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**SOAH DOCKET NO. 473-22-1074  
PUC DOCKET NO. 52487**

<b>APPLICATION OF ENTERGY TEXAS,</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>INC. TO AMEND ITS CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY TO</b>	<b>§</b>	<b>OF</b>
<b>CONSTRUCT ORANGE COUNTY</b>	<b>§</b>	
<b>ADVANCED POWER STATION</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**SUPPLEMENTAL DIRECT TESTIMONY**

**OF**

**DEBORAH SAXTON**

**ON BEHALF OF**

**ENTERGY TEXAS, INC.**

**JANUARY 2022**

**ENTERGY TEXAS, INC.**  
**SUPPLEMENTAL DIRECT TESTIMONY OF DEBORAH SAXTON**  
**SOAH DOCKET NO. 473-22-1074**  
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**EXHIBITS**

Exhibit DS-SD-1      TPWD Recommendations and ETI Responses

1                                   **I. INTRODUCTION AND PURPOSE**

2   Q1.    PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TITLE.

3   A.    My name is Deborah Saxton. My business address is 2107 Research Forest Drive,  
4           FL 6, The Woodlands, Texas 77380. I am the Environmental Services Manager for  
5           Entergy Services, LLC (“ESL”), the service company affiliate of Entergy Texas, Inc.  
6           (“ETI” or the “Company”).

7  
8   Q2.    ARE YOU THE SAME DEBORAH SAXTON WHO FILED DIRECT  
9           TESTIMONY ON BEHALF OF ETI IN THIS PROCEEDING?

10   A.    Yes.

11  
12   Q3.    WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT TESTIMONY?

13   A.    The purpose of my supplemental direct testimony is to address Issue Nos. 35 and 36  
14           in the Commission’s Preliminary Order.

15  
16   Q4.    DO YOU SPONSOR ANY EXHIBITS?

17   A.    Yes, I sponsor Exhibit DS-SD-1, TPWD Recommendations and ETI Responses.

18  
19   Q5.    PLEASE SUMMARIZE YOUR SUPPLEMENTAL DIRECT TESTIMONY.

20   A.    First, in my exhibit to this testimony, Exhibit DS-SD-1, TPWD Recommendations  
21           and ETI Responses, I provide a response to the Texas Parks and Wildlife  
22           Department’s (“TPWD”) recommendations filed in this proceeding on  
23           November 9, 2021 (“the Letter”). In the exhibit, I have also identified the

1 recommendations in the Letter that should not be included in the Commission's order  
2 in this proceeding because they are not applicable or would be overly burdensome in  
3 relation to the potential impact the recommendations seek to avoid.

4 This testimony also explains that the Orange County Advanced Power Station  
5 ("OCAPS") will be located within the Coastal Management Program Boundary as  
6 defined in 31 Tex. Admin. Code ("TAC") § 503.1(a). All of OCAPS is seaward of  
7 the Coastal Facility Designation Line as defined in 31 TAC § 19.2(A)(21). OCAPS  
8 complies with the goals and applicable policies of the Coastal Management Program  
9 in accordance with 16 TAC § 25.102(a). The facilities will not have any direct and  
10 significant effects on any of the applicable coastal natural resource areas listed in 31  
11 TAC § 501.3(b).

12

13 **II. TEXAS PARKS AND WILDLIFE DEPARTMENT**  
14 **(PRELIMINARY ORDER ISSUE NO. 36)**

15 Q6. DID THE TPWD FILE A LETTER IN THIS PROCEEDING?

16 A. Yes. TPWD filed the Letter with recommendations in this proceeding on  
17 November 9, 2021.

18

19 Q7. HAVE YOU CONSULTED WITH TPWD REGARDING THE  
20 RECOMMENDATIONS OUTLINED IN THE TPWD 2021 LETTER AND ETI'S  
21 RESPONSES?

22 A. Yes. On December 17, 2021, I, along with David Fry and Travis Wycoff,  
23 representatives of our environmental consultant, ERM, discussed the

1 recommendations and comments in the Letter, along with ETI's plans for addressing  
2 the items raised by TPWD, with TPWD representatives Rachel Lange, Habitat  
3 Assessment Biologist and Laura Zebehazy, Program Leader – Habitat Assessment  
4 Program.

5

6 Q8. WHAT MODIFICATIONS, IF ANY, SHOULD BE MADE TO OCAPS AS A  
7 RESULT OF ANY RECOMMENDATIONS OR COMMENTS?

8 A. No material modifications to OCAPS should be made as a result of TPWD's  
9 recommendations and comments in the Letter.

10

11 Q9. HOW DOES ETI PROPOSE TO ADDRESS TPWD'S RECOMMENDATIONS IN  
12 THE LETTER?

13 A. As a general proposition, when considering all TPWD's recommendations, it is  
14 important to recognize that the OCAPS site is one that was previously disturbed for  
15 industrial use as the Sabine Power Station. Therefore, construction, operation, and  
16 maintenance of OCAPS will result in a minimal incremental effect on the  
17 environment. Furthermore, ETI has designed and planned OCAPS to have minimal  
18 impacts to the environment. As set out in my direct testimony, the Environmental  
19 Assessment ("EA") (Exhibit DS-1 to my direct testimony), this supplemental  
20 testimony, and the exhibit to this testimony (Exhibit DS-SD-1), TPWD  
21 Recommendations and ETI Responses, ETI will use a variety of avoidance,  
22 minimization, and mitigation measures throughout the construction and operation of  
23 OCAPS. With the implementation of mitigation measures where necessary, the

1 potential environmental implications of OCAPS are manageable and reasonable. ETI  
2 will incorporate best management practices where practical during construction.

3 I provide a specific response to each of TPWD's recommendations in the  
4 Letter in the exhibit to this testimony, Exhibit DS-SD-1, TPWD Recommendations  
5 and ETI Responses. In the exhibit, I have also identified the recommendations in the  
6 Letter that should not be included in the Commission's final order in this proceeding  
7 because they are not applicable or would be overly burdensome in relation to the  
8 potential impact the recommendations seek to avoid.

9

10 Q10. WHAT ACTION WILL ETI TAKE IF WILDLIFE OR PROTECTED SPECIES  
11 ARE OBSERVED ONSITE DURING CONSTRUCTION OF OCAPS?

12 A. ETI will use environmental inspectors and trained contractors to check for wildlife  
13 during construction. ETI will use the stop work/notification authority to notify  
14 TPWD and/or USFWS if state or federally listed species are observed onsite during  
15 construction. In the event OCAPS personnel need to handle or remove state-listed  
16 species, ETI will obtain a scientific permit from TPWD to do so.

17

18 Q11. BEYOND THE RECOMMENDATIONS ADDRESSED HEREIN AND IN  
19 EXHIBIT DS-SD-1, DO YOU RECOMMEND ANY MODIFICATIONS,  
20 LIMITATIONS, OR CONDITIONS ON OR TO OCAPS BASED ON TPWD'S  
21 RECOMMENDATIONS IN THE LETTER?

22 A. No. I believe the measures that I have described herein and in Exhibit DS-SD-1  
23 appropriately address TPWD's recommendations in the Letter.

1 Q12. WHAT DISPOSITION, IF ANY, SHOULD BE MADE OF ANY  
2 RECOMMENDATIONS OR COMMENTS IN THE LETTER?

3 A. I believe that I have provided a reasonable response to each of TPWD's  
4 recommendations in the Letter. ETI will continue to work with TPWD to ensure that  
5 ETI is in compliance with the applicable laws and regulations that address the  
6 environmental aspects of OCAPS.

7 As I stated in my direct testimony in this case, the site of OCAPS is one that  
8 was previously disturbed for industrial use as the Sabine Power Station, resulting in a  
9 minimal incremental effect on the environment. ETI has designed and planned  
10 OCAPS to have minimal impacts to the environment. As set out in my direct  
11 testimony, the Environmental Assessment (Exhibit DS-1 to my direct testimony), and  
12 this supplemental testimony, ETI will use a variety of avoidance, minimization, and  
13 mitigation measures throughout the construction and operation of OCAPS. With the  
14 implementation of mitigation measures where necessary, the potential environmental  
15 implications of OCAPS are manageable and reasonable.

16 For these reasons, the Commission should make findings in its final order that  
17 ETI's responses to TPWD's recommendations, as set forth in my Exhibit DS-SD-1,  
18 are reasonable and sufficient.



1                                    **III.    COASTAL MANAGEMENT PROGRAM**  
2                                    **(PRELIMINARY ORDER ISSUE NO. 35)**

3    Q13.   IS ANY PART OF THE PROPOSED GENERATION FACILITY LOCATED  
4            WITHIN THE COASTAL MANAGEMENT PROGRAM BOUNDARY AS  
5            DEFINED IN 31 TAC § 503.1(a)?

6    A.     Yes.   As with the adjacent Sabine units being replaced, the entirety of the OCAPS  
7            project will be sited within the mapped coastal management program boundary.

8  
9    Q14.   IS ANY PART OF THE OCAPS PROJECT SEAWARD OF THE COASTAL  
10          FACILITY DESIGNATION LINE AS DEFINED IN 31 TAC § 19.2(A)(21)?

11   A.     Yes.   Again, as with the adjacent Sabine units being replaced, the entirety of OCAPS  
12          will be seaward of the coastal facility designation line.

13  
14   Q15.   WHEN MAY THE COMMISSION GRANT A CERTIFICATE OF  
15          CONVENIENCE AND NECESSITY FOR A GENERATING RESOURCE  
16          LOCATED WITHIN COASTAL MANAGEMENT ZONE BOUNDARY?

17   A.     According to 16 TAC § 25.102(a),

18            The commission may grant a certificate for the construction of  
19            generating or transmission facilities within the coastal boundary as  
20            defined in 31 T.A.C. §503.1 only when it finds that the proposed  
21            facilities are consistent with the applicable goals and policies of the  
22            Coastal Management Program specified in 31 T.A.C. §501.14(a), or  
23            that the proposed facilities will not have any direct and significant  
24            impacts on any of the applicable coastal natural resource areas  
25            specified in 31 T.A.C. §501.3(b).

1 Q16. IS THE FACILITY CONSISTENT WITH THE GOALS AND APPLICABLE  
2 POLICIES OF THE COASTAL MANAGEMENT PROGRAM?

3 A. Yes. In 2004, 31 TAC § 501.14(a) was repealed and replaced by 31 TAC § 501.16.<sup>1</sup>  
4 Currently, 31 TAC § 501.12 lists the Goals of the Coastal Management Program and  
5 31 TAC § 501.16(a) describes the Policies for Construction of Electric Generating  
6 and Transmission Facilities of the Coastal Management Program.

7 I have reviewed the goals of the Coastal Management Program in 31 TAC §  
8 501.12, which are as follows:

9 (1) to protect, preserve, restore, and enhance the diversity, quality,  
10 quantity, functions, and values of coastal natural resource areas  
11 (CNRAs);

12 (2) to ensure sound management of all coastal resources by allowing  
13 for compatible economic development and multiple human uses of the  
14 coastal zone;

15 (3) to minimize loss of human life and property due to the impairment  
16 and loss of protective features of CNRAs;

17 (4) to ensure and enhance planned public access to and enjoyment of  
18 the coastal zone in a manner that is compatible with private property  
19 rights and other uses of the coastal zone;

20 (5) to balance the benefits from economic development and multiple  
21 human uses of the coastal zone, the benefits from protecting,  
22 preserving, restoring, and enhancing CNRAs, the benefits from  
23 minimizing loss of human life and property, and the benefits from  
24 public access to and enjoyment of the coastal zone;

25 (6) to coordinate agency and subdivision decision-making affecting  
26 CNRAs by establishing clear, objective policies for the management of  
27 CNRAs;

28 (7) to make agency and subdivision decision-making affecting CNRAs  
29 efficient by identifying and addressing duplication and conflicts  
30 among local, state, and federal regulatory and other programs for the  
31 management of CNRAs;

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<sup>1</sup> 29 Tex. Reg. 7038 (Jul. 23, 2004) and 29 Tex. Reg. 9409 (Oct. 1, 2004).

(8) to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date;

(9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP; and

(10) to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

The OCAPS facility is consistent with these goals for the same reasons discussed below, which address how OCAPS is consistent with the applicable policies set forth in 31 TAC § 501.16(a).

31 TAC § 501.16(a) provides in relevant part:

(a) Construction of electric generating facilities and electric transmission lines in the coastal zone shall comply with the policies in this section.

(1) New electric generating facilities shall, where practicable, be located at previously developed sites. New electric generating facilities at undeveloped sites shall be located so that future expansion will avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable. To the extent applicable to the public beach, the policies in this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(2) Electric generating facilities using once-through cooling systems shall be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms.

(3) Electric generating facilities shall be constructed at sites selected to have the least adverse effects practicable on recreational uses of CNRAs and on areas used for spawning, nesting, and seasonal migrations of terrestrial and aquatic fish and wildlife species.

1           The OCAPS site is one that was previously disturbed for industrial use as the  
2           Sabine Power Station, which complies with the policy set out in 31 TAC  
3           §501.16(a)(1) that states, in relevant part, “new electric generating facilities shall,  
4           where practicable, be located at previously developed sites.” With regard to 31 TAC  
5           § 501.16(a)(2), OCAPS will not use once through cooling. Finally, construction of  
6           OCAPS at a previously developed site will also comply with the requirement in 31  
7           TAC § 501.16(a)(3) that electric generating facilities be constructed to have the least  
8           adverse effects practicable on recreational uses of coastal natural resource areas  
9           (“CNRAs”) used for spawning, nesting, and seasonal migrations of terrestrial and  
10          aquatic fish and wildlife species.

11  
12       Q17. WILL THE FACILITY HAVE ANY DIRECT AND SIGNIFICANT IMPACTS ON  
13       ANY OF THE APPLICABLE COASTAL NATURAL RESOURCE AREAS  
14       SPECIFIED IN 31 TAC § 501.3(b)?

15       A. No. The CNRAs specified and defined in 31 TAC § 501.3(b) are: coastal barrier,  
16       coastal historic area, coastal preserve, coastal shore area, coastal wetlands, critical  
17       dune area, critical erosion area, Gulf beach, hard substrate reef, oyster reef, special  
18       hazard area, submerged land, submerged aquatic vegetation, tidal sand or mud flat,  
19       water of the open Gulf of Mexico, and water under tidal influence. Of those CNRAs,  
20       the only CNRAs present at the OCAPS site are: coastal wetlands, submerged lands,  
21       and waters under tidal influence. As explained below, the OCAPS facility will not  
22       have a direct and significant impact on the applicable CNRAs.

1           OCAPS is located within a previously developed site and will avoid and  
2           minimize impacts to critical areas where practicable. OCAPs will utilize closed-cycle  
3           cooling that will reduce water use and provide least adverse effects on estuarine  
4           organisms. Proposed dredging activities will occur in areas potentially used for  
5           spawning of aquatic fish species. ETI will implement best management practices that  
6           will allow for the least adverse effects on these resources. The practices include  
7           matting, hydraulic dredging, and silt fencing. Transmission line modifications will be  
8           located within existing rights-of-way or previously disturbed areas and will result in  
9           minimal adverse effects.

10           Dredging activities will be completed in accordance with the U.S. Army  
11           Corps of Engineers (“USACE”) Section 404 and Section 10 permit requirements and  
12           conditions. Proposed dredging activities will be considered maintenance dredging  
13           within the existing Sabine Discharge Canal and will align with the previously  
14           permitted boundaries and elevations. No new or additional areas or depths will be  
15           dredged above or beyond the original permitted design for the discharge canal. No  
16           adverse effects to wetlands will result as part of the dredging activities. Dredging  
17           will not cause or contribute to negative impacts to surface water quality standards.  
18           All dredge materials will be placed within an approved Dredge Material Placement  
19           Area. Dredging and disposal and placement of materials will comply with the  
20           applicable standards for sediment toxicity and all dredge materials will be tested prior  
21           to dredging.

22           Coastal wetlands: The coastal wetlands to the west of the OCAPS site will  
23           not be directly or significantly impacted because dredging activities will be within

1 maintained open water areas. The coastal wetlands to the east of the OCAPS site will  
2 be matted to prevent direct impacts or significant loss.

3 Submerged lands: The submerged lands associated with the dredging  
4 activities will not be directly or significantly impacted because they have been and  
5 will remain associated with a long-term maintenance program at the Sabine plant. No  
6 new or additional areas of submerged lands will be directly or significantly impacted  
7 for the dredging activities. Crushed rock will be placed on submerged land at the  
8 proposed wastewater outfall. The materials used will be minimal and are intended to  
9 provide bank stabilization and prevent erosion and sedimentation.

10 Waters under tidal influence: For waters under tidal influence, the dredging  
11 activities will have a direct, but not significant impact. ETI will use best management  
12 practices, including hydraulic dredging, to minimize sedimentation and turbidity.  
13 The proposed wastewater outfall will also have a direct, but not significant impact to  
14 waters under tidal influence because of the minimal amount of material that will be  
15 used to provide bank stabilization and prevention of erosion and sedimentation.

16 Accordingly, the OCAPS facility is both consistent with the goals and  
17 applicable policies of the CMP in accordance with 16 TAC § 25.102(a) and will also  
18 not have any direct and significant impact on the applicable CNRAs (coastal  
19 wetlands, submerged lands, and waters under tidal influence).

1 **IV. OTHER ISSUES**

2 Q18. DID ETI RAISE THE ELEVATION OF THE SITE TO ADDRESS ITS LOCATION  
3 ON THE GULF COAST?

4 A. Yes. Carlos Ruiz addresses this issue in his Direct Testimony in this proceeding on  
5 pages 8-10, including stating that the base site elevation of OCAPS was set at 14 feet  
6 to address 500-year flood events based on current climate models.

7  
8 Q19. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?

9 A. Yes, at this time.

TPWD Recommendation in November 2021 Letter	Letter Page	ETI Response
Please review the TPWD correspondence in Attachment 1 [of the Environmental Assessment] and consider the recommendations provided, as they remain applicable to the project as proposed.	3	ETI followed the recommendations in the May 29, 2020 letter from TPWD to avoid and minimize impacts during the initial project siting and design. The recommendations from TPWD in the May 29, 2020 letter were the basis for developing the EA.
TPWD recommends the judicious use and placement of sediment control fence to exclude wildlife from the construction area where practical. In many cases, sediment control fence placement for the purposes of controlling erosion and protecting water quality can be modified minimally to also provide the benefit of excluding wildlife access to construction areas. For linear projects, fencing can be limited to active-construction areas within the project site. The exclusion fence should be buried at least six inches and be at least 24 inches high. The exclusion fence should be maintained for the life of the project and only removed after the construction is completed and the disturbed site has been revegetated.	3	ETI plans to use 24" silt fencing for wildlife exclusion during the construction of OCAPS.
For soil stabilization and/or revegetation of all disturbed areas within the project area, TPWD recommends erosion and seed/mulch stabilization materials that avoid entanglement hazards to wildlife species. Because the mesh found in many erosion control blankets or mats pose an entanglement hazard to wildlife, TPWD recommends the use of no-till drilling, hydromulching and/or hydroseeding rather than erosion control blankets or mats due to a reduced risk to wildlife. If erosion control blankets or mats will be used, the product should contain no netting or contain loosely woven, natural fiber netting in which the mesh design allows the threads to move, therefore allowing expansion of the mesh openings. Plastic mesh matting and hydromulch containing microplastics should be avoided.	3	ETI will use erosion control blankets ("ECBs") primarily in areas in ditches, roadways, or highly sloped areas. Most of the site will be stabilized using crushed aggregate base fill or hydroseeding. Preliminary design includes the use of a Federal Highway Administration-approved photodegradable product limited to the highly sloped areas where other stabilization methods are not feasible. ETI will continue to evaluate erosion control options to minimize the impact of the project.
Any mulched vegetation left in place to provide soil remediation should be less than 2 inches thick. The mulch that is left in place should not inhibit revegetation of right-of-way (ROW) or other greenspace within the ETI property.	4	Current plans do not include spreading of mulched vegetation for soil remediation. If spreading mulched vegetation is deemed necessary, ETI will endeavor to limit the thickness of such mulched vegetation to less than two inches.



TPWD Recommendation in November 2021 Letter	Letter Page	ETI Response
Inappropriately timed trimming and/or clearing can contribute to oak wilt, a disease that has killed over 1 million trees in Texas. TPWD advises against vegetation clearing between February 1 and June 15, which is the highest risk season for oak wilt. The use of a rotary mower along ROW borders leaves splintered, jagged cuts and adjacent vegetation communities become vulnerable to disease and infestations (e.g. oak wilt, oak decline). Regardless of season, all trimming cuts or other wounds to oak trees, including freshly cut stumps and damaged surface roots, should be treated immediately with a wound or latex paint to prevent exposure to contaminated insect vectors. TPWD's primary recommendation is to avoid impacts to native woodlands; if impacts are unavoidable, TPWD recommends hand-clearing within areas of native oaks.	4	The Commission should not include this recommendation in the order in this docket. This recommendation is not applicable because almost all vegetation within the OCAPS construction area will be permanently cleared.
Maintenance mowing should be timed to occur between September and December. If the conditions are too dry and pose a fire or other safety hazard, mowing should be postponed until conditions allow for safe mowing.	4	The Commission should not include this recommendation in the Order in this docket. The mowing that may be necessary will be limited to only those areas where mowing is necessary to ensure security and safety at the OCAPS facility. As previously stated, most of the area will be constructed with crushed aggregate and vegetated areas will be limited.
During construction, operation, and maintenance of the proposed facility, TPWD recommends observing slow (25 miles per hour, or less) speed limits within the project site. Reduced speed limits would allow personnel to see wildlife in the vehicle path and avoid harming them.	4	A speed limit of 15 miles-per-hour or lower will be observed during the construction, operation, and maintenance of OCAPS.
TPWD recommends any PUC certificate preclude vegetation clearing activities during the general bird nesting season, March 15 through September 15, to avoid adverse impacts to birds. If clearing vegetation during bird nesting season is unavoidable, TPWD recommends ETI survey the proposed route for active nests (nests with eggs or young). TPWD recommends that a minimum 150-foot buffer of vegetation remain around any nests that are observed prior to disturbance and occupied nests and buffer vegetation not be disturbed until the eggs have hatched and the young have fledged.	4-5	The Commission should not include these recommendations in the Order in this docket. ETI will work to clear vegetation outside of the general bird nesting season, when possible. However, if site clearing is delayed and must be conducted in the bird nesting period, ETI will conduct pre-construction clearance surveys for nests and wildlife.
TPWD recommends minimizing electrocution hazards to perching birds and marking lines in areas of high bird use to minimize collision risks. For additional information, please see the guidelines published by USFWS and the Avian Power Lines Interaction Committee (APLIC) in the updated guidance document Reducing Avian Collisions with Power Lines: State of the Art in 2012. This manual, released on December 20, 2012, identifies beneficial practices and provides specific guidance to help electric utilities and cooperatives reduce bird collisions with power lines. A companion document, Suggested Practices for Avian Protection on Power Lines, was published by APLIC and the USFWS in 2006.	5	ETI will adhere to the Federal Migratory Bird Treaty Act and review the guidelines published by United States Fish and Wildlife Service ("USFWS") and the Avian Power Lines Interaction Committee in the guidance document titled Reducing Avian Collisions with Power Lines: State of the Art in 2012 and the companion document, published by the Avian Power Lines Interaction Committee and the USFWS in 2006 as recommended by TPWD.

TPWD Recommendation in November 2021 Letter	Letter Page	ETI Response
Please review the Federal Law: Migratory Bird Treaty Act section above for recommendations as they would also serve to minimize potential impacts to federally listed birds.	5	TPWD will review the Migratory Bird Treaty Act as recommended by TPWD.
The black rail and presence of its habitat within the proposed OCAPS project site is discussed briefly within Section 3.12.1.4 of the EA in the context of the MBTA; however, there is no discussion regarding impacts to the black rail in relation to the ESA. The black rail was officially listed under the ESA on November 9, 2020. TPWD recommends ETI conduct a thorough black rail occupancy assessment and evaluation of potential impacts relative to the ESA to the black rail and any potential suitable habitat within the project area.	6	The Commission should not include this recommendation in the order in this docket. Although the black rail species is not currently listed by either TPWD or the USFWS as occurring in Orange County, Texas, recent information indicates that the black rail species occurs in the County. ETI identified estuarine marsh on the east and west sides of the Sabine facility and the OCAPS site that would be crossed by a relocated transmission line and the proposed dredging of the discharge canal. ETI does not anticipate impacts to the black rail or its habitats based on planned or proposed construction activities. ETI will use temporary matting in marsh areas to limit impacts to the area identified as potential habitat for the black rail species during construction of the transmission line and dredging activities will only affect open water habitats not associated with the black rail. ETI will coordinate with the USFWS Clear Lake Field Office to further evaluate potential impacts and avoidance/mitigation strategies for the black rail species.
TPWD recommends that potential impacts to West Indian manatee should not be totally discounted and be granted further consideration in consultation with the USFWS.	6	As ETI clarified in the December 17, 2021 discussion with TPWD, the Sabine intake canal has barriers that would preclude a wayward West Indian manatee from reaching the construction area along the intake canal. However, there is a slight potential for manatees to occur within the Sabine discharge canal that is scheduled to undergo maintenance dredging as part of the construction of OCAPS. During the construction of OCAPS, ETI will inform dredge vessel operators of the potential for West Indian manatees and require that dredge vessels be operated at slow speeds within the discharge canal to minimize the potential for vessel strikes during the maintenance dredging. Dredging activities are currently planned to occur outside of the documented periods when the West Indian manatee is known to occur in the region of the OCAPS project. ETI will coordinate with the USFWS Clear Lake Field Office to further evaluate potential impacts and mitigation strategies for the West Indian manatee.

TPWD Recommendation in November 2021 Letter	Letter Page	ETI Response
<p>Since wetland impacts associated with the proposed project would be permitted through a U.S. Army Corps of Engineers' Nationwide Permit, TPWD believes Section 7 consultation is appropriate and should be pursued for the black rail and West Indian manatee.</p>	6-7	<p>ETI will coordinate with USFWS regarding the black rail and West Indian manatee.</p>
<p>Please review the Federal Law : Migratory Bird Treaty Act section above for recommendations as they are also applicable for chapter 64 of the PWC compliance.</p>	7	<p>ETI will review the Migratory Bird Treaty Act as recommended by TPWD and implement measures where feasible and applicable.</p>
<p>To avoid or minimize potential adverse impacts to aquatic species, TPWD recommends implementing additional construction methodologies and beneficial management practices (BMP), including constructing stream crossings that do not obstruct flow and ensuring that permanent or temporary fills do not smother freshwater mussels.</p>	8	<p>The Commission should not include this recommendation in the order in this docket. OCAPS has been designed to avoid and minimize impacts to aquatic habitat because project fill impacts will occur within man-made drainages that do not have significant riparian zones or sensitive aquatic organisms. Wetland delineations identified man-made drainage ditches within the OCAPS site that were unnaturally straight and engineered to facilitate the drainage of excess surface water off-site. The man-made drainages were observed during the survey as supporting aquatic life including snakes, small fish, waterfowl, and frogs. However, freshwater mussels were not observed . Construction of OCAPS will result in some fill impacts to surface waters that will be permitted in accordance with the USACE and Texas Commission on Environmental Quality ("TCEQ") requirements. ETI will utilize industry standard construction best management practices such as silt fencing, erosion controls, hydroseeding, and revegetation to stabilize soils and minimize potential erosion and sedimentation into onsite and offsite waterbodies.</p>

TPWD Recommendation in November 2021 Letter	Letter Page	ETI Response
<p>To minimize disturbance to streams and to minimize impacts to aquatic life, TPWD recommends allowing personnel and equipment to enter streams only when essential to the work being done. If work would be conducted within riparian areas, only vegetation impeding construction should be removed, equipment should not be driven over vegetation when it is wet, and heavy machinery should not be stored on vegetative cover for long periods of time. Protective mats should be utilized during construction to reduce the amount of soil and root disturbance and aid in the recovery of plants.</p>	8	<p>The Commission should not include this recommendation in the order in this docket. There are no natural streams or associated aquatic resources or natural riparian areas associated with the project. Aquatic resources consist of man-made drainage ditches used for stormwater runoff. Impacts from OCAPS will not result in losses to riparian zones as there are not significant riparian zones associated with the man-made ditches. There are not any natural streams within the OCAPS project site. OCAPS has been designed to avoid and minimize impacts to aquatic habitat because project fill impacts will occur within man-made drainages that do not have significant riparian zones or sensitive aquatic organisms. Construction of OCAPS will result in some fill impacts to surface waters that will be permitted in accordance with USACE and TCEQ requirements. ETI will utilize industry standard construction best management practices such as silt fencing, erosion controls, hydroseeding, and revegetation to stabilize soils and minimize potential erosion and sedimentation into onsite and offsite waterbodies. Protective mats will be utilized during installation of the transmission line within the marsh areas along the eastern OCAPS boundary.</p>
<p>TPWD recommends avoiding and minimizing impacts to bottomland/riparian woodlands. Healthy and intact riparian zones are an integral component to stream health. Riparian zones reduce sedimentation by stabilizing sediment. Sediments within the water can reduce the capacity of downstream reservoirs, clog fish gills, bury mussels and their preferred habitats, and reduce instream habitat, creating homogenized flat, sandy topography that benefits few species. Healthy riparian zones also contribute to instream structural habitat by providing woody debris. Tree canopy cover from the riparian zone moderates and cools water temperature, supporting more fish and mussel species than sunny, warm water. Allochthonous nutrient input from riparian plant leaf litter contribute large amounts of energy into stream systems and form the basis of healthy, diverse, and robust food webs and aquatic communities.</p>	8	<p>The Commission should not include this recommendation in the order in this docket. The man-made drainage ditches that will be impacted by OCAPS will not result in impacts to riparian zones as there are not significant riparian zones associated with the man-made ditches. There are not any natural streams within the OCAPS project site. OCAPS has been designed to avoid and minimize impacts to bottomland forest and forested wetlands where possible.</p>

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If construction or maintenance related activities within water resources are anticipated to occur, then TPWD recommends ETI coordinate with TPWD Kills and Spills Team (KAST) to develop a plan to avoid impacts to aquatic resources and, in some instances, relocate aquatic resources outside of the project area. The coordination process should include the development of a written Aquatic Resources Relocation Plan (ARRP) to control and limit the impacts of construction, operation or maintenance related projects on aquatic resources. An ARRP for this project can be submitted to Ms. Claire Iseton at (281) 534-0137 or Claire.Iseton@tpwd.texas.gov.	9	The Commission should not include this recommendation in the order in this docket. OCAPS has been designed to avoid and minimize impacts to aquatic habitat because project fill impacts will occur within man-made drainages that do not have significant riparian zones or sensitive aquatic organisms. No protected aquatic resources requiring relocation are known to occur within the OCAPS impact areas. In the event that protected species are identified, ETI will coordinate with TPWD and USFWS.
If construction occurs during times when water is present in streams and dewatering activities or other harmful construction activities are involved, then TPWD recommends relocating potentially impacted native aquatic resources in conjunction with the Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters and an ARRP. The ARRP should be completed and approved by the department 30 days prior to dewatering and/or resource relocation and submitted with the application for a no - cost Permit to Introduce Fish, Shellfish, or Aquatic Plants into Public Waters. ETI must receive formal approval of the ARRP by TPWD prior to initiating dewatering, maintenance, or construction related activities.	9	The Commission should not include this recommendation in the order in this docket. There are no natural streams within the OCAPS project site. OCAPS has been designed to avoid and minimize impacts to aquatic habitat because project fill impacts will occur within man-made drainages that do not have significant riparian zones or sensitive aquatic organisms. No protected aquatic resources requiring relocation are known to occur within the OCAPS impact areas. In the event that protected species are identified, ETI will coordinate with TPWD and USFWS.
TPWD recommends use of BMPs for riparian areas to minimize potential impacts to sensitive aquatic organisms. BMPs would include measures such as avoiding construction during spawning periods and use of double silt fences and doubling soil stabilization measures along the banks to avoid increasing the turbidity of the creek. If dewatering activities and other project-related activities cause mortality to fish and wildlife species, then the responsible party would be subject to investigation by the TPWD KAST and will be liable for the value of the lost resources under the authority of PWC sections 12.0011(b)(1) and 12.301.	9	The Commission should not include this recommendation in the order in this docket. The man-made drainage ditches that will be impacted by OCAPS will not result in impacts to riparian zones as there are not significant riparian zones associated with the man-made ditches. There are not any natural streams within the OCAPS project site. OCAPS has been designed to avoid and minimize impacts to aquatic habitat because project fill impacts will occur within man-made drainages that do not have significant riparian zones or sensitive aquatic organisms. In the event that protected species are identified, Entergy will coordinate with TPWD and USFWS.
Due to the lack of information on how ETI will not impact state listed species, TPWD recommends review of the information and implementation of the BMP pertaining to state listed species provided in the May 29,2020, correspondence from this agency.	10	Prior to construction of OCAPS, ETI will evaluate the state-listed species with potential to occur in the project and will follow, where practical, the recommended best management practices in the May 29, 2020 letter to reduce impacts.

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<p>Please review the TPWD RTEST Orange County species list since other species in addition to those discussed in this letter could be present within the project area depending upon habitat availability. Please note that the TPWD RTEST application undergoes regular updates. Please routinely review the RTEST county species lists for this and all other proposed projects. The USFWS should be contacted for species occurrence data, guidance, permitting, survey protocols, and mitigation for federally listed species. Determining the actual presence of a species in an area depends on many variables including daily and seasonal activity cycles, environmental activity cues, preferred habitat, transiency, and population density (both wildlife and human). The absence of a species can be demonstrated only with great difficulty and then only with repeated negative observations, considering all the variable factors contributing to the lack of detectable presence. If encountered during construction, TPWD recommends that measures be taken to avoid impacting all wildlife, regardless of federal or state listing status.</p>	11	<p>Prior to construction of OCAPS, ETI will review the TPWD RTEST Orange County species list and consult with USFWS for species occurrence data, guidance, permitting, survey protocols, and mitigation for state and federally listed species.</p>
<p>TPWD recommends ETI reduce the amount of vegetation proposed for clearing and minimize clearing of native vegetation, particularly mature native trees, riparian vegetation, and vegetation characteristic of protected species' habitats to the greatest extent practicable. TPWD also recommends ETI prepare a site reclamation plan if one has not been prepared to date. TPWD recommends off-site mitigation for removed trees. For losses determined to be unavoidable, TPWD recommends a 1:1 acreage replacement of high-quality habitat lost or a replacement ratio of three trees for every mature tree lost. For trees in the project area determined to be old timber (100+ years and/or with a diameter breast height &gt;25 inches) the value of each tree should be estimated using current insurance schedules or replaced at a ratio of 10 trees for each tree lost. A three to five-year maintenance plan that ensures an 85 percent survival rate should be developed for the replacement vegetation. Mitigation should be planned for unavoidable loss of native vegetation disturbed by project activities and should be developed in coordination with TPWD. TPWD recommends utilizing online resources concerning vegetation, clearing, and revegetation, available at the TPWD Wildlife Habitat Assessment Program: Planning Tools and Best Management Practices webpage. Specific requirements apply to impacts to wetlands; please reference the above State Law: Aquatic Resources section and previous correspondence ( May 2020 ) for information on coordination for wetland mitigation with federal and state agencies. Alternatively, mitigation could be coordinated with a local land trust or other conservation organization</p>	11-12	<p>The Commission should not include these recommendations in the order in this docket. These recommendations are not applicable to the project because almost all vegetation within the OCAPS construction area will be permanently cleared.</p>
<p>TPWD believes the "species management plan" mentioned in Section 3.12.3 of the EA is appropriate and necessary to include as an appendix to the EA. Detailed recommendations were provided by this agency in prior correspondence, and therefore, could have been used in the development of such a document. It is possible that the inclusion of the "species management plan" in the EA would have addressed a number of concerns and subsequent recommendations discussed in this letter had it been submitted for review by TPWD.</p>	12	<p>ETI understands the request, however, at the time of the development of the EA, ETI did not have the project details to complete a species management plan. ETI is currently working to develop the species management plan prior to construction. ETI will provide the species management plan to TPWD after it has been completed.</p>

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Based upon interagency correspondence regarding the OCAPS project, it appears that the USFWS has not yet been provided an opportunity to offer recommendations. TPWD recommends ETI and ERM consult with the USFWS to garner valuable input related to natural resource conservation.	12	Under the federal process, the lead federal agency (USACE for the OCAPS project) is responsible for correspondence with USFWS with regards to protected species. At this time, a USACE permit application has not been submitted, therefore formal consultation has not taken place.
TPWD recommends ETI and the PUC utilize the following summarized BMP, which are more fully described in TPWD's May 29, 2020 letter, when specifically applicable to the project: • Survey for active bird nests and avoid disturbance until fledged • Utilize a biological monitor during construction • Allow wildlife to safely leave the site on their own, without harassment or harm • Use a TPWD-permitted individual to translocate state-listed threatened species that will not readily leave the site on their own • Use wildlife escape ramps in trenches and inspect trenches for trapped wildlife prior to backfilling • Avoid the use of erosion control blankets containing polypropylene fixed intersection mesh • Utilize minimal lighting required for safety and security, including utilization of features such as cutoff luminaries • Implement specific practices to avoid or minimize potential negative impacts to state listed species that have appropriate habitat documented in the project area, such as Rafinesque's big-eared bat ( <i>Corynorhinus rafinesquii</i> ) and alligator snapping turtle ( <i>Macrolemys temminckii</i> ) • Coordinate with the USFWS regarding federally listed threatened and endangered species and their habitat that may occur within the project area • Report encounters of threatened, and endangered species and SGCN to the Texas Natural Diversity Database • Prepare an Aquatic Resource Relocation Plan and coordinate with TPWD Kills and Spills Team to obtain a Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters if working in inland waters • Search for and avoid disturbance of SGCN species, special features, and natural communities tracked by the TXNDD • Prepare a mitigation plan for any unavoidable loss of native vegetation.	13	The Commission should not include this "catch-all," duplicative recommendation in the order in this docket. ETI will address TPWD's specific recommendations as stated above to the extent applicable and practical to ensure the safe and efficient construction, operation, and maintenance of OCAPS in a manner that is responsible to the surrounding environment.
The TXNDD is updated continuously based on new or updated records; therefore, TPWD recommends requesting the most recent TXNDD data on a regular basis.	14	ETI will continue to monitor available data on protected species occurrences.
To aid in the scientific knowledge of a species' status and current range, TPWD encourages reporting encounters of protected and rare species to the TXNDD according to the data submittal instructions found at the TPWD Texas Natural Diversity Database: Submit Data webpage.	14	ETI will continue to monitor available data on protected species occurrences. In the event that protected species are observed onsite, ETI will notify the TPWD and/or USFWS as applicable.

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