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Received - 2022-04-13 02:43:47 PM
Control Number - 52485
ItemNumber - 151

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

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

of

**ANASTACIA SANTOS *on behalf of*
SOUTHWESTERN PUBLIC SERVICE COMPANY**

(Filename: SantosRebuttal.docx Total Pages 14)

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

<u>Acronym/Defined Term</u>	<u>Meaning</u>
BMPs	best management practices
Commission	Public Utility Commission of Texas
POWER	POWER Engineers, Inc.
SPS	Southwestern Public Service Company, a New Mexico corporation
TPWD	Texas Parks and Wildlife Department

LIST OF ATTACHMENTS

<u>Attachment</u>	<u>Description</u>
AS-R-1	SPS Response to Staff Question No. 7-1 (<i>Non-native format</i>)

**REBUTTAL TESTIMONY
OF
ANASTACIA SANTOS**

I. WITNESS IDENTIFICATION

1

2 **Q. Please state your name, business address, and job title.**

3 A. My name is Anastacia Santos. My business address is 7600 North Capital of Texas
4 Highway, Suite 320, Austin, Texas 78731. I am employed by POWER Engineers,
5 Inc. (“POWER”), a 100% employee-owned consulting and engineering firm, as
6 Project Manager II in the Environmental Division.

7 **Q. On whose behalf are you testifying in this proceeding?**

8 A. I am filing testimony on behalf of Southwestern Public Service Company, a New
9 Mexico corporation (“SPS”) and wholly-owned electric utility subsidiary of Xcel
10 Energy Inc. (“Xcel Energy”).

11 **Q. Are you the same Anastacia Santos who filed direct testimony on behalf of SPS**
12 **in this case?**

13 A. Yes.

II. PURPOSE AND SUMMARY OF REBUTTAL TESTIMONY AND RECOMMENDATIONS

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to recommendations proposed by Staff witness John Poole, who testifies on behalf of Public Utility Commission of Texas (“Commission”) Staff.

Q. Please summarize your rebuttal testimony and overall recommendations in this case.

A. All of the recommendations outlined by Commission Staff witness John Poole should be adopted by SPS with the clarifications noted below in my rebuttal testimony.

1 **III. SPS’S RESPONSE TO STAFF’S RECOMMENDATIONS**

2 **Q. Do you take issue or oppose any of the recommendations or comments with**
3 **Staff witness John Poole’s recommendations?**

4 A. Yes. The recommendations numbered 1 through 8 on pages 17 through 19 are
5 consistent with industry best management practices (“BMPs”) and should be
6 adopted. However, Mr. Poole’s recommendation on page 27, line 14, “that SPS be
7 ordered to collaborate with Texas Parks and Wildlife Department (“TPWD”) to adopt
8 TPWD’s recommendations to the extent reasonably possible and to the extent that they
9 are not already reflected in my other recommendations” is a bit vague.

10 **Q. Are TPWD’ s recommendations, listed in their letter dated October 27, 2021,**
11 **consistent with industry BMPs?**

12 A. Some of TPWD’s recommendations are consistent with industry BMPs and some
13 are not. I specifically discuss each of their recommendations in my response to
14 Staff’s RFI 7-1, which is my Attachment AS-R-1. I believe TPWD’s
15 recommendations should not be adopted to the extent that they would expand or
16 conflict with industry practices or applicable requirements or cause delay or
17 additional cost for the proposed project.

18 **Q. Does SPS object to collaborating with TPWD on reasonably possible**
19 **construction-related practices?**

20 A. No. SPS explains in the Rebuttal Testimony of Jeffrey L. West on pages 11 through
21 12 that SPS has worked with TPWD on many projects in the past and is familiar
22 with TPWD’s practices and preferences. Mr. West clarifies, however, that not all
23 of TPWD’s practices and preferences may be applicable to the Harrington

1 conversion project. Thus, Mr. Poole's recommendation that SPS collaborate with
2 TPWD should be limited to applicable requirements and consistent with
3 Commission precedent in CCN cases. The collaboration will allow SPS and TPWD
4 to appropriately tailor and agree on reasonable practices applicable to this project.

5 **Q. Does Mr. Poole recommend that TPWD's recommendations be formally**
6 **adopted as distinct requirements within a final order issued by the**
7 **Commission?**

8 A. As SPS interprets Mr. Poole's testimony, the eight specific mitigation practices he
9 recommends are listed on pages 17 through 19 of his testimony. These mitigation
10 practices are standard practices that the Commission routinely includes in final
11 orders approving CCN amendment applications. Later in his testimony, on page
12 27, Mr. Poole references TPWD's recommendations, but does recommend that they
13 be specifically binding on SPS through a Commission final order. He recommends
14 that SPS be ordered to collaborate to the extent reasonably possible. In my
15 experience, reasonable collaboration with TPWD for CCN projects is consistent
16 with Commission practice but should not be interpreted as endorsing TPWD's
17 recommendations that go beyond the Commission's standard mitigation measures
18 included in final orders. Consistent with Mr. Poole's testimony, the Commission
19 should not adopt TPWD's recommendations as distinct requirements in any final
20 order approving SPS's request to convert Harrington.

1 **Q. Does SPS plan to follow industry BMPs regarding minimizing any impact to**
2 **fish and wildlife resources?**

3 A. Yes. SPS is committed to comply with all applicable regulatory requirements
4 including Commission final orders.

5 **Q. In your experience, are those BMPs sufficient to protect wildlife resources**
6 **potentially impacted by construction of an underground pipeline?**

7 A. Yes, industry BMPs and all applicable regulatory requirements help to protect
8 wildlife resources.

9 **Q. Does this conclude your pre-filed rebuttal testimony?**

10 A. Yes.

AFFIDAVIT

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

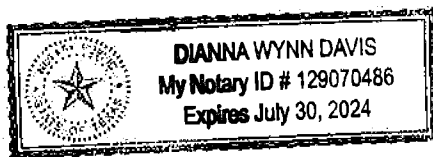
ANASTACIA SANTOS, first being sworn on his oath, states:

I am the witness identified in the preceding testimony. I have read the testimony and the accompanying attachment(s) and am familiar with the contents. Based upon my personal knowledge, the facts stated in the testimony are true. In addition, in my judgment and based upon my professional experience, the opinions and conclusions stated in the testimony are true, valid, and accurate.



ANASTACIA SANTOS

Subscribed and sworn to before me this 13th day of April, 2022 by
ANASTACIA SANTOS



Notary Public, State of Texas

My Commission Expires: July 30, 2024

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 April 13, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Mark A. Santos

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

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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