Joint Motion for an agreed Order in Docket No. 3860 under the terms of which Order Company will retain the right to provide retail service to two residential customers and the Channel 23 TV Station in the City of Brownsville which are currently being provided retail service by Company. The remainder of such line, from and to points at or within the present limits of City, to be identified in such Joint Motion, will be an express feeder line from which Company will have no right to serve customers by direct drop or otherwise, except as may be permitted by paragraph 2.02.

2.02 Nothing contained herein shall be construed as preventing Company from providing service from such line to laterals presently or in the future necessary to serve

customers in areas certificated for service by Company.

III.

COMPANY'S SECTION 53 GRANDFATHER RIGHTS

3.01 City recognizes Company's "grandfather rights" (TEX. REV. CIV. STAT. ANN. art. 1446c, sec. 53) as to all other Company facilities now or in the future located within areas singly certificated for service by City. With reasonable dispatch, City and Company agree to define with certainty those rights by inspecting Company's facilities with City and Company personnel and reviewing records and maps relevant thereto.

IV.

APPROVAL BY PUOT

4.01 This agreement is made pursuant to the provisions of Section 56 of the PURA. Both City and Company recognize that the PUOT must approve any application for amended Certificates of Convenience and Necessity in accordance with the provisions and requirements of the Public Utility Regulatory Act, and this Agreement is not intended, nor shall it be construed, as interfering with the PUOT's jurisdiction to make that determination on all applications submitted by City.

EXECUTED in multiple originals this 23 day of

February, 1982.

ATTEST:

CENTRAL POWER AND LIGHT COMPANY

Evelyn Dupont  
Assistant Secretary EVELYN DUPONT

By: [Signature]  
President and  
Chief Executive Officer  
VANDY DOWNEY



CITY OF BROWNSVILLE, TEXAS  
Acting by and through the  
PUBLIC UTILITIES BOARD OF THE  
CITY OF BROWNSVILLE, TEXAS

ATTEST:

*M. Hernandez*  
Secretary

By: *Albert Phillips*  
Chairman of the Board

ATTEST:

CITY OF BROWNSVILLE, TEXAS

*Mary Bennett*  
City Secretary

By: *Charles A. Dunn*  
Mayor

# **ATTACHMENT B3-b**

2000

PUC DOCKET NO. 19265  
SOAH DOCKET NO. 473-98-0839

APPLICATION OF CENTRAL AND § PUBLIC UTILITY COMMISSION  
SOUTH WEST CORPORATION AND §  
AMERICAN ELECTRIC POWER §  
COMPANY, INC. REGARDING §  
PROPOSED BUSINESS COMBINATION § OF TEXAS

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PUBLIC UTILITY COMMISSION  
FILING CLERK

ORDER

This Order finds that the proposed business combination involving Central and South West Corporation (CSW) and American Electric Power Company, Inc. (AEP) (collectively applicants) is consistent with the public interest, pursuant to PURA<sup>1</sup> § 14.101, under the terms and conditions specified in this Order. This conclusion rated the comprehensive public interest standard articulated in *Application of Southwestern Public Service Company Regarding Proposed Business Combination with Public Service Company of Colorado*.<sup>2</sup> Furthermore, this Order and approves the requested regulatory treatments detailed in Section X of the application to the extent specified in this Order.

This Order is consistent with the non-unanimous stipulation (ISA)<sup>3</sup> entered into by several parties in this proceeding. Nevertheless, this Order addresses two areas, allocation of certain savings to regulated rates and reliability standards, to ensure compatability of the ISA and this Order with electric restructuring legislation passed by the 76<sup>th</sup> Legislature.<sup>4</sup> The State Office of Administrative Hearings' Proposal for Decision,<sup>5</sup> including findings of fact and conclusions of law, is adopted and incorporated by reference into this Order, except where inconsistent with this Order.

<sup>1</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§11.001-64.158 (Vernon 1999) (PURA).

<sup>2</sup> *Application of Southwestern Public Service Company Regarding Proposed Business Combination with Public Service Company of Colorado*, Docket No. 14980 (Feb. 14, 1997).

<sup>3</sup> Integrated Stipulation and Agreement (May 4, 1999) (ISA).

<sup>4</sup> Act of May 27, 1999, 76<sup>th</sup> Leg., R.S., ch. 405 (S.B. 7), 1999 Tex. Sess. Law Serv. 2543 (Vernon) (to be codified primarily as Chapters 39, 40, and 41 of the Texas Utilities Code).

<sup>5</sup> Proposal for Decision (Sept. 30, 1999).

1124



## I. Discussion

### Distribution rates

The ISA provides that the Texas operating companies<sup>6</sup> will apply the savings detailed in Attachments A and H of the ISA to the “regulated rates of their customers”<sup>7</sup> and that all rate reduction riders will be credited to customers in accordance with Attachment I.<sup>8</sup> Paragraph 9 of Attachment I provides:

In the event of industry restructuring legislation, the base rate revenue credits will be maintained by individual rate class, to the extent possible, although it is impossible to formulate a specific plan at this time. If and when restructuring legislation is enacted, the Applicants will submit a plan for [Commission] approval to allocate the credits set forth in Attachments A and H consistent with Sections 3.C, 3.F(8) and Attachment H, Section 6.<sup>9</sup>

Subsequent to the filing of the ISA, electric restructuring legislation was enacted into law.<sup>10</sup>

The Commission concludes that customers of the Texas operating companies will not receive the full benefit of the savings specified in the ISA after January 1, 2002, unless the savings are allocated to the distribution rates of the successor transmission and distribution utilities.<sup>11</sup> A representative of AEP has assured the Commission that the proposed savings in the ISA can, as a practical matter, be applied against distribution rates.<sup>12</sup> The Commission’s decision in this matter rests, in part, on this assurance.

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<sup>6</sup> Central Power and Light, Southwestern Electric Power Company, and West Texas Utilities and their respective successors in interest. See ISA § 1.

<sup>7</sup> ISA § 3.C and Attachment H, ¶ 6.

<sup>8</sup> *Id.* Attachment H, ¶ 1.

<sup>9</sup> *Id.* Attachment I, ¶ 9.

<sup>10</sup> Act of May 27, 1999, 76<sup>th</sup> Leg., R.S., ch. 405 (S.B. 7), 1999 Tex. Sess. Law Serv. 2543 (Vernon) (to be codified primarily as Chapters 39, 40, and 41 of the Texas Utilities Code).

<sup>11</sup> Under PURA § 39.051, all electric utilities, including the Texas operating companies, will be required to unbundle their business activities into several entities, one of which will be a transmission and distribution utility.

<sup>12</sup> Open Meeting Tr. at 284-88 (Nov. 4, 1999).

Therefore, the unbundling proceedings in 2000, in which the Commission will approve the transmission and distribution tariffs<sup>13</sup> are the appropriate forums to reflect these post-2002 savings in distribution rates. The savings are not effective, however, until the first month after the effective date of the merger,<sup>14</sup> and the merger may not be effective until after the April 1, 2000 deadline for filing tariffs initiating the unbundling proceedings.<sup>15</sup> In that event, after the merger is effective, the Texas operating companies' filings shall be amended to reflect the regulated-rate savings in the distribution rates of their successor transmission and distribution utilities. Ordering Paragraph 9 is modified and new Ordering Paragraph 9A is added to reflect this decision.

#### **Reliability Standards**

Section 7.B of the ISA specifies reliability standards that are based upon P.U.C. SUBST. R. 25.53 and 25.81, and guarantees related to those standards. The Commission is, however, presently considering amendments to these rules<sup>16</sup> to conform to newly enacted statutory requirements.<sup>17</sup> Anticipating such changes, Section 7.D(2) of the ISA provides that:

In the event the Commission's service reliability rule (Substantive Rule 25.52) is amended, such amendments shall automatically be incorporated in this agreement. Additionally, the signatories agree that they will revisit these standards and penalties in the future in the context of any performance-based ratemaking plans or rules for CSW and /or the electric industry.<sup>18</sup>

To effectuate this provision, the Commission adds new Ordering Paragraph 9B directing the Office of Regulatory Affairs, after any amendments to the Commission's service reliability rules, to establish a project to address any inconsistencies between the ISA and those amendments.

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<sup>13</sup> See PURA § 39.201.

<sup>14</sup> ISA § 3A.

<sup>15</sup> Open Meeting Tr. at 301-02 (Nov. 4, 1999).

<sup>16</sup> *Electric Reliability Standards*, Project No. 21076 (pending).

<sup>17</sup> See PURA § 38.005.

<sup>18</sup> ISA § 7.D(2).

## **V. Findings of Fact and Conclusions of Law**

### **A. Findings of Fact**

#### **Description of the Applicants**

1. This case involves the potential merger of American Electric Power Company, Inc. (AEP) with Central and South West Corporation (CSW) (collectively called the Applicants).
2. AEP is a utility holding company based in Columbus, Ohio. It owns all the common shares of seven domestic electric utility operating companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company. The AEP operating companies serve almost three million customers in parts of Ohio, Michigan, Indiana, Kentucky, West Virginia, Virginia, and Tennessee.
3. CSW is a utility holding company based in Dallas, Texas. It owns four domestic utility operating companies: Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU). CPL and WTU operate within Texas, SWEPCO serves customers in Texas, Arkansas and Louisiana, and PSO serves customers within Oklahoma. The CSW operating companies provide electric service to approximately 1.7 million customers in a widely diversified area covering 152,000 square miles. The three utility companies serving Texas are referred to as the "Texas operating companies."



**Description of the Merger**

4. Under the proposed transaction, CSW will in effect be merged into AEP, and CSW shares will be converted into AEP shares using an exchange ratio of .6 AEP shares per CSW share. Any fractional shares of AEP stock resulting from the exchange will be paid in cash. The merger will be accounted for by the "pooling of interests" method of accounting.
5. The only corporate effect of the merger on the operating companies of CSW is a change in the ownership of the holding company. AEP will be the surviving corporation, which will be headquartered in Columbus, Ohio.
6. The eleven domestic utility operating companies of CSW and AEP retain their separate corporate identities, assets and liabilities, franchises, and certificates of convenience and necessity.
7. The merger will require the approval of the Oklahoma Corporation Commission, the Arkansas Public Service Commission, and the Louisiana Public Service Commission. Each of those bodies has issued an order approving the merger with various conditions. On the federal level, approvals are being requested from the Federal Energy Regulatory Commission (FERC), the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvement Act, the Nuclear Regulatory Commission, and the Federal Communications Commission.

**Procedural History**

8. On April 30, 1998, the Applicants submitted an application to the Public Utility Commission of Texas (PUC or Commission) for a public interest finding. On May 1, 1998, the Commission referred this docket to the State Office of Administrative Hearings (SOAH).

9. On May 27, 1998, the Administrative Law Judge (ALJ) held a pre-hearing conference and set December 2, 1998 as the date for the hearing on the merits. On June 1, 1998, the PUC Office of Policy Development (OPD) issued an order requesting briefing on threshold issues. On June 5, 1998, OPD requested additional briefing on the issue of federal authority *vis-a-vis* the Commission's regulatory authority. After consideration of the briefs of the parties, the Commission issued its first Preliminary Order in this docket on July 1, 1998. That Preliminary Order identified statutory issues, issues arising from Commission precedent, and twelve case-specific questions. On July 14, 1998, the Commission issued its Supplemental Preliminary Order, adding a thirteenth question. On July 14, 1998, the Applicants submitted supplemental testimony that addressed each of the issues identified in the Commission's Preliminary Orders.
10. On July 24, 1998, the ALJ directed parties to engage in settlement meetings, and specified dates on which the Applicants would report to the ALJ on those settlement discussions. No comprehensive settlement was reached as a result of those discussions, but the Applicants did reach a settlement with the Office of Public Utility Counsel (OPC) and intervenor Cities.<sup>19</sup> That settlement was filed November 9, 1998. As a result, the Applicants filed additional testimony in support of that stipulation on November 25, 1998. On December 8, 1998, the ALJ issued an order setting a new date for the hearing on the merits of April 27, 1999. The ALJ also ordered the Applicants to file supplemental testimony on market power on January 15, 1999.
11. Several parties contended that the non-unanimous stipulation required additional notice. In Order No. 32, issued on December 14, 1998, the ALJ denied the motion. On appeal, in an order dated January 27, 1999, the Commission reversed the ALJ's ruling and ordered bill insert notices be given to affected customers and affected municipalities.

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<sup>19</sup>Cities include Abilene, Corpus Christi, McAllen, Victoria, Big Lake, Vernon, and Paducah.

12. On March 23, 1999, the ALJ suspended the procedural schedule and rescheduled the hearing on the merits to May 4, 1999. On April 1, 1999, the ALJ moved the hearing on the merits to May 25, 1999. On April 23, 1999, the ALJ granted a motion to suspend the procedural schedule in light of a pending settlement. On May 4, 1998, numerous parties (the Signatories) submitted an Integrated Stipulation and Agreement (ISA). In addition to the OPC and the Cities, the Signatories included the Commission Office of Regulatory Affairs (ORA), the State of Texas, the Texas Industrial Energy Consumers, and Low Income Intervenors. On May 11, 1999, the ALJ issued Order No. 52, requiring the filing of additional testimony in support of the ISA and setting August 9, 1999 as the date for the hearing on the merits.
13. In accordance with Order No. 52, the Signatories filed supplemental testimony on May 21, 1999. Several non-signatory parties filed testimony regarding the merger on July 16, 1999. The Signatories filed rebuttal testimony on July 30, 1999.
14. The hearing on the merits commenced on August 9, 1999. At the start of the hearing, counsel for Applicants announced additional settlements had been reached with all but one of the active non-signatories. As a result, the hearing consisted exclusively of the cross-examination by Power Choice, Inc.'s (Power Choice) counsel, with limited redirect by the Signatories and inquiry by the ALJ. Upon receipt of a letter from the counsel for the Public Utility Board of Brownsville, the ALJ closed the hearing on August 11.



**The ISA**

15. The ISA resolves all the merger-related issues among the Signatories and also resolves some regulatory proceedings of the Texas operating companies as well. The ISA contains merger-related rate reductions, as well as rate reductions arising from the settlement of other cases. It provides for additional amortization of Excess Cost Over Market (ECOM) of CPL. It contains a market power mitigation plan and provides affiliate standards. It sets detailed customer service standards. It includes a rate moratorium for the Texas Operating companies that will last until January 1, 2003, subject to certain force majeure provisions. It contains provisions regarding jurisdictional issues between the PUC and federal agencies. It provides for Applicants to implement a Customer Education Plan and an expanded Low-Income program. It includes a sharing of off-system sales margins and other provisions relating to the operations of the merged companies.
16. The ISA represents a compromise among all the Signatories. If the PUC does not accept the ISA or issues an interim or final order that is materially inconsistent with the ISA, any Signatory adversely impacted by that material modification or inconsistency may withdraw its consent and proceed to a hearing on all issues.

**Reasonable Value**

17. This merger is accomplished through a stock transaction. The price of CSW's and AEP's stock is set through the daily trading activity of the New York Stock Exchange. The merger was analyzed by the Board of Directors of both CSW and AEP and included the consideration of fairness opinions produced for both Boards. The transaction was the product of a willing buyer and a willing seller establishing a reasonable value after consideration of a number of factors. The Boards of both companies utilized fairness opinions prepared by investment bankers. Those opinions considered discounted cash flows, comparable companies, selected other mergers and acquisitions, historic trading ratios, and a *pro forma* analysis of the merger.

18. AEP will convert CSW stock to AEP stock using a conversion ratio of .60 of AEP shares for each share of CSW stock.

**Health and Safety**

19. AEP has an excellent safety record. AEP has employee training regarding safety, programs for the health and well being of its employees, and an active safety outreach program for the general public. After the merger, the similar health and safety programs of CSW will eventually be combined into a unified health and safety program. The proposed merger will not adversely affect the health or safety of customers or employees.

**Employment Impacts**

20. The merger could result in some jobs being transferred out of the state of Texas. Most of the potential job losses will be in the middle and upper ranks of management in the service companies. The geographic diversity of the merger ensures that many functions remain local.
21. Paragraph 9.C. of the ISA commits the Merged Company<sup>20</sup> not to reduce operating company field positions and customer service jobs for eighteen months beginning April 1, 1999. "Field positions" includes all employees on the front-line of providing service to the customer. This term would include all linemen, servicemen, and meter readers. "Customer service jobs" would include all the jobs having day-to-day contact with customers, such as telephone service representatives in the companies' call centers.
22. The merger will not result in the material transfer of jobs of citizens of this state to workers domiciled outside this state.

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<sup>20</sup> Merged company is defined in the ISA as the post-merger AEP and its successors in interest. See ISA § 1.

**No Decline in Service**

23. The ISA contains numerous standards for service quality, with monetary penalties if they are not met. The merger will not result in a decline of service quality or reliability.

**Merger Does "More than Promise" Cost Savings**

24. The ISA provides for the sharing of net merger savings with Texas customers through a "net merger savings rate reduction rider." A total of \$84.4 million of merger savings will be shared with customers of CPL (\$52.7 million), SWEPCO (\$16 million), and WTU (\$15.6 million). After the sixth year, the net merger savings rider will continue at the same level as the year six rider. In the first base rate proceeding for an operating company after the six-year net merger sharing savings period, all merger savings will be reflected in rates and the net merger savings rate reduction rider will be terminated. The amount of the net merger savings rate reduction rider is based on the estimates of net Texas retail merger savings. Even if net merger savings fall short of the estimates, the Applicants are guaranteeing a fixed level of benefits to customers and will bear the risk of any failure to actually achieve the full amount of net savings.
25. The ISA also contains rate reduction riders in Attachment H. In the context of the overall ISA, the total amount of the rate reductions (merger-related and Attachment H) is just and reasonable. Attachment H also provides that CPL will extend the terms of the Docket No. 12820<sup>21</sup> Stipulation to include a pre-tax ECOM amortization of \$20,000,000 per year in 2000 and 2001 and a pre-tax ECOM amortization of \$5,000,000 per year in the years 2002 through 2005. The provisions of the ISA dealing with rate reduction riders and reductions of ECOM are reasonable and in the public interest.

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<sup>21</sup>*Inquiry of General Counsel for an Inquiry Into the Reasonableness of the Rates and Services of Central Power and Light Company (CPL), Docket No. 12820, Order on Rehearing (Oct. 11, 1995).*



26. The ISA requires that all reconcilable fuel and purchased power savings be passed through to customers in accordance with PUC rules and proceedings for fuel factor adjustments and fuel reconciliation. The Applicants estimate that there will be fuel savings as a result of the merger.
27. The ISA does more than "just promise" savings to the Texas retail customers of the Texas Operating companies.

**Improvement in Service**

28. AEP made the commitment to meet current levels of service and strive to exceed those levels. AEP may improve CSW service through the introduction of a real-time customer service data system, developments in the AEP transmission and distribution system which may be useful to CSW in the proper circumstances, and software programs which may be useful to CSW service.
29. The ISA contains eight pages of detailed standards relating to quality of service. The ISA specifies standards for service turn on and upgrades, light replacements, telephone response, and reporting requirements. Each of the customer standards has an accompanying penalty for failure to meet the standard. The ISA similarly establishes standards for distribution feeders and system standards, with detailed monetary penalties for failure to meet each standard. The ISA authorizes an independent audit of the standards by the Office of Customer Protection twenty-four months after the standards are implemented by the Merged Company, and every twenty-four months thereafter.
30. The quality of service provisions provide additional assurances that the merger will result in improvements in service to CSW's Texas customers because of the financial incentives contained in the standards. The customer service reporting standards are new requirements that do not exist under current Commission rules. The ISA establishes numerous reporting,

surveying, and independent auditing requirements, which enhance the Commission's and customers' monitoring and evaluation of the customer service provided by the Merged Company.

31. The ISA contains an expanded Low-Income program which will improve the quality of service for the customers served by that program. The Low-Income program is reasonable and in the public interest.
32. The ISA includes a Customer Education plan in the event of retail competition. Now that Senate Bill No. 7 has been signed, this provision of the ISA will mean more information for Texas consumers. The Customer Education plan is reasonable and in the public interest.
33. The customer service standards and reliability standards contained in the ISA are appropriate. Based on Findings of Fact Nos. 28 through 32, the quality of service for Texas customers will improve as a result of the merger.

**Merger Costs and Merger Benefits**

34. Over a ten-year period, the Applicants estimate they would have a total savings of \$2.407 billion, less merger costs-to-achieve of \$248,080 million and pre-merger initiatives of \$193,327 billion for a net savings level of \$1.965 billion.
35. The total amount of merger savings was allocated to each company by creating a synergy savings work order based on the analysis of services provided by the functional group. They utilized appropriate allocation factors for those functions to determine savings allocated to each operating company. The merger costs and pre-merger initiatives were allocated to all companies on a pro rata basis following gross savings. The individual company estimates of costs savings and costs were divided among regulatory jurisdictions using allocation factors that were generally consistent with the practices used for cost assignments in past

CSW rate proceedings. These efforts resulted in the level of merger savings shown in the ISA.

36. The ISA authorizes a "net merger savings" expense item (as shown in ISA Attachment B) to be reflected as a reasonable and necessary operating expense, if there is a proceeding to change base rates of a Texas Operating Company to become effective prior to the end of a six-year period after the effective date of the merger.
37. The ISA authorizes the Merged Company and Texas Operating companies to defer and amortize their merger-related costs-to-achieve over a six-year period following the effective date of the merger. If there is a proceeding to change base rates of a Texas Operating Company within six years after the effective date of the merger, the ISA states that the amortization of costs to achieve the merger included in Attachment C to the ISA will be reflected as a reasonable and necessary expense included in the cost of service. The ISA also reduces the amount that will be considered reasonable and necessary as included in Attachment B if a Texas operating company requests an increase to overall base revenues to be effective prior to the end of the six-year period.
38. Both the provisions of the ISA relating to the "net merger savings" expense item and the deferral and amortization of costs to achieve the merger, including change in control payments, are reasonable and should be approved.
39. The merger will not cause Texas customers to bear merger costs unrelated to corresponding benefits to Texas customers.



**Merger Facilitates Regulatory Oversight**

40. This merger does not cause any change in the jurisdiction of any regulatory body.
41. The Merged Company will propose a substantially expanded set of allocation factors over those presented by CSW in the last CPL rate case. Those factors will correlate to the volume of activity that is generated in performing certain services and thereby emphasize cost causation factors.
42. The ISA contains numerous provisions that relate to the regulatory jurisdiction of the PUC. They are primarily contained within ISA Section 4, but other provisions will assist the PUC in its regulatory oversight over the Merged Company.
43. The books and records of the Texas operating companies might be kept outside the state. The Merged Company will return such records for inspection pursuant to P.U.C. Subst. R. 25.71.
44. The merger is not a means of evading regulation and will facilitate regulatory oversight of the Merged Company.

**Market Power and Competition**

45. Under the Applicants' market power study, there were instances in the Southwest Power Pool (SPP) and the Electric Reliability Council of Texas (ERCOT) in which the merger might cause failures of the FERC merger guidelines screen. The mitigation proposed by the ISA will address the apparent problems.
46. Under the ISA, the Merged Company agrees to divest 1604 megawatts (MW) of generation capacity in ERCOT. The ISA specifies that the divestiture shall consist of Lon Hill Units 1-4 (546 MW), Nueces Bay Plant (559 MW), Joslin Unit 1 (249 MW), and Frontera Plant (250 MW). The ISA also specifies that the Merged Company agrees to divest 300 MW in the SPP, or more if it is required to do so by FERC.

47. The ISA protects the accounting of the merger by timing the ERCOT divestiture so as to not violate the criteria of pooling of interests accounting. Paragraph 6.C of the ISA contains the procedures that the Applicants and ORA will follow in order to determine the appropriate timing for the divestiture.
48. CPL may recall up to 1354 MW of the divested capacity under certain circumstances. The ISA contains numerous details regarding when and under what circumstances CPL may recall the capacity.
49. Gains from the sale of the CPL plants will be used to reduce ECOM of the South Texas Nuclear Project (STP). Pursuant to the ISA, CPL is required to submit the terms of the divestiture of its plants to the Commission for approval.
50. The ISA also addresses a Regional Transmission Organization (RTO) in SPP. Under paragraph 6 M of the ISA, the Applicants set a date certain to place CSW's SPP transmission facilities within an RTO.
51. The market power mitigation plan contained in the ISA is consistent with the public interest.

**Consistency with CPL Rate Case**

52. The ISA regulatory plan does not change the accounting treatments ordered in Docket No. 14965,<sup>22</sup> or the rate reductions associated with the "glide path." The ISA reduces rates as reflected in the rate reduction riders contained in the ISA. The final order in Docket No. 14965 does not restrict CPL's ability to file for rate increases, but the ISA imposes a rate moratorium, with certain force majeure conditions, until January 1, 2003.

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<sup>22</sup>*Application of Central Power and Light Company for Authority to Change Rates, Docket No. 14965 (Oct. 16, 1997).*

53. Under the ISA, within 30 days of the effective date of the merger, CPL will withdraw from its pending appeal of Docket No. 14965 all issues which relate to the mandated glide path rate reductions. Paragraph 4.L of the ISA also provides that the Merged Company will abide by the ultimate resolution of affiliate allocation issues in the Docket No. 14965 appeal.
54. The ISA is consistent with and furthers the final decision in Docket No. 14965.

Consistency With WTU Rate Case

55. Docket No. 13369<sup>23</sup> limited WTU-initiated rate increases, which has now been extended by the ISA to January 1, 2003. The ISA does not impact the amortization of the deferred Oklaunion costs, but does reduce rates as provided in the ISA's rate reduction riders.
56. With regard to sharing margins for off-system sales, the CPL final order requires that 100 percent of the off-system sales be passed through to CPL customers, while the WTU settlement allows 15 percent of the margins to be shared with shareholders. The ISA contains sharing mechanisms that allow for 100 percent of off-system margins to go to customers if the margins are below a certain level, 85 percent to customers if the margins exceed that level, and 50 percent of margins to customers if the margins exceed a significantly greater level.
57. There is good cause to authorize the treatment for off-system sales contained in the ISA. The current high credit percentages diminish the incentive to the Texas operating companies to commit additional resources to pursue additional sales and/or trading activities. The levels proposed in the ISA for sharing of 15 percent with shareholders is approximately 30 percent higher than the previous maximum margins in the last three years. In order to justify 50/50

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<sup>23</sup>*Petition & Statement of Intent of West Texas Utilities for Rate Review, Request for Good Cause Exceptions for Filing & Procedural Requests*, Docket No. 13369 (Nov. 10, 1995).

sharing, the margins must increase by almost 100 percent from historical maximum levels. The ISA's provisions with regard to off-system sales are reasonable and in the public interest.

58. While the ISA contains off-system sales margins that differ from those contained in the CPL or WTU rate cases, they are "consistent with" or "further the rate treatments incorporated in" those two cases, and should, therefore, be adopted as part of the overall ISA. Similar treatment should be given to SWEPCO.
59. The ISA's provisions as a whole are consistent with or further the rate treatments incorporated in the WTU rate case.

**Consistency with IRP**

60. While the merger with AEP will potentially result in an additional source of firm capacity for the CSW Texas Companies after closing the merger, because planning for the sources of supply in the current IRP must occur today and given the limited amount of available firm transmission capacity, the CSW Texas Companies will continue the resource solicitation approved in Docket No. 16995.<sup>24</sup>
61. The ISA contains an agreement by the Applicants not to seek any new resource surcharge or Power Cost Recovery Factor or increase in any existing resource surcharge or PCRf, subject to certain conditions. Those conditions include if the requested surcharge or PCRf (1) was authorized in Docket Nos. 18041 or 18845,<sup>25</sup> or (2) is to provide for recovery of fuel and

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<sup>24</sup>Joint Application of Central Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company for Approval of Preliminary Integrated Resource Plans (IRP) and Related Good Cause Exceptions, Docket No. 16995 (July 30, 1997 and April 13, 1998)(Interim Order on Preliminary Plan and Interim Order on Interruptible Phase, respectively).

<sup>25</sup>Petition of Central Power and Light Company, West Texas Utilities Company, and Southwestern Electric Power Company for Approval of Contracts for Low-Income DSM Programs and for Authority to Implement a Power Cost Recovery Factor Associated Therewith, Docket No. 18041, Final Order (May 11, 1998) or Petition of Central



purchased power energy savings resulting from demand-side management (DSM) as required by the preliminary integrated resource plan in Docket No. 16995. Docket Nos. 18041 and 18845 provide for certification of contracts and recovery of costs associated with low-income DSM programs and renewable-energy resources, which were acquired in compliance with the Commission's interim order in Docket No. 16995.

62. Neither the merger nor the provisions of the ISA affect the decisions in the interim orders issued in Docket No. 16995.

**Transmission Rights**

63. The rights of Texas transmission users (and all other parties) are potentially affected by the merger only to the extent that available transmission capacity through Ameren and into PSO and SWEPCO is reduced by the reservation of 250 MW of transmission capacity. AEP will continue to offer open-access transmission service between its East region (the current AEP) and the West region (the current CSW). The Applicants have filed a tariff at FERC that follows FERC Order No. 888 and ERCOT rules.
64. The Applicants have agreed to waive certain transmission priorities at FERC. They will agree to waive the SPP operating companies' priority to the use of their interfaces with other transmission systems to import centrally dispatched energy from the existing AEP East Zone in excess of 250 MW. The Merged Company will also waive PSO's and SWEPCO's priority to the use of those interfaces to import non-firm energy from non-affiliates. Finally, the Merged Company will schedule its use of the HVDC ties between SPP and ERCOT on a first-in-time basis for certain transactions.

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*Power and Light Company, West Texas Utilities Company and Southwestern Electric Power Company for Approval of Photovoltaic Contract and Renewable Energy Technologies Trailer Program and Associated Cost Recovery Mechanisms, PUC Docket No. 18845, Final Order (Nov. 24, 1998).*

65. The acquisition and use of transmission rights by AEP for the merger will not impair the access, rights or priorities of other transmission owners or customers in Texas.

**Tangible Benefits on a Timely Basis**

66. Based on Findings of Fact Nos. 19 through 65, the ISA contains tangible benefits for Texas customers.
67. The ISA will produce timely benefits for Texas customers in the areas of rate reductions, ECOM amortization, market power mitigation, affiliate standards, customer service standards, rate moratorium, jurisdictional issues, customer education, low-income programs, off-system sales margins, and other ISA provisions.
68. Based on Findings of Fact Nos. 66 and 67, the merger will result in tangible benefits to Texas customers on a timely basis.

**Impact of Retail Competition**

69. The net merger savings rate reduction rider will continue to apply to regulated rates in the event of legislatively-mandated unbundling. The rate reductions apply even if there is a legislatively-mandated rate freeze. The net merger savings rate reduction rider will continue if there are legislatively-mandated rate reductions, and the net merger savings rate reduction rider will not be considered an offset to the legislative reduction.

**Form of Merger Savings Sharing**

70. The nature of the merger savings sharing plan has changed since the Commission issued its Preliminary Order. The Applicants' current regulatory plan is contained in the ISA, and is an appropriate means to implement sharing with customers. Preliminary Order question No. 6, as posed, is moot or should be modified to ask if the ISA's provisions are reasonable.

**Service Quality Guarantees**

71. The ISA contains several guarantees for service quality, including penalties if the standards are not met. The ISA also requires several reports (including statistically valid customer service surveys) and bi-annual audits by the Office of Customer Protection. The ISA contains appropriate guarantees to ensure that service quality in Texas does not suffer after the merger.

**Guaranteed Minimum Amount**

72. The ISA's net merger savings rate reduction rider is based on the estimated net Texas retail merger savings. Use of a fixed amount of savings allows for guaranteed benefits for customers while providing flexibility to accommodate a transition to competition. The Applicants bear the risk of any failure to actually achieve the full amount of net savings.
73. Using a fixed value for merger costs is reasonable. The ISA provides for a guaranteed minimum amount for the customers' share of merger savings. No true-up mechanism should be adopted.

**Affiliate Standards**

74. The ISA contains affiliate standards that will apply in the absence of PUC rules or legislation. The PUC is also devising rules for affiliate relations, including unbundling rules and code of conduct rules. Senate Bill No. 7 also contains several provisions concerning the ability of electric utilities to engage in cost shifting, cross subsidies, and/or discriminatory behavior. The Applicants have provided sufficient guarantees that will prevent unjustified cost shifting, cross subsidies, or discriminatory behavior.

**Contested Issue**

75. Section 4.B. of the ISA states that stranded costs will be recovered on a stand-alone basis among the Texas operating companies. This section of the ISA is intended to ensure a clear

separation between the three Texas companies and the AEP companies or PSO in Oklahoma in the allocation and recovery of stranded costs. It guarantees that customers of the CSW operating companies will not be at risk for stranded costs incurred by AEP.

76. Central Power & Light Company is likely to have stranded costs related to its ownership interest in the STP. WTU and SWEPCO do not currently have stranded costs related to generation plant. The language of § 4.E. does not address whether CPL stranded costs should be netted against the value of WTU and SWEPCO plants among the CSW operating companies. Furthermore, treatment of CSW stranded costs through netting among its Texas operating companies is not relevant to issues in this merger case.
77. The ISA does provide for ECOM mitigation in two instances: Attachment H, paragraph 3.d. of the ISA pledges a \$60 million stranded cost reduction for CPL customers as an extension of the Docket No. 12820 Stipulation, and § 6.J. provides that the gains on the sale of CPL's power plants will be applied to reduce the company's stranded costs. The ISA does not bind the Commission to any particular treatment of stranded costs or ECOM in future proceedings.

#### **General Evaluation**

78. The ISA, taken as a whole, is a reasonable resolution of contested issues in this docket, is supported by the record, and is in the public interest. Therefore, the ISA should be adopted as the basis for the Commission's decision in this case.
79. The Applicants have presented substantial evidence that demonstrates that this merger meets each of the statutory standards, the Docket No. 14860<sup>26</sup> (SPS/PSCo) standards and the questions posed by the PUC in the Preliminary Orders. This evidence supports an independent finding that the ISA is just and reasonable.

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<sup>26</sup>*Application of Southwestern Public Service Company Regarding Proposed Business Combination With Public Service Company of Colorado*, Docket No. 14980, Final Order (Feb. 14, 1997).



80. Under the provisions and conditions of the ISA, the merger of AEP with CSW is consistent with the public interest.

**B. Conclusions of Law**

81. CPL, SWEPCO and WTU are electric utilities as defined by Section 31.002 of the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. (Vernon 1999). The Commission has jurisdiction over those utilities under PURA §14.001, *et seq.*; §31.001 *et seq.*; §33.001, *et seq.*; §36.001, *et seq.*; and §38.001 *et seq.*
82. The Applicants seek a public interest determination pursuant to PURA §14.101.
83. SOAH has jurisdiction over all matters relating to the conduct of a hearing of this proceeding including the preparation of a proposal for decision with findings of fact and conclusions of law pursuant to PURA §14.053 and TEX. GOV. CODE ANN. §2003.049 (Vernon 1999).
84. The Applicants have complied with the notice requirements as set by the PUC.
85. Because the Applicants, along with numerous other parties, presented a non-unanimous stipulation for approval, the procedure for considering such stipulations is proscribed by PURA §14.054 and PUC Procedural Rule §22.206. The hearing on the merits to consider the ISA was conducted in accordance with these provisions.
86. *Cities of Abilene, et al. v. Public Utility Comm'n*, 854 S.W.2d 932, 937-38 (Tex. App. - - Austin 1993), *aff'd in part and rev'd in part*, 909 S.W. 2d 493 (Tex. 1995) determined that a non-unanimous stipulation could be considered as a basis for a final order so long as "nonstipulating parties had an opportunity to be heard on the merits of the stipulation and the Commission made an independent finding on the merits, supported by substantial evidence

in the record, that the stipulation set just and reasonable rates.” The procedure followed in this case conforms with the *Cities of Abilene* procedural requirements.

87. The ISA is a reasonable resolution of the contested issues in this docket, is consistent with PURA, is supported by the record, and is in the public interest.
88. The Applicants will comply with P.U.C. Subst. R. 25.71 by returning records to the PUC for inspection.
89. The Applicants have demonstrated good cause for the ISA’s provisions regarding sharing of the margin for off-system sales in a manner different than that contained within P.U.C. Subst. R. 25.236(a)(8).
90. The Applicants have met their burden of proof with regard to the statutory standards; the SPS/PSCo standards found in Docket No. 14980, which specified other issues that need to be examined prior to the determination of the public interest; and the questions posed by the PUC in its Preliminary Orders in this case.
91. The rates resulting from the net merger savings rate reduction rider and the rate reduction riders in ISA Attachment H are just, reasonable, in the public interest and are not unreasonably preferential, prejudicial, or discriminatory pursuant to PURA §36.003.
92. Under the provisions and conditions of the ISA, the merger of AEP with CSW is consistent with the public interest under PURA §14.101.

## VI. Ordering Language

In accordance with the foregoing findings of fact and conclusions of law, the Commission issues the following orders:

1. The application of CSW and AEP to combine their two businesses, as amended by the Integrated Stipulation and Agreement, is approved.
2. CPL, SWEPCO and WTU shall implement the net merger savings rate reductions riders and the ISA Attachment H rate reductions riders through filings with appropriate regulatory authorities to be effective for bills rendered in the first revenue month after the closing of the merger as specified in this Order.
3. CPL shall reduce stranded costs related to its generating plants consistent with the agreements contained in ISA.
4. The Merged Company shall comply with the jurisdictional resolutions contained in § 4 of the ISA.
5. The Merged Company shall adopt the Low-Income program, customer service, and reliability standards established in the ISA and shall implement the customer education program to provide information concerning electric industry restructuring and retail competition.
6. The Applicants shall provide for the sharing of off-system sales margins as specified in the ISA and for the treatment of fuel savings arising from the integrated operations of the Merged Company.

7. Applicants shall defer and amortize over a six-year period the estimated costs to achieve the merger, including change in control payments as specified in the ISA.

8. If the Merged Company maintains CSW's Texas operating companies' business records outside the State of Texas, it shall do so in accordance with the requirements of P.U.C. Subst. R. 25.71(c).

9. The Merged Company or the Texas operating companies shall file tariff sheets consistent with this Order upon closing of the merger. Only savings applied to regulated rates that will be recognized prior to January 1, 2002 shall be included in this filing; additional tariffs to recognize post-2002 savings to regulated rates shall be filed pursuant to Paragraph 9A. This tariff, and all filings related to it, shall be filed in Tariff Control Number 21429, and shall be styled: *COMPLIANCE TARIFF Pursuant to Final Order in PUC Docket No. 19265, SOAH Docket No. 473-98-0839, Application of Central and South West Corporation and American Electric Power Company, Inc. Regarding Proposed Business Combination*. The filing shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed, and any other necessary information. The timetable for review of the compliance tariff shall be established by the PUC ALJ assigned to the tariff. In the event any sheets are modified or rejected, the Applicants shall file proposed revisions to those sheets in accordance with the PUC ALJ's notice. The effective date of the tariff shall be as determined in the written notice of approval by the PUC ALJ. All subsequent filings in connection with the compliance tariff (i.e., requests for extensions, textual corrections, revisions) shall be filed in the same Tariff Control No. provided above, and styled as set forth above. After issuance of the final order in this docket, no further filings other than those pertaining to a Motion for Rehearing shall be made in this docket.

9A. The Merged Company or Texas operating companies shall file, or shall amend the filings made prior to the merger by the Texas operating companies relating to, tariffs and supporting information to reflect the savings provided in the ISA in the distribution rates of the Texas operating companies' successor transmission and distribution utilities. The filings or amendments shall be made in the unbundling proceedings established by the Commission to approve proposed transmission and distribution tariffs under PURA § 39.201 and shall comply with any applicable Commission rules related to that proceeding.

9B. The Office of Regulatory Affairs shall, after adoption of any amendments to the Commission's service reliability rules, establish a project to address any inconsistencies between the ISA and those amendments.

10. Entry of the Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the ISA. Neither shall entry of the Order be regarded as binding precedent as to the appropriateness of any principle underlying the ISA.

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



SIGNED AT AUSTIN, TEXAS the 18<sup>th</sup> day of November, 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

  
PAT WOOD, III, CHAIRMAN

  
JUDY WALSH, COMMISSIONER

  
BRETT A. PERLMAN, COMMISSIONER

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# **ATTACHMENT B3-c**

RECEIVED

PUC DOCKET NO. 27727

2003 MAY -1 PM 4: 34

NOTIFICATION BY AEP TEXAS CENTRAL COMPANY FOR NAME CHANGE  
REGARDING TARIFFS PUBLIC UTILITY COMMISSION  
FILING CLERK

MAY 1, 2003

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May 1, 2003

American Electric Power  
400 West 15<sup>th</sup> Street, Suite 1500  
Austin, TX 78701  
aep.com

Ms. Pamela Whittington  
Director, Policy Development Division  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
P. O. Box 13326  
Austin, Texas 13326

Re: *Central Power and Light Company Certificate of Convenience and  
Necessity No. 30028*

Dear Ms. Whittington:

Effective December 23, 2002, the name of Central Power and Light Company (CPL), holder of Certificate of Convenience and Necessity (CCN) No. 30028, was officially changed to AEP Texas Central Company (TCC). TCC requests that the Public Utility Commission of Texas (PUC) change its official records to reflect the name of the holder of CCN No. 30028 to be AEP Texas Central Company and to notify TCC when the change has been made.

Attached hereto is the tariff of TCC. It is identical to the CPL tariff, modified only to reflect the name change and for non-substantive wording changes listed on the first page of the attachment. TCC requests that this tariff be approved and substituted for the current Tariff for Retail Delivery Service of the Energy Delivery Company Providing Transmission and Distribution Service to the Area Served by Central Power and Light Company.

Please feel free to call me at (512)481-3321 or e-mail me at [rcryan@aep.com](mailto:rcryan@aep.com) if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Rhonda Colbert Ryan". The signature is fluid and cursive, with the first name "Rhonda" being the most prominent.

Rhonda Colbert Ryan  
Assistant General Counsel

RR/tmj  
Attachment

# **ATTACHMENT B3-d**

PUC DOCKET NO. 46050  
SOAH DOCKET NO. 473-16-4822

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2016 DEC 12 PM 4:44

|                                  |   |                           |
|----------------------------------|---|---------------------------|
| APPLICATION OF AEP TEXAS         | § | PUBLIC UTILITY COMMISSION |
| CENTRAL COMPANY, AEP TEXAS       | § | MISSION                   |
| NORTH COMPANY, AND AEP           | § | OF TEXAS                  |
| UTILITIES, INC., FOR APPROVAL OF | § |                           |
| MERGER                           | § |                           |

### ORDER

This Order addresses the application of AEP Texas Central Company (TCC), AEP Texas North Company (TNC), and AEP Utilities, Inc. (AEP Utilities) (collectively, the applicants) for a public interest determination and related approvals regarding their proposed merger. The applicants' application for approval of the proposed merger is approved as consistent with the public interest.

On October 19, 2016, the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) issued a proposal for decision (PFD) recommending that the Commission find that the proposed merger is consistent with the public interest if certain conditions are imposed. On November 9, 2016, the SOAH ALJ filed a letter recommending a modification to the proposed language in ordering paragraph 5. The Commission adopts the PFD as modified by the SOAH ALJ's letter of correction, including findings of fact and conclusions of law, except as provided by this Order.

The Commission finds that AEP Texas should be required to prepare a study at least four months in advance of filing a system-wide rate case. To reflect that determination, the Commission adds new finding of fact 78A. The Commission also makes non-substantive changes to findings of fact and conclusions of law for such matters as capitalization, spelling, punctuation, style, grammar, and readability.

The Commission adopts the following findings of fact and conclusions of law:

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**I. Findings of Fact**

**Procedural History**

1. AEP Texas Central Company (TCC) and AEP Texas North Company (TNC) are Texas corporations providing transmission and distribution service to retail electric providers (REPs) within portions of the Electric Reliability Council of Texas (ERCOT) region of Texas. TCC and TNC provide these services to over one million meters located in nearly 400 communities in all or parts of 93 counties in the south and west Texas regions.
2. AEP Utilities, Inc. is a Delaware corporation that is the immediate parent company of TCC and TNC. TCC, TNC and AEP Utilities are wholly owned subsidiaries of American Electric Power Company, Inc. (AEP).
3. On June 15, 2016, TCC, TNC, and AEP Utilities (collectively, the applicants) filed an application with the Commission for a public interest determination and related approvals regarding their proposal to merge TCC and TNC into their parent company, AEP Utilities, which will change its name to AEP Texas Inc. (AEP Texas).
4. On June 16, 2016, the Commission issued Order No. 1, which established the deadline to intervene, required Commission Staff to file its comments and recommendations on the sufficiency of the applicants' proposed notice and sufficiency of the application, and granted the applicants' request for adoption of a protective order.
5. On June 23, 2016, the Commission referred this case to the State Office of Administrative Hearings (SOAH).
6. On June 27, 2016, Commission Staff filed its recommendation as required by Order No. 1, deeming the application sufficient for review on the merits and the applicants' proposed notice sufficient.
7. On July 1, 2016, in SOAH Order No. 1, the administrative law judge (ALJ) found the applicants' application and proposed notice to be sufficient.
8. On July 19, 2016, in SOAH Order No. 2, the ALJ provided notice of the hearing and granted intervenor status to Golden Spread Electric Cooperative, Inc., the Office of Public

Utility Counsel, South Texas Electric Cooperative, Inc., and Texas Industrial Energy Consumers (TIEC). Commission Staff also participated in this proceeding.

9. In SOAH Order No. 3 issued August 16, 2016, the ALJ granted intervenor status to the City of McAllen.
10. On July 20, 2016, the Commission issued a preliminary order, identifying issues to be addressed in this proceeding.
11. Prior to the commencement of the hearing on the merits, on August 24, 2016, Golden Spread Electric Cooperative, Inc. appeared and announced on the record that it was withdrawing from the case.
12. The hearing on the merits commenced and concluded on August 24, 2016.
13. Initial post-hearing briefs were filed on September 2, 2016, and reply briefs and proposed findings and conclusions were filed on September 12, 2016.

**Notice**

14. The applicants provided notice of their application to all municipalities within the service areas of TCC and TNC; all neighboring utilities that do not operate in the ERCOT region; all parties to TCC's and TNC's most recent base-rate cases and distribution cost recovery factor (DCRF) cases; the transmission owners listed in *Commission Staff's Application to Set 2016 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*, Docket No. 45382 (Mar. 26, 2016), which established the 2016 wholesale transmission service charges for the ERCOT region; and all REPs listed on the Commission's website at the time of filing.
15. Notice was completed on June 17, 2016.
16. Notice of the application was also published in the *Texas Register* on July 1, 2016.

**Description and Rationale for Merger Transaction**

17. The proposed merger is a legal entity reorganization among affiliated entities, with no compensation among the parties to the merger.

18. TCC and TNC are currently separate legal entities and transmission and distribution utilities operating in ERCOT. However, these companies are managed and operated, to a great extent, as a single business under the brand name "AEP Texas."
19. TCC and TNC already reflect the cost profile resulting from joint management and operations that have been in place for some time. Therefore, there are minimal costs to achieve the merger and minimal synergy savings resulting from it.
20. Applicants will not seek recovery of the costs to achieve the merger in transmission and distribution rates.
21. To accomplish the merger, TCC and TNC will each separately be merged into their parent corporation, AEP Utilities, an existing AEP affiliate that is the first tier subsidiary between TCC and TNC and AEP, their ultimate owner. In one of the mergers, AEP Utilities will change its name to AEP Texas Inc. All of the rights, interests, responsibilities and obligations of TCC and TNC will be merged into the surviving entity.
22. After the merger is consummated, AEP Texas will establish TCC and TNC divisions with the merged utility and will continue to maintain separate rates, riders, and tariff manuals for TCC and TNC within those divisions, unless and until the Commission approves consolidated rates.
23. The applicants are not proposing any change in their current business-unit accounting as a result of the merger. Separate accounting ledgers will be maintained for the TCC and TNC divisions as long as is appropriate, which will allow for costs to be captured in the same manner as currently and for rates to be maintained separately for each division.
24. The applicants will maintain separate TCC and TNC depreciation rates for as long as necessary after the merger.
25. The merger will not alter the manner in which American Electric Power Service Corporation bills affiliate charges to the various AEP business units, including AEP Texas.
26. AEP Texas will continue to include TCC and TNC divisional information in its Commission filings as appropriate.

27. AEP Texas will continue to maintain separate certificates of convenience and necessity (CCNs) for the TNC and TCC divisions and CCN filings will continue to be handled in the same manner as currently.
28. The merger will not result in any change in the way in which customer complaints are submitted to the Commission.
29. The merger will not affect the transition charges or nuclear-decommissioning-fee charges assessed only to TCC customers per the requirements of the Public Utility Regulatory Act.
30. The merger will not have any adverse impacts on REPs.
31. After the merger, among the instances wherein a single financial report will be filed by AEP Texas are the Federal Energy Regulatory Commission Form 1 and the Commission Earnings Monitoring Report.
32. The merger will allow TCC and TNC to issue one set of financing instruments as AEP Texas.
33. The merger will create a bigger and stronger financial platform from which to access financial markets, which will support the continued and increasing investment in the transmission and distribution grid needed to provide reliable service to customers.
34. The merger allows the elimination of duplication in the production of financial statements currently filed by TCC and TNC.
35. The elimination of duplication of financial statements will conserve the resources of TCC and TNC, as well as those other parties in the review of such filings.
36. The merger will promote efficiency in regulatory filings (eliminating and consolidating filings), thereby conserving resources of AEP Texas, the Commission, and other parties that participate in regulatory proceedings.

**Merger Benefits, Savings, and Costs**

37. The proposed merger of TCC and TNC will result in three primary benefits for the Companies and their customers: (a) improved access to financing, (b) efficiencies in financial reporting, and (c) efficiencies in regulatory filings.

Access to Financing

38. The proposed merger will create a bigger and stronger financial platform from which to access financial markets, which will support the continued and increasing investment in the AEP Texas transmission and distribution assets needed to provide reliable service to customers.
39. On completion of the merger, AEP Texas will be better positioned to source capital across the entire capital market spectrum, including both the public and private placement markets.
40. By conducting fewer debt issuances than TCC or TNC would conduct individually, AEP Texas will incur fewer debt-issuance costs, such as accountant, consultant, and attorney fees. AEP Texas will save approximately \$700,000 in reduced issuance costs, or approximately the annual debt-issuance costs incurred by TNC.
41. To ensure that customers benefit from reduced debt-issuance cost, AEP Texas should be required to provide merger credits equal to 90% of the expected savings, or \$630,000, per year from the date of the merger until the effective date of its next base-rate proceeding.
42. While AEP Texas is projected to make significant capital expenditures in the next several years, the size and timing of debt offerings could vary, depending on cash flow from operations, the ability to execute the forecasted capital plan, and the level of short-term debt.
43. By conducting larger debt issuances on the public debt markets, AEP Texas is expected to obtain interest rates that are 15-25 basis points lower than TCC or TNC can currently obtain on the private debt markets.
44. To ensure that customers benefit from this reduced debt-issuance cost, AEP Texas should be required to provide merger credits equal to 90% of the interest-rate savings that result from assuming the achievement of a 20-basis point reduction on all debt issuances between the date of the merger and the effective date of AEP Texas's next base-rate case.
45. Securities and Exchange Commission (SEC) registration is not a condition or cost of the proposed merger. The cost of registering with the SEC is a cost of accessing financing.

46. There is no reasonable basis to foreclose AEP Texas's future recovery of SEC registration costs as a condition to the proposed merger.

*Efficiencies in Financial Reporting and Regulatory Filings*

47. The proposed merger will allow the elimination of duplication in the production of financial statements filed by TCC and TNC and efficiencies in regulatory filings through the elimination and consolidation of filings.
48. Over time, both of these effects will conserve the resources of AEP Texas and those parties that review these filings, including the Commission.
49. Reduced rate-case expenses associated with the elimination and consolidation of filings will be passed on to customers through lower rate-case-expense riders in appropriate instances or in the form of lower costs in future rate proceedings.
50. No reasonable basis exists to condition the proposed merger on foregoing these efficiencies.
51. TIEC's proposal to condition the proposed merger on a guarantee of \$250,000 per year savings for regulatory filings lacks credible evidentiary support.
52. In the short term, AEP Texas will need to continue to provide reporting on a TCC and TNC divisional basis in a number of reports.

*Application of Statutory Standard*

53. The benefits of the proposed merger will be achieved over time, as AEP Texas invests in its transmission and distribution assets, issues debt as a consolidated entity, and consolidates and eliminates financial reporting and regulatory filings when appropriate to do so.
54. AEP Texas has agreed that it will not seek recovery of the direct costs to achieve the proposed merger.
55. There is no credible evidence that the proposed merger will adversely affect the reliability, availability, or cost of service.
56. The legal combination of TCC and TNC, as proposed by the applicants, is in the public interest.



Merger Impact on Service

57. The proposed merger will not affect the delivery, reliability, or availability of electric services or lead to a decline of such services to customers of TCC and TNC.
58. The operations of TCC and TNC are jointly managed via functional organizations that execute the planning, engineering and design, construction, and operations of those entities' transmission and distribution grid.
59. AEP Texas will continue to be operated and managed as a single entity, as is the case to a large extent for TCC and TNC today, including outage restoration at all levels.
60. The merger is designed to preserve the current management and operation of TCC and TNC, albeit under a different legal entity structure.
61. It is reasonable, as proposed by Commission Staff and not opposed by the applicants, that TCC's and TNC's current separate system-average-frequency-index (SAIFI) and system-average-duration-index (SAIDI) benchmarks be combined into a single AEP Texas system-wide SAIDI and SAIFI values. Combination of the separate standards will advance the merger's goal of increasing efficiency in regulatory reporting.
62. Commission Staff's proposed SAIDI and SAIFI performance standard is not supported by evidence, the Commission's rules, or Commission precedent.
63. The proposed merger does not involve the combination of a Commission-regulated company with an unaffiliated company that can raise questions about the unaffiliated company's ability to provide service, changes in the merged entity's provision of service, or the potential synergies of the combined system that motivated the proposed merger.
64. Adoption of Commission Staff's proposed additional SAIDI and SAIFI performance standard as a reliability metric is not necessary as a condition of the merger, since the merger will not result in any change in the manner in which the two utilities are currently operated and managed.
65. The proposed merger is designed to conform the legal structure of AEP Texas with its existing organizational and operational form.

66. There is no change in control or change in the provision of service that will take place because of the proposed merger.

**Other Public Interest Factors**

67. All of the rights, responsibilities; and obligations of TCC and TNC will be merged into the surviving entity, AEP Texas.
68. All of the assets and debts of TCC and TNC will be merged into the surviving entity, AEP Texas.
69. The consolidated balance sheet and income statement of TCC and TNC will become that of AEP Texas.
70. The merger will not alter the status of TNC's ownership interest in the Oklahoma generating unit or certain mothballed power plants.
71. The special purpose entities that were established for the three securitization transactions that TCC entered into as part of its transition to competition will continue as subsidiaries of the surviving entity, AEP Texas.
72. No payment of consideration will occur, or is required, as a result of this transaction because the transaction is a merger of two affiliated entities with one common owner.
73. The merger will not adversely affect the health or safety of either the customers or employees of TCC or TNC.
74. There will be neither a transfer of jobs from Texas to other states nor a downsizing or restructuring that will cause a reduction in personnel as a result of the merger.

**Additional Merger Conditions**

75. Consistent with the application, it is reasonable for the future TCC and TNC divisions of AEP Texas to maintain separate base rates, DCRF, energy efficiency cost recovery factors, transmission cost of service factors and other rates until such time as the Commission may consider and approve rate consolidation.
76. It is premature and unnecessary at this time to address, or to preclude the applicants from recovering, future rate-case expenses associated with any proposal to consolidate TCC and

TNC rates. The reasonableness and necessity of rate-case expenses and their recovery should be addressed at the time recovery is requested.

77. It is premature and unnecessary at this time to address the extent to which a future proposal to consolidate TCC and TNC may or may not create subsidies. Applicants do not propose that any decisions about the future consolidation of TCC and TNC rates be made in this proceeding, and no such decisions are being made.
78. Consummation of the merger transaction will have no effect on the status quo regarding Federal Energy Regulatory Commission (FERC) jurisdiction over TCC and TNC wholesale transmission rates in ERCOT.
- 78A. It is reasonable to require AEP Texas to file a proposal for setting system-wide rates, along with an underlying study and supporting data, at least four months prior to filing a case proposing system-wide rates with the Commission.

Other Issues

PURA § 39.051

79. As a result of the proposed merger, AEP Texas will step into the shoes of TNC regarding ownership of the Oklaunion generating facility and the associated liabilities, contractual rights, and contractual obligations.
80. AEP Texas will continue to meet the statutory requirements for ownership of an interest in Oklaunion under PURA § 39.051(c) after the merger.
81. Nothing in the proposed merger transaction will alter the status of the Oklaunion generating facility, or compliance with the requirements of PURA § 39.051, once AEP Texas succeeds to its ownership.

PURA § 37.154

82. Upon consummation of the merger, the ownership interests and rights and obligations of TCC and TNC under their certificates of convenience and necessity (CCNs) pass to AEP Texas as a matter of law and not as the result of a sale, assignment, or lease.
83. AEP Texas will be able to provide adequate service to end use-customers following the merger.

84. To preserve separate TCC and TNC divisions for purposes of Commission rate setting and regulatory oversight after the merger, it is reasonable that AEP Texas maintain separate CCNs for the TCC and TNC divisions that will be formed pursuant to the merger.

## II. Conclusions of Law

1. TCC and TNC are electric utilities as defined by Texas Utilities Code (PURA) § 31.002(6), transmission and distribution utilities (TDUs) as defined by PURA § 31.002(19), and public utilities as defined by PURA § 11.004.
2. AEP Texas will be an electric utility as defined by PURA § 31.002(6), a TDU as defined by PURA § 31.002(19), and a public utility as defined by PURA § 11.004.
3. The Commission has jurisdiction over this proceeding under PURA §§ 14.001, 14.101 and 39.915 and 16 Texas Administrative Code (TAC) § 25.74(a) and (b).
4. SOAH has jurisdiction over this proceeding under PURA § 14.053 and Texas Government Code § 2003.049.
5. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act, Tex. Gov't Code §§ 2001.001-.902 (West 2016 and Supp. 2016), and Commission rules.
6. Notice of the merger at issue in this proceeding and the events in this docket was provided as required by 16 TAC § 22.55.
7. The proposed merger transaction is in the public interest under PURA §§ 14.101 and 39.915.
8. AEP Texas ownership of the Oklaunion generating facility subsequent to the consummation of the merger is authorized by PURA § 39.051(c).
9. The proposed merger does not result in a sale, transfer, or assignment of CCNs and, therefore, PURA § 37.154 compliance is unnecessary. *Application of Century Telephone Enterprises, Inc.*, Docket No. 3304, 6 P.U.C. Bull. 68 (Sept. 11, 1980).
10. Combination of the existing TCC and TNC service metrics into system-wide AEP Texas SAIDI and SAIFI values benchmarks is consistent with 16 TAC § 25.52.

### III. Ordering Paragraphs

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

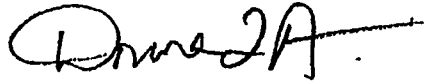
1. The applicants' application for approval of the proposed merger is granted as consistent with the public interest.
2. Applicants shall maintain separate TCC and TNC divisions, which will continue to charge separate rates and riders, and maintain separate tariffs, unless and until such time as the Commission may consider and approve consolidated rates and tariffs.
3. As a condition of approval for this transaction, AEP Texas is ordered to provide rate credits to its customers. AEP Texas shall provide set rate credits of \$630,000 per year to account for savings stemming from lower debt-issuance costs. AEP Texas shall also submit a yearly compliance filing detailing the amount of debt it issued in the prior year. AEP Texas shall then provide its customers with an additional rate credit equal to 90% of 0.2% of that total debt issuance. These credits will terminate on the effective date of AEP Texas's next base-rate case. Any rate credits awarded as a result of this order shall be divided between AEP Texas's existing TCC and TNC customers based on asset allocation.
4. Applicants shall combine the current TCC and TNC SAIDI and SAIFI statistics into a single AEP Texas metric, consistent with the recommendation of Staff in this proceeding.
5. As a condition of approval for this transaction, the applicants shall reaffirm the commitments made in Section 4(i) of the Integrated Stipulation Agreement in *Application of Central and South West Corporations and American Electric Power Company, Inc. Regarding Proposed Business Combination*, Docket No. 19265 (Nov. 18, 1999). AEP Texas will continue to file rates for transmission services at FERC in accordance with ERCOT regional pricing and terms and conditions as established by the Commission so long as AEP Texas is a member of ERCOT or until such time as ERCOT is no longer subject to the jurisdiction of the Commission. AEP Texas will comply with PURA, all other applicable statutes, and the Commission's rules, including transmission cost of service allocations. Additionally, AEP Texas will continue to make transmission cost of service filings with the Commission in accordance with the Commission's rules and

procedures. The Commission will determine AEP Texas transmission cost of service in accordance with PURA and its rules. With regard to transmission rate filings at FERC, AEP Texas will submit and support the results of the Commission's orders regarding AEP Texas's transmission cost of service.

6. AEP Texas shall file a proposal for setting system-wide rates, along with an underlying study and supporting data, at least four months prior to filing a case proposing system-wide rates with the Commission.
7. 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, are denied.

Signed at Austin, Texas the 12<sup>th</sup> day of December 2016.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER



# **ATTACHMENT D1**

**OVERSIZED MAP(S)**

**TO VIEW OVERSIZED MAP(S),  
PLEASE GO TO  
CENTRAL RECORDS.**

**(512) 936-7180**

# **ATTACHMENT E**

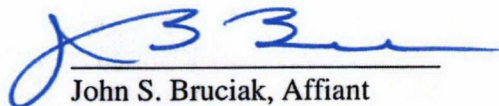
Application For A Certificate of Convenience and Necessity  
For Service Area Boundaries

OATH

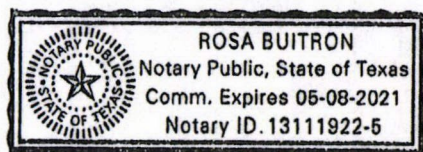
STATE OF TEXAS

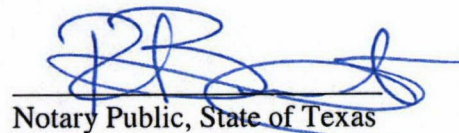
COUNTY OF CAMERON

I, John S. Bruciak, being duly sworn, file this application as General Manager & CEO of the Public Utilities Board of the City of Brownsville; that in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the maps filed with this application, and have complied with all requirements contained in the application; and, that all such statements made and matters set forth therein are true and correct. I further state that the application is made in good faith; that notice of its filing was given to affected neighboring utilities and to the County Commission of Cameron County; and that this application does not duplicate any filings presently before the Commission.

  
John S. Bruciak, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State and County above names, this 10<sup>th</sup> day of July 2019.



  
Notary Public, State of Texas

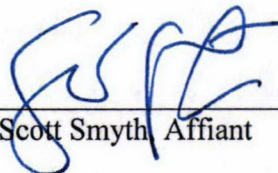
Application For An Amendment to Certificate of Convenience and Necessity  
For Service Area Boundaries

OATH

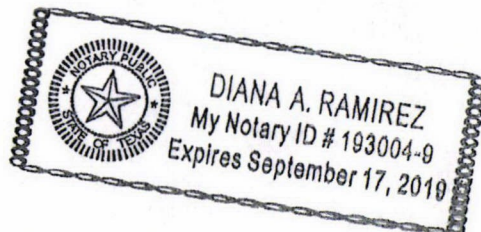
STATE OF TEXAS

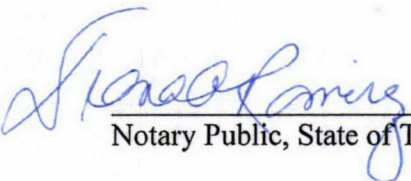
COUNTY OF TRAVIS

I, Scott Smyth, being duly sworn, file this application as attorney for the Brownsville Public Utilities Board; that in such capacity, I am qualified and authorized to confirm that the paper map and portable electronic storage medium containing the GIS data were sent to the Texas Natural Resources Information System at 1700 N. Congress Avenue, Room B40, Austin, Texas 78701, no later than seven days after filing the application for the boundary change to the best of my knowledge.

  
Scott Smyth, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State and County above names, this 16 day of July 2019.



  
Notary Public, State of Texas