



Filing Receipt

Received - 2021-09-30 02:57:55 PM
Control Number - 52485
ItemNumber - 19

DOCKET NO. 52485

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

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S
BRIEF IN RESPONSE TO ORDER NO. 1**

Table of Contents

I.	SUMMARY OF BRIEFING	2
II.	ONLY THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER SPS'S CCN AND SPS HAS SUBMITTED A GENERATION CCN AMENDMENT APPLICATION CONSISTENT WITH SIMILAR PRIOR COMMISSION APPLICATIONS	5
III.	IN PREPARING ITS APPLICATION, SPS SOUGHT TO APPROPRIATELY DETAIL ITS PROPOSED CHANGES TO HARRINGTON	6
IV.	ONLY AFTER THE CCN AMENDMENT IS APPROVED WILL THE RAILROAD COMMISSION EXERCISE JURISDICTION OVER THE PIPELINE'S PERMITTING, OVERSIGHT AND SAFETY	10
V.	CONCLUSION AND REQUEST FOR RELIEF	12
	CERTIFICATE OF SERVICE	14

DOCKET NO. 52485

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

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S
BRIEF IN RESPONSE TO ORDER NO. 1**

Southwestern Public Service Company ("SPS") files this briefing in response to Order No. 1, which required the Staff of the Public Utility Commission of Texas ("Commission") and SPS to submit 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").

I. SUMMARY OF BRIEFING

The Commission has exclusive original jurisdiction over any proposed changes to SPS's Certificate of Convenience and Necessity ("CCN") under the Public Utility Regulatory Act (PURA).¹ As such, only the Commission can make the determination of whether SPS's CCN should be amended to change the fuel source at Harrington Generating Station ("Harrington") from coal to natural gas. So that the Commission can fully consider the nature of SPS's request, SPS has presented the Commission with detailed information on the new natural gas pipeline that will be required to complete the fuel conversion. SPS's presentation was purposefully mindful of: (1) that its request for a CCN amendment would be evaluated by the Commission on the

¹ Tex. Util. Code §§ 11.001-66.016 ("PURA").

grounds of whether or not the amendment is “necessary for the service, accommodation, convenience, or safety of the public,”² and (2) that the Commission has a well-established history of reviewing the proposed siting for new electric facilities. In the context of this review, SPS respectfully submits that the Commission has the authority to review Harrington’s new natural gas pipeline siting, just as the Commission has the authority to review the siting of a new electric transmission line or any other new component of a power plant. However, if the Commission determines not to opine on details of the pipeline routing for Harrington, SPS will nevertheless be compliant with Railroad Commission processes relating to construction and operation, which come in to play *after* the Commission determines if the overall project meets the CCN standards to proceed.

The question posed for briefing in Order No. 1 correctly recognizes that the Railroad Commission has a role regarding regulation of pipelines in Texas. As an initial point, however, SPS points out that – as with any project approved by the Commission – a utility must comply with *all* other applicable regulations, such as environmental emission controls, water quality requirements, and engineering and construction requirements. This is true of all utility construction and operations, whether directly addressed by the Commission or not.

The Railroad Commission, as an agency, has jurisdiction over permitting, oversight and the safety of intrastate pipeline operations in Texas. And, as explained in greater detail below, it is true that if the Commission approves SPS’s request to amend its CCN to convert Harrington, SPS will be required to obtain a T-4 permit from the Railroad Commission to construct and operate the new pipeline to Harrington. However, the Railroad Commission has not been

² PURA §§ 37.056(a) and 37.051(a) (requirement that an electric utility obtain a CCN from the Commission to “directly or indirectly provide service to the public under a franchise or permit”).

granted statutory authority to issue CCNs for utility facilities, and its T-4 permitting process for intrastate pipelines does not involve a contested process related to siting of pipelines. This is in contrast with the Commission's historical considerations and processes surrounding the location of electric generation and transmission facilities noted above.

SPS also plans to account for the necessary Harrington natural gas pipeline assets in accordance with the FERC Uniform System of Accounts and, because those assets will be used to serve SPS's electric customers, will request cost recovery for the pipeline assets through its electric base rates. The Commission will have jurisdiction over that rate request when it occurs. Finally, it is premature to ask the Railroad Commission for T-4 pipeline permit approval, due to the estimated start date for construction on the Harrington conversion and the fact that this Commission has not yet approved the proposed conversion. For all these reasons, SPS included its proposed pipeline route for the Commission's consideration when determining whether to grant SPS's request to convert Harrington's fuel source to natural gas.

Regardless of the Commission's determination on whether it has any role to play in the siting of the proposed natural gas pipeline to Harrington, SPS is committed to working with landowners who would be impacted by pipeline construction and this Commission. This case is important because SPS is required to cease coal-fired generation at Harrington by December 31, 2024 but will continue to need the capacity and voltage support currently supplied by Harrington to provide reliable service in SPS's service territory well after that date. As such, SPS will ensure that it obtains all required permitting from other regulatory authorities prior to the initiation of construction and operation of Harrington following conversion. SPS respectfully requests that the Commission process its application for an amendment to its CCN and make a determination as to whether its proposed conversion of Harrington to natural gas is permitted.

II. ONLY THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER SPS'S CCN AND SPS HAS SUBMITTED A GENERATION CCN AMENDMENT APPLICATION CONSISTENT WITH SIMILAR PRIOR COMMISSION APPLICATIONS

The Commission has exclusive original jurisdiction under PURA §§ 37.051, 37.053 and 37.056 to review and approve SPS's planned conversion of Harrington from coal to natural gas. No other agency of the State of Texas has any authority over the granting or amendment of SPS's CCN.³ It is in this context that SPS submitted its request to the Commission for comprehensive review and approval to amend its existing CCN to convert Harrington's fuel source.

SPS is mindful that its case may be one of first impression in that the Commission has not, to SPS's knowledge, previously addressed a request to convert an existing coal plant to operate on natural gas. However, both PURA and the Commission's past practice support consideration of SPS's request. Specifically, consistent with the statutory factors listed in PURA § 37.056(c), SPS's application describes: the circumstances that led the Texas Commission on Environmental Quality ("TCEQ") to order SPS to cease coal-fired operations at Harrington by December 31, 2024; the need for continued capacity and voltage support currently supplied by Harrington; SPS's efforts to evaluate different options to replace Harrington's necessary capacity and voltage support; the investment that will be needed to convert Harrington to gas (including the building of a new 20 to 22 mile long natural gas pipeline and the associated costs of conversion), the expected impact of the conversion on other utilities, and certain factors listed in

³ PURA § 37.051 references only the Commission's authority when addressing the issuance of CCNs; *See also* Tex. Atty. Gen. Op. No. H-844 (1976) at 3559 ("the Public Utility Commission is the only body authorized to grant such certificates by the Act").

§ 37.056(c)(4).⁴ SPS's presentation is also consistent with generation CCN amendment applications that SPS and other utilities have submitted in prior cases before the Commission.⁵

In short, SPS has filed a generation CCN amendment application that, both in form and content, the Commission has jurisdiction to preside over and to approve.

III. IN PREPARING ITS APPLICATION, SPS SOUGHT TO APPROPRIATELY DETAIL ITS PROPOSED CHANGES TO HARRINGTON

In preparing its application, SPS was mindful of the fact that conversion of Harrington to natural gas will entail certain changes to SPS's currently certificated configuration and future operations. For instance, the Company's filing details that the facility will no longer need to use coal and ash handling systems.⁶ The existing coal inventory at Harrington will be burned down until it is extinguished, and fly ash will no longer be produced at the facility.⁷ The existing boilers, which were originally designed to be capable of burning either coal or natural gas, will be reconfigured with new gas piping.⁸ Operationally, the plant's dispatch flexibility will improve simply because of the nature of natural gas generation.⁹

Similarly, the switch to natural gas at Harrington is expected to have a positive impact on

⁴ The Company's application and testimony address each of the PURA § 37.056 factors. The testimony of Ms. Anastacia Santos, with POWER Engineers, Inc., specifically addresses the § 37.056(c)(4) factors of community values, recreational and park areas, historical and aesthetic values, and environmental integrity.

⁵ See e.g. *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy, LLC and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Application (Mar. 21, 2017); *Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso*, Docket No. 50277, Application (Nov. 22, 2019).

⁶ Direct Testimony of Mark Lytal at 16.

⁷ *Id.*

⁸ *Id.* at 8.

⁹ *Id.* at 16.

the environment in and around Amarillo, Texas. Potter County is expected to move from a potential non-attainment designation under the National Ambient Air Quality Standards (“NAAQS”) (40 CFR part 50) for pollutants considered harmful to public health and the environment, to an attainment designation.¹⁰ Overall emissions for pollutants will be decreased, including an approximate 70% reduction in carbon monoxide (CO), an approximate 30% reduction in nitrous oxide (NOx) and an approximate 40% reduction in carbon dioxide (CO₂).¹¹ Again, SPS’s application describes these changes so that the Commission has evidence to consider when evaluating whether an amendment to SPS’s CCN should be approved.

In the same vein, SPS submitted information with its filing related to the construction of the new natural gas pipeline that will be required for conversion. Specifically, because the existing natural gas supply to Harrington is insufficient to support full natural gas generation operations, a new 20-inch natural gas transmission pipeline will need to be built to the facility.¹² The new pipeline will connect Harrington to two current intrastate natural gas pipelines located approximately 20 to 22 miles from Harrington, depending on the route selected.¹³ The construction of the pipeline is also the most costly aspect of the conversion and is the only part of the project that will require the acquisition of right-away and/or easements from local landowners near Harrington. Thus, SPS included details of its planned construction of the pipeline, including the route contemplated for those facilities, so that the Commission could make an informed decision based on facts relevant to the conversion.

¹⁰ Direct Testimony of Jeffrey L. West at 10.

¹¹ *Id.* at 16.

¹² Direct Testimony of Mark Lytal at 9-10.

¹³ *Id.*

SPS also currently owns and operates three natural gas pipelines that serve other generation facilities in Texas. One of the pipelines connects SPS's Plant-X and Tolk generating stations.¹⁴ A second pipeline feeds SPS's Jones Generating Station.¹⁵ The third line feeds the Blackhawk Station generating facility, which is a facility that was formerly owned by SPS and is now owned by Borger Energy Associates LP.¹⁶ Consistent with its current ownership of gas pipeline facilities serving generation plants, and Commission precedent, the Company expects to request recovery of the costs associated with building a new natural gas pipeline to Harrington in a future base rate case after those new assets are in service and used and useful.¹⁷ The Company will account for the assets in accordance with the FERC Uniform System of Accounts and present its request to recover investment for Harrington consistent with the Commission's instructions for and precedent relating to base rates in that future case, also in keeping with past practice with those other plants. However, to the extent the Commission believes that the cost of the conversion is relevant to its decision, given the factors referenced in PURA § 37.056, SPS has attempted to provide the Commission with sufficient detail surrounding the pipeline construction to evaluate the reasonableness of SPS's request.

Additionally, SPS is familiar with and was cognizant of the Commission's past practice involving the amendment of CCN applications for electric transmission investment when preparing its application. Accordingly, the potential identified pipeline routes were optimized to

¹⁴ Direct Testimony of Mark Lytal at 13.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Application of Texas-New Mexico Power Company for Authority to Change Rates*, Docket No. 9491, Examiner's Report at 38 – 39 (concluding as prudent the utility's decision to build a natural gas pipeline connected to a power plant designed for multi-fuel capability), Revised Proposed Order adopting Examiner's Report (Feb. 7, 1991).

minimize impacts to landowners by following existing infrastructure and property lines.¹⁸ The routes were analyzed from a constructability perspective to avoid environmentally sensitive areas such as Waters of the United States, wetlands, flood plains, and cultural sites.¹⁹ The routes were also optimized to minimize the number of railroad and public road crossings.²⁰

Lastly, the routes were presented to landowners and public agencies to obtain feedback – just as SPS would normally present them to landowners in an electric transmission CCN amendment case.²¹ In other words, SPS’s application sought to provide the Commission and landowners with as much information related to the Harrington pipeline construction as possible, using general guidance from other Commission practices, so that the Commission could determine whether a routing analysis was necessary and/or relevant to its decision on whether the conversion is necessary for the service, accommodation, convenience or safety of the public under PURA § 37.056(a) and that landowners potentially impacted by that pipeline construction could also have a voice in this case – nothing more, nothing less.²²

Of course, in the event the Commission determines that a review of pipeline routing is not necessary or appropriate, or only within some general parameters, SPS has no objection provided the Commission makes its determination that the proposed conversation is permitted inclusive of the pipeline addition. This approach would in practice be workable as SPS will still comply with Railroad Commission requirements, as discussed below.

¹⁸ Direct Testimony of Mark Lytal at 14.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See also Tex. Const. art. 1, § 17; *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 194 (Tex. 2012) (relating to public use).

IV. ONLY AFTER THE CCN AMENDMENT IS APPROVED WILL THE RAILROAD COMMISSION EXERCISE JURISDICTION OVER THE PIPELINE'S PERMITTING, OVERSIGHT AND SAFETY

An electric utility's operations are comprehensively overseen by the Commission, and that includes determination of the need for new facilities, such as in this proceeding, and in all fundamentals aspects of operations, accounting, rates charged, and terms of service. In the execution of those activities, every utility must also comply with *all other* applicable standards and regulations including accounting standards, environmental regulations, water quality requirements, engineering and construction requirements, and worker safety. Requirements regarding the construction and operation of a natural gas pipeline is no different. The Railroad Commission has environmental and economic jurisdiction over all persons owning or operating pipelines in Texas.²³ That jurisdiction is intended to ensure the safety and integrity of those pipelines.²⁴ For this reason, the Railroad Commission exercises limited pre-approval authority over intrastate pipelines and does not conduct contested proceedings similar to Commission CCN proceedings. In fact, there is no requirement for an intrastate pipeline to seek routing or siting approval from the Railroad Commission.²⁵ The owner or operator of the pipeline may determine the route (except in instances where the pipeline will transport toxic gas, which is not applicable here).²⁶ An intrastate pipeline owner or operator must, however, notify the RRC

²³ Tex. Nat. Res. Code Ann. §§ 81.051.

²⁴ 16 TAC Ch 8, Pipeline Safety Regulations.

²⁵ See, *Sansom v. Tex. Railroad Comm'n*, 03-19-00469 – CV, 2021 WL, 2006312, Austin May 20, 2021, no pet) and Cause No. D-1-GN-19-002161; *Andrew Samson et al. v. Texas Railroad Comm'n, et al.* (Order on Summary Judgment) (Jun. 25, 2019).

²⁶ *Id.*

before starting construction when the pipeline is longer than one mile.²⁷ The operator of a pipeline that is longer than 10 miles is required to file a pre-construction report at least 60 days before beginning construction.²⁸ The pre-construction report is called a Form PS-48.

In other words, the Railroad Commission provides regulatory oversight on the permitting, operation, and safety of intrastate pipelines – not location approval. The Railroad Commission permitting guidelines are straightforward and are available on the Railroad Commission’s website.²⁹ Any new pipeline entrant must have a Form P-5 Organizational Report on file with the Railroad Commission and must have an approved T-4 Permit to operate the pipeline.³⁰ To this end, SPS already has a P-5 Report on file and has approved T-4 permits for pipelines that service Jones Generating Station and Blackhawk Generating Station. Upon receipt of a complete permit application, the Railroad Commission has 30 calendar days to issue, amend, or deny the pipeline permit as filed.³¹ The Commission does not initiate a proceeding to review the T-4 pipeline permit, and there is no opportunity for other interested parties to intervene. Rather, “If the Commission is satisfied from the application and the documentation and information provided in support thereof, and its own review, that the proposed line is, or will be laid, equipped, managed and operated in accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted.”³²

²⁷ 16 TAC § 8.115. See also <https://www.rrc.texas.gov/pipeline-safety/reports/new-pipeline-construction-reports/>

²⁸ *Id.*

²⁹ *Id.*

³⁰ Tex. Nat. Res. Code § 91.142 & 16 TAC § 3.1(a)(1)(I). The rule governing the filing is referred to at the Railroad Commission as “Statewide Rule (SWR) Rule 1” or “Rule 3.1”; 16 TAC § 3.70.

³¹ 16 TAC § 3.1(d).

³² *Id.* § 3.70(e).

It is also currently premature to file any information or apply for permits with the Railroad Commission. An application for new construction expires after eight months and only a single six-month extension is contemplated by Railroad Commission rules.³³ A new construction report is a prerequisite for a T-4 permit application.³⁴ Therefore, SPS will have to wait until a later date before applying for the necessary Harrington pipeline construction and T-4 permits. For these reasons, there is no Railroad Commission authorization for SPS to seek at this time.

V. CONCLUSION AND REQUEST FOR RELIEF

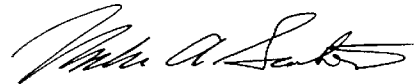
In order to maintain electric service reliability to SPS customers, it is vital that the Harrington Plant remain available to continue to provide service after it is not permitted to use coal as a fuel source. Clearly the Commission has sole authority to approve the investments needed to do so. Regardless of whether the Commission decides to review or make any findings on the routing of the natural gas pipeline associated with the Harrington conversion, SPS seeks CCN approval for the planned conversion and all its necessary elements needed to preserve this important resource for customers. The pipeline is an integral part of the conversion. SPS will work with landowners impacted by the conversion, just as it would with any facility extension, in an effort to collaboratively achieve the buildout in a manner that is responsive to all parties as much as reasonably possible. Additionally, if conversion of Harrington is approved, SPS will proceed with constructing, owning, and operating the related natural gas pipeline and will ensure that the pipeline is properly permitted, constructed and maintained in accordance with all other

³³ *Id.* § 8.115(b).

³⁴ *See* Railroad Commission Pipeline Online Permitting Systems, p. 12. <https://www.rrc.texas.gov/media/myxib4ls/pops-user-guide.pdf>.

applicable regulations, including the Railroad Commission's pipeline rules and jurisdiction. SPS requests that the Commission proceed with its review of the Company's generation CCN amendment application so that the Company's capacity and voltage needs can continue to be met and it can meet environmental requirements.

Respectfully Submitted,

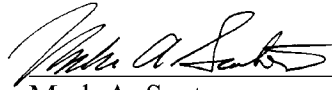


Mark Walker
XCEL ENERGY SERVICES INC.
919 Congress Ave., Suite 900
Austin, Texas 78701
(512) 236-6926
(512) 236-6935 (Fax)
mark.a.walker@xcelenergy.com

Mark A. Santos
Kate Norman
C. Glenn Adkins
COFFIN RENNER LLP
1011 West 31st Street
Austin, Texas 78705
(512) 879-0900
(512) 879-0912
mark.santos@crtxlaw.com
kate.norman@crtxlaw.com
glenn.adkins@crtxlaw.com

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.


Mark A. Santos