



Control Number: 52485



Item Number: 199

**Peter M. Lake**  
Chairman

**Will McAdams**  
Commissioner

**Lori Cobos**  
Commissioner

**Jimmy Glotfelty**  
Commissioner

**Kathleen Jackson**  
Commissioner



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## *Public Utility Commission of Texas*

**TO:** Chairman Peter M. Lake  
Commissioner Will McAdams  
Commissioner Lori Cobos  
Commissioner Jimmy Glotfelty  
Commissioner Kathleen Jackson  
  
All Parties of Record

**FROM:** Stephen Journeay, Commission Counsel

**DATE:** 9 September 2022

**RE:** September 15, 2022 Open Meeting – Item No. 21  
PUC Docket No. 52485; SOAH Docket No. 473-22-1073 – *Application of Southwestern Public Service Company to Amend Its Certificate of Convenience and Necessity to Convert Harrington Generating Station from Coal to Natural Gas.*

A proposal for decision filed in the above-referenced docket is posted for consideration and action by the Commission. If the Commission adopts the proposal for decision, I recommend the following changes to the Commission's order.

Finding of fact 10 should be corrected as follows.

10. In its preliminary order filed on December ~~1643~~, 2021, the Commission concluded as a threshold issue that it had exclusive jurisdiction over the application, including for the construction of the new pipeline that would supply natural gas to Harrington.

New finding of fact 14A should be added to support conclusion of law 10.

- 14A. The COVID-19 pandemic and the social-distancing recommendations made by the Centers for Disease Control and Prevention and the State of Texas constitute good cause for SPS to have held an online public meeting by webinar rather than hold an in-person public meeting for these transmission facilities.

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The following new section should be added for completeness after finding of fact 66.

Costs

- XX. The conversion of all three units, including the construction of a new 20-inch-diameter natural gas pipeline, is estimated to cost between \$65 and \$75 million, \$45 to \$52 million of which will be allocable to SPS's Texas ratepayers.
- XX. The construction of the new natural gas pipeline is estimated to cost approximately \$57 million on a total-company basis.

The wording of finding of fact 60 should be modified. Prudence is a commonly used technical term in utility law for determinations made in the context of base-rate proceedings, and the finding of fact should be clarified so that there is no confusion that the Commission's decision here relates to granting a certificate of convenience and necessity (CCN), not approving capital investments as in a base-rate proceeding.

60. The conversion of all three Harrington units is an appropriate~~prudent~~ alternative to meet the need to maintain necessary capacity.

Findings of fact 115 and 122 should be replaced with a finding of fact that is standard for the Commission's electric CCN proceedings, and the Commission should add the following standard findings of fact that are missing from the proposal for decision.

- ~~115. SPS will implement mitigation measures and best management practices set forth in the environmental assessment, those included in the recommendations of the Commission's engineering staff, and those typically included in the Commission's final orders in CCN amendment applications involving the construction of new utility facilities. The mitigation measures and best management practices recommended by Commission Staff, combined with the mitigation practices set out in the environmental assessment, will minimize the impact of pipeline construction on wildlife, minimize disruption of flora and fauna, and result in revegetation with native species following construction.~~
122. The standard mitigation requirements included in the ordering paragraphs of this Order, coupled with SPS's current practices, are reasonable measures for a transmission service provider to undertake when constructing a transmission line and sufficiently address the Texas Parks and Wildlife Department's comments and recommendations.~~Commission Staff's recommended mitigation measures included in the ordering paragraphs in this Order, coupled with SPS's current practices, are reasonable measures for a utility to undertake when constructing a pipeline and are sufficient to address the Texas Parks and Wildlife Department's comments and recommendations.~~

XX. This Order addresses only those recommendations by the Texas Parks and Wildlife Department for which there is record evidence.

XX. The recommendations and comments made by the Texas Parks and Wildlife Department do not necessitate any modifications to the proposed conversion or pipeline.

Finding of fact 119 should be modified for clarity.

119. SPS will use appropriate avian protection procedures, if applicable.

Conclusion of law 10 should be modified for clarity.

10. There is good cause under 16 TAC § 22.5(b) to grant an exception to the requirements of 16 TAC § 22.52(a)(4), which requires a utility to hold an in-person public meeting, and instead allow for SPS to have held an online public meeting instead of an in-person public meeting.

Ordering paragraphs 10, 12, 13, 14, and 16 should be modified to more accurately reflect the Commission's standard ordering paragraphs for electric CCN proceedings.

10. SPS must exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way. ~~SPS must ensure that the use of chemical h~~Herbicide use must comply to control vegetation within the rights of way complies with rules and guidelines established in the Federal Insecticide, Fungicide, and Rodenticide Act and with the Texas Department of Agriculture's regulations.

12. SPS must implement erosion-control measures as appropriate. Erosion-control measures may include inspection of the rights-of-way before and during construction to identify erosion areas and implement special precautions as determined ~~necessary~~reasonable to minimize the effect of vehicular traffic over the areas. Also, 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. However, the Commission does not require SPS~~is not required~~ to restore original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the pipeline facilities or the safe operation and maintenance of the pipeline facilities.

13. SPS must cooperate with directly affected landowners to implement minor deviations ~~in from~~ the approved route to minimize the ~~burden~~disruptive effect of the pipeline facilities. Any minor deviations ~~in from~~ the approved route must only directly affect landowners who were sent notice of the pipeline facilities in accordance with 16 TAC § 22.52(a)(3) and ~~that have~~ agreed to the minor deviation.

14.     The Commission does not permit SPS to deviate from the approved route in any instance in which the deviation would be more than a minor deviation without first further amending the relevant ~~its~~CCN.
  
16.     The Commission grants a good-cause exception under 16 TAC § 22.5(b) to the requirements of 16 TAC § 22.52(a)(4) for ~~allow~~ SPS to have held an online public meeting in lieu of the requirement for ~~instead of~~ an in-person public meeting ~~under 16 TAC § 22.52(a)(4).~~

Additionally, the Commission should delegate to the Office of Policy and Docket Management the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

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