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PUC DOCKET NO. 53727
SOAH DOCKET NO. 473-22-05831

JOINT APPLICATION OF AEP TEXAS	§	PUBLIC UTILITY COMMISSION
INC. AND SHARYLAND UTILITIES	§	
L.L.C. TO AMEND CERTIFICATES OF	§	OF TEXAS
CONVENIENCE AND NECESSITY FOR	§	
THE LA PALMA-TO-KINGFISHER	§	
345-KV TRANSMISSION LINE IN	§	
CAMERON COUNTY	§	

ORDER OF REFERRAL
AND PRELIMINARY ORDER

On June 29, 2022, AEP Texas Inc. and Sharyland Utilities L.L.C. filed an application to amend their respective certificates of convenience and necessity (CCNs) to construct and operate a 345-kilovolt (-kV) transmission line in Cameron County, Texas.

The Commission refers this docket to the State Office of Administrative Hearings (SOAH) and requests the assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision if the parties contest one or more issues. The Commission has delegated authority to the Office of Policy and Docket Management to issue this preliminary order, which is required under Texas Government Code § 2003.049(e). This preliminary order identifies the issues that must be addressed in this proceeding and an issue not to be addressed.

All subsequent pleadings in this docket must contain both the SOAH and Commission docket numbers to allow for efficient processing. Parties must make filings in accordance with 16 Texas Administrative Code (TAC) § 22.71(c) regarding the number of copies to be filed or 16 TAC § 22.71(d)(1)(C) regarding the number of confidential items to be provided. In addition, if any party has filed confidential material before referral of this matter to SOAH, that party must provide a copy of each such confidential filing to the SOAH ALJ assigned to this matter, if ordered.

I. Procedural History

The proposed transmission line is designated as the La Palma-to-Kingfisher transmission line. The applicants propose that the structures be double-circuit-capable, but only a single circuit will be certificated in this proceeding. The proposed line will begin at AEP Texas’s existing

345-kV La Palma station and will extend to Sharyland's proposed 345-kV Kingfisher station. The applicants proposed 19 alternative routes for the proposed transmission line. The total estimated cost for the routes, including associated substation costs, ranges from approximately \$30,122,000 to \$56,238,000, not including substation costs of \$13,638,000 for AEP Texas's existing La Palma station and of \$43,709,000 to construct Sharyland's new Kingfisher station. The estimated length of the routes ranges from 4.35 to 10.91 miles. The applicants have agreed to each construct and own approximately half of the transmission line. The Commission can approve any route presented in the application. The Commission can also approve any combination of routes or route segments.

The applicants provided notice of the application at the time of filing to all cities and neighboring utilities within five miles of the proposed transmission facilities, the county governments of all counties in which any portion of the proposed transmission facilities is located, the Department of Defense Siting Clearinghouse, and directly affected landowners. The deadline for the applicants to file affidavits regarding notice is July 19, 2022, and the deadline for the applicants to file proof of publication is July 25, 2022. A number of local landowners requested protestant or intervenor status in the docket. Motions to intervene filed by the following have not been ruled on: Palo Verde/Las Retamos Neighbors Association; Rolando Gonzalez; Raul A. Gonzalez; Gobar Brothers, LLC; Randall P. Crane; and Jose A. Quintanilla. The deadline for intervention is July 29, 2022.

II. Deadline for Decision

On October 14, 2021, the Commission filed an order in Docket No. 52682 that required the applicants under PURA¹ §§ 35.005(b) and 39.203(e) to prepare an application for constructing transmission facilities to close the loop from Palmito to North Edinburg and to file the application no later than June 30, 2022. The application in this docket is in response to that order.

The Commission has ordered that the proposed transmission facilities be built under PURA §§ 35.005(b) and 39.203(e). Under subsection 39.203(e), the Commission must issue a final order

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

in this proceeding before the 181st day after the date the application is filed. Therefore, the Commission must issue a final order before December 27, 2022 (i.e., by December 26, 2022).

III. Conditional Approval

If the Commission determines that it should grant the amendment to the applicants' CCNs, 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 transmission line is commercially energized 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 line are such that the above condition should be changed (e.g., a longer period of time may be more appropriate).

IV. Issues to be Addressed

Under Texas Government Code § 2003.049(e), the Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH. The Commission identifies the following issues that must be addressed in this docket:

Application

1. Is the applicants' application to amend their respective CCNs adequate? Does the application contain an adequate number of reasonably differentiated alternative 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 transmission line, and any associated proposed 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 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 applicants to amend the application and to provide proper notice to affected landowners; however, if the applicants chooses not to amend the application, then the ALJ may dismiss the case without prejudice.

Notice

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

Public Input

4. What were the principal concerns expressed in the questionnaire responses received at or after any public meetings held by the applicants regarding the proposed transmission facilities?

Route

5. Weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B), to the extent they are applicable under PURA § 39.203(e), which proposed transmission-line route is the best alternative?
6. 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?
7. 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 the electric efficiency of the line or reliability?

Texas Parks and Wildlife Department

8. Did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application in accordance with section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:
 - a. What modifications, if any, should be made to the proposed transmission 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 proposed transmission facilities or the final order, 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.

Permits

- 9. What permits, licenses, plans, or permission will be required for construction and operation of the proposed transmission facilities? If any alternative route requires permission or an easement from a state or federal agency, please address in detail the following:
 - a. What agency is involved, and what prior communication have the applicants had with the agency regarding the proposed transmission 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 transmission facilities?

Coastal Management Program

- 10. Is any part of the proposed transmission facilities located within the coastal management program boundary as defined in 31 TAC § 503.1(a)? If so, please address the following issues:
 - a. Do the facilities comply with the goals and applicable policies of the Coastal Management Program in accordance with 16 TAC § 25.102(a)?
 - b. Will the facilities have any direct and significant effects on any of the applicable coastal natural resource areas specified in 31 TAC § 501.3(b)?

Limitation of Authority

11. Are the circumstances for this line such that the seven-year limit discussed in section III of this Order should be changed?

Other Issues

12. Will anything occur during construction that will preclude or limit a generator from generating or delivering power or that will adversely affect the reliability of the ERCOT system?

13. If complete or partial agreement of the parties is reached on a route that relies on modifications to the route segments as noticed in the application, please address the following issues:

- a. Did the applicants comply with the additional notice requirements of 16 TAC § 22.52(a)(2) and (a)(3)(C)?
- b. Was written consent obtained from landowners directly affected by the proposed modifications to the route segments?

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).

V. Issue Not to Be Addressed

The Commission identifies the following issue 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.

2. Whether the proposed transmission line is necessary for the service, accommodation, convenience, or safety of the public.

PURA § 39.203(e) exempts electric utilities that are ordered under that subsection to construct or enlarge transmission or transmission-related facilities from proving that the

construction ordered is necessary for the service, accommodation, convenience, or safety of the public in any proceeding brought under chapter 37.

3. **The adequacy of existing service, the need for additional service, the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area, or the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted, including any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities in areas outside the ERCOT power region.**

PURA § 39.203(e) exempts electric utilities that are ordered under that subsection to construct or enlarge transmission or transmission-related facilities from addressing the factors listed in PURA § 37.056(c)(1)–(3) and (c)(4)(E) in any proceeding brought under chapter 37.

VI. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that 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 11th day of July 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

Electronically signed by Stephen Journey
STEPHEN JOURNEY
COMMISSION COUNSEL