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PUBLIC UTILITY COMMISSION
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APPLICATION OF SOUTHWESTERN §
ELECTRIC POWER COMPANY TO §
AMEND ITS CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
FOR THE SWEP CO MORTON CUT- §
IN TO WOOD COUNTY ELECTRIC §
COOPERATIVE E BURGES CUT-IN §
138-KV TRANSMISSION LINE IN §
VAN ZANDT COUNTY

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S INITIAL BRIEF

PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION

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I. INTRODUCTION AND SUMMARY

The applicant, Southwestern Electric Power Company (SWEPCO), seeks a certificate of convenience and necessity (CCN) for a proposed 138-kV transmission line (Proposed Project) in Van Zandt County.¹ Depending on which route is ultimately chosen, the Proposed Project will begin either at one of two points of connection (POC) that start near the existing SWEPCO Morton Substation and terminates at one of the three potential POC end options along the existing Wood County Electric Cooperative, Inc. (WCEC) 138-kV transmission line located east to southeast of the City of Grand Saline and north of the WCEC E Burges Substation.²

The Staff (Staff) of the Public Utility Commission of Texas (Commission) supports the routing of the Proposed Project along what is designated as Route 2 in the Application.³ As discussed below, Route 2 best meets the criteria in PURA⁴ § 37.056 and 16 Texas Administrative Code (TAC) § 25.101 when compared to all the proposed routes.

Staff's witness, Ms. Ramya Ramaswamy, recommended Route 2 as the route that best meets PURA and the Commission's criteria.⁵ SWEPCO identified Route 2 as the route that best meets PURA and the Commission's criteria.⁶ Texas Parks and Wildlife (TPWD) recommended Route 2.⁷

Based on the route alternatives, Route 2 adequately balances the desire to select a route exhibiting reasonable quantitative criteria, while also exhibiting qualitative features consistent with the community values expressed by parties and residents.

A total of 10 routes were originally proposed by SWEPCO and were included in the notice of the application.⁸ During the hearing on the merits, intervenor Mallat Farms LLC and SWEPCO provided data for one additional route, Route 6M.⁹

¹ SWEPCO's Application, SWEPCO Ex. 1 at 4 (Mar. 31, 2020).

² *Id.*

³ Direct Testimony of Ramya Ramaswamy, Staff Ex. 1 at 16.

⁴ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (PURA).

⁵ Staff Ex. 1 at 16.

⁶ Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Mountain Home 138-kV Transmission Line Project in Gillespie, Kerr, and Kimble Counties (Application), LCRA Ex. 1, at 39 (May 31, 2019).

⁷ Staff Ex. 1, Attachment BPI-3, at 3.

⁸ Direct Testimony of Anastacia Santos, SWEPCO Ex. 3 at 25.

PURA and the Commission’s substantive rules list the requirements for approving an application for a CCN and for approving a route for a proposed transmission line. “To approve an application to obtain or amend a CCN, the [Commission] must find that the proposed CCN is necessary for the service, accommodation, convenience, or safety of the public.”¹⁰ “The plain language of the rule grants the [Commission] authority to consider and weigh a variety of factors—engineering constraints, costs, grid reliability, and security, along with the criteria in PURA section 37.056—in addition to use of existing rights-of-way in determining the most reasonable route for a transmission line.”¹¹ On being given authority to consider and weigh the various routing factors, “the [Commission] may in some cases be required to adjust or accommodate the competing policies and interests involved.”¹² Additionally, “no one factor controls or is dispositive.”¹³

A. Route 2 exhibits positive quantitative features.

Route 2 exhibits positive quantitative features. The main quantitative criteria that most favor Route 2 are the following:

- Route 2 is the shortest route of the 10 alternative routes.¹⁴
- Route 2 is the least expensive of the 10 alternative routes.¹⁵
- Route 2 utilizes paralleling for 93% in terms of percent of total route length paralleling.¹⁶
- Route 2 has the second least habitable structures within 300 feet.¹⁷

⁹ Mallat Notice of Amended Exhibit List, Mallat Exhibit 2 (Nov. 13, 2020); Mallat Notice of Second Amended Exhibit List, Mallat Exhibit 3 (Nov. 16, 2020).

¹⁰ *Dunn v. Pub. Util. Comm’n of Tex.*, 246 S.W.3d 788, 791 (Tex. App.—Austin 2008, no pet.).

¹¹ *Id.* at 795.

¹² *Pub. Util. Comm’n of Tex. v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985).

¹³ *Dunn*, 246 S.W.3d at 795.

¹⁴ Application Errata, SWEPCO Ex. 1A at Attachment 1 (July 10, 2020); Staff Ex. 1 at 29 (Oct. 8, 2020).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

B. Route H-REV exhibits positive qualitative features.

Route 2 also performs well with regard to “community values”—a broadly construed term that “is properly interpreted as a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community.”¹⁸ Moreover, “community values may include landowner concerns and opposition.”¹⁹

Ms. Ramaswamy considered the feedback provided by landowners at the public meeting held by SWEPCO.²⁰ Ms. Ramaswamy also considered impacts to recreational and park areas, historical values, aesthetic values, environmental integrity, engineering constraints, costs, and moderation of impact on the affected community and landowners.²¹ Consideration of these factors supports the selection of Route 2.

¹⁸ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 138-kV Transmission Line in Kerr County*, Docket No. 33844, Finding of Fact No. 65 (Mar. 4, 2008).

¹⁹ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas*, Docket No. 37448, Proposal for Decision at 14 (Mar. 18, 2010).

²⁰ Staff Ex. 1 at 17.

²¹ *Id.* at 17-20.

III. JURISDICTION

The Commission has jurisdiction over this matter under PURA §§ 32.001, 37.053, 37.056, 37.057, and 16 TAC § 25.101. The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding under Tex. Gov't Code § 2003.049 and PURA § 14.053.

IV. NOTICE

SWEPSCO provided proper notice of the application in compliance with PURA § 37.054 and 16 TAC § 22.52(a). In Commission Order No. 2, the ALJ found notice sufficient.²² In an Order of Referral and Preliminary Order dated June 17, 2020, the docket was transferred to SOAH.²³

V. DISCUSSION

A. PRELIMINARY ORDER ISSUE NO. 1: APPLICATION

Application – Is SWEPSCO's application to amend its CCN adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation?

Staff considers the 10 initial alternative routes proposed by SWEPSCO to be adequate in number and geographic diversity.²⁴

C. ROUTE

1. Preliminary Order Issue No. 4: Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?

The Commission may grant a CCN only if it finds that it is necessary for the service, accommodation, convenience, or safety of the public.²⁵ PURA § 37.056 provides routing criteria to be considered in an electric CCN proceeding.²⁶ Furthermore, 16 TAC § 25.101(b)(3)(B)

²² Order No. 2 Addressing Sufficiency of Application and Notice (May 15, 2020).

²³ Order of Referral and Preliminary Order (June 17, 2020) (Order of Referral).

²⁴ Staff Ex. 1 at 9 (Oct. 8, 2020).

presents additional criteria to be considered in an electric CCN. Staff analyzes routing criteria under PURA § 36.056(c) and 16 TAC § 25.101(b)(3)(B) as demonstrated below:

a. Effect of Granting certificate on SWEPCO and any electric utility serving proximate area

WCEC is the only electric utility served by and directly connected to the Proposed Project. East Texas Electric Cooperative (ETEC) will also indirectly benefit from the Proposed Project. WCEC will be the owner of any one of the three possible POC end points for the Proposed Project and has agreed to the connection. ETEC is one of the owning members of WCEC.²⁷

b. Community values

Staff's analysis of community values supports selection of Route 2. To facilitate community involvement, SWEPCO held a public meeting as required by 16 TAC § 22.52(a)(4). The public meeting was conducted on November 19, 2019.²⁸

Routes 1 through 6 are within 2,000 feet of one FM radio transmitter, microwave tower or other electronic installation.²⁹ There are no FAA-registered airstrips in the study area.³⁰

c. Recreational park areas

None of the alternative routes, including Route 2, cross or are within 1,000 feet of any park or recreational area.³¹

d. Cultural, aesthetic, and historical values

There are two recorded archeological sites and zero cemeteries located within 1,000 feet of the 10 alternative route centerlines.³² Specifically, Route 2 does not cross any known historical or archeological sites and does not contain any cemeteries.³³ Route 2 is within 1,000 feet of two recorded archeological sites.³⁴ All of the proposed alternative routes would result in a

²⁵ PURA § 37.056(a).

²⁶ PURA § 37.056(c).

²⁷ SWEPCO Ex. 1 at 7.

²⁸ *Id.* at 12.

²⁹ SWEPCO Ex. 1 at 13.

³⁰ SWEPCO Ex. 1 at 13.

negative impact on aesthetic values; however, Route 2 is the shortest among the alternative routes, which would help to mitigate those impacts compared to the other alternative routes.³⁵

e. Environmental integrity

After reviewing the information provided by SWEPCO and TPWD, Staff believes that Route 2 is the alternative route that best balances land use, ecology, cultural resources, and the Commission's routing criteria.³⁶

f. Engineering constraints

Staff did not identify any specific engineering constraints that are not present in a usual transmission line project and noted that all possible constraints can be adequately addressed by using design and construction practices and techniques that are usual and customary in the electric utility industry.³⁷

g. Costs

Route 2 is the least expensive route at \$4,185,088.³⁸

h. Use of existing corridors

The paralleling of existing transmission line ROW, existing public roads, highways and railways ranges from 1.35 to 3.02 miles.³⁹ Route 2 parallels existing transmission line ROW,

³¹ SWEPCO Ex. 1 at 14; Staff Ex. 1 at 19.

³² SWEPCO Ex. 1A at Attachment 1.

³³ *Id.*

³⁴ *Id.*

³⁵ Staff Ex. 1 at 20.

³⁶ *Id.* at 29.

³⁷ *Id.* at 23-24.

³⁸ Staff Ex. 1 at 24; SWEPCO Ex. 1 at Attachment 3.

³⁹ Staff Ex. 1 at 27; SWEPCO Ex. 1A at Attachment 1.

existing public roads, highways and railways for 2.39 miles.⁴⁰ Route 2 parallels the highest amount of existing compatible rights-of-way at 89% of the route.⁴¹

i. Prudent avoidance

The Commission’s rules define prudent avoidance as “[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”⁴² Limiting exposure to electric and magnetic fields can be accomplished by choosing a route that has fewer habitable structures in close proximity to the route.

The alternative routes impact between 1 and 7 habitable structures. Route 2 impacts 2 habitable structures, making it 2nd overall.⁴³

k. Summary of routing recommendations

Considering the factors under PURA § 37.056 and 16 TAC § 25.101, Route 2 balances those factors and has the most advantages over the other alternative routes. As Ms. Ramaswamy noted:

- Route 2 is the shortest route at 2.57 miles;
- Route 2 is the least expensive route at \$4,185,088;
- Route 2 has the second least habitable structures within 300 feet;
- Route H-REV parallels the highest amount of existing compatible rights-of-way.⁴⁴

2. Preliminary Order Issue No. 5: Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?

Although some intervenors assert that routes other than Route 2 would have a less negative impact on landowners, the evaluation of this criterion is subjective, and Staff

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 16 TAC § 25.101(a)(6).

⁴³ Staff Ex. 1 at 28; SWEPCO Ex. 1A at Attachment 1.

⁴⁴ Staff Ex. 1 at 29.

recommends that Route 2 adequately balances the concerns regarding the impact on landowners with the other statutory criteria. Ms. Ramaswamy further recommended that the Commission include language that would allow the utility to make deviations under certain conditions.⁴⁵

3. Preliminary Order Issue No. 6: If alternative routes or facility configurations are considered due to landowner preference:

- 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?**

Staff has not noted any contributions made by individual landowners to offset additional costs associated with any requested configurations.

D. PRELIMINARY ORDER ISSUE NO. 7: TEXAS PARKS & WILDLIFE

On or after September 1, 2009, did the TPWD provide any recommendations or informational comments regarding this application pursuant to 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 project 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 this project or the final order, or should not be acted upon, 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.**

Ms. Ramaswamy recommended several mitigation measures that she found sufficient to address most of TPWD's concerns.⁴⁶ These measures include the following proposed ordering paragraphs:⁴⁷

⁴⁵ Staff Ex. 1 at 12.

1. SWEPCO must follow the procedures to protect raptors and migratory birds as outlined in the following publications: *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, Edison Electric Institute and Avian Power Line Interaction Committee, Washington, D.C. 2012; *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*, Edison Electric Institute, Avian Power Line Interaction Committee, and the California Energy Commission, Washington, D.C. and Sacramento, CA 2006; and *Avian Protection Plan Guidelines*, Avian Power Line Interaction Committee and United States Fish and Wildlife Service, April 2005. SWEPCO must take precautions to avoid disturbing occupied nests and take steps to minimize the burden of construction on migratory birds during the nesting season of the migratory bird species identified in the area of construction.
2. SWEPCO must exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within rights-of-way. SWEPCO must ensure that the use of chemical herbicides to control vegetation within the rights-of-way complies with rules and guidelines established in the Federal Insecticide Fungicide and Rodenticide Act and with Texas Department of Agriculture regulations.
3. SWEPCO must minimize the amount of flora and fauna disturbed during construction of the transmission lines, except to the extent necessary to establish appropriate right-of-way clearance for the transmission lines. In addition, SWEPCO must revegetate, using native species and must consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practical, SWEPCO must avoid adverse environmental influence on sensitive plant and animal species and their habitats, as identified by the Texas Parks and Wildlife Department and the United States Fish and Wildlife Service.
4. SWEPCO must use best management practices to minimize the potential impacts to migratory birds and threatened or endangered species.

VI. CONCLUSION

Based on the foregoing discussion, Staff supports the adoption of Route 2. Specifically, Route 2 is comparable to, or superior to, the other routes supported by intervenors based on the evidence and quantitative criteria provided in the application.

⁴⁶ Staff Ex. 1 at 11-12.

⁴⁷ *Id.*

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on December 7, 2020, in accordance with the Order Suspending Rules issued in Project No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher