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

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

COMMISSION STAFF'S REPLY BRIEF

Dated: May 25, 2022

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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**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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COMMISSION STAFF’S REPLY BRIEF

I. INTRODUCTION

Commission Staff recommends approval of SPS’s application to convert the three units at the Harrington Power Station from use of coal to use of natural gas based on the evidence in the record. Staff further recommends that conditions be imposed on the approval: a cost cap of \$70 million, including allowance for funds used during construction (AFUDC); reporting requirements regarding both construction for the conversion and SPS's Integrated Resource Plan) IRP; mitigation requirements for construction; and the use of pipeline Route 2. According to SPS, the Commission effectively has no choice but to approve its application because of time constraints to meet the January 1, 2025, deadline to which it agreed to stop burning coal at Harrington. However, SPS should have submitted its application sooner. The Commission has a keen interest in electric system reliability and cost issues. As a result, after consideration of the expert testimony and other evidence in the record, the Commission may want further evaluation of alternatives to SPS’s proposal, including siting of resources at the Harrington site with a more detailed evaluation of SPP (Southwest Power Pool) interconnection-related costs and the timeline necessary for SPP to evaluate such an alternative. Staff therefore respectfully recommends the prompt issuance of a PFD so that the Commission can determine whether additional evaluation of alternatives is needed.

II. REPLY TO SPS INITIAL BRIEF

Staff agrees with SPS that full conversion is the most cost-effective option among the evaluated alternatives.¹ Staff also agrees with SPS that full conversion presents the lowest risk of SPS being placed in a situation where it might lack needed capacity in 2026 and beyond.²

Harrington's coal-fired units have been providing 1,050 MW of service to SPS customers for decades.³ Per an order issued by the Texas Commissions on Environmental Quality (TCEQ), and its accompanying enforcement order, Harrington must cease coal operations by December 2024.⁴ Nevertheless, SPS will continue to need the capacity and voltage support provided by the Harrington units beyond December 2024.⁵ Staff agrees that conversion is a cost-effective, reliable, and simple solution that defers the need for costly firm and dispatchable replacements.

Staff agrees that conversion is a reasonable solution to meet the National Ambient Air Quality Standards (NAAQS) compliance requirements with which TCEQ ordered SPS to comply.⁶ SPS can complete the conversion within the required timeframe because the project consists of constructing a new pipeline and making minor adjustments to the existing boilers.⁷ These boilers are already built to operate on natural gas.⁸ Conversion will allow SPS to retain the 1,050 MW of dispatchable capacity to satisfy customer demand and meet its reserve requirements.⁹ Staff agrees that SPS's proposal avoids unnecessary costs and preserves the resources in which SPS customers have already invested.¹⁰

If the project is approved and natural gas becomes the fuel source, the Harrington units will be more responsive and flexible than current operations.¹¹ In that event, operational limitations to

¹ Southwestern Public Service Company's Initial Brief at 3 (May 11, 2022) (SPS's Brief).

² SPS's Brief at 4.

³ SPS's Brief at 8.

⁴ *Id.* at 8.

⁵ SPS's Brief at 9.

⁶ SPS's Brief at 10.

⁷ *Id.*

⁸ *Id.*

⁹ SPS's Brief at 10-11.

¹⁰ SPS's Brief at 11-12.

¹¹ *Id.*

coal operations will no longer apply, and as a result, and in the event of an emergency, the facility will be able to reach full operation in less than two hours.¹²

Although Staff agrees that the proposed project is in the public interest, it disagrees with SPS that placing additional conditions on approval is “unnecessary.”¹³ As Staff outlined extensively in its initial brief, these conditions are necessary to protect the ratepayers from cost overruns and to allow the Commission to better evaluate future generation projects SPS proposes, as well as to mitigate the impacts of construction of the project and avoid premature resolution of rates issues.¹⁴

Staff reaffirms its Pipeline 2 recommendation. Staff also maintains its recommendation that SPS be ordered to implement the Texas Parks and Wildlife Department (TPWD) measures recommended in Staff witness John Poole’s direct testimony. Finally, Staff reaffirms its recommendation that the SOAH ALJ impose the four conditions enumerated within its Initial Brief on the Harrington project. To recap, those recommended conditions are as follows:

- (1) A cost recovery cap of \$70 million, including allowance for funds used during construction (AFUDC);
- (2) An opening of a compliance project in which SPS is required to file its New Mexico Integrated Resource Plan (IRP) within two working days of SPS filing it in New Mexico;
- (3) Consideration of SPS’s depreciation rates for the converted units, and the gas pipeline, in a rate proceeding rather than this CCN amendment proceeding;¹⁵ and
- (4) Construction mitigation measures that address most of TPWD’s concerns, including the following proposed ordering paragraphs:
 1. If SPS encounters any archeological artifacts or other cultural resources during Proposed Project construction, work must cease immediately in the vicinity of the artifact or resource, and the discovery must be reported to the Texas Historical Commission. In that situation, must SPS take action as directed by the Texas Historical Commission.
 2. SPS must take precautions to avoid disturbing occupied nests and take steps to minimize the burden of construction on migratory birds during the

¹² *Id.*

¹³ SPS’s Brief at 30.

¹⁴ Commission Staff’s Initial Brief at 12-15/22 (May 11, 2022) (Staff’s Brief).

nesting season of the migratory bird species identified in the area of construction.

3. SPS must exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within rights-of-way. SPS must ensure that the use of chemical herbicides to control vegetation within the rights-of-way complies with rules and guidelines established in the Federal Insecticide Fungicide and Rodenticide Act and with Texas Department of Agriculture regulations.
4. SPS must minimize the amount of flora and fauna disturbed during construction of the Proposed Project, except to the extent necessary to establish appropriate right of way clearance. In addition, SPS must revegetate, using native species and must consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practical, SPS must avoid adverse environmental influence on sensitive plant and animal species and their habitats, as identified by TPWD and the United States Fish and Wildlife Service.
5. SPS must implement erosion control measures as appropriate. Erosion control measures may include inspection of the right-of-way before and during construction to identify erosion areas and implement special precautions as determined necessary. SPS must return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner or the landowner's representative. SPS is not required to restore the original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the lines.
6. SPS must use best management practices to minimize the potential impacts to migratory birds and threatened or endangered species.
7. SPS must cooperate with directly affected landowners to implement minor deviations from the approved route to minimize the burden of the transmission line. Any minor deviations from the approved route must only directly affect landowners who were sent notice of the transmission line in accordance with 16 TAC § 22.52(a)(3) and landowners that have agreed to the minor deviation.
8. SPS must report the Proposed Project approved by the Commission on its monthly construction progress reports before the start of construction to reflect the final estimated cost and schedule in accordance with 16 TAC § 25.83(b). In addition, SPS must provide final construction costs, with

any necessary explanation for cost variance, after completion of construction when all costs have been identified.¹⁶

III. REPLY TO AXM INITIAL BRIEF

A. AXM's Position

The Alliance of Xcel Municipalities (AXM) urged the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) to reject the Harrington conversion project.¹⁷ Specifically, AXM outlines three main arguments for denial; (1) that SPS plans to install combustion turbine generators (CTGs) within the next several years to meet capacity requirements and the record does not support conversion of all three Harrington Units over replacing the units with CTGs¹⁸; (2) the converted Harrington Units will only have a useful life of 10-15 years¹⁹; and (3) that there is only a 1% variance in cost between converting all three Harrington Units and another replacement option SPS analyzed on a net present value basis over a 20-year period.²⁰ However, AXM proposes that if the Commission determines that the project should be approved that certain conditions be placed on approval of the project.²¹ Those conditions include: (1) a cost cap of \$70 million (Total company) capital costs for the project and required gas pipeline; (2) the Commission direct SPS to issue an RFP within 45 days of the final order in this docket; and (3) that SPS obtain approval for the project from the New Mexico Public Regulation Commission.²²

AXM first argues that SPS base-demand forecast for Summer 2021 shows that if SPS were to only retire and not convert the Harrington Units they would be short approximately 902 MW for the required minimum capacity and reserve requirements for 2025.²³ Further, AXM argues that that deficit would grow to 1,802 MW by 2030.²⁴ AXM argues that CTGs would be a better alternative to meet this generation capacity and would save rate payers \$75 million for what will

¹⁶ Staff's Brief at 18/22.

¹⁷ Alliance of Xcel Municipalities' Initial Post-Hearing Brief at 3 (May 11, 2022) (AXM's Brief).

¹⁸ AXM's Brief at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ AXM's Brief at 15.

²² *Id.*

²³ AXM's Brief at 5.

²⁴ *Id.*

be 10-15 years of generation for the converted units.²⁵ AXM makes the analogy that “you would not renovate [a]... home 2-3 years prior to the rebuild” of that home.²⁶ Second AXM argues that the useful life of the converted units would only be 10-15 years and that is far lower than the 40 year useful life of the CTGs that AXM argues could be built at the Harrington site instead of converting the three units.²⁷ Lastly, AXM makes the argument that over a 20-year period it would only cost 1% more to provide rate payers with CTGs as opposed to conversion of the units on a net present value basis based upon review of the approximately \$12 billion that will be spent system wide over the next 20 years.²⁸ To support its argument that the percentage difference between conversion of the three units and CTGs, AXM makes the argument that SPS’ analysis regarding interconnection costs is questionable and that no interconnection costs would be incurred if a new generating resource, like CTGs, were placed at the Harrington site within three years as opposed to converting the three coal units to natural gas-generation.²⁹

B. Staff’s Reply to AXM

Staff understands AMX’s concerns with the conversion project but as is already outlined in Staff’s initial brief, AXM’s recommendation to require a new bidding process is too risky as a result of the relatively short amount of time before the January 1, 2025 deadline to stop the use of coal at Harrington.³⁰ Below Staff will outline its response to AXM’s three main arguments outlined above.

First, AXM argued that retiring the Harrington Units would leave SPS 902 MW deficient for the required minimum capacity and reserve requirements for 2025 and that number would grow to 1,802 MW by 2030.³¹ Further, AXM points out that SPS plans to install new CTGs in the next few years to meet its capacity requirements by 2030.³² Therein lies the issue with AXM’s argument

²⁵ *Id.*

²⁶ *Id.*

²⁷ AXM’s Brief at 8.

²⁸ *Id.*

²⁹ AXM’s Brief at 11.

³⁰ Staff’s Brief at 12/22.

³¹ AXM’s Brief at 5.

³² AXM’s Brief at 3.

from a practical perspective. AXM's recommendation to require a new bidding process is too risky due to the relatively short amount of time before the January 1, 2025 deadline to stop the use of coal at the Harrington.³³ Adoption of AXM's proposal would leave SPS 902 MW short of its capacity and reserve requirements absent costly interim measures. Further, because SPS will need 1,802 MW of additional capacity by 2030, even if AXM's proposal could meet the generation capacity by 2025 and produce 1,000+ MW, there would still be hundreds of megawatts needed by 2030 that SPS would need additional generating resources for. Based upon the evidence in the record the conversion of the Harrington Units from coal-fired generation to natural gas-fired generation is the only cost-effective option to get the necessary generating capacity for SPS to meet its minimum capacity and reserve requirements for 2025.

Second, AXM argues that the converted Harrington Units would only have a useful life of 10-15 years as opposed to CTGs which would have a useful life of 40 years.³⁴ Staff agrees that CTGs would have a much longer useful life, however as outlined above CTGs are not a reasonable or viable alternative to meet SPS's generating capacity for 2025 and the additional 10-15 years of useful life will give SPS time to plan for SPS's longer term generation needs.

Third, AXM argues that there is only a 1% variance in cost between converting all three Harrington Units and another replacement option SPS analyzed on a net present value basis over a 20-year period.³⁵ Staff does not opine on that evaluation in the brief but reiterates its initial point that even if AXM's analysis is correct, CTGs would likely not be a realistic generating resource that could be put online by January 1, 2025.

Lastly, Staff supports AXM's requested condition, if the project is approved, to implement a \$70 million (Total company) cost cap on the project. Staff recommended this cost cap to protect rate payers in its initial brief³⁶ and argues that it is necessary based upon the nature of this proceeding to protect ratepayers. Therefore, Staff respectfully requests that the ALJ reject AXM's

³³ Rebuttal Testimony of D. Dean Koujack, SPS Exhibit 11 at 15-16.

³⁴ AXM's Brief at 3.

³⁵ *Id.*

³⁶ Staff's Brief at 19-20/22.

proposal to deny the application but adopt AXM's alternative for a cost cap of \$70 million for the conversion project.

IV. REPLY TO OPUC INITIAL BRIEF

Staff continues to support its recommendations from the initial brief that depreciation rates for the converted units and the gas pipeline should be addressed in a rate proceeding separate from this docket.

In its initial brief, Office of Public Utility Counsel (OPUC) argues that if the retirement of Harrington units is approved, the Commission should reject accelerated recovery of the remaining depreciation expense and treat the retirement of the unit(s) consistent with the treatment adopted in SWEPCO Docket Nos. 51415 and 46449.³⁷ In the same breath, OPUC concedes that depreciation rates are not being set in this proceeding.³⁸ Commission precedent dictates that issues like depreciation service lives and rates are appropriately addressed in rate proceedings, not in those for CCN amendments.³⁹ The two dockets to which Office of Public Utility Counsel (OPUC) witness Karl Nalepa refers buttresses Staff's argument: even though those dockets addressed depreciation service lives and rates, both of those proceedings were to change rates.⁴⁰ Staff maintains its position that although these issues must be addressed, a proceeding for a CCN amendment is not the appropriate forum.

Additionally, OPUC asserts that SPS does not recognize any extension of the service life of Harrington after converting the units from coal to natural gas operations.⁴¹ OPUC states that the pipeline SPS seeks to construct makes up much of the incremental investment and should have a service life on the order of 70 years, rather than 12 to 16 years.⁴² OPUC recommends that approval of SPS's request to convert the Harrington Station from coal operations to natural gas operations should require the pipeline cost to be separately booked to plant and recovered over 70 years or a

³⁷ Direct Testimony of Karl Nalepa, OPUC Exhibit 1 at 7; Office of Public Utility Counsel's Post-Hearing Initial Brief at 18 (May 11, 2022) (OPUC's Brief).

³⁸ OPUC's Brief at 18.

³⁹ Staff's Brief at 15/22.

⁴⁰ *Id.*

⁴¹ OPUC Exhibit 1 at 7.

⁴² *Id.*

reasonable period commensurate with a depreciation study and operation of a natural gas pipeline.⁴³

Staff reiterates that the appropriate proceeding to address these issues is a rate proceeding. The Commission will set the appropriate depreciation rate for the Harrington pipeline in the first base rate case in which SPS seeks to include those assets in base rates.⁴⁴

V. REPLY TO SIERRA CLUB INITIAL BRIEF

Staff continues to support its recommendations from its Initial Brief, recommending approval of the project to convert the three Harrington units from coal-fired generation to natural gas-fired generation with certain conditions, be imposed.

⁴³ OPUC's Brief at 19.

⁴⁴ SPS's Brief at 31.

In its Initial Brief, Sierra Club recommends that the Commission authorize SPS to convert only two Harrington units.⁴⁵ Sierra Club argues that SPS's modeling of the retirement Harrington Unit was understated due to flawed and unsupported assumptions.⁴⁶ However, Staff agrees with SPS, that the evidence demonstrates that full conversion of all three units is the best option among the scenarios SPS modeled for cost, timing and capacity reasons.⁴⁷

First, SPS argues that all three Units would operate more frequently than SPS modeled them to operate and SPS asserts that all three Units will be dispatched when their operation would result in an overall cost decrease to SPS's total system costs.⁴⁸ Second, SPS provides an analysis that Unit 1 would run along with the other two units, despite its lower capacity factor.⁴⁹ Further, retiring Unit 1 would likely lead to a loss of 340 MW of interconnection rights.⁵⁰ This would require a new generation interconnection agreement for replacement generation capacity, eventually leading to additional system improvement charges in the future.⁵¹ Therefore, Staff is not persuaded that Sierra's recommendation to retire Unit 1 and convert Units 2 and 3 is a viable solution.

Staff is not persuaded that Sierra Club's proposed alternative of retiring or mothballing Unit 1 and converting Harrington Units 2 and 3 is a viable solution for SPS to meet the demand, nor that it is a cost-effective alternative to conversion of all three units.

VI. CONCLUSION

Staff respectfully recommends that the SOAH ALJs promptly issue a proposal for decision finding that the conversion of the Harrington Power Station from coal generation to natural gas is necessary for the service, accommodation, convenience, and safety of the public. In addition, as explained in its initial brief, Staff recommends approval of the application with a cost cap of \$70

⁴⁵ Sierra Club's Initial Post-Hearing Brief at 5 (May 11, 2022) (Sierra Club's Brief).

⁴⁶ Sierra Club's Brief at 15.

⁴⁷ SPS's Brief at 25.

⁴⁸ Rebuttal Testimony of Ben R. Elsey, SPS Exhibit 8 at 50.

⁴⁹ *Id.* at 50-51.

⁵⁰ Rebuttal Testimony of D. Dean Koujack, SPS Exhibit 11 at 9.

⁵¹ SPS Exhibit 11 at 9.

million, including AFUDC; reporting requirements regarding both construction of the project and SPS's IRP; mitigation requirements for construction; and the selection of pipeline Route 2.

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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 May 25, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Mildred Anaele
Mildred Anaele