



Control Number: 50546



Item Number: 14

Addendum StartPage: 0



Life's better outside.®

April 30, 2020

2020 MAY 14 AM 9:17

Ms. Rachelle Robles
Public Utility Commission
P.O. Box 13326
Austin, TX 78711-3326

RE: PUC Docket No. 50546: Application of AEP Texas, Incorporated to amend its Certificate of Convenience and Necessity for the proposed Union Carbide to Loma Alta Cut-in to Pompano 138-kilovolt Double-Circuit Transmission Line, Cameron County, Texas

Dear Ms. Robles:

Texas Parks and Wildlife Department (TPWD) has received and reviewed the Environmental Assessment and Alternative Route Analysis (EA) regarding the above-referenced proposed transmission line project. TPWD offers the following recommendations and comments concerning this project.

Please be aware that a written response to a TPWD recommendation or informational comment received by a state governmental agency may be required by state law. For further guidance, see the Texas Parks and Wildlife (TPW) Code, Section 12.0011. For tracking purposes, please refer to TPWD project number 43402 in any return correspondence regarding this project.

Project Description

AEP Texas, Incorporated (AEP Texas) is proposing to construct a new double-circuit 138-kilovolt (kV) transmission line. The goal of the proposed Union Carbide to Loma Alta cut-in to Pompano 138-kV electric transmission line is to connect the existing Union Carbide to Loma Alto 138-kV transmission line to the proposed AEP Texas Pompano Substation to be constructed at the proposed Rio Grande Liquefied Natural Gas (LNG) facility along State Highway (SH) 48, southwest of Port Isabel, Cameron County, Texas. The transmission line would be approximately 10 miles in length depending on the route selected. AEP Texas proposes to use steel single-pole structures within a 100-foot right-of-way (ROW). Regardless of the route selected, a significant portion of the project would be located within the Brownsville Navigation District's (BND) utility corridor.

AEP Texas retained POWER Engineers, Incorporated (POWER) to prepare an Environmental Assessment and Alternative Route Analysis (EA). The EA will support AEP Texas' application to amend its Certificate of Convenience and Necessity (CCN) for this project. The EA was prepared to provide information and address the requirements of Section 37.056(c)(4)(A)-(D) of the Texas Utilities Code, Public Utilities Commission (PUC) Procedural Rules Section 22.52(a)(4), PUC Substantive

To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations

- Commissioners
- S. Reed Morian
Chairman
Houston
- Arch "Beaver" Aplin, III
Vice-Chairman
Lake Jackson
- James E. Abell
Kilgore
- Oliver J. Bell
Cleveland
- Anna B. Galo
Laredo
- Jeffery D. Hildebrand
Houston
- Jeanne W. Latimer
San Antonio
- Robert L. "Bobby" Patton, Jr.
Fort Worth
- Dick Scott
Wimberley
- Lee M. Bass
Chairman-Emeritus
Fort Worth
- T. Dan Friedkin
Chairman-Emeritus
Houston

Carter P. Smith
Executive Director

Ms. Rachelle Robles
Page 2
April 30, 2020

Rules Section 25.101, and the PUC CCN application form for the proposed transmission line.

Previous Coordination

TPWD's Wildlife Habitat Assessment Program provided information and recommendations regarding the preliminary study area for this project to POWER on May 19, 2016. TPWD's Texas Natural Diversity Database (TXNDD) provided rare resources data to POWER on February 17, 2016. TPWD's responses were included in Appendix A: Agency Correspondence of the EA.

Comment: Please review the TPWD correspondence in Appendix A and consider the recommendations provided, as they remain applicable to the project as proposed.

Proposed Route

AEP Texas and POWER developed 14 primary alternative links that were used to develop 8 primary alternative routes that were filed with the CCN application. Each primary alternative link was incorporated in at least one route. The consensus opinion of the POWER evaluators was that primary Alternative Route 4 was the route that best balanced land use, ecological, and cultural factors. AEP Texas concluded after reviewing the results of POWER's evaluation, in addition to considering other factors, including engineering and construction constraints, grid reliability and security issues, and estimated costs, that Alternative Route 4 best addresses the requirements of the Public Utility Regulatory Act (PURA) and the PUC's Substantive Rules.

The EA states that primary reasons that lead to the selection of Route 4 included:

- has the longest length of ROW paralleling other existing ROW, at 8.9 miles;
- has the third shortest length across upland shrublands/brushlands, at 9.0 miles;
- has the third shortest length across all NWI wetlands, at 5.53 miles.

Comment: Numeric values provided for several of the evaluation criteria used to support the selection of Alternative 4 as the recommended route are inconsistent with the values reported in Table 4-1 of the EA. For example, the EA states that Route 4 was selected because it has the longest ROW paralleling existing ROW at 8.9 miles. However, its length of ROW paralleling existing ROW, including existing transmission ROW, is 8.7 miles; the route with the longest ROW paralleling existing ROW is Route 8, at 8.9 miles. The EA states that Route 4 has the shortest length across upland shrublands/brushlands at 9.0 miles. None of the eight routes evaluated has a length across upland shrublands/brushlands exceeding 1.6 miles. The length of Route 4 across upland shrubland/brushland is 1.2 miles. The EA also states that Route 4 has the third shortest length across NWI wetlands at 5.53 miles; however, its length across

NWI wetlands is 5.33 miles. These inconsistencies were also recorded in the project's Application to the PUC.

The EA failed to provide sufficient information based on surveys (aerial or field), remote sensing, modeling, or other available analysis techniques to determine which route would best minimize impacts to important, rare, and protected species. Therefore, TPWD's routing recommendation is based solely on the natural resource information provided in the CCN amendment application and the EA, as well as publicly available information examined in a Geographic Information System (GIS).

Recommendation: Of the 8 alternative routes evaluated in the EA, Alternative Route 8 appears to be the route that causes the least adverse impacts to natural resources. TPWD's primary recommendation to the PUC is to select a route that minimizes the fragmentation of intact lands because such a route should have the least adverse impacts to natural resources. TPWD believes the State's long-term interests are best served when new utility lines and pipelines are sited where possible in or adjacent to existing utility corridors, roads, or rail lines instead of fragmenting intact lands. Of the proposed routes, Route 8 appears to be the route that best meets these criteria.

Alternative Route 8 was selected as the recommended route primarily because it:

- has the longest length paralleling other existing ROW, at 8.9 miles;
- is the shortest route across wetlands, at 4.51 miles for NWI mapped wetlands, and 2.02 miles for estuarine mapped wetlands;
- is the second shortest route through pasture/rangeland, at 5.5 miles;
- is the second shortest route across 100-year floodplain, at 8.0 miles;
- its length through upland woodlands/brushlands, at 1.6 miles, is only 0.4 miles longer than the shortest routes through upland woodlands/brushlands, Routes 1-4, all at 1.2 miles;
- although it is the fourth longest route, at 10.07 miles, it is only 0.53 miles longer than the shortest route, Route 2, at 9.54 miles;

Federal Laws

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) prohibits direct and affirmative purposeful actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control, except when specifically authorized by the Department of the Interior. This protection applies to most native bird species, including ground nesting species.

Section 4.6.4 of the EA states, "If ROW clearing occurs during bird nesting seasons, potential impacts could occur within the ROW area related to migratory bird eggs and/or nestlings. Increases in noise and equipment activity levels during construction could also potentially disturb breeding or other activities of bird species nesting in areas immediately adjacent to the ROW. AEP Texas proposes to complete all ROW clearing

and construction activities in compliant with the MBTA to avoid or minimize these potential impacts to the extent practical.”

Recommendation: TPWD recommends any PUC certificate preclude vegetation clearing activities during the general bird nesting season, March 15 through September 15, to avoid adverse impacts to birds. If clearing vegetation during the migratory bird nesting season is unavoidable, TPWD recommends AEP Texas survey the proposed route for active nests (nests with eggs or young), including ground nests. Nest surveys should be conducted no more than five days prior to the scheduled clearing to ensure recently constructed nests are identified. TPWD recommends that a minimum 150-foot buffer of vegetation remain around any nests that are observed prior to disturbance and occupied nests and buffer vegetation not be disturbed until the eggs have hatched and the young have fledged.

Also, please note, TPW Code Section 64.002, regarding protection of nongame birds, provides that no person may catch, kill, injure, pursue, or possess a bird that is not a game bird. TPW Code Section 64.003, regarding destroying nests or eggs, provides that no person may destroy or take the nests, eggs, or young and any wild game bird, wild bird, or wild fowl.

State Law

State Law: Parks and Wildlife Code, Section 68.015

TPW Code regulates state-listed threatened and endangered species. The capture, trapping, taking, or killing of state-listed threatened and endangered species is unlawful unless expressly authorized under a permit issued by USFWS or TPWD. *TPWD Guidelines for Protection of State-Listed Species* includes a list of penalties for take of species and can be found on the Wildlife Habitat Assessment Program website. State-listed species may only be handled by persons with authorization obtained through TPWD. For more information on this permit, please contact the Wildlife Permits Office at (512) 389-4647.

Based on a review of the annotated county list of rare species accessed electronically by POWER in May 2019, Section 2.8.4 of the EA states the following state-listed species “may occur within the study area in areas of suitable habitat:”

- Black-spotted newt (*Notophthalmus meridionalis*)
- Mexican treefrog (*Smilisca baudinii*)
- Sheep frog (*Hypopachus variolosus*)
- South Texas siren (large form) (*Siren* sp. 1)
- White-lipped frog (*Leptodactylus fragilis*)
- Brown pelican (*Pelecanus occidentalis*)
- Northern beardless-tyrannulet (*Camptostoma imberbe*)
- Peregrine falcon (*Falco peregrinus*)
- Reddish egret (*Egretta rufescens*)
- Rose-throated becard (*Pachyramphus aglaiae*)

- Sooty tern (*Elanoides forficatus*)
- Texas Botteri's sparrow (*Peucaea botterii texana*)
- Tropical parula (*Setophaga pitiayumi*)
- White-faced ibis (*Plegadis chihi*)
- White-tailed hawk (*Buteo albicaudatus*)
- Wood stork (*Mycteria americana*)
- Mexican goby (*Ctenogobius clatyonii*)
- Opossum pipefish (*Microphis brachyurus*)
- River goby (*Awaous banana*)
- Coues' rice rat (*Oryzomys couesi aquaticus*)
- Southern yellow bat (*Lasiurus ega*)
- White-nosed coati (*Nasua narica*)
- Black-striped snake (*Coniophanes imperialis*)
- Northern cat-eyed snake (*Leptodeira septentrionalis septentrionalis*)
- Speckled racer (*Drymobius margaritiferus*)
- Texas horned lizard (*Phrynosoma cornutum*)
- Texas indigo snake (*Drymarchon melanurus erebennus*)
- Texas scarlet snake (*Cemophora coccinea lineri*)
- Texas tortoise (*Gopherus berlandieri*)

Recommendation: Please note that the lists of state threatened and endangered nongame species has been revised substantially since May 2019. Several species evaluated in the EA are no longer state-listed threatened (e.g., brown pelican, peregrine falcon, opossum pipefish, southern yellow bat, Texas indigo snake, Texas scarlet snake) while other species were added. Within Cameron County, several bird, fish, and mammal species were added to the state threatened list (see list below). A complete list of the species that were removed from and added to the state threatened and endangered species lists are available in the Texas Register (45 TexReg 2188). Best management practices and recommendations for species and taxonomic groups that may occur in the study area were provided in TPWD's previous correspondence. Please review those recommendations as they remain applicable.

Common Name	Scientific Name
Black rail	<i>Laterallus jamaicensis</i>
Red-crowned parrot	<i>Amazona viridigenals</i>
Rufa red knot	<i>Calidris canutus rufa</i>
Oceanic whitetip shark	<i>Carcharhinus longimanus</i>
Rio Grande shiner	<i>Notropis jemezanus</i>
Shortfin Mako shark	<i>Isurus oxyrinchus</i>

As suggested in the EA, once an alternative route is approved by the PUC, TPWD recommends that AEP Texas survey the route to determine the potential of the site to support state-listed species or their habitat. Surveying the route prior to construction would aid in protecting state-listed species from potential take. Please

be aware that species *not* observed during site surveys may utilize the habitat within the project area at times beyond those during which surveys were conducted. That is, their presence in an area may depend on the season or time of day in which surveys occurred. For instances in which field surveys reveal the occurrence of state-listed species, TPWD recommends route adjustments to avoid impacting state-listed species and their habitat. If route adjustments cannot be made, TPWD recommends AEP Texas coordinate with TPWD to develop impact-minimization measures specific to the species.

Texas tortoise

During the past year, numerous Texas tortoises have been observed by environmental consultants and contractors at the Rio Grande LNG project site. The following recommendations regarding protective measures for the Texas tortoise are provided in addition to those previously provided.

Recommendation: Contractors and other staff should also be made aware that in south Texas, the Texas tortoise is inactive from December through January and is therefore likely to be undetectable in a project area during this time. TPWD recommends a biological monitor be on site during vegetation clearing to inspect sites subject to disturbance that may provide cover for tortoises (e.g., bases of prickly pear cactus) or provide sites for tortoise pallets (shallow excavations typically at the base of vegetation that are opportunistically occupied by tortoises). Occasionally tortoises seek shade by crawling under parked vehicles at construction sites; therefore, TPWD recommends that before driving vehicles that have been parked within the project site, contractors should check underneath the vehicles to ensure no tortoises are present.

In addition to being naturally slow-moving animals susceptible to vehicle collisions, when startled (e.g., by traffic or heavy machinery), the Texas tortoise may withdraw into its shell rather than fleeing, thus increasing its risk for collision with vehicles and construction equipment.

Recommendation: TPWD recommends establishing and enforcing low speed limits (<15 MPH) in construction areas in order to minimize the potential of vehicle collisions with tortoises and other wildlife.

Other Species of Greatest Conservation Need

In addition to state and federally protected species, TPWD tracks special features, natural communities, and other species of greatest conservation need (SGCN) that are not listed as threatened or endangered. These species and communities are tracked in the TXNDD, and TPWD actively promotes their conservation. TPWD considers it important to evaluate and, if necessary, minimize impacts to rare species and their habitat to reduce the likelihood of endangerment and preclude the need to list as threatened or endangered in the future.

Section 2.8.4 and Table 2-16 in the EA lists the following species of concern as having potential to occur in the study area:

- Audubon's oriole (*Icterus graduacauda audubonii*)
- Brownsville common yellowthroat (*Geothlypis trichas insperata*)
- Sennett's hooded oriole (*Icterus cucullatus sennetti*)
- Snowy plover (*Charadrius alexandrinus*)
- Western burrowing owl (*Athene cunicularia hypugaea*)
- Western snowy plover (*Charadrius alexandrinus nivosus*)
- American eel (*Anguilla rostrata*)
- Rio Grande shiner (*Notropis jemezianus*)
- Mexican long-tongued bat (*Choeronycteris mexicana*)
- Plains spotted skunk (*Spilogale putorius interrupta*)
- Keeled earless lizard (*Holbrookia propinqua*)
- Royal moth (*Sphingicampa blanchardi*)
- Manfreda giant-skipper (*Stallingsia maculosus*)
- Smyth's tiger beetle (*Cicindela chlorocephala smythi*)
- Subtropical blue-black tiger beetle (*Cicindela nigrocoerulea subtropica*)
- Tamaulipan agapema (*Agapema galbina*)

Recommendation: As noted above, the lists of state threatened and endangered nongame species, which includes SGCN species, have been revised substantially since May 2019. The TPWD Rare, Threatened, and Endangered Species of Texas by County online application (RTEST) was revised substantially in 2019 and will continue to undergo regular updates. Several species evaluated in the EA no longer occur on the RTEST Cameron County species list (e.g., Audubon's oriole, Sennett's hooded oriole, snowy plover, western snowy plover, royal moth, Smyth's tiger beetle) while other species were added. TPWD recommends reviewing the species listed in RTEST for Cameron County and evaluate the project area for potential suitable habitat and assess the potential for direct and indirect impacts to those additional species.

If any of the above listed species are encountered during construction, TPWD recommends that precautions be taken to avoid impacts to them. Recommendations and BMPs provided in TPWD's previous correspondence remain applicable.

Texas Natural Diversity Database

The TXNDD is intended to assist users in avoiding harm to rare species or significant ecological features. Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state. Absence of information in the database does not imply that a species is absent from that area. Although it is based on the best data available to TPWD regarding rare species, the data from the TXNDD do not provide a definitive statement as to the presence, absence or condition of special species, natural communities, or other significant features within your project area. These data are not inclusive and cannot


Ms. Rachelle Robles
Page 8
April 30, 2020

be used as presence/absence data. They represent species that could potentially be in your project area. This information cannot be substituted for field surveys. The TXNDD is updated continuously based on new, updated and undigitized records; therefore, TPWD recommends requesting the most recent TXNDD data on a regular basis. For questions regarding a record or to request the most recent data, please contact TexasNatural.DiversityDatabase@tpwd.texas.gov.

Recommendation: To aid in the scientific knowledge of a species' status and current range, TPWD encourages project proponents and their contractors to report all encounters of rare, state-listed, and federally-listed species to the TXNDD according to the data submittal instructions found on the TXNDD website.

TPWD appreciates the opportunity to review and comment on this EA. Please contact Russell Hooten at (361) 825-3240 or Russell.Hooten@tpwd.texas.gov if you have any questions. Thank you for your favorable consideration.

Sincerely,

A handwritten signature in black ink that reads "Clayton Wolf". The signature is written in a cursive style with a large initial "C" and "W".

Clayton Wolf
Wildlife Division Director

RH:jn.43402

cc: Randal E. Roper, AEP Texas