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APPLICATION OF SOUTHWESTERN	§	PUBLIC UTILITY COMMISSION
PUBLIC SERVICE COMPANY TO	§	
AMEND ITS CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY TO	§	
CONVERT HARRINGTON	§	
GENERATING STATION FROM COAL	§	
TO NATURAL GAS	§	

COMMISSION STAFF’S BRIEFING IN RESPONSE TO ORDER NO. 1

On August 27, 2021, Southwestern Public Service Company (SPS) filed an application seeking Public Utility Commission of Texas (Commission) approval to amend its Certificate of Convenience and Necessity (CCN) to convert the three coal-powered steam turbine units at the Harrington Generation Station (Harrington) to be fueled by natural gas and allow continued use of the facility.¹ This conversion will require the construction of a new 20-inch natural gas transmission line to Harrington.² Specifically, in its application, SPS has proposed four potential natural gas pipeline routes for the Commission’s consideration that run 20 to 22 miles to the Harrington Generating Station and 15 landowners own property within 500 feet of the proposed pipeline centerlines.³ The estimated cost of the conversion is \$65 to \$75 million, of which \$45 to \$52 million is allocable to Texas.⁴ In its application, SPS has requested that the Commission grant the following forms of relief: 1) grant an amendment to SPS’s CCN authorizing SPS to convert all three units at Harrington from coal to natural gas generation and 2) authorize SPS’s to construct, own, and operate a new natural gas pipeline to supply Harrington.⁵

Additionally, whether the Commission has authority to authorize the construction, ownership, and operation of a natural gas pipeline is most likely an issue of first impression related to SPS’s request to convert an existing coal plant to operate on natural gas. In prior applications

¹ Application at 1 (Aug. 27, 2021).

² *Id.* at 5.

³ *Id.* at 6.

⁴ *Id.* at 5.

⁵ *Id.* at 10.

involving generation units using natural gas, those units have had access to existing natural gas pipelines.⁶

On August 31, 2021, the administrative law judge (ALJ) filed Order No. 1, requiring the Commission Staff to file a briefing regarding the Commission's authority to authorize the construction, ownership, and operation of a natural gas pipeline and whether authorization should be sought from the Railroad Commission of Texas (Railroad Commission) by September 30, 2021. Therefore, this pleading is timely filed.

I. INTRODUCTION

The Commission has exclusive original jurisdiction over the proposed changes to SPS's CCN under the Public Utility Regulatory Act (PURA)⁷ including whether SPS's CCN should be amended to change the fuel source at Harrington from coal to natural gas, and in doing so, the Commission has the authority to authorize the construction, ownership, and operation of a natural gas pipeline needed for the conversion. However, neither the Commission rules nor PURA contemplates that the Commission perform a routing analysis in its review of whether or not the amendment is "necessary for the service, accommodation, convenience, or safety of the public."⁸ The Commission will consider cost of constructing the natural gas pipeline as well as any alternatives in its review of the CCN application. Staff also notes that the Railroad Commission has jurisdiction over "persons owning or operating pipelines in Texas,"⁹ and that, in constructing a pipeline, the utility is subject to regulatory oversight and it is the responsibility of SPS to obtain all the necessary regulatory permissions prior to the construction and operation of Harrington.

⁶ See *Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for One Additional Generating Unit at the Newman Generating Station*, Docket No. 50277, Direct Testimony of David C. Hawkins at 4 (Nov. 22, 2019); *Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for Two Additional Generating Units at the Montana Power Station*, Docket No. 41763, Direct Testimony of Ricardo Acosta at 32-33 (Sept. 6, 2013); *Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for Two Generating Units at the Montana Sites in Texas*, Docket No. 40301, Application at 3 (May 3, 2012); *Application of El Paso Electric Company for a Certificate of Convenience and Necessity for a Peaking Generating Unit at the Rio Grande Site in New Mexico*, Docket No. 38717, Application at 2 (Sept. 30, 2010);

⁷ Public Utility Regulatory Act (PURA) §§ 37.051, 37.053, 37.056.

⁸ PURA § 37.056.

⁹ See Tex. Nat. Res. Code § 81.051(a)(3).

Staff believes that this position is consistent with PURA and with the substantive rules of the Railroad Commission.

II. APPLICABLE LAW

Under PURA, “an electric utility may not directly or indirectly provide service to the public under a franchise or permit unless the utility first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service.”¹⁰ Also, “an electric utility that wants to obtain or amend a certificate must submit the application to the commission.”¹¹ In the instant proceeding, SPS appropriately filed an application with the Commission seeking authorization to amend its existing CCN to convert all three units at Harrington from coal generation to gas generation, and SPS has stated that the construction of a new pipeline is necessary for this conversion. The Commission has the authority to grant SPS’ amendment of its certificate as requested, to grant the certificate for the construction of a portion of the requested system, facility, or to refuse to grant the certificate after considering the factors listed in subsection PURA § 37.056(c).¹² Therefore, the Commission has the authority to consider the entirety of SPS’ application under PURA, including SPS’s request for authorization to construct, own, and operate a new pipeline to supply Harrington.

The Railroad Commission’s substantive rules involve regulation of pipelines and pipeline owners. Those substantive rules involve the economic regulation, and the safety and permitting of pipelines in Texas.¹³ To operate a pipeline in Texas, a permit must be obtained from the Railroad Commission.¹⁴ However, the Railroad Commission’s procedural rules do not regulate the routing of natural gas pipelines; rather, the legislature has granted eminent domain authority to utilities that are entitled to common-carrier status.¹⁵

Overall, in considering SPS’ application to amend its CCN to change the fuel source at Harrington, the Commission has authority under PURA to authorize the construction, ownership,

¹⁰ PURA § 37.051(a).

¹¹ PURA § 37.053(a).

¹² PURA §§ 37.056(b), (c).

¹³ 16 Texas Administrative Code Chapters 3 (Oil and Gas Division) and 8 (Pipeline Safety Regulations).

¹⁴ 16 TAC § 8.115.

¹⁵ *Sansom v. Tex. Railroad Comm’n*, No. 03-19-00469-CV, 2021 WL 2006312 at *5 (Tex.App.—Austin) (May 20, 2021).

and operation of a natural gas pipeline and this authority does not conflict with the regulations of the Railroad Commission. However, the Railroad Commission still has oversight over persons owning and operating pipelines in Texas, and it is still the responsibility of SPS to obtain all the necessary regulatory permissions prior to the construction and operation of Harrington. Additionally, as discussed above, while the Commission may authorize construction of the pipeline, the Commission's substantive rules do not provide for Staff to perform a routing analysis in reviewing SPS' application.

III. CONCLUSION

Based on SPS' application requesting to amend its CCN to convert all three units at Harrington from coal to natural gas generation, the Commission has the authority to authorize the construction, ownership, and operation of a new pipeline needed to supply Harrington. However, the Commission's authority is limited to a review of SPS's CCN amendment application and does not involve a routing analysis. Additionally, SPS is responsible for complying with the Railroad Commission's jurisdiction over pipelines and pipeline owners in Texas and obtaining any necessary regulatory permissions from the Railroad Commission in relation to Harrington.

Dated: September 30, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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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 September 30, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/S/ Mildred Anaele
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