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**SOAH DOCKET NO. 473-22-1073
DOCKET NO. 52485**

APPLICATION OF SOUTHWESTERN	§	
PUBLIC SERVICE COMPANY TO	§	BEFORE THE STATE OFFICE
AMEND ITS CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY TO	§	OF
CONVERT HARRINGTON	§	
GENERATING STATION FROM COAL	§	ADMINISTRATIVE HEARINGS
TO NATURAL GAS	§	

**SOUTHWESTERN PUBLIC SERVICE COMPANY’S
RESPONSE TO COMMISSION STAFF’S
SEVENTH REQUEST FOR INFORMATION
QUESTIONS NO. 7-1 THROUGH 7-2**
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Southwestern Public Service Company ("SPS") files this response to the Public Utility Commission of Texas Staff's ("Staff") Seventh Request for Information, Question No. 7-1 through 7-2. SPS has provided notice, by email, to all parties that SPS's Responses to Staff's Seventh Request for Information and accompanying exhibits (excluding voluminous and exhibits provided pursuant to the protective order) have been filed with the Commission and are available for download from the Commission's Interchange website.

I. WRITTEN RESPONSES

SPS's written responses to Staff's Seventh Request for Information are attached and incorporated by reference. Each response is stated on or attached to a separate page on which the request has been restated. SPS's responses are made in the spirit of cooperation without waiving SPS's right to contest the admissibility of any of these matters at hearing. In accordance with 16 Tex. Admin. Code § 22.144(c)(2)(A) ("TAC"), each response lists the preparer or person under whose direct supervision the response was prepared and any sponsoring witness. When SPS provides certain information sought by the request while objecting to the provision of other information, it

does so without prejudice to its objection in the interests of narrowing discovery disputes under 16 TAC § 22.144(d)(5). Pursuant to 16 TAC § 22.144(c)(2)(F), SPS stipulates that its responses may be treated by all parties as if they were made under oath.

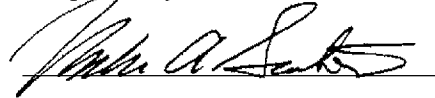
II. INSPECTIONS.

If responsive documents are more than 100 pages but less than eight linear feet in length, the response will indicate that the attachment is voluminous (“(V)”) and, pursuant to 16 TAC § 22.144(h)(2), the exhibit will be made available for inspection at SPS’s voluminous room at 600 Congress Avenue, Suite 2000, Austin, Texas 78701; telephone number (512) 721-2700. Voluminous exhibits will also be provided on SPS’s file sharing platform.

If a response or the responsive documents are provided pursuant to the protective order in this docket, the response will indicate that it or the attachment is either Confidential (“CONF”) or Highly Sensitive (“HS”) as appropriate under the protective order. Access to Confidential and Highly Sensitive materials will be available on Coffin Renner’s file sharing link to all parties that have signed and filed the certification under the protective order entered in this docket. Confidential and Highly Sensitive responsive documents will also be made available for inspection at SPS’s voluminous room, unless they form a part of a response that exceeds eight linear feet in length; then they will be available at their usual repository in accordance with the following paragraph. Please call in advance for an appointment to ensure that there is sufficient space to accommodate your inspection.

If responsive documents exceed eight linear feet in length, the response will indicate that the attachment is subject to the FREIGHT CAR DOCTRINE, and, pursuant to 16 TAC § 22.144(h)(3), the attachment will be available for inspection at its usual repository, SPS's offices in Austin, Texas, unless otherwise indicated. SPS requests that parties wishing to inspect this material provide at least 48-hour notice of their intent by contacting Stephanie Tanner at Coffin Renner L.L.P. PC, 1011 West 31st Street, Austin, Texas 78705; telephone number (512) 879-0900; facsimile transmission number (512) 879-0912; email address stephanie.tanner@crtxlaw.com. Inspections will be scheduled to accommodate all requests with as little inconvenience to the requesting party and to SPS's operations as possible.

Respectfully submitted,



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ATTORNEYS FOR
SOUTHWESTERN PUBLIC SERVICE COMPANY

RESPONSES

QUESTION NO. Staff 7-1:

Refer to Section IV of the Direct Testimony of Anastacia Santos and the response to the Texas Parks and Wildlife (TPWD) comment letter. To the extent that the letter is not already addressed in the direct testimony, please address each recommendation by TPWD on the construction aspects of the project including each of the best management practices (BMP) that TPWD recommends SPS endorse commitments to utilize.

RESPONSE:

TPWD's letter dated October 27, 2021 submitted to Rachelle Robles of Commission Staff provides nine recommendations on page 4 of the letter. There are numerous laws, regulations, and Commission directives that govern the construction of pipeline projects and guide SPS's practices that incorporate many of TPWD's recommendations. A list of permits/approvals that will be obtained as necessary after Commission approval, but prior to commencement of construction are listed in the Environmental Assessment (EA).

The TPWD letter refers to "*Beneficial* Management Practices" on page 4 of the letter as opposed to industry standard "*Best* Management Practices." Although these phrases utilize the same acronym "BMP" they do not necessarily carry the same meaning. Please note the TPWD's "*Beneficial* Management Practices" (*BMP*) acronym is italicized to distinguish from industry standard "*Best* Management Practices" (BMP).

SPS has considered TPWD's recommendations while considering its construction practices and mitigation and permitting activities. SPS is committed to implementing construction mitigation measures consistent with Commission final orders, current local, state, and federal regulations while also considering landowner concerns. SPS understands TPWD's recommendations and "*BMPs*" are advisory and many are not required practices under current regulations. Some "*BMPs*" conflict with the Commission's standard ordering language and involve trade-offs in terms of feasibility, schedule, cost, and landowner and other impacts and attempts to modify or recommend new practices that impact pipeline construction industry standards. TPWD's recommendations should not be adopted to the extent that they would expand or conflict with industry practices or applicable requirements or cause delay or additional cost for the project.

Recommendation 1: Use sediment control fence to exclude wildlife from the construction area

As stated in Ms. Santos' testimony, SPS is committed to utilizing erosion control/stabilizing methods and mitigation measures consistent with industry standard BMPs in accordance with a Storm Water Pollution Prevention Plan (SWPPP) as required under a Texas Pollution

Discharge Elimination System General Construction Permit (or other applicable permit) implemented by the Texas Commission on Environmental Quality (TCEQ). SWPPPs are developed after a final route has been selected and access to private property has been obtained and surveys have been conducted prior to construction. SWPPPs are tailored to site specific needs of the project and types of materials are selected based on various factors such as purpose, function, availability, and cost. As such, commitments to specific types of erosion controls cannot be made at this time. The Commission has not specified types of materials to be used in final orders in prior Certificate of Convenience and Necessity (CCN) dockets regarding erosion controls and industry standard BMPs. TPWD's 1st recommendation should not be adopted to the extent that it would expand or conflict with industry practices or applicable requirements, cause delay or additional cost for the project, or conflict with landowner interests.

Recommendation 2: Use wildlife escape ramps in trenches and excavation areas and inspect for trapped wildlife prior to backfilling

The Commission has not specified types of construction procedures to be implemented in final orders in prior CCN dockets regarding trenching and industry standard BMPs. TPWD's 2nd recommendation should not be adopted to the extent that it would expand or conflict with industry practices or applicable requirements, cause delay or additional cost for the project, or conflict with landowner interests.

Recommendation 3: Avoid the use of erosion control blankets containing polypropylene fixed-intersection mesh

The above recommended "BMP" is addressed in response to the 1st recommendation above. The types of materials for erosion controls are selected based on various factors such as purpose, function, availability, and cost. As such, commitments to specific types of erosion controls cannot be made at this time. The Commission has not specified types of materials to be used in final orders in prior CCN dockets regarding erosion controls and industry standard BMPs. TPWD's 1st and 3rd recommendations should not be adopted to the extent that they would expand or conflict with industry practices or applicable requirements, cause delay or additional cost for the project, or conflict with landowner interests.

Recommendation 4: Utilize a biological monitor during construction

SPS is committed to comply with all applicable regulatory requirements including Commission final orders. Commission final orders typically have not required utilities to use biological monitors to identify or relocate state listed species but require applicants to allow state-listed species if encountered, to leave the site on their own. TPWD's 4th recommendation should not be adopted to the extent that it would expand or conflict with industry practices or applicable requirements or cause delay or additional cost for the project.

Recommendation 5: Survey for active bird nests and avoid disturbance until fledged

Agency Actions are addressed in Section 1.6 of the EA. As previously stated in Ms. Santos' testimony and in Section 4.8.3 of the EA, SPS proposes to implement applicable avian protection plan guidelines recommended by US Fish and Wildlife Service (USFWS) and construction activities compliant with the Migratory Bird Treaty Act (MBTA) to avoid or minimize potential impacts. SPS has developed an Avian Protection Plan in accordance with the Avian Power Line Interaction Committee (APLIC) and USFWS publications referenced by TPWD. SPS will follow the language of the final order, which, if similar to recent CCN orders, will likely direct SPS to take precautions to avoid disturbing occupied nests and to take steps to minimize the impacts of construction on migratory birds during the nesting season of the migratory bird species identified in the area of construction. TPWD's 5th recommendations should not be adopted to the extent that it would expand or conflict with industry practices or applicable requirements or cause delay or additional cost for the project.

Recommendation 6: Survey for black-tailed prairie dog colonies

As previously stated in Ms. Santos' testimony and the EA, SPS is committed to complying with all applicable environmental laws and regulations including those pertaining to wildlife species. The EA thoroughly addresses impacts to natural resources including wildlife species which are specifically addressed in Section 3.9.4 and 4.8.3. POWER obtained county species information from TPWD and USFWS and this information is documented throughout the EA. Where reasonable and practical, POWER developed the alternative segments through cleared areas and parallel to existing compatible ROW and other linear features where reasonable and practical to minimize wildlife habitat fragmentation. As stated in Ms. Santos' testimony and the EA, SPS will assess the approved route to determine the need for any permits or approvals from the USFWS and TPWD. There is no USFWS designated critical habitat within the study area and none of the alternative routes cross known recorded threatened and endangered species habitats. The black-tailed prairie dog is not a federal or state listed threatened or endangered species. It is tracked as a Species of Greatest Conservation Need (SGCN) by the TPWD Texas Natural Diversity Database (TXNDD). Surveying for all SGCN species, special features, and natural communities tracked by the TXNDD is not required by any state or federal law or regulation and would be an unreasonable and costly effort. TPWD's 6th recommendation should not be adopted to the extent that it would expand or conflict with industry practices or applicable requirements or cause delay or additional cost for the project.

Recommendation 7: Allow wildlife to safely leave the site on their own, without harassment or harm

The above recommended "BMPs" are addressed in the response to the 4th recommendation provided above. SPS is committed to comply with all applicable regulatory requirements including Commission final orders. Commission final orders typically have not required

utilities to use biological monitors to identify or relocate state listed species but require applicants to allow state-listed species if encountered, to leave the site on their own. These recommended “BMPs” should not be adopted to the extent that they would expand or conflict with industry practices or applicable requirements or cause delay or additional cost for the project.

Recommendation 8: Use a TPWD-permitted individual to translocate state-listed threatened species that will not readily leave the site on their own

State listed species are addressed in sections 3.9.5 and 4.8.4 of the EA. Impacts to state-listed species are not anticipated by the project. The above recommended “BMPs” are addressed in the response to the 4th and 7th recommendations provided above. SPS is committed to comply with all applicable regulatory requirements including Commission final orders. Commission final orders typically have not required utilities to use biological monitors to identify or relocate state listed species but require applicants to allow state-listed species if encountered, to leave the site on their own. TPWD’s 4th, 7th and 8th recommendations should not be adopted to the extent that they would expand or conflict with industry practices or applicable requirements or cause delay or additional cost for the project.

Recommendation 9: Revegetate and maintain ROW with native vegetation for the benefit of wildlife, including pollinators

Although woody vegetation clearing is required for safe operation of the pipeline and therefore cannot be restored to its previous condition, Section 1.4.1 of the EA states that the contractor will restore affected areas as close to the original condition consistent with the Commission’s standard order language. SPS’ will develop a restoration plan to restore the ROW after installation. Restoration planning will also be part of the preparation of a SWPPP in accordance with Texas Pollution Discharge Elimination System General Construction Permit (or other applicable permit) implemented by the TCEQ. Vegetation maintenance will be developed by SPS professionals in the field of vegetation management with an emphasis on leaving native vegetation intact where practical while considering landowner interests. TPWD’s 9th recommendation should not be adopted to the extent that it would expand or conflict with industry practices or applicable requirements or cause delay or additional cost for the project.

Preparer: Anastacia Santos
Sponsor: Anastacia Santos

QUESTION NO. Staff 7-2:

In the event that any modification to the project is recommended and adopted by the Commission as a result of TPWD's recommendations or comments on construction and BMPs, please indicate if there are any issues with costs to implement the recommendations and provide details accordingly for each recommendation.

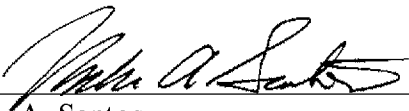
RESPONSE:

As stated in response to Staff 7-1, SPS is committed to implementing construction mitigation measures consistent with Commission final orders and current local, state, and federal regulations while also considering landowner concerns. SPS does not have the requested information because it has not analyzed the costs to implement TPWD's recommendations that are not consistent with prior Commission final orders or applicable requirements or regulations. If the Commission final order includes recommendations or practices currently outside of existing regulations or in addition to best construction practices, there could be additional costs incurred. At this time, SPS is not able to predict or speculate as to the approximate cost impact of potential new requirements.

Preparer: Mark Lytal
Sponsor: Mark Lytal

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on March 10, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Mark A. Santos