

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF SOUTHWESTERN PUBLIC)
SERVICE COMPANY’S APPLICATION)
REQUESTING: (1) ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY AUTHORIZING)
CONSTRUCTION AND OPERATION OF THE)
ROADRUNNER TO PHANTOM TO CHINA)
DRAW 345-KV TRANSMISSION LINE AND) **Case No. 20-00085-UT**
ASSOCIATED FACILITIES; (2) APPROVAL OF)
THE LOCATION OF THE 345-KV)
TRANSMISSION LINE AND ASSOCIATED)
FACILITIES; (3) DETERMINATION OF RIGHT-)
OF-WAY WIDTH FOR THE TRANSMISSION)
LINE; AND (4) AUTHORIZATION TO ACCRUE)
AN ALLOWANCE FOR FUNDS USED DURING)
CONSTRUCTION FOR THE TRANSMISSION)
LINE AND ASSOCIATED FACILITIES,)
)
**SOUTHWESTERN PUBLIC SERVICE)
COMPANY, APPLICANT.)****

RECOMMENDED DECISION

Christopher P. Ryan, hearing examiner in this case, submits this recommended decision to the New Mexico Public Regulation Commission.

I. SUMMARY OF SPS’S PROPOSED TRANSMISSION LINE PROJECT AND THE HEARING EXAMINER’S RECOMMENDATION

Southwestern Public Service Company (SPS) seeks Commission approval to construct a forty-two mile, 345-kilovolt (kV) transmission line (the Proposed Line) in the southeastern region of New Mexico. The Proposed Line will cross federal, state, and private land owned by SPS.

The Southwest Power Pool (SPP) deemed the project necessary to ensure system reliability and to serve SPS’s increasing retail loads in Eddy and Lea counties. SPS expects the Proposed Line to be operational by November of 2021.

An environmental assessment (EA) was conducted and determined that the Proposed Line will not produce environmental harm. SPS procured approval of the necessary rights of way (ROW) from the appropriate federal and state agencies and asks the Commission to approve a ROW width of 150 feet except at the Pecos River where the ROW width must be 200 feet due to span length.

The cost of the Proposed Line is \$81.8 million dollars. SPS is not requesting ratemaking treatment of the Proposed Line. Costs will be borne by the members of the SPP according to the rules governing that entity. Costs ultimately allocated to SPS will be passed along and collected through New Mexico and Texas retail sales and FERC wholesale sales. SPS anticipates that New Mexico ratepayers will be responsible for roughly 2.5% of the project costs or roughly \$2 million. SPS seeks Allowance for Funds Used During Construction (AFUDC).

Staff recommends that the Commission approve the Proposed Line but recommends approval be predicated upon SPS's acceptance and satisfaction of the following conditions.

1. SPS must file copies of all construction and environmental permits for the Proposed Line within two weeks of receiving a final permit.
2. SPS must file a report in the docket of the final cost of the Proposed Line when the final cost is known.
3. SPS must file a notice on the date the Proposed Line actually enters into service.
4. SPS must (a) agree that the majority of the Proposed Line will remain within the 150 foot ROW and that the line will remain within the 200 foot ROW at the Pecos River, (b) file notice it received all permits for roadway crossings and for the river crossing, and (c) agree that it will seek Commission authorization if it anticipates exceeding the 150 and 200 foot ROWs requested.

SPS has agreed to comply with these conditions.

The hearing examiner recommends that the Commission grant SPS all approvals it seeks and all that are necessary to construct the Proposed Line and agrees with Staff that approval should be conditioned upon SPS's compliance with the conditions identified by Staff.

II. PROCEDURAL HISTORY

On May 6, 2020, SPS filed an application requesting that the Commission take the following action:

- Issue SPS a Certificate of Convenience and Necessity (CCN) under the authority of NMSA 1978, § 62-9-1 (2019) and NMSA 1978, § 62-9-6 (1967) authorizing SPS to construct, operate, and maintain a 345-kV transmission line and associated facilities in Eddy and Lea counties, New Mexico and which will extend from SPS's Roadrunner Substation to its Phantom Substation and then on to its China Draw Substation;
- Approve the location of the transmission line and route under the authority of NMSA 1978, § 62-9-3 (2005) and 17.9.592.10 NMAC;
- Approve a 150 foot ROW for the line under NMSA 1978, § 62-9-3.2 (2001) and a 200 foot ROW where the line crosses the Pecos River;
- Authorize SPS to accrue the proposed allowance for AFUDC for the Proposed Line under 17.3.580 NMAC;
- Grant SPS whatever other approvals are necessary to permit it to construct the Proposed Line.

On May 6, 2020, the Commission issued an order initiating this proceeding and designating this hearing examiner to preside over it.

Two parties intervened: Louisiana Energy Services and XTO Energy Inc. Both operate industrial facilities in SPS's southeastern service area.

SPS timely issued an affidavit of publication attesting that SPS circulated documents notifying its customers of the application to build the Proposed Line.

On July 31, 2020, Staff filed direct testimony supportive of all of SPS's requests subject to SPS fulfilling the conditions identified above.

On August 16, 2020, the hearing examiner consulted the parties to determine if they wished to hold a hearing on unopposed matters for which a hearing is discretionary. The hearing examiner suggested that efficiency could be best maximized by conducting a hearing on only those matters for which a hearing is statutorily mandated. The hearing examiner further suggested that the parties stipulate to the admission of all witness testimony on any issue for which there would be no hearing. The parties agreed with this suggested course of action.

On August 18, 2020, the hearing examiner entered an order memorializing the agreement described immediately above and admitted into evidence the prefiled testimony and accompanying exhibits of all witnesses offering evidence on matters for which there would be no hearing. The following testimony and exhibits were admitted:

- the direct testimony of Jarred J. Cooley, a manager in SPS's transmission planning for its southern region, along with attachments JJC-1 to -7; and
- the direct testimony of Alexandria M. Simons, a consultant employed by SWCA Inc. and who served as the deputy project manager of the federal permitting process for the Proposed Line, along with attachments AMS-1 to AMS-8.

On August 24, 2020, a public hearing was conducted on the Zoom web-video-conferencing platform. Time for public comments was provided but no comments were received.

SPS called two witnesses at the hearing. They were sworn-in, submitted direct testimony with exhibits, and confirmed that they would testify in the same fashion if asked to do so. The following evidence was admitted:

- the direct testimony of Nebiyou Y. Bogale, a principal transmission engineer for SPS, along with attachments NYB-1 to NYB-3; and
- the direct testimony of Nisha P. Fleischmann, an agent in SPS’s Siting and Land Rights Department, along with attachments NPF-1 to NPF-7.

No party asked to cross examine these witnesses.

The Utility Division Staff of the New Mexico Public Regulation Commission called a single witness: Jack Sidler. His direct testimony was admitted.

The hearing examiner was asked to and did take administrative notice of a document filed by SPS expressing its willingness to comply with Staff’s conditions.

III. DISCUSSION

A. SPS’s CCN Application

1. Applicable Law

Public utilities must obtain a CCN before constructing or operating any public utility plant or system. Section 62-9-1(A). The Commission must, when considering whether to issue a CCN, give due regard to public convenience and necessity. Section 62-9-6.

The phrase “public convenience and necessity” is a legal standard primarily aimed at ensuring a net public benefit flows from the issuance of the CCN. *Re Valle Vista Water Utility Co.*, 212 P.U.R. 4th 305 (2001). The Commission has treated the phrase as synonymous with public interest. *See Re Public Serv. Co. of NM.*, 119 P.U.R. 4th 48, 50 (1990).

In cases where the utility requests a CCN for generation not to be used toward compliance with the RPS, the public convenience and necessity requires a utility to show that it needs the additional capacity the proposed plant will provide. *See, e.g.*, Case No. 11-00313-UT, Certification of Stipulation at 11-14, 19 (1-3-12), adopted by Final Order Approving Certification of Stipulation (2-7-12); Case No. 2717, Final Order at 5-8, 10-11 (3-5-97). In addition, the utility must show that the resource it proposes is the most cost effective among feasible alternatives. Case No. 15-00205-UT, Order Partially Granting PNM Motion to Vacate and Addressing Joint Motion to Dismiss at 10-11 (12-22-15).

The utility must consider alternatives before going forward with a project, and a new resource will not be approved if a better alternative is available. This principle is illustrated by Case No. 15-00261-UT, Corrected Recommended Decision at 96 (8-15-16), adopted in relevant part by Final Order Partially Adopting Corrected Recommended Decision (9-28-16).

There, the Commission rejected PNM's request for a CCN for a transmission-line extension because "PNM's alternatives analysis [was] not sufficiently reliable to determine whether [the line extension was] in fact the best alternative among those presented by PNM." Recommended Decision at 98 (7-5-95), adopted by Final Order (11-20-95). The Commission explained that, even if it assumed the need for the line extension was established, it remained "unconvinced that the public convenience and necessity require[s] or will require the [line extension] as the proper response to such a need." *Id.* at 102.

2. Testimony Offered by SPS in Support of Its CCN Application

The Proposed Line is required to enhance system stability and reliability and to satisfy the increased demand for electric energy in southeastern New Mexico. **[Cooley Direct p.5 li.14-16]** SPS has experienced "continued, significant electric load growth" in Eddy and Lea Counties

(which makeup the southeastern corner of New Mexico) as a consequence of increased industrial growth in that area as well as increased residential and small-commercial demand. **[Id. p.17 li.13-18]** This growth is the product of “robust” economic activity in this region. **[Id. li.16-18]** In some instances, demand and increased load has “exceeded available capacity[.]” **[Id. p.17-18]** SPS expects load growth in the region to continue for the foreseeable future. **[Id. p.18 li.9-10]**

The need for the Proposed Line was evaluated by SPP through a delivery point network study. **[Id. p.5-6]** That study identifies ““significant and numerous’ thermal and voltage violations[.]” **[Id. p.20 li.1-7]** and recommends upgrades that include the Proposed Line. **[Id.; see also generally Attachment JJC-3]**

According to the study, these upgrades will provide a “robust network solution” to the problems identified. **[Attachment JJC-2 p. 15]** Based on the study, SPP concluded that the Proposed Line “is the most appropriate and cost effective alternative for addressing SPS’s transmission system stability and reliability needs” in SPS’s southeastern-service area and that the Proposed Line “is required to provide adequate service to the additional new load located in this area.” **[Cooley Direct p.16 li.11-15]**

The Proposed Line will also eliminate some of the vulnerability to system disruptions to which EPE’s southeastern service area is presently exposed. **[Id. p.18 li.4-7]** The Proposed Line is also necessary given the unique nature of SPS’s southeastern system.

The southeastern-portion of SPS’s system resembles a “peninsula,” with most energy coming from either nearby generating stations or from Texas. **[Id. p.10 li.7-13]** Energy imported from Texas must travel over a limited number of high-voltage lines. **[Id.]** Unlike areas surrounded by multiple supply sources and transmission pathways, SPS’s southeast-service area has “operational limitations” that produce reliability challenges. **[Id. li.13-17]** The area requires a

“stronger foundation[,]” **[Id. p.11, li.1-2]** and SPS has been granted several CCNs in recent years to build that foundation. **[Id. p.11-13]** The Proposed Line is a continuation of that broader project.

The Proposed Line will involve not only the construction of the line itself but upgrades and expansion of equipment at the Roadrunner, Phantom, and China Draw substations. **[Id. p14-15]** The Roadrunner and China Draw substation yards will both be enlarged and new equipment will be added. **[Bogale Direct p.11 li.4-10]** New equipment will also be added to the Phantom substation. **[Id. li.11-14]**

The Proposed Line will produce an additional “looped 345-kV source to the southeast New Mexico area.” **[Cooley Direct p.19 li.8-15]** It will provide “an alternate, high capacity and low impedance path for energy flow” in that region and will “provide[] the additional capacity and voltage support necessary to serve the increasing load.” **[Id. p.20, li.13-16]** The Proposed Line will provide “significant benefits for existing and future customers in the region and is critical to the continual development in the region.” **[Id. li.16-18]** There will be no “unnecessary duplication of service” or “economic waste” produced by the Proposed Line. **[Id. p.21 li.1-5]**

3. Staff’s Position on SPS’s CCN Application

Staff supports SPS’s application for the CCN. In Staff’s view, SPS has provided “ample evidence” that the Proposed Line is needed to meet increased load which exists as a consequence of increased demand. **[Sidler Direct p.10]** Staff agrees that linking the various substations as proposed with a 345-kV loop will, as SPS indicates, “significantly increase the reliability of the 345-kV transmission service in the” area these lines serve. **[Id. p.10 li.15-18]** Staff accepts SPS’s position that the Proposed Line is the most economical choice among feasible alternatives. **[Id. p.12 li.1-9]**

4. Hearing Examiner's Recommendation

The evidence described above demonstrates that SPS has established that it needs the Proposed Line to ensure reliable service and because it will permit SPS to respond to the increased demand for electricity in its southeastern-service area. The SPP study concludes that the Proposed Line is the most economical and effective way to satisfy the twin aims of providing increased load and ensuring reliability. The conclusions of the SPP study are not contested. The benefits that will flow to the individuals residing in and the commercial operators acting within SPS's southeastern-service area from the Proposed Line are self-evident. SPS's request for a CCN to construct the Proposed Line should be approved.

B. Location of the Proposed Line

1. Applicable Law

Utilities must obtain location approval to construct transmission lines and associated substation facilities that are designed for, or capable of, operating at 230-kV or more. *See generally* Section 62-9-3. "The Commission shall approve the application for the location of transmission lines" and associated facilities "unless the Commission finds that the location will unduly impair important environmental values" Section 62-9-3(F).

The Commission "may" consider the following when deciding whether the proposed location of a transmission line will unduly impair important environmental values:

- (1) existing plans of the state, local government and private entities for other development at or in the vicinity of the proposed location;
- (2) fish, wildlife and plant life;
- (3) noise emission levels and interference with communications signals;
- (4) the proposed availability of the location to the public for recreational purposes, consistent with safety considerations and regulations;
- (5) existing scenic areas, historic, cultural or religious sites and structures or archeological sites at or near the vicinity of the proposed location; and
- (6) additional factors that require consideration under applicable federal and state law pertaining to the location.

Section 62-9-3(M).

To implement Section 62-9-3, the Commission adopted 17.9.592 NMAC, which states that an application for location approval “shall contain:”

- A. a description of the transmission line including, but not limited to:
 - (1) the location of the transmission line;
 - (2) identification of the ownership of the land (such as private, bureau of land management, U.S. forest service, state trust, etc.) the transmission line will cross and the number of feet the transmission line will cross over each owner’s land;
 - (3) the total length of each transmission line in feet;
 - (4) a description of interconnection facilities;
 - (5) a map showing the location of the transmission line; and
 - (6) a schematic diagram showing the transmission line and the interconnection of the transmission line to the transmission grid;
- B. identification of all applicable land use statutes and administrative regulations and proof of compliance or statement of noncompliance with each;
- C. if required under NEPA, an environmental assessment prepared in connection with the transmission line;
- D. if required under NEPA, an environmental impact statement and record of decision or a finding of no significant impact, prepared in connection with the transmission line;
- E. if preparation of a federal environmental assessment or environmental impact statement is not required under NEPA in connection with the transmission line, then a report, comparable to an environmental impact statement, in the format prescribed in 40 C.F.R. Section 1502.10;
- F. all written federal, state, and local environmental authorizations necessary to begin construction of the transmission line;
- G. all written federal, state, and local environmental authorizations necessary to begin operation of the transmission line; if any such authorization cannot be obtained until after construction of the transmission line, proof of application for such authorization;
- H. testimony demonstrating that the transmission line will not unduly impair important environmental values; important environmental values include, but are not limited to, preservation of air and water quality, land uses, soils, flora and fauna, and water, mineral, socioeconomic, cultural, historic, religious, visual, geologic and geographic resources;
- I. the expected date that the transmission line will be online;
- J. proof that the application has been served on all local authorities in each county and township where the transmission line will be located, the New Mexico attorney general, the New Mexico environment department, and the New Mexico state engineer;

K. any other information, including photographs, which the applicant wishes to submit in support of the application.

17.9.592.10 NMAC.

Location approval is *not* required for the work SPS will do on the varying substations the Proposed Line will connect. **[Sidler Direct p.19 li.12-14]** Those substations will only be modified and those modifications do not require location approval. **[Id.]**

2. Evidence Offered by SPS in Support of the Location and Route of the Proposed Line

As noted previously, the Proposed Line is roughly forty-two miles long and will connect the substations earlier identified which are located near Jal and Malaga, New Mexico. **[Fleischmann Direct p.7 li.4-11]** The route of the Proposed Line was determined by first identifying its end points and then considering possible routing options. **[Id. p.9 li.13-15]** The Proposed Line will be constructed with steel supports installed on concrete foundations. **[Bogale Direct p.12 li.5-6]**

The line will cross roughly twenty-three miles of federal land, nineteen miles of state land, and one-quarter mile of land owned by SPS. **[Fleischmann Direct p.21 li.10-11]** In addition to the transmission line and supports, the Proposed-Line project also includes improvements to the substations the transmission line will connect. **[Bogale Direct p.11-12]** A new ring bus with termination points will be installed at the Phantom Substation. **[Cooley p.14 li.10-13]** The yard at the China Draw Substation will be enlarged and a three-terminal ring bus will be added. **[Id. p.14-15]** The Roadrunner Substation will also be enlarged and a new ring bus with termination points will be installed. **[Bogale Direct p.11 li.4-10]**

Several maps and schematics of the Proposed Line and of SPS's service lines more generally were attached as exhibits to SPS's witnesses' testimony.

SPS was unable to locate or identify any *local* land-use statutes or regulations with which it is required to comply. **[Fleischmann Direct p.22 li.15-16]** SPS notes, however, that Eddy County does have a general ordinance providing guidance for land use in the County. **[Id. p.23 li.3-16]** SPS confirmed with Eddy County officials that the Proposed Line is consistent with their ordinance and that they support the construction of the Proposed Line. **[Id.]**

Similarly, Lea County has a comprehensive plan. **[Id. p.24 li.1-7]** That plan does not, however, specifically govern transmission lines. **[Id.]** It prioritizes infrastructure development, **[Id.]** and SPS rightly points out that the Proposed Line is a quintessential form of infrastructure development. **[Id.]**

Preparation of a National Environmental Policy Act (NEPA) analysis to evaluate environmental impacts of the Proposed Line was necessary. **[Simons Direct p.15 li.5-10]** The Bureau of Land Management (BLM) determined that the Proposed Line will not significantly impact the environment and “achieves a balance of resource protection and beneficial uses of the human environment envisioned by NEPA.” **[Id. p.24 li.7-11, p.25 li.9-11]**

SPS prepared an EA which the BLM reviewed and accepted. **[Id. p.25 li.5-11]** The EA was conducted by SWCA Environmental consultants. **[Id. p.5 li.3-9]** That assessment concludes that the Proposed Line will not impair important environmental values. **[Id. p.7 li.1-4]**

SWCA participated in route selection by identifying locations with environmental or cultural significance so that these locations could be avoided. **[Id. p.12-13]** These locations included areas with vegetation identified as “BLM sensitive species[.]” **[Id. p.14 li.11-16]**

Consideration was also given to impacts to native plants and other special-status species as identified in state and federal law as well as to cultural resources. **[Id. p.20 li.8-13]** Investigation was made to determine if any of these existed within a 250 foot wide corridor of the center line of

the Proposed Line. **[Id. p.20 li.8-13, p.22 li.6-17]** The review included desktop studies as well as field surveys. **[Id. p.20 li.4-7]**

Active bird nests and burrows were identified. **[Id. p.20-21]** Impacts to the disturbance area and the biological resources within that area were evaluated at different seasonal points in 2019. **[Id. p.21 li.8-10]**

In sum, the EA evaluated the overall impact of the Proposed Line on a host of environmental concerns including: air, water, and soil resources; vegetation; wildlife and special status species; karst resources; livestock grazing; cultural, paleontological, and visual resources; employment and demographic impacts; and noise impacts. **[Id. p.29 li. 5-12, p.31 li.8-9, p.32 li.12-13, p.33 li. 8-13]** The Proposed Line will have no detrimental impact on any of these considerations. **[Id. p.31 li.8-9; p.32 li.12-13; p.33 li. 11-13; p.35 li.7-9, p.36 li.14-16, p.37 li.12-14, p.38 li.5-7, p.40 li.15-16; p.43 li. 1-4, p.44 li.3-8, p.51 li.1-2, p.54-55]**

SPS made efforts to coordinate with grazing lessees, oil and gas lessees, and other stake holders to ensure that the line would not interfere with other uses of the land over which the Proposed Line will travel. **[Id. p.12 li.13-14, p.28 li.11-13]** There are no other development plans for the route the Proposed Line will travel. **[Id. p.28 li.7-8]**

The expected date of operation is November 15, 2021. **[Cooley Direct p.1 li.8]** Design of the line commenced in September 2019. **[Bogale p.14 li.8]** Construction should take eleven to twelve months. **[Id. p.14 li.11-12]**

SPS filed its application to construct the line with all necessary authorities and parties. **[Fleischmann Direct p.29 li.9-12]** SPS submitted applications with the appropriate state and federal entities to route the line across state and federal lands. **[Id. p.8-9, p.10 li.12-16, p.18-19, p.31-32]**

The BLM and NMSLO hosted several meetings to discuss the Proposed Line's route and its final location. **[Id. p.12 li. 10-11, p.15-16]** Oil and gas operators in the area of the Proposed Line's route as well as individuals with grazing lessees were contacted about the Proposed Line. **[Id. p.12 li.12-16]** The NMSLO held a public meeting. **[Id. p.13 li.1-3]** Both the BLM and NMSLO suggested route changes based on environmental concerns. **[Id. p.13 li.4-7, p.13-14]** And, both the BLM and the NMSLO issued final approval of the route to cross federal and state lands. **[Id. p.14, li.7-13; p.19 li.3-8]**

3. Staff's Position on Route Selection

Staff believes that SPS has offered testimony sufficient to satisfy the statute and rule governing line location approval. **[Sidler Direct p.19 li. 6-10]**

4. Hearing Examiner's Recommendation

The route selected for the Proposed Line will not unduly impair important environmental values or harm the environment, wildlife, or cultural resources. The EA is thorough, lengthy, and detailed, and its conclusions are undisputed. The route for the Proposed Line was scrutinized, and the path selected was deemed acceptable to all involved in this project. The location of the Proposed Line should be approved.

C. SPS's ROW Width Application

1. Applicable Law

Utilities cannot begin construction on a ROW exceeding 100 feet without first obtaining from the Commission "a determination of the necessary [ROW] width to construct and maintain the transmission line." Section 62-9-3.2(A). A utility requesting a ROW width determination must provide notice of the time and place of the hearing to any owner of property proposed to be taken and, if applicable, the person in actual occupancy of the property. Section 62-9-3.2(D).

2. Evidence Offered by SPS in Support of ROW Width

SPS requests a 150 foot ROW for the Proposed Line and a 200 foot ROW at the point the Proposed Line crosses the Pecos River. **[Bogale Direct p.4 li.4-15]** The 150 foot width was calculated using design software that accounts for “wind loading requirements and structure characteristics[,]” **[Id. p.8-9]** is needed to comply with the National Electric Safety Code, and will ensure necessary clearances. **[Id. p.7 li.6-7 & li. 12-13; p.8-9]** A 150 foot width will permit 75 feet of clearance on either side of the center of the transmission line. **[Id. p.6 li.14-15]** The 150 foot ROW will also ensure that SPS maintenance workers can easily access the lines. **[Id. p.8 li. 7-8]**

The ROW width request is also based on the assumption of a typical span of 1,100 feet and phase spacing of 30 feet. **[Id. p.6-8]** The additional 50 feet of width at the Pecos River is needed as the span across the river will be longer than 1,100 feet at the river crossing. **[Id. p.7 li.1-3]** The span across the river will be 1,720 feet. **[Id. p.9 li.8-10]**

SPS reports that there may be need to expand the typical 150 ROW width in some instances apart from at the river. **[Id. p.9 li.14-16]** For instance, some expansion of the ROW might be necessary to avoid “sensitive resources or pipelines.” **[Id. p. 9-10]** SPS will inform the Commission and file a notice if this becomes necessary. **[Id. p.10 li.11-13]**

As noted earlier, the Proposed Line crosses no private land other than SPS’s land. The federal government and the State of New Mexico have received notice of these proceedings, hosted meetings about the Proposed Line, and have been actively involved in the planning of the Proposed Line.

3. Staff's Position on the ROW Width

Staff agrees that the electrical code requires the ROW width requested and that the ROW will not affect use of the property upon which the ROW will be placed. [Sidler Direct p.15 li.1 to p.19 li.5] Staff is satisfied that the requested ROW width should be approved. [Sidler Direct p.15 li.1 to p.19 li.5]

4. Hearing Examiner's Recommendation

The 150 foot ROW width requested by SPS is reasonable and necessary to construct and maintain the Proposed Line. The 150 width requested ensures safe operation of the Proposed Line and will permit access for maintenance. The request for the 200 foot ROW is also reasonable and necessary given the slightly longer span at the river. SPS's ROW application should be approved.

D. Costs and Request for AFUDC

1. Applicable Law

AFUDC is an allowance for the return on the capital costs of construction financing. Instead of recovering that return from customers as it is incurred, the utility accrues it in an account for future recovery. Future recovery occurs through inclusion of the capitalized cost in rate base as a component of plant in service, thereby earning a return and being recovered through depreciation allowances. See Robert L. Hahne et. al., *Accounting for Public Utilities*, § 4.04[4] (2008). There is little debate over the propriety of including AFUDC as a component of construction costs along with materials, labor, overhead, and other similar items. *Id.*

2. Evidence Bearing on AFUDC

SPS is not requesting a Commission determination of ratemaking principles and treatment of the costs of the Proposed Line. [Cooley Direct p.26 li.1-8] The total estimated cost of the project is \$81.8 million. [Id. p.21 li.9-10] Approximately \$2 million of this cost is estimated for

AFUDC. [Id.; see also p.24 li.10-14] The \$2 million estimated for AFUDC includes \$659,000 in substation cost and \$1.41 million in transmission line cost. [Id.] AFUDC costs will be included in rate base as a part of a future rate case filing. [Id. p.25 li.14-15]

3. Staff's Position on AFUDC

Staff supports SPS's request for AFUDC. [Sidler Direct p.14 li.10-13]

4. Hearing Examiner's Recommendation

SPS's request for AFUDC should be approved to the extent necessary.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Examiner recommends that the Commission **FIND AND CONCLUDE** as follows:

1. All findings of fact and conclusions of law contained in this decision are adopted as findings of fact and conclusions of law by the Commission;
2. SPS is a public utility as defined by NMSA 1978, § 62-3-3(G) (1985) and its New Mexico retail service is subject to the jurisdiction of the Commission;
3. SPS provided the public reasonable, proper, and adequate notice of its application to construct the Proposed Line;
4. The Proposed Line is required by the public convenience and necessity and will not result in unnecessary duplication or economic waste;
5. Issuance of a CCN for the Proposed Line is in the public interest and should be approved;
6. The location of the Proposed Line will not unduly impair important environmental values;
7. SPS's application to construct the Proposed Line does not violate an existing state, county, or municipal land use statute or administrative regulation.

8. The necessary right of way width to construct and maintain the Proposed Line is 150 feet and 200 feet at the point the Proposed Line crosses the Pecos River.

V. DECRETAL PARAGRAPHS

The hearing examiner recommends that the Commission order as follows:

A. The findings, conclusions, and rulings contained in this decision are adopted and approved as findings, conclusions, and rulings of the Commission;

B. SPS is granted a CCN to construct, operate and maintain the Proposed Line, subject to the following conditions:

1. SPS must file copies of all construction and environmental permits for the Proposed Line within two weeks of receiving a final permit;
2. SPS must file a report on the docket of the final cost of the Proposed Line when the final cost is known;
3. SPS must file a notice on the date the Proposed Line actually enters into service;
4. Fourth and finally, SPS must (a) agree that the majority of the Proposed Line will remain within the 150 foot ROW and that the line will remain within the 200 foot ROW at the Pecos River, (b) file notice it received all permits for roadway crossings and for the river crossing, and (c) agree that it will seek Commission authorization if it anticipates exceeding the 150 and 200 foot ROWs requested;

C. The location of the Proposed Line is approved;

D. SPS's request to accrue AFUDC for the Proposed Line and associated facilities is approved to the extent necessary;

E. Any and all ratemaking aspects of the Proposed Line are reserved for future proceedings before the Commission;

F. This order should be effective immediately;

G. This docket is closed.

ISSUED at Santa Fe, New Mexico on September 4, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

A handwritten signature in black ink, appearing to read 'C. Ryan', is written over a horizontal line.

[electronically signed]

Christopher P. Ryan
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN PUBLIC)
 SERVICE COMPANY’S APPLICATION)
 REQUESTING: (1) ISSUANCE OF A)
 CERTIFICATE OF PUBLIC CONVENIENCE AND)
 NECESSITY AUTHORIZING CONSTRUCTION)
 AND OPERATION OF THE ROADRUNNER TO)
 PHANTOM TO CHINA DRAW 345-KV)
 TRANSMISSION LINE AND ASSOCIATED)
 FACILITIES; (2) APPROVAL OF THE)
 LOCATION OF THE 345-KV TRANSMISSION)
 LINE AND ASSOCIATED FACILITIES; (3))
 DETERMINATION OF RIGHT-OF-WAY WIDTH)
 FOR THE TRANSMISSION LINE; AND (4))
 AUTHORIZATION TO ACCRUE AN)
 ALLOWANCE FOR FUNDS USED DURING)
 CONSTRUCTION FOR THE TRANSMISSION)
 LINE AND ASSOCIATED FACILITIES,)
)
 SOUTHWESTERN PUBLIC SERVICE COMPANY,)
 APPLICANT.)

Case No. 20-00085-UT

CERTIFICATE OF SERVICE

I certify that on this date, identified below at the signature line, I sent to the parties listed below, via email only, a true and correct copy of the **Recommended Decision**.

Zoe E. Lees	zoe.e.lees@xcelenergy.com ;	Cydney Beadles	cydney.beadles@westernresources.org ;
Dana Hardy	dhardy@hinklelawfirm.com ;	Thomas Jernigan	thomas.jernigan.3@us.af.mil ;
Mark A. Walker	mark.a.walker@xcelenergy.com ;	Capt. Robert Friedm	Robert.friedman.5@us.af.mil ;
Phillip Oldham	phillip.oldham@tklaw.com ;	Ebony Payton	ebony.payton.ctr.@us.af.mil ;
Katie Coleman	katie.coleman@tklaw.com ;	TSgt Arnold Braxton	Arnold.braxton@us.af.mil ;
Mario Contreras	mario.a.contreras@xcelenergy.com ;	Dhiraj Solomon	Dhiraj.Solomon@state.nm.us ;
Bobby J. Jones, III	bobby.j.jones.iii@xcelenergy.com ;	Jack Sidler	Jack.Sidler@state.nm.us ;
Julia Broggi	jbroggi@hollandhart.com ;	John Bogatko	John.Bogatko@state.nm.us ;
Nikolas Stoffell	nsstoffel@hollandhart.com ;	John Reynolds	John.Reynolds@state.nm.us ;
Austin Rueschhoff	darueschhoff@hollandhart.com ;	Gabriella Dasheno	gabriella.dasheno@state.nm.us ;
Thorvald A. Nelson	tnelson@hollandhart.com ;	Peggy Martinez-Rae	MichaelC.Smith@state.nm.us ;
Glen Lyons	glen.c.lyons@exxonmobil.com ;	Elizabeth Ramirez	Peggy.Martinez-Rael@state.nm.us ;
Johnnie Randolph	johnnie.r.randolph@exxonmobil.com ;	Gilbert Fuentes	Elizabeth.Ramirez@state.nm.us ;
Sujata Bhatia	sujata.bhatia@exxonmobil.com ;	Michael C. Smith	Gilbert.T.Fuentes@state.nm.us ;
G.L. Gargano	glgargano-amari@hollandhart.com ;	Ana C. Kippenbrock	Ana.Kippenbrock@state.nm.us ;
AC Lee	aclee@hollandhart.com ;		
A.J. Gross	ajgross@hollandhart.com ;	Christopher Ryan	Christopher.Ryan@state.nm.us ;
Joan Drake	jdrake@modrall.com ;	Hearing Examiner	
Perry Robinson	Perry.Robinson@urenc.com ;		

Dated September 4, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

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[electronically signed]

Christopher P. Ryan
HEARING EXAMINER