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

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

**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER

This Order addresses the application of Southwestern Public Service Company (SPS) to amend its certificate of convenience and necessity (CCN) number 30153 to convert the Harrington generating station from coal to natural gas. The State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) issued a proposal for decision recommending that the Commission amend SPS's CCN to include both the conversion of all three existing coal-powered steam turbine units of the Harrington station to be fueled by natural gas and the construction and operation of a pipeline along route 2 for supplying natural gas to the converted Harrington station. The SOAH ALJs also recommended that the Commission not impose any conditions on the amendment of SPS's CCN. The Commission adopts the proposal for decision to the extent provided in this Order.

The Commission makes the following modifications to the proposal for decision. The Commission corrects a factual error in finding of fact 10, adds new finding of fact 14A to support conclusion of law 10, and adds new findings of fact 66A and 66B for completeness. The Commission also modifies finding of fact 60, so that there is no confusion that the Commission's decision in this proceeding relates to granting a CCN, not approving capital investments as in a base-rate proceeding. The Commission deletes finding of fact 115 and replaces finding of fact 122 with standard language and adds new findings of fact 122A and 122B, which are standard in the Commission's orders in electric CCN proceedings. The Commission modifies finding of fact 119 and conclusion of law 10 for clarity.

The Commission adds conclusion of law 1A to reflect the threshold legal determination made in the Commission's preliminary order as described in finding of fact 10. The Commission

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also adds new findings of fact 37A, 37B, 40A, and 40B to address additional procedural history and testimony admitted after the proposal for decision was issued.

The Commission makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I. Findings of Fact

The Commission adopts the following findings of fact.

Applicant

1. SPS is incorporated under the laws of the State of New Mexico and is a wholly owned subsidiary of Xcel Energy, Inc.
2. SPS is a fully integrated utility that owns equipment and facilities to generate, transmit, distribute, and sell electricity in Texas and New Mexico.
3. In Texas, SPS is authorized under CCN number 30153 to provide service to the public and to provide retail electric utility service within its certificated service area.

Application

4. On August 27, 2021, SPS filed an application with the Commission to amend its CCN to convert all three generation units at the Harrington generating station from coal generation to natural gas generation. The application additionally requests that the Commission authorize SPS to construct, own, and operate a new pipeline to supply natural gas to Harrington.
5. Harrington is located north of Amarillo in Potter County, Texas.
6. Harrington consists of three coal-powered steam turbine units with a total net capacity of 1,050 megawatts (MW).
7. All three of Harrington's boilers were designed to burn either coal or natural gas.
8. On October 5, 2021, Commission Staff recommended that the application be deemed administratively complete.
9. No party challenged the sufficiency of the application.

10. In its preliminary order filed on December 16, 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.

Notice

11. On November 4, 2021, SPS filed the affidavit of Michael K. Knapp, case specialist with SPS, attesting to the provision of notice of the application on August 27, 2021 by email to all parties of record in SPS's most recent rate case, Docket No. 51802,¹ and by mail to the City of Amarillo, the county judge of Potter County, the Texas Parks and Wildlife Department, and all directly affected landowners. Additionally, SPS filed publishers' affidavits attesting to the publication of notice as follows: (a) in the *Amarillo Globe-News*, a newspaper of general circulation in Potter County, on October 14, 2021; (b) in the *Booker News*, a newspaper of general circulation in Lipscomb County, on October 14, 2021; (c) in the *Caprock Courier*, a newspaper of general circulation in Briscoe, Cottle, Hall, King, and Motley counties, on October 14, 2021; (d) in the *County Star-News*, a newspaper of general circulation in Wheeler County, on October 14, 2021; (e) in the *Dalhart Texan*, a newspaper of general circulation in Dallam and Hartley counties, on October 15, 2021; (f) in the *Miami Chief*, a newspaper of general circulation in Roberts County, on September 30 and October 7, 14, and 21, 2021; (g) in the *Muleshoe Journal*, a newspaper of general circulation in Bailey County, on October 14, 2021; (h) in the *Pampa News*, a newspaper of general circulation in Gray County, on October 16, 2021; and (i) in the *Sherman County Gazette*, a newspaper of general circulation in Sherman County, on October 14, 2021.
12. On November 23, 2021, SPS filed a publisher's affidavit attesting that notice was published in the *Lubbock Avalanche-Journal*, a newspaper of general circulation in Cochran, Crosby, Dawson, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry, and Yoakum counties, on October 15, 2021.
13. In Order No. 7 filed on November 29, 2021, the Commission ALJ found SPS's notice of the application sufficient.

¹ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 51802, Order (May 20, 2022).

Public Input

14. SPS hosted a live virtual public meeting on April 29, 2021, by videoconference in lieu of an in-person meeting.
- 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.
15. SPS invited all landowners with property within 500 feet of a proposed pipeline centerline to the public meeting and provided them an overview map of the proposed pipeline routes, a questionnaire, a landowner's bill of rights, a permission-to-survey form, a brochure from the Commission with information about CCN amendment proceedings, a comment form, and instructions on how to access the live virtual public meeting.
16. Four landowners attended the virtual public meeting.
17. SPS did not receive any completed questionnaires or written comments from the landowners or other members of the public.

Intervenors

18. Adobe Creek, Ltd., Windtree Manor, Ltd., Texas Industrial Energy Consumers (TIEC), Sierra Club, the Alliance of Xcel Municipalities, and the Office of Public Utility Counsel (OPUC) filed motions to intervene in this docket.
19. In Commission Order No. 2 filed on September 21, 2021, the Commission ALJ granted the motions to intervene of Adobe Creek, Ltd., Windtree Manor, Ltd., and TIEC.
20. In Commission Order No. 5 filed on October 21, 2021, the Commission ALJ granted the motion to intervene of Sierra Club.
21. In Commission Order No. 8 filed on December 3, 2021, the Commission ALJ granted the motion to intervene of the Alliance of Xcel Municipalities.
22. In SOAH Order No. 2 filed on January 5, 2022, the SOAH ALJ granted the motion to intervene of OPUC.

Statements of Position and Testimony

23. On August 27, 2021, SPS filed the direct testimonies of William A. Grant, Jeffrey L. West, John M. Goodenough, Ben R. Elsey, Mark Lytal, D. Dean Koujak, and Anastacia Santos. These direct testimonies were admitted at the hearing.
24. On March 25, 2022, the Alliance of Xcel Municipalities filed the direct testimony of Scott Norwood. This direct testimony was admitted at the hearing.
25. On March 25, 2022, Sierra Club filed the direct testimony of Devi Glick. This direct testimony was admitted at the hearing.
26. On March 25, 2022, OPUC filed the direct testimony of Karl Nalepa. This direct testimony was admitted at the hearing.
27. On April 5, 2022, Commission Staff filed the direct testimony of John Poole. This direct testimony was admitted at the hearing.
28. On April 13, 2022, SPS filed the rebuttal testimonies of Mr. Grant, Mr. Elsey, Mr. Koujak, Mr. Lytal, Mr. West, and Ms. Santos. These rebuttal testimonies were admitted at the hearing.
29. On April 20, 2022, TIEC filed a statement of position.
30. On April 21, 2022, Commission Staff filed a statement of position.
31. On April 21, 2022, SPS filed errata to the rebuttal testimony of Mr. Grant. This rebuttal testimony was admitted at the hearing.
32. On April 26, 2022, Sierra Club filed errata to the direct testimony of Ms. Glick. This direct testimony was admitted at the hearing.

Referral to SOAH for Hearing

33. On December 13, 2021, the Commission referred this docket to SOAH and filed a preliminary order identifying the issues to be addressed in this proceeding.
34. On January 4, 2022, SOAH convened a prehearing conference in this docket by videoconference, at which time a procedural schedule was discussed.

35. In SOAH Order No. 3 filed on January 24, 2022, the SOAH ALJs scheduled the hearing on the merits to begin on April 26, 2022.
36. On April 26, 2022, the hearing on the merits convened before SOAH ALJs Cassandra Quinn and Ross Henderson by videoconference. The following parties made appearances through their legal counsel and participated in the hearing: SPS, Commission Staff, the Alliance of Xcel Municipalities, OPUC, Sierra Club, and TIEC. Neither Adobe Creek, Ltd. nor Windtree Manor, Ltd. appeared at the hearing.
37. The record closed on May 25, 2022, with the filing of the parties' post-hearing reply briefs.

Return from SOAH

- 37A. On September 7, 2022, SPS filed the responsive testimony of Ben R. Elsey.
- 37B. In Order No. 9 filed on September 14, 2022, the Commission ALJ admitted the responsive testimony of Mr. Elsey into the evidentiary record.

Adequacy of Existing Service and Need for Additional Service

38. SPS and the Texas Commission on Environmental Quality (TCEQ) executed an agreed order in TCEQ Docket No. 2020-0982-MIS requiring SPS to cease coal operations at Harrington by January 1, 2025, to avoid non-compliance with federal National Ambient Air Quality Standards for sulfur dioxide (SO₂).
39. SPS is a member of the Southwest Power Pool (SPP).
40. SPP requires that each member in SPP have a planning reserve margin of at least 12% of its peak-demand forecast.
- 40A. SPP recently increased the planning reserve margin to 15%.
- 40B. SPS will require between 116 MW and 157 MW of additional capacity on an annual basis to meet the 3% increase to the planning-reserve-margin requirement.
41. If SPS retired Harrington on or before January 1, 2025, rather than converting Harrington to be powered by natural gas, SPS would not meet its planning reserve margin requirements in SPP unless SPS secured replacement generation resources.

42. SPS modeled different scenarios under a variety of conditions to determine the cost of replacement generation resources under both resource planning and financial planning forecasts.
43. SPS modeled the following compliance options to reduce SO₂ emissions at Harrington:
 - a. Retirement of all three Harrington units and replacement of Harrington's generation capacity with replacement resources;
 - b. Conversion of all three Harrington units to operate on natural gas;
 - c. Installation of dry sorbent injection (an environmental control for SO₂ emissions) on the Harrington units;
 - d. Installation of spray dry absorber (an environmental control for SO₂ emissions) on the Harrington units;
 - e. Retirement of Harrington units 1 and 2 and conversion of Harrington unit 3 to operate on natural gas; and
 - f. Retirement of unit 1 and conversion of Harrington units 2 and 3 to operate on natural gas.
44. Due to the high cost of installing environmental controls, SPS reasonably concluded that it should cease coal operations at Harrington before 2025.
45. In evaluating replacement resources, SPS considered the construction of new natural gas combustion turbines.
46. Retiring and replacing Harrington with new natural gas combustion turbines at the same site is not feasible in the timeframe needed.
47. In evaluating replacement resources, SPS also considered proposals from 18 companies that proposed eight key technologies: solar, solar plus storage, wind, gravitational energy storage, combined cycle plus hydrogen storage, liquid air energy storage, flow energy storage, and compressed air batteries.
48. SPS's modeling was reviewed and approved by an independent evaluator.
49. The independent evaluator concluded that either converting all three units at Harrington or just two units "can be deemed prudent paths forward."

50. Because a natural gas pipeline of the same size is needed whether two or three units are converted, the incremental cost to retain the 340 MW of capacity of unit 1, the oldest and most likely unit to be retired, is relatively small, only \$2.6 million or \$7.65 per kilowatt.
51. In deciding between the options, it is appropriate to consider qualitative factors in addition to cost.
52. Retiring unit 1 would pose reliability risks and could result in the loss of SPS's interconnection rights at Harrington, which are increasingly valuable given the current cost of new interconnection rights.
53. Mothballing unit 1 would mean that it is unable to immediately serve as a peaking unit and thus may be unavailable when SPS's customers might need it most, such as during the summer heat or a winter weather event.
54. SPS demonstrated that the most feasible and cost-effective option for maintaining the necessary generation capacity provided by Harrington is converting all three boilers from coal to natural gas.
55. SPS's request does not include dual-fuel or fuel-storage capabilities, which would require additional investment.
56. SPS demonstrated that entering into a firm fuel contract in lieu of building a new pipeline was not feasible because the existing natural gas pipeline serving Harrington is not large enough to serve the fuel needs of the converted boilers.
57. SPS selected interconnection points to existing pipelines based on the available pipelines in the area of Harrington and discussed supply with representatives for those pipelines.
58. SPS will be able to benefit from a diversity of natural gas supplies by connecting to two natural gas pipelines.
59. SPS demonstrated that it used reasonable methods to develop fuel-price forecasts used in its modeling.
60. The conversion of all three Harrington units is an appropriate alternative to meet the need to maintain necessary capacity.

Effect of Granting the CCN on SPS and Other Electric Utilities

61. SPS's conversion of Harrington will not likely have any adverse impacts on other electric utilities in Texas.
62. After the conversion of Harrington, the same amount of firm and dispatchable generation will be available at the same location.
63. Conversion of Harrington will allow SPS to maintain compliance with SPP's reserve margin requirements.
64. Conversion of Harrington will allow SPS to maintain voltage stabilization provided by the Harrington units, which positively impacts the overall reliability of SPP and benefits SPP members.
65. If conversion of Harrington is not approved, SPS would need to secure replacement resources for Harrington at a higher cost than conversion and would need to invest in voltage stabilization.
66. No party argued or presented evidence that the proposed conversion will adversely impact SPS or other electric utilities.

Costs

- 66A. 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.
- 66B. The construction of the new natural gas pipeline is estimated to cost approximately \$57 million on a total-company basis.

Pipeline Routes

67. The application included four alternative routes.
68. The four routes range in length from 19.01 to 21.81 miles.
69. None of the proposed pipeline routes have habitable structures within 500 feet of the centerline.
70. All alternative routes are viable and constructible.

Route Adequacy

71. No party requested a hearing on route adequacy.
72. Given the location of existing pipeline interconnection points and the nature of the area where the alternatives are located, the application provided an adequate number of reasonably differentiated routes to conduct a proper evaluation.

Effect on Customers, the Community, and the Environment

73. The conversion of all three Harrington units is the most cost-effective alternative for SPS to meet the minimum reserve requirements in SPP after weighing all qualitative and quantitative factors.
74. If conversion of Harrington is not approved, SPS would need to secure replacement resources at a higher cost, which would negatively impact its customers through higher bills.
75. Conversion of Harrington from coal to natural gas will positively impact the environment through improved emissions and air quality.
76. There is no evidence that the proposed conversion would affect retirement or modification of any other facility in a manner that affects environmental integrity.
77. Continued operation of the pipeline and Harrington post-conversion is unlikely to have any significant adverse impact on the community because the pipeline will be below ground and Harrington will continue to operate as a power plant.
78. The environmental assessment performed by POWER Engineers analyzed the possible effects of the pipeline facilities on numerous environmental factors.
79. Review of information from the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service indicates no federally listed or state-listed plant or animal species within the study area for the potential pipeline routes.
80. It is unlikely that the pipeline facilities will have significant adverse impacts on populations of any federally listed endangered or threatened species.
81. It is unlikely that the pipeline will have any significant adverse impacts on the physiographic or geologic features and resources of the area.

82. It is unlikely that construction, operation, and maintenance of the pipeline will adversely affect groundwater resources within the study area.
83. The pipeline is anticipated to have short-term minimal impacts on soil, water, and ecological resources. Most of the impacts will be during construction.
84. The impacts to vegetation will result from clearing and maintaining right-of-way for the construction, operation, and maintenance of the pipeline.
85. None of the proposed pipeline routes cross critical habitat.
86. None of the proposed pipeline routes cross sensitive vegetation communities.
87. None of the proposed pipeline routes cross wetlands.
88. SPS can construct the pipeline facilities in an ecologically sensitive manner on any of the proposed routes.
89. The following factors favor selection of route 2:
 - a. It is the shortest route at 19.01 miles;
 - b. It has the shortest length and area across bottomland and riparian brushland or shrubland, 11.8 miles and 71.5 acres;
 - c. It has the shortest area across highly erodible soils, 0.2 acres;
 - d. It has the shortest area across soils with poor potential for revegetation, 4.0 acres;
 - e. It has the shortest length and area across areas with a high probability for archaeological sites, 11.0 miles and 66.9 acres; and
 - f. It contains no archaeological or historical sites within its construction right of way.
90. It is appropriate for SPS to employ erosion control during initial construction of the pipeline. SPS indicated that prior to construction it would develop a stormwater pollution prevention plan to minimize potential impacts associated with soil erosion, compaction, and off-right-of-way sedimentation. The stormwater pollution prevention plan will also establish criteria for mitigating soil compaction and revegetation to ensure adequate soil stabilization during construction and operation.

91. After Commission approval of a route, field surveys may be performed, if necessary, to identify potential suitable habitat for federally and state-listed animal species and determine the need for any additional species-specific surveys. If potential suitable habitat is identified or federally or state-listed animal species are observed during a field survey of the Commission-approved route, SPS will cooperate with the Texas Parks and Wildlife Department and the United States Fish and Wildlife Service to determine avoidance or mitigation strategies.
92. SPS will mitigate any effect on federally listed plant or animal species according to standard practices and measures taken in accordance with the Endangered Species Act.
93. It is appropriate for SPS to minimize the amount of flora and fauna disturbed during construction of the pipeline facilities.
94. It is appropriate for SPS to re-vegetate cleared and disturbed areas using native species in accordance with SPS's standard vegetation management practices and operational needs.
95. It is appropriate for SPS to avoid, to the maximum extent possible, causing adverse environmental effects on sensitive plant and animal species and their habitats.
96. It is appropriate for SPS to take precautions to avoid disturbing occupied nests and take steps to minimize the burden of construction on migratory birds during the nesting season of the migratory bird species identified in the area of construction.
97. It is appropriate for SPS to implement erosion-control measures and return each affected landowner's property to its original contours and grades unless the landowners agree otherwise. However, it is not appropriate for SPS to restore original contours and grades where different contours or grades are necessary to ensure the safe operation and maintenance of the pipeline.
98. It is appropriate for SPS to exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within rights-of-way. The use of chemical herbicides to control vegetation within rights-of-way is required to comply with the rules and guidelines established in the Federal Insecticide, Fungicide, and Rodenticide Act and with the Texas Department of Agriculture's regulations.

99. It is appropriate for SPS to use best management practices to minimize potential harm that the approved route presents to any migratory birds and threatened or endangered species.
100. It is unlikely that the presence of pipeline facilities below ground along any of the proposed routes will adversely affect the environmental integrity of the surrounding landscape.
101. All of the proposed routes, including route 2, are environmentally acceptable.

Recreational and Park Areas; Historical and Aesthetic Values

102. There are no parks or recreational areas impacted by the proposed conversion of Harrington or any of the proposed pipeline routes.
103. No National Register of Historic Places properties, State Antiquities Landmarks, or Official Texas Historical Markers located in the area will be impacted by the proposed conversion of Harrington or any of the proposed pipeline routes.
104. The landscape within the study area includes residential developments, oil and gas developments, wind farms, and existing pipelines. Once construction is complete, SPS's proposed pipeline will be below ground.
105. No party challenged the proposed conversion of Harrington or the proposed pipeline on the grounds of adverse impacts to recreational and park areas, historical values, or aesthetic values.
106. The conversion of Harrington and the construction of the pipeline will not adversely affect recreational and park areas, historical values, or aesthetic values.

Renewable Energy Goal

107. The goal in PURA² § 39.904(a) for 10,000 MW of renewable capacity to be installed in Texas by January 1, 2025, has already been met.
108. The proposed conversion of Harrington and construction of the new pipeline cannot adversely affect the goal for renewable energy development established in PURA § 39.904(a).

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016 (PURA).

Reliability

109. The conversion of Harrington will positively affect the reliability in the SPP transmission system by allowing SPS to meet SPP's minimum reserve requirements.
110. The conversion of Harrington will also allow SPS to maintain the voltage support capabilities of Harrington.

Texas Parks and Wildlife Department

111. The Texas Parks and Wildlife Department's wildlife habitat assessment program provided information and recommendations regarding the preliminary study area for the proposed pipeline to POWER Engineers on June 1, 2021.
112. On October 28, 2021, a letter from the Texas Parks and Wildlife Department was filed in this proceeding making various comments and recommendations regarding the proposed pipeline facilities.
113. The Texas Parks and Wildlife Department included comments and recommendations regarding the pipeline facilities and potential impacts on sensitive fish and wildlife resources, habitats, or other sensitive natural resources. The letter includes concerns, comments, and recommendations that are often provided by the Texas Parks and Wildlife Department regarding CCN amendment applications before the Commission involving the construction of new utility facilities. POWER Engineers and SPS have already taken into consideration several of the recommendations offered by the Texas Parks and Wildlife Department as SPS follows many of the recommendations in the Texas Parks and Wildlife Department letter relating to proper use and placement of sediment-control fencing, avoiding impacts to water resources, avoiding potential impacts to endangered species, and re-vegetation of disturbed areas where appropriate.
114. The Texas Parks and Wildlife Department's letter identified route 2 as the route that best minimizes adverse impacts on natural resources.
115. DELETED.
116. SPS will use avoidance and mitigation procedures to comply with laws protecting federally listed species.

117. SPS will revegetate disturbed areas to the extent that revegetation does not interfere with the normal operation and maintenance of the pipeline.
118. SPS's standard vegetation-removal, construction, and maintenance practices adequately mitigate concerns expressed by the Texas Parks and Wildlife Department.
119. SPS will use appropriate avian protection procedures, if applicable.
120. SPS will comply with all environmental laws and regulations, including those governing threatened and endangered species.
121. SPS will cooperate with the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department if threatened or endangered species' habitats are identified during field surveys.
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.
- 122A. This Order addresses only those recommendations by the Texas Parks and Wildlife Department for which there is record evidence.
- 122B. The recommendations and comments made by the Texas Parks and Wildlife Department do not necessitate any modifications to the proposed conversion or pipeline.

Other Regulatory Approvals

123. SPS obtained regulatory approval from the New Mexico Public Regulation Commission for the conversion of Harrington on April 27, 2022.
124. The New Mexico Public Regulation Commission's approval of the conversion of Harrington included minor reporting conditions. The New Mexico Public Regulation Commission required SPS to file with the New Mexico Public Regulation Commission all construction reports; actual costs of the project, including allowance for funds used during construction, within one month of becoming available; notice of Harrington's commercial operation date post-conversion; and a notice when fuel costs shall first be included in SPS's fuel and purchased power cost adjustment clause.

125. Upon approval of this application, SPS will seek necessary permits from the Railroad Commission of Texas, including an amendment to its T-4 permit to allow for operation of the proposed pipeline, and SPS will file a Form PS-48 with the Railroad Commission at least 60 days before beginning construction on the pipeline.
126. SPS has made no other commitments to any other regulatory authorities regarding the proposed project.

Permits

127. SPS sent communications to the federal, state, and local governmental entities listed in the environmental assessment regarding the proposed conversion.
128. Before beginning construction of the pipeline facilities approved by this Order, SPS will obtain any necessary permits from the Texas Department of Transportation or any other applicable state agency if the facilities cross state-owned or -maintained properties, roads, or highways.
129. Before beginning construction of the pipeline facilities approved by this Order, SPS will obtain a miscellaneous easement from the General Land Office if the pipeline facilities cross any state-owned riverbed or navigable stream.
130. Before beginning construction of the pipeline facilities approved by this Order, SPS will obtain any necessary permits or clearances from federal, state, or local authorities.
131. It is appropriate for SPS, before commencing construction, to obtain a general permit to discharge under the Texas Pollutant Discharge Elimination System for stormwater discharges because of construction activities as required by TCEQ. In addition, it is appropriate for SPS, before commencing construction, to prepare the necessary stormwater pollution prevention plan, to submit a notice of intent to TCEQ, and to comply with all other applicable requirements of the general permit.
132. It is appropriate for SPS to conduct a field assessment of the approved route before beginning construction of the pipeline facilities approved by this Order to identify water resources, cultural resources, potential migratory bird issues, and threatened and endangered species' habitats disrupted by the pipeline. As a result of these assessments,

SPS will identify all necessary permits from Potter County and federal and state agencies. SPS will comply with the relevant permit conditions during construction and operation of the pipeline facilities along the approved route.

Limitation of Authority

133. It is reasonable and appropriate for a CCN order not to be valid indefinitely because it is issued based on the facts known at the time of issuance.
134. Seven years is a reasonable and appropriate limit to place on the authority granted in this Order for SPS to convert Harrington to natural gas and construct the pipeline.

II. Conclusions of Law

The Commission adopts the following conclusions of law.

1. The Commission has authority over this application under PURA §§ 14.001, 37.051, 37.053, 37.056, and 37.058.
- 1A. Under PURA §§ 37.051, 37.053, 37.056, and 37.058, the Commission has exclusive original jurisdiction over this application for the conversion of the Harrington station, including for the construction of a 20-inch pipeline that will supply natural gas to the station.
2. SPS is an electric utility as defined in PURA §§ 11.004 and 31.002(6).
3. SPS is not a participant in the retail competition market under PURA, chapter 39, subchapter I.
4. The Southwest Power Pool is a regional transmission organization approved by the Federal Energy Regulatory Commission that meets the requirements of PURA § 39.151 as an independent system operator.
5. SPS must obtain the approval of the Commission to convert Harrington's generating units from coal to natural gas, to build, own, and operate the pipeline supplying natural gas to the converted Harrington station, and to provide service to the public from the converted Harrington station.

6. SOAH exercised jurisdiction over the proceeding under PURA § 14.053 and Texas Government Code §§ 2001.058, 2003.021, and 2003.049.
7. The application is sufficient under 16 Texas Administrative Code (TAC) § 22.75(d).
8. The Commission processed this docket in accordance with the requirements of PURA, the Administrative Procedure Act,³ and the Commission's rules.
9. SPS provided notice of the application in compliance with PURA § 37.054 and 16 TAC § 22.52(a).
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) for SPS to have held an online public meeting instead of an in-person public meeting.
11. SPS provided notice of the online public meeting in compliance with 16 TAC § 22.52(a)(4).
12. The hearing on the merits was set, and notice of the hearing was provided, in compliance with PURA § 37.054 and Texas Government Code §§ 2001.051 and 2001.052.
13. The conversion of all three Harrington units and the construction and operation of the pipeline along route 2 are necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056 and 16 TAC § 25.101.
14. Route 2 best meets the routing criteria set forth in PURA § 37.056 and 16 TAC § 25.101(b)(3)(B).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, to the extent provided in this Order.

³ Tex. Gov't Code §§ 2001.001–.903.

2. The Commission amends SPS's CCN number 30153 to include the conversion of all three existing coal-powered steam turbine units at Harrington to be fueled by natural gas.
3. The Commission amends SPS's CCN number 30153 to include the construction, ownership, and operation of a pipeline along route 2 for supplying natural gas to the converted Harrington station.
4. SPS must obtain all permits, licenses, plans, and permissions required by state and federal law that are necessary to construct the pipeline facilities and convert the Harrington station as approved by this Order, and if SPS fails to obtain any such permit, license, plan, or permission, it must notify the Commission immediately.
5. SPS must identify any additional permits that are necessary, consult any required agencies (such as the U.S. Army Corps of Engineers and the United States Fish and Wildlife Service), obtain all necessary environmental permits, and comply with the relevant conditions before construction and during construction and operation of the pipeline facilities approved by this Order.
6. If SPS encounters any archeological artifacts or other cultural resources during construction, work must cease immediately in the vicinity of the artifact or resource, and SPS must report the discovery to, and act as directed by, the Texas Historical Commission.
7. Before beginning construction, SPS must undertake appropriate measures to identify whether a potential habitat for endangered or threatened species exists and must respond as required.
8. SPS must use best management practices to minimize the potential harm to migratory birds and threatened or endangered species.
9. SPS must take precautions to avoid disturbing occupied nests and take steps to minimize the burden of construction on migratory birds during the nesting season of the migratory bird species identified in the area of construction.
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. Herbicide use must comply with rules and guidelines established in the Federal Insecticide,

Fungicide, and Rodenticide Act and with the Texas Department of Agriculture's regulations.

11. SPS must minimize the amount of flora and fauna disturbed during construction of the pipeline facilities, except to the extent necessary to establish appropriate right-of-way clearance for the pipeline facilities. In addition, SPS must re-vegetate using native species and must consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practicable, SPS must avoid adverse environmental effects on sensitive plant and animal species and their habitats, as identified by the Texas Parks and Wildlife Department and the United States Fish and Wildlife Service.
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 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 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 the approved route to minimize the disruptive effect of the pipeline facilities. Any minor deviations 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 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 CCN.
15. SPS must include the pipeline facilities approved by this Order 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 SPS identifies all charges.

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 SPS to have held an online public meeting instead of an in-person public meeting.
17. The Commission limits the authority granted by this Order to a period of seven years from the date of this Order unless the converted Harrington station and the supply pipeline are operational before that time.
18. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 29th day of September 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER