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

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	§	

PRELIMINARY ORDER

Southwestern Public Service Company (SPS) filed an application to amend its certificate of convenience and necessity (CCN) number 30153 to convert the three steam turbine units at the Harrington generating station from coal generation to natural gas. This preliminary order identifies the issues that must be addressed and issues that shall not be addressed and answers a threshold legal issue.

I. Application

The Harrington station was first certificated in Docket No. 6.¹ The examiner's report adopted by the Commission's order in that docket specifies that SPS was actively engaged in installing "all three units of the Harrington coal fired generation plant" on September 1, 1975.² Therefore, based on the law at that time, the Commission granted SPS a CCN for "all three units of [SPS's] Harrington generation plant in Potter County."³ The Harrington station's three units have a total net capacity of 1,050 megawatts.⁴

SPS and the Texas Commission on Environmental Quality entered into an agreed order to cease the use of coal-fired generation at the Harrington station by January 1, 2025 because the

¹ *Applications of City of Canadian, Community Public Service Co., Deaf Smith Electric Coop, Greenbelt Electric Coop, North Plains Electric Coop, Rita Blanca Electric Coop, Southwestern Electric Coop, Southwestern Public Service Co, and Swisher Electric Coop for Certificate of Convenience and Necessity for Certain Areas within Armstrong, Carson, Dallam, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, and Sherman Counties*, Docket No. 6, Order (Jul 27, 1976).

² Docket No. 6, Order, Examiner's Report at Finding of Fact No. 8.

³ Docket No. 6, Order at Ordering Paragraph No. 7.

⁴ Direct Testimony of William A. Grant at 9 (Aug. 27, 2021)

station's sulfur dioxide emissions failed to comply with national ambient air quality standards.⁵ SPS stated that although the Harrington station was designed to burn both coal and natural gas, modifications are needed for the station to run only on natural gas. Additional natural gas burners and associated piping and control equipment will be needed. Two additional levels of gas burners are needed for the boilers of units 1 and 3, and three additional levels of gas burners are needed for unit 2.⁶ Also, the common gas distribution header will have to be enlarged to deliver a larger natural gas flow.⁷

In addition, the conversion of the Harrington station will require the construction of a new 20-inch natural gas pipeline from existing gas pipelines northwest of Amarillo to the Harrington station.⁸ SPS proposes four potential pipeline routes, which range from 20 to 22 miles in length.⁹ SPS estimates that the entire conversion process, including the new natural gas pipeline and other infrastructure, will cost approximately \$65 to \$75 million, with \$45 to \$52 million allocable to Texas.¹⁰ The natural gas pipeline is estimated to cost approximately \$57 million of the \$75-million total for the proposed conversion.¹¹ There will not be any net change in the capacity available at the Harrington station following the conversion.¹²

II. Procedural Background

SPS filed its application along with direct testimony in support of the application on August 27, 2021. In Order No. 1 filed on August 31, 2021, the Commission administrative law judge (ALJ) required briefing from Commission Staff and SPS 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 (the Railroad

⁵ Direct Testimony of Jeffery L. West, Attachment JLW-1 (Aug. 27, 2021).

⁶ Direct Testimony of Mark Lytal at 9.

⁷ Direct Testimony of Mark Lytal at 8–9.

⁸ Application at 6, Direct Testimony of Mark Lytal at 8.

⁹ Bullet Points Attachment 2, Direct Testimony of Mark Lytal, Att. ML-2.

¹⁰ Application at 5 (Aug. 27, 2021).

¹¹ See Direct Testimony of Mark Lytal at 24, Att. ML-1.

¹² Direct Testimony of Mark Lytal at 8.16-18 (Aug. 27, 2021).

Commission). Commission Staff and SPS filed briefs on September 30, 2021. The Commission ALJ found the application administratively complete and notice of the application sufficient.¹³

The following parties' motions to intervene have been granted to date: Adobe Creek, Ltd.; Windtree Manor, Ltd.; Texas Industrial Energy Consumers (TIEC); the Sierra Club; and the Alliance of Xcel Municipalities.¹⁴ Commission Staff and TIEC requested referral to the State Office of Administrative Hearings (SOAH).¹⁵

SPS was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by November 19, 2021. Commission Staff, SPS, and the Sierra Club each timely filed a list of issues.

III. Deadline for Decision

PURA § 37.058 applies to CCN proceedings for generation facilities. PURA § 37.058(c) requires the Commission to issue a final order on a CCN involving the purchase of an existing generating facility no later than the 181st day after the date the utility files a CCN application. By contrast, PURA § 37.058(d) requires the Commission to issue a final order on a CCN involving a newly constructed generating facility not later than the 366th day after the date the utility files a CCN application.

Neither subsection (c) nor subsection (d) applies in this CCN proceeding. Although the proceeding pertains to an existing generation facility, no purchase of the facility is involved. Therefore, the deadline in PURA § 37.058(c) does not apply. Likewise, new construction is required, but it is to convert the existing generating station, not to build a new generating facility. Therefore, the deadline in PURA § 37.058(d) does not apply either.

¹³ Order No. 4 (Oct. 6, 2021); Order No. 7 (Nov. 29, 2021)

¹⁴ Order No. 2 (Sept. 21, 2021); Order No. 5 (Oct. 21, 2021); Order No. 8 (Dec. 3, 2021).

¹⁵ Commission Staff's Recommendation on the Application, Notice, and Request for Referral to SOAH (Oct. 5, 2021); Commission Staff's Second Request for Referral to SOAH (Oct. 26, 2021); TIEC's Request for a Hearing (Nov. 19, 2021).

IV. Conditional Approval

If the Commission determines that it should grant the amendment to SPS's CCN, the Commission will limit the authority granted in the order. The authority granted by the order will be limited to a period of seven years from the date the order is signed unless the converted Harrington station is commercially operationalized before that time. It is reasonable, appropriate, and in the public interest for a CCN order not to be valid indefinitely because it is issued based on the facts known at the time of issuance. The Commission may extend the seven-year time period if good cause is shown by demonstrating that the circumstances of this generating-station conversion are such that the above condition should be changed (e.g., a longer period of time may be more appropriate).

V. Threshold Legal and Policy Determinations

The Commission ALJ requested briefing regarding the Commission's authority to authorize the construction, ownership, and operation of a natural gas pipeline as part of the proposed conversion and whether authorization should be sought from the Railroad Commission.¹⁶ The following statements of position were reached in consideration of the arguments of the parties. However, the Commission restates the issue to focus on whether a CCN is required for SPS to build, own, and operate the natural gas pipeline because the Commission has authority to grant any CCN required under Public Utility Regulatory Act (PURA)¹⁷ § 37.051(a). Accordingly, as required by section 2001.058(c) of the Administrative Procedure Act,¹⁸ the Commission states its position on the following threshold issue.

1. Is a CCN required for SPS to build, own, and operate a pipeline supplying natural gas to the converted Harrington station?

The Commission determines that a CCN is required for SPS to build, own, and operate a pipeline supplying natural gas to the converted Harrington station.

¹⁶ Order No. 1 (Aug. 31, 2021)

¹⁷ Tex. Util. Code §§ 11.001–66.016.

¹⁸ Administrative Procedure Act, Tex. Gov't Code §§ 2001.001– 902 (APA)

A CCN is required for the direct or indirect provision of *service* to the public, and a CCN states that the “public convenience and necessity requires or will require the installation, operation, or extension of the *service*.”¹⁹ *Service* is defined in PURA as follows: “‘Service’ has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility’s duties under [PURA] to its patrons, employees, other public utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.”²⁰

In this context, SPS’s duty as an electric utility is to generate electricity. Building, owning, and operating a pipeline to supply natural gas as a fuel source to a generation facility is an act performed in the performance of generating electricity. The parts of the natural gas pipeline and the natural gas itself are supplied so that the generating facility can produce electricity. Stated differently, the natural gas pipeline will be a facility used or supplied by SPS in the performance of generating electricity at the Harrington station. Therefore, building, owning, and operating a pipeline to supply natural gas to the Harrington station constitutes service under PURA’s broad definition. That service was not included in SPS’s original CCN for the Harrington station and requires a CCN amendment just as the converted Harrington station as a natural-gas-only plant was not included in SPS’s original CCN and requires a CCN amendment. Therefore, SPS is required to obtain a CCN to build, own, and operate a pipeline that supplies natural gas to the Harrington facility.

The Commission has exclusive original jurisdiction over an electric utility’s “rates, operations, and *services*” in areas outside a municipality and within a municipality that surrenders jurisdiction to the Commission.²¹ As discussed above, PURA requires a CCN for SPS to build, own, and operate a pipeline supplying natural gas to the Harrington station as part of the service SPS provides to the public. Therefore, the Commission has exclusive original jurisdiction under PURA §§ 37.051, 37.053, 37.056, and 37.058 over SPS’s CCN application for the conversion of

¹⁹ PURA § 37.051(a) (emphasis added).

²⁰ PURA § 11.003(19).

²¹ PURA § 32.001 (emphasis added).

the Harrington station, including for the construction of a 20-inch pipeline that will supply natural gas to the station.

As mentioned by the parties in their briefs, the Railroad Commission has jurisdiction over “persons owning or operating pipelines in Texas,”²² but the Railroad Commission does not regulate the routing of natural gas pipelines.²³ It is not this Commission’s role to determine what jurisdiction the Railroad Commission has with respect to the proposed natural gas pipeline. But as is true in all proceedings, SPS is required to comply with all applicable laws and to obtain whatever regulatory approvals are required from all applicable governmental bodies, including from the Railroad Commission.

VI. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.²⁴ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket. **Unless otherwise specified, any issue that refers to the conversion of the Harrington station includes the construction of the proposed natural gas pipeline.**

Application

1. Is SPS’s application to amend its CCN sufficient?
2. Does the application contain an adequate number of reasonably differentiated alternative pipeline routes to conduct a proper evaluation? In answering this question, consideration must be given to the number of proposed alternatives, the locations of the proposed pipeline, and any associated proposed generation or transmission facilities that influence the location of the line. Consideration may also be given to the facts and circumstances specific to the geographic area under consideration and to any analysis and reasoned justification presented for a limited number of alternative routes. A limited number of alternative routes is not in itself a sufficient

²² Tex. Nat. Res. Code § 81.051(a)(3)

²³ See *Sansom v. Tex. Railroad Comm’n*, 03-19-00469-CV, 2021 WL 20006312 at 2 (Tex. App.—Austin May 20, 2021, no pet. h.) (finding that the Court would not review the Railroad Commission’s decision *not* to promulgate rules regarding pipeline routing).

²⁴ Tex. Gov’t Code § 2003.049(e).

basis for finding an application inadequate when the facts and circumstances or a reasoned justification demonstrates a reasonable basis for presenting a limited number of alternatives. If an adequate number of routes is not presented in the application, the ALJ must allow the applicant to amend the application and to provide proper notice to affected landowners; however, if the applicant chooses not to amend the application, then the ALJ may dismiss the case without prejudice.

3. What is the proposed date of commercial operation for the converted Harrington generating station?
4. What is the total estimated cost, if any, for additional facilities such as, but not limited to, transmission facilities, necessary to ensure that the converted Harrington station will serve Texas customers cost-effectively?
5. Is any land not owned by SPS directly affected by the proposed generation facilities as the term *directly affected* is defined in 16 Texas Administrative Code (TAC) § 22.52(a)(3)?

Notice

6. Did SPS provide notice of the application in accordance with 16 TAC § 22.52(a)(1), (2), and (3)?
7. Did SPS provide notice of the public meeting in accordance with 16 TAC § 22.52(a)(4)?

Public Input

8. What were the principal concerns expressed in the questionnaire responses received at or after any public meetings held by SPS regarding the proposed generating facilities?

General CCN Issue

9. Taking into account the factors set out in the Public Utility Regulatory Act (PURA)²⁵ § 37.056(c), is the proposed CCN amendment necessary for the service, accommodation, convenience, or safety of the public under PURA § 37.056? In answering this issue, please address issues 10 through 30 below.

²⁵ Public Utility Regulatory Act, Tex. Util Code §§ 11 001–66 016

Adequacy of Existing Service and Need for Additional Service

10. Is SPS currently providing adequate generation service?
11. What existing generating facilities does SPS plan to retire in the next five years, and what is the anticipated timeline for those retirements? How do those retirements affect SPS's need to convert the Harrington station to natural gas generation?
12. Has SPS demonstrated a need to maintain the capacity currently provided by the Harrington station?
 - a. Is SPS's projected load sufficiently documented and supported by the preponderance of the evidence?
 - b. If SPS has demonstrated a need to maintain that amount of capacity, is the proposed conversion of the Harrington station a prudent alternative to meet that need to maintain capacity?
13. What alternatives to the proposed CCN amendment were considered to satisfy SPS's identified need, if any, for the amount of generation currently provided by the Harrington station?
 - a. Was purchasing capacity from a competitive generator considered?
 - b. Were other types of investment in existing generation facilities considered?
 - c. Was building new generation facilities considered?
 - d. Was building additional transmission considered?
 - e. Were the environmental compliance costs associated with alternatives adequately considered compared to the environmental compliance costs associated with the proposed conversion of the Harrington station?
 - f. Why did SPS propose conversion of the Harrington station rather than select an alternative proposal?
14. Are the data and analysis provided in SPS's application regarding projected natural gas prices appropriate in light of more current economic conditions?
15. Did SPS adequately consider alternative sources of natural gas and alternative locations for interconnections with existing pipelines?

16. Did SPS adequately consider entering into firm fuel supply or firm transportation contracts as an alternative to constructing a new natural gas pipeline?

Effect of Granting the CCN on SPS and Other Electric Utilities

17. What is the effect on any affected utility in the Southwest Power Pool if the proposed conversion is approved? In addressing this issue, please address the following non-exhaustive list of factors:
- a. What effect, if any, would the proposed conversion have on energy prices?
 - b. What effect, if any, would the proposed conversion have on congestion charges?
 - c. What effect, if any, would the proposed conversion have on reliability-must-run designations of generation units?
 - d. What effect, if any, would the proposed conversion have on satisfying reserve requirements?

Effect on Customers, the Community, and the Environment

18. Will granting the CCN amendment improve service or lower the cost of service to consumers in the area?
- a. What are the potential economic or reliability benefits associated with dual-fuel and fuel-storage capabilities?
 - b. What is the total cost of converting the Harrington station from coal to natural gas? In answering this question, include and adequately explain the constituent costs that compose the total.
 - c. Does SPS's analysis of the lowering of cost of service, if any, sufficiently account for the effects of any recent escalation in commodity costs?
 - d. What is the expected effect of converting the Harrington station on customers' bills?
 - e. Compare differences in service and cost between converting the Harrington station and retiring it.
 - f. Compare the differences in service and cost between converting the Harrington generating station and building new generation facilities.

19. In addition to the factors listed above, please address any other relevant factors, including the following:
- Community values;
 - Recreational and park areas;
 - Historical and aesthetic values; and
 - Environmental integrity.
20. Will the proposed conversion of the Harrington station change SPS's plans for retiring or modifying any other generation facilities in a manner that affects environmental integrity?
21. What is the distance of the proposed natural gas pipeline from habitable structures?
22. Has SPS limited the proximity of the proposed natural gas pipeline to habitable structures with reasonable investments of money and effort?

Route

23. What constraints were taken into consideration in developing the proposed routes for the natural gas pipeline?
24. Are the pipeline routes presented in the application representative of routes that would typically be considered by a pipeline owner?
25. Weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B), which proposed pipeline route is the best alternative?
- Did SPS adequately consider the inherent differences between electric transmission lines and natural gas pipelines and weigh the factors accordingly?
 - Alternatively, should the Commission approve more than one proposed route as routes that meet the requirements of PURA and the Commission's rules?
26. Did SPS consider a more direct pipeline route? If so, why was such an alternative route not presented?
27. Are there alternative routes or configurations of facilities that would have a less negative effect on landowners? What would be the incremental cost of those routes or configurations of facilities? In answering these questions, be sure to address and appropriately weigh the

inherent differences, if any, between transmission lines and pipelines in terms of the effect on landowners.

28. If alternative routes or configurations of facilities are considered because of individual landowners' preferences, please address the following issues:
- a. Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?
 - b. Have the accommodations to landowners diminished reliability?
29. If complete or partial agreement of the parties is reached on a route that relies on modifications to the pipeline routes as noticed in the application, please address the following issues:
- a. Did SPS comply with the additional notice requirements of 16 TAC § 22.52?
 - b. Was written consent obtained from landowners directly affected by the proposed modifications to the pipeline routing?

Renewable Energy

30. To the extent applicable, what is the effect of granting the CCN amendment on the ability of this state to meet PURA's goal of adding renewable energy resources established by PURA § 39.904(a)?

Reliability

31. What is the effect on reliability in the Southwest Power Pool transmission system or the costs of that entity to operate its system if the proposed CCN amendment is approved?
32. What capabilities, if any, are included in the converted Harrington station and associated natural gas pipeline that enhance weatherization for extreme cold weather?

Texas Parks and Wildlife Department

33. On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application in accordance with Texas Parks and Wildlife Code § 12.0011(b)? If so, please address the following issues:
- a. What modifications, if any, should be made to the proposed generating facilities as a result of any recommendations or comments?

- b. What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?
- c. What other disposition, if any, should be made of any recommendations or comments?
- d. If any recommendation or comment should not be incorporated in the final order, or should not be acted on, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.

Other Regulatory Approvals

- 34. From what other regulatory authorities must SPS or an SPS-affiliated entity seek approval to convert the Harrington station from coal generation to natural gas?
- 35. Has SPS filed applications for any of the approvals necessary from other regulatory authorities? If so, when were the applications filed?
- 36. What approvals, if any, will SPS need to obtain from the Railroad Commission of Texas?
- 37. Which regulatory authorities have approved applications relating to the proposed conversion of the Harrington station, and which regulatory authorities have disapproved them? When is action anticipated on any applications that have not yet been approved or disapproved?
- 38. Has SPS made any commitments to any other regulatory authority regarding the facilities proposed in the application for this proceeding? If so, what are those commitments, and would it be appropriate to condition any approvals in this docket on similar commitments?

Permits

- 39. What permits, licenses, plans, or permission will be required for construction and operation of the proposed generating facilities? If any permission or easement is required from a state or federal agency, please address in detail the following:
 - a. What agency is involved, and what prior communication has SPS had with the agency regarding the proposed generating facilities?
 - b. Has the agency granted the required permission or easement? If not, when is a decision by the agency expected?

- c. What contingencies are in place if the agency does not grant the required permission or easement or if the process to obtain the required permission or easement would materially affect the estimated cost, proposed design plans, or anticipated timeline to construct the proposed generating facilities?

Limitation of Authority

40. Are the circumstances for this CCN amendment such that the seven-year limit discussed in section IV of this Order should be changed?

Other Issue

41. What conditions, reporting requirements, or reviews, if any, should the Commission impose if it conditionally approves the application?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

VII. Issues Not to be Addressed

The Commission identifies the following issues that need not be addressed in this proceeding for the reasons stated.

1. What is the appropriate compensation for right-of-way or condemnation of property?

The Commission does not have the authority to adjudicate or set the amount of compensation for rights-of-way or for condemnation.

VIII. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding threshold legal and policy issues and issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues and issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this Order is preliminary in nature and is

entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the 16th day of December 2021.

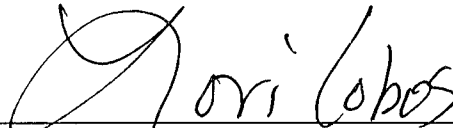
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