Control Number: 51023

Item Number: 343

Addendum StartPage: 0

TEXAS PARKS & WILDLIFE

Life's better outside.®

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

September 10, 2020

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

RE: PUC Docket No. 51023: Application of the City of San Antonio through City Public Service Board to amend its Certificate of Convenience and Necessity for the proposed Scenic Loop 138-kilovolt Double-Circuit Transmission Line, Bexar 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 44546 in any return correspondence regarding this project.

Project Description

The City of San Antonio, acting by and through City Public Service Board (CPS Energy), is proposing to construct a new double-circuit 138-kilovolt (kV) transmission line. The goal of the proposed Scenic Loop 138-kV electric transmission line is to connect the existing transmission grid to a proposed Scenic Loop Substation in the general area of the intersection of Scenic Loop Road and Toutant Beauregard Road. The footprint of the new substation would be between four and six acres and will be connected to the existing Ranchtown to Menger Creek 138-kV transmission line. Depending on the route selected, the transmission line would be approximately five to seven miles in length. CPS Energy proposes to use 138-kV double-circuit pole structures ranging in height from 70 to 130 feet tall. The project would be constructed within a 100-foot right-of-way (ROW).

CPS Energy retained POWER Engineers, Incorporated (POWER) to prepare an Environmental Assessment and Alternative Route Analysis (EA). The EA will support CPS Energy's application to amend its Certificate of Convenience and Necessity

4200 SMITH SCHOOL ROAD
AUSTIN, TEXAS 78744-3291
512.389.4800
www.tpwd.texas.gov

(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 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 August 1, 2019. This letter is included in Appendix A of the EA. The TPWD Texas Natural Diversity Database (TXNDD) provided rare resources data to POWER on April 4, 2019.

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

CPS Energy and POWER identified seven potential substation locations and developed 48 primary alternative segments that were used to develop 29 primary alternative routes that were filed with the CCN application. Each of the seven proposed alternative substation locations was incorporated into at least three alternative routes that were developed. Each primary alternative link was incorporated in at least one route. POWER evaluators did not recommend a route that best-balanced land use, ecological, and cultural factors. CPS Energy identified Route Z as the alternative route that best addresses the requirements of the Public Utility Regulatory Act (PURA) and the PUC's Substantive Rules.

The Application states the following primary reasons that led to the selection of Route Z:

- has the lowest cost of any of the 29 alternative routes, at $38,330,469;
- is the shortest of any of the 29 alternative routes, at 4.58 miles;
- has a relatively high percentage of ROW parallel and adjacent to existing roadways and apparent property lines at 69%;
- has the second shortest length across upland woodland/brushland, at 3.59 acres;
- has a moderate area of ROW across golden-cheeked warbler modeled habitat designated as a 3-Moderate High and 4-High Quality, at 9.47 acres.

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 29 alternative routes evaluated in the EA, Alternative Route AA 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 AA would appear to be the preferred route.

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

- is the fourth shortest route of the 29 alternative routes, at 4.77 miles (Route Z is the shortest at 4.58 miles);
- is the fourth shortest route across upland woodlands/bushlands; at 3.77 miles (Route Z is the shortest at 3.59);
- has a relatively high percentage of ROW parallel to other existing ROW at 39% (Route Y has the highest percentage at 58%, Route T has the lowest at 9%);
- is tied with Route J as having the fifth least amount of area of ROW across golden-cheeked warbler modeled habitat designated as 3-Moderate High and 4-High Quality, at 7.39 acres.
- is located almost entirely in Karst Zone 5, defined as cavernous and non-cavernous areas that do not contain endangered karst invertebrate species. Approximately 650 feet of the west end of the 4.77-mile long route occurs in Karst Zone 3, defined as areas that probably do not contain endangered karst species.

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 4.1.9 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 species nesting in areas immediately adjacent to the ROW." If ROW clearing is necessary during the nesting

season, CPS Energy stated they will ensure a qualified biologist conducts surveys for active nests prior to vegetation clearing.

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 CPS Energy 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.

Endangered Species Act

Federally-listed animal species and their habitat are protected from take on any property by the Endangered Species Act (ESA). Take of a federally-listed species can be allowed if it is incidental to an otherwise lawful activity and must be permitted in accordance with Section 7 or 10 of the ESA. Federally-listed plants are not protected from take except on lands under federal/state jurisdiction or for which a federal/state nexus (i.e., permits or funding) exists. Any take of a federally-listed species or its habitat without the required take permit (or allowance) from the USFWS is a violation of the ESA.

All the proposed alternative routes cross potential suitable golden-cheeked warbler habitat as defined by the Diamond et al. (2010) Model C. The EA states that a field survey for potential habitat for federally listed species will be conducted after PUC approval of a route. CPS Energy will consult with the USFWS if suitable habitat for the golden-cheeked warbler is identified and may contact the City of San Antonio to enroll in the Southern Edwards Plateau Habitat Conservation Plan in order to comply with the ESA.

Recommendation: Prior to conducting surveys of the approved alternative route, TPWD recommends contacting the USFWS for appropriate survey protocols for surveying for golden-cheeked warblers. In addition to the Southern Edwards Plateau Habitat Conservation Plan, TPWD recommends also considering the Bandera Corridor Conservation Bank (BCCB) to fulfill any mitigation requirements. For more information, please contact the BCCB at 512-751-9100.

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 June 2020, Sections 3.1.11 and 4.1.11 of the EA states the following state-listed species "may occur within the study area in areas of suitable habitat:"

- Cascade Caverns salamander (*Eurycea latitans*)
- Mexican treefrog (*Smilisca baudinii*)
- Texas salamander (*Eurycea neotenes*)
- Reddish egret (*Egretta rufescens*)
- Tropical parula (*Setophaga pitiayumi*)
- White-faced ibis (*Plegadis chihi*)
- Zone-tailed hawk (*Buteo albonotatus*)
- Toothless blindcat (*Trogloglanis pattersoni*)
- Widemouth blindcat (*Satan eurystomus*)
- American black bear (*Ursus americanus*)
- White-nosed coati (*Nasua narica*)
- Texas horned lizard (*Phrynosoma cornutum*)
- Texas tortoise (*Gopherus berlandieri*)

Recommendation: Beneficial management practices (BMP) 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.

As suggested in the EA, once an alternative route is approved by the PUC, TPWD recommends that CPS Energy 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 CPS Energy coordinate with TPWD to develop impact-minimization measures specific to the species.

Mexican treefrog

In the United States, the Mexican treefrog is a tropical frog species found only in south Texas. The Mexican tree frog typically occurs near mouths of rivers or in wooded areas near streams and resacas. They may also occur in suburban areas where lawns are watered regularly. They are arboreal (inhabiting trees) and nocturnal but will seek shelter in burrows or under grass clumps, dead vegetation, or rocks during the day. It breeds explosively following rainfall events throughout the year. Water bodies, including resacas and drainage canals, as well as roadside ditches, and ephemeral ponds located in or near the project areas may provide suitable habitat for this species

Recommendation: Contractors should be made aware of the potential to encounter state-listed amphibians in the project area and be instructed to avoid negatively impacting them, if encountered. TPWD recommends minimizing impacts to water features and their associated vegetation. Also, erosion control BMPs should be installed and staging areas and fuels or other hazardous chemicals should be stored away from water bodies to avoid potential spills or leaks into adjacent aquatic areas.

Texas salamander

The Texas salamander is a strictly aquatic species that occurs in subterranean steams, springs, and creek headwaters with rocky or cobble beds. As proposed, the project would span all surface waters and implement a storm water pollution prevention plan (SWPPP).

Recommendation: TPWD recommends avoiding disturbances to any habitats that may be occupied by the Texas salamander (e.g., spring-fed habitats). TPWD recommends use of BMPs for work near these areas to minimize impacts on salamanders and other sensitive aquatic species. BMPs would include measures such as: 1) placement of fencing surrounding spring features to exclude equipment and personnel, 2) employee and contractor training on the need to avoid impacts to springs, and 3) use of double erosion control features and doubling soil stabilization measures along any nearby work areas to avoid increasing the turbidity of springs.

Toothless blindcat and widemouth blindcat

Both species are restricted to five artesian wells penetrating the San Antonio Pool of the Edwards Aquifer and are found at depths of 305 to 582 meters. They range in size from 10 to 13 centimeters.

Recommendation: Activities that may contribute to the depletion of the aquifer (e.g., overpumping) pose the greatest threat to these species. TPWD does not anticipate that activities related to the construction of the proposed transmission line would result in significant impacts to these species.

White-nosed coati

The white-nosed coati inhabits woodlands, riparian corridors, and rocky canyons. They are sociable animals and require a sizeable area of habitat to maintain a viable population.

Recommendation: TPWD recommends selecting a route that would avoid the fragmentation of large, intact woodland tracts and recommends minimizing impacts to woodlands in general. TPWD appreciates that CPS Energy would perform tree and vegetation clearing in accordance with the City of San Antonio Tree Preservation Ordinance.

Texas tortoise

The Texas tortoise has a home range of approximately five to ten acres. Suitable habitat for the Texas tortoise may be present within or adjacent to the project areas. They are often found near or at the base of prickly pear cactus and occasionally seek shade by crawling under parked vehicles at construction sites.

Recommendation: TPWD recommends that contractors be made aware of the potential for the state-listed Texas tortoise to occur in the area and avoid contacting them if encountered. Additionally, TPWD recommends that before driving vehicles that have been parked at the project site, contractors should check underneath the vehicles to ensure no tortoises are present.

If a tortoise is located at the project site, it should be relocated only if it is found in an area in which imminent danger is present. Individuals that must be relocated should be transported to the closest suitable habitat outside of the proposed disturbance area but preferably within its five to ten-acre home range. After tortoises are removed from the immediate project area, TPWD recommends constructing an exclusion fence. In many cases, sediment control fence placement for the purposes of controlling erosion and protecting water quality can be modified minimally to also provide the benefit of excluding wildlife access to construction areas. The exclusion fence should be buried at least six inches and be at least 24 inches high. The exclusion fence should be maintained for the life of the project and only be removed after the project activities are completed and the disturbed sites have been revegetated or otherwise stabilized. Construction personnel should be encouraged to examine the inside of the exclusion area daily to determine if any wildlife species have been trapped inside the area of impact and provide safe egress opportunities prior to initiation of construction activities.

Regarding trenches or excavations for support structure foundations or any buried infrastructure, TPWD recommends that any open trenches or deep excavation areas be covered overnight and/or inspected every morning to ensure no wildlife species have been trapped. For open trenches and excavated areas that cannot be backfilled at the end of the day or covered overnight, escape ramps should be installed at an angle of less than 45 degrees (1:1) in excavated areas that will allow trapped

wildlife to climb out on their own. If any state-listed species are trapped in trenches or excavated areas, they should be removed by personnel permitted by TPWD to handle state-listed species.

Additional information regarding Texas tortoise BMPs are described in the *Texas Tortoise Best Management Practices* available on TPWD's Wildlife Habitat Assessment Program website.

If possible, TPWD recommends completing major ground disturbing activities before October when reptiles become inactive and could be utilizing burrows in areas subject to disturbance.

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.

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 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.

Recommendations: The TXNDD data used to prepare the EA was more than a year old when the EA was made available for comment. 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.

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,

John Silovsky
Acting Wildlife Division Director

RH:jn.44546

cc: Adam Marin, CPS Energy, Regulatory Case Manager

References

Diamond, D.D., L.F. Elliot, and R. Lea. 2010. Golden-cheeked warbler habitat up-date. Final Report to Texas Parks and Wildlife, Austin, Texas.