

SOAH DOCKET NO. 473-11-1312  
PUC DOCKET NO. 38524

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PUBLIC UTILITY COMMISSION  
FILING CLERK

APPLICATION OF SOUTHWESTERN §  
PUBLIC SERVICE COMPANY TO § BEFORE THE STATE OFFICE  
AMEND A CERTIFICATE OF §  
CONVENIENCE AND NECESSITY FOR A § OF  
PROPOSED TRANSMISSION LINE §  
WITHIN HANSFORD AND OCHILTREE § ADMINISTRATIVE HEARINGS  
COUNTIES §

UNANIMOUS STIPULATION

The parties to this Unanimous Stipulation (Stipulation), dated January 26, 2011, are: the Staff of the Public Utility Commission of Texas (Staff), Southwestern Public Service Company (SPS), and Intervenor Jennifer Willard on behalf of and as power of attorney for Amy Kathleen Brillhart. The aforementioned are all the parties to this docket and shall be referred to collectively as the "Signatories." The Signatories submit the Stipulation to the Public Utility Commission of Texas (Commission) as representing a just and reasonable disposition of the issues in this docket consistent with the public interest. The Signatories request approval of the Stipulation and entry of the proposed order attached as *Exhibit A*.

On August 17, 2010, under authority of Chapter 37 of the Public Utility Regulatory Act ("PURA"), TEX. UTIL. CODE ANN. Title 2 (Vernon 2007 and Supp. 2010), SPS filed an *Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Hansford and Ochiltree Counties* (Application). In its Application, SPS requested approval to construct a 230 kilovolt (kV) transmission line. The proposed transmission line would begin at the Hitchland Substation, end at the proposed Ochiltree County Substation, and is approximately 39 miles in length. By this Stipulation, the Signatories resolve all issues between them with respect to this docket.

In order to settle all outstanding issues in this docket, the Signatories stipulate to the following:

**Section 1.** The Commission should amend SPS's Certificate of Convenience and Necessity (CCN) to allow the construction of the proposed transmission line. The parties agree that, after weighing the factors set forth in PURA § 37.056, the best alternative for the proposed transmission line is Route 1 comprised of Links A-E-U-V-W-M-O-P-R (as described in the Application) with certain modifications (Settlement Route). Specifically, the Settlement Route is described as follows:

- The Settlement Route begins at the Hitchland Substation and uses Links A, E, U, and V as originally proposed for Route 1;
- At the end of Link V, the Settlement Route continues due east for approximately 21,335 feet, following just south of the north section lines of Sections 4 (Hansford County, Texas, WCRR Survey, Block 1) and Sections 16, 17 and 18 (Hansford County, Texas, H&TC Survey, Block 45);
- At the northeast corner of Section 18, the Settlement Route then turns due south and parallels the east boundary of Section 18 for approximately 5,200 feet, until it reaches the southeast corner of Section 18 where it intersects with Link M;
- The Settlement Route then uses the remaining portion of Link M and all of Links O, P, and R as originally proposed for Route 1, ending at the proposed Ochiltree County Substation;
- The Settlement Route does not use Link W.

The Signatories support using the Settlement Route as described herein.

**Section 2.** SPS agrees to offer into evidence the following items and requests that they be admitted into the record in this docket:

- A. SPS's Application, filed on August 17, 2010;
- B. SPS's Affidavit of Proof of Notice filed on August 27, 2010;
- C. SPS's Affidavit of Proof of the Revised Notice filed on September 30, 2010;
- D. SPS's Affidavit of Proof of Publication of Notice filed on August 31, 2010;

- E. SPS's Affidavit of Proof of Publication of Revised Notice filed on September 30, 2010;
- F. Revised Figure 2-3 of the EA Routing map showing the Settlement Route;
- G. this signed Stipulation and its attached Proposed Order (Exhibit A) and Landowner Letters (Exhibit B).

The Signatories agree to support SPS's motion to admit the evidence described above and waive their right to cross-examination. The Signatories agree that the evidence described in this section supports a finding that SPS's Application to amend its CCN should be granted and SPS should be authorized to construct and operate the 230 kV transmission line as agreed to in this Stipulation.

**Section 3.** The Signatories request the Commission adopt an order consistent with the terms

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**COMPANY**

By: \_\_\_\_\_  
Jerry Shackelford  
Attorney of Record

**JENNIFER D. WILLARD AND  
AMY KATHLEEN BRILLHART**

By: \_\_\_\_\_  
Jennifer D. Willard

proceeding to enforce the terms of the Stipulation. The Stipulation shall have no effect on any Signatory's right to raise any issue other than those specifically addressed in the Stipulation. It is acknowledged that a Signatory's support of the matters contained in the Stipulation may differ from the position taken or testimony presented by it in other dockets and jurisdictions.

**Section 6.** If the Commission does not adopt an order consistent with the terms of the Stipulation, the Signatories will have the right to withdraw from the Stipulation and assume any position, not inconsistent with any other agreements between the parties, which they deem appropriate with respect to any issue in this docket.

**Section 7.** The Signatories hereby agree that all of the facts and matters stated in this Stipulation and in the proposed order attached hereto as *Exhibit A*, are true and correct and may be relied upon by the Commission in resolving this Docket.

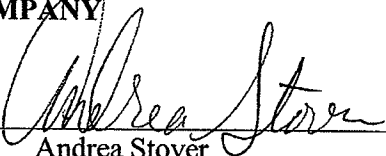
**Section 8.** Each person executing this Stipulation represents that he or she is authorized to sign on behalf of the party represented. Facsimile copies of signatures are valid for purposes of evidencing such execution. This Stipulation may be executed in multiple counterparts, each of which is deemed an original but all of which constitute one and the same instrument.

Executed as shown below:  
Dated this 26<sup>th</sup> day of January 2011.

**STAFF OF THE PUBLIC UTILITY  
COMMISSION OF TEXAS**

By: \_\_\_\_\_  
Susan Goodson  
Attorney of Record

**SOUTHWESTERN PUBLIC SERVICE  
COMPANY**

By:  \_\_\_\_\_  
Andrea Stover  
Attorney of Record

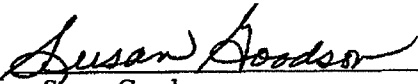
**JENNIFER D. WILLARD AND  
AMY KATHLEEN BRILLHART**

By: \_\_\_\_\_  
Jennifer D. Willard

Executed as shown below:

Dated this 26<sup>th</sup> day of January 2011.

**STAFF OF THE PUBLIC UTILITY  
COMMISSION OF TEXAS**

By:   
Susan Goodson  
Attorney of Record

**SOUTHWESTERN PUBLIC SERVICE**

Executed as shown below:

Dated this 26<sup>th</sup> day of January 2011.

**STAFF OF THE PUBLIC UTILITY  
COMMISSION OF TEXAS**

By: \_\_\_\_\_  
Susan Goodson  
Attorney of Record

**SOUTHWESTERN PUBLIC SERVICE  
COMPANY**

By: \_\_\_\_\_  
Jerry Shackelford  
Attorney of Record

**JENNIFER D. WILLARD AND  
AMY KATHLEEN BRILLHART**

By: Jennifer D. Willard  
Jennifer D. Willard

**EXHIBIT A**

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<b>APPLICATION OF SOUTHWESTERN</b>	<b>§</b>	
<b>PUBLIC SERVICE COMPANY TO</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>AMEND A CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY FOR A</b>	<b>§</b>	<b>OF</b>
<b>PROPOSED TRANSMISSION LINE</b>	<b>§</b>	
<b>WITHIN HANSFORD AND OCHILTREE</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>COUNTIES, TEXAS</b>		

**PROPOSED ORDER**

This Order addresses the application of Southwestern Public Service Company (SPS) to amend a certificate of convenience and necessity (CCN) for a proposed transmission line in Hansford and Ochiltree Counties, Texas, (Application). SPS, the Staff of the Public Utility Commission of Texas (Staff), and Intervenor Jennifer Willard on behalf of and with power of attorney for Amy Kathleen Brillhart (collectively, Signatories) executed a Unanimous Stipulation (Stipulation) that resolves all of the issues in this docket. This docket was processed in accordance with applicable statutes and Commission rules. SPS requested approval to construct a 230 kilovolt (kV) transmission line from the existing Hitchland Substation located in Hansford County, Texas in the northern/central Texas Panhandle region near the Oklahoma-Texas state line to the proposed Ochiltree County Substation located just north of Perryton, Ochiltree County, Texas. Consistent with the Stipulation, SPS's Application is approved.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

**Procedural History**

1. SPS is an investor-owned electric utility providing retail electric service in Texas under CCN No. 30153.



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2. On August 17, 2010, under authority of Chapter 37 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. Title 2 (Vernon 2007 & Supp. 2010), SPS filed an application for a proposed 230 kV transmission line that begins at the existing Hitchland Substation located in Hansford County, Texas in the northern/central Texas Panhandle region near the Oklahoma-Texas state line to the proposed Ochiltree County Substation located north of the city of Perryton, Ochiltree County, Texas and is approximately 39 miles in length.
3. On August 17, 2010, SPS provided, by first class mail, written notice of the Application to: (a) each county in which the requested facilities will be located, including Hansford, and Ochiltree; (b) each neighboring utility within five miles of the requested facilities, including Golden Spread Electric Cooperative, Inc. (GSEC), North Plains Electric Cooperative, Inc. (NPEC), and Tri-County Electric Cooperative, Inc. (TCEC); and (c) each landowner, as stated on current county tax rolls, that will be directly affected by the requested CCN amendment.
4. On August 17, 2010, SPS provided a copy of the Environmental Assessment (EA) and a copy of the Application to the Texas Parks and Wildlife Department (TPWD).
5. On August 18, 2010, the Commission Administrative Law Judge (ALJ) issued Order No. 1, requiring information from SPS and a recommendation from Commission Staff regarding the sufficiency of the Application and notice, and addressing other procedural matters.
6. On August 20, 2010, SPS sent TPWD notice that the application could be approved administratively within 80 days of its filing.
7. August 27, 2010, SPS filed the proof of notice to the affected counties, utilities, landowners, and to TPWD.
8. On August 19, 2010, SPS published notice of the Application in the *Guyman Daily Herald*, a newspaper of general circulation in Texas County, Oklahoma.
9. On August 22, 2010, SPS published notice of the Application in the Perryton Herald, which has general circulation in Ochiltree County, Texas
10. On August 25, 2010, SPS published notice of the Application in the Hansford County Reporter-Statesman, which has general circulation in Hansford County, Texas.

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11. On August 31, 2010, SPS filed an affidavit attesting to the publication of notice in each newspaper.
12. On September 8, 2010, Commission Staff recommended that the Application be deemed sufficient, but requested supplemental information and identified several deficiencies in SPS's notice. Staff recommended that SPS be required to resend and republish notice with corrections.
13. On September 15, 2010, SPS filed a response to Commission Staff's recommendation, stating that it would re-notice the docket to correct the deficiencies pointed out by Commission Staff and provide the requested supplement to the Application.
14. On September 16, 2010, SPS provided, by first class mail, corrected written notice of the Application to: (a) each county in which the requested facilities will be located, including Hansford and Ochiltree; (b) each neighboring utility within five miles of the requested facilities, including GSEC, NPEC, and TCEC; and (c) each landowner, as stated on current county tax rolls, that will be directly affected by the requested CCN amendment.
15. On September 20, 2010, the Commission ALJ issued Order No. 2 approving the sufficiency of the Application and requiring SPS to resend and republish notice with the corrections noted by Commission Staff and supplement the Application.
16. On September 21, 2010, SPS published a revised notice of the Application in the *Guyman Daily Herald*, a newspaper of general circulation in Texas County, Oklahoma.
17. On September 19, 2010, SPS published a revised notice of the Application in the *Perryton Herald*, which has general circulation in Ochiltree County, Texas.
18. On September 23, 2010, SPS published a revised notice of the Application in the *Hansford County Reporter-Statesman*, which has general circulation in Hansford County, Texas.
19. On September 28, SPS filed a supplement to the Application as requested by Staff.
20. On September 30, 2010, SPS filed the proof of revised notice to the affected counties, utilities, and landowners.
21. On September 30, 2010, SPS filed an affidavit attesting to the publication of the re-notice.

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22. On October 6, 2010, Staff recommended that the revised notice be found sufficient and filed a proposed procedural schedule.
23. On October 7, 2010, the Commission ALJ issued Order No. 3 finding the Application and notice sufficient and approving Staff's proposed procedural schedule.
24. On October 10, 2010, Staff and SPS filed a Joint Motion to Amend the Procedural Schedule.
25. On October 12, 2010, the Commission ALJ issued Order No. 4 approving the amended procedural schedule as proposed by SPS and Staff.
26. On October 29, 2010, Jennifer Willard filed a motion to intervene on behalf of herself and Amy Kathleen Brillhart.
27. On November 10, 2010, Jennifer Willard requested a hearing.
28. On November 15, 2010, the Commission ALJ issued Order No. 5 granting Jennifer Willard's motion to intervene.
29. On November 17, 2010, the Commission referred the proceeding to the State Office of Administrative Hearings (SOAH).
30. On November 24, 2010, the SOAH ALJ issued SOAH Order No. 1: Notice of Prehearing Conference; Requiring Proposed Schedule from Staff and Setting out Hearing Procedures.
31. On December 22, 2010, Staff filed a proposed procedural schedule and status report noting that the parties were attempting to settle this matter.
32. On January 11, 2011, TPWD filed a letter containing comments and recommendations regarding the Application.
33. On January 26, 2011, the Signatories filed a Unanimous Stipulation and an Agreed Proposed Order resolving all issues in this docket; SPS also filed an unopposed motion to admit evidence.

**Description of SPS's Proposed Transmission Line and Cost**

34. The proposed 230 kV transmission line begins at the existing Hitchland Substation located in Hansford County, Texas in the northern/central Texas Panhandle region near

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the Oklahoma-Texas state line, ends at the proposed Ochiltree County Substation north of Perryton, Ochiltree County, Texas, and is approximately 39 miles in length.

35. SPS filed five alternate routes. Consistent with the Stipulation, the Signatories agreed to SPS's Preferred Route, Route 1, with modifications (Settlement Route). The Settlement Route is described as follows:

- the Settlement Route begins at the Hitchland Substation and uses Links A, E, U, and V as originally proposed for Route 1;
- at the end of Link V, the Settlement Route continues due east for approximately 21,335 feet, following just south of the north section lines of Sections 4 (Hansford County, Texas, WCRR Survey, Block 1) and Sections 16, 17, and 18 (Hansford County, Texas, H&TC Survey, Block 45);
- at the northeast corner of Section 18, the Settlement Route then turns due south and parallels the east boundary of Section 18 for approximately 5,200 feet, until it reaches the southeast corner of Section 18 where it intersects with Link M;
- the Settlement Route then uses the remaining portion of Link M and all of Links O, P, and R as originally proposed for Route 1, ending at the proposed Ochiltree County Substation;
- the Settlement Route does not use Link W.

36. The proposed transmission line will be built primarily using single pole steel structures with direct burial foundations for in-line structures and drilled pier foundations for corner and angle structures.

37. Because the Settlement Route does not add any length or additional corners compared to the originally proposed Route 1, it will not affect the cost to construct the transmission line. The cost to construct the Settlement Route is approximately \$13,908,958 and the cost for the substation facilities is approximately \$8,037,305. The total estimated cost of the project is approximately \$21,946,263.

**Need for the Proposed Transmission Line**

38. SPS is a member of, and its entire transmission system is located within the Southwest Power Pool (SPP). The SPP is an organization that meets the requirements of PURA

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- §39.151 as an independent system operator. The SPP determined that there is a need and sent SPS a notification to construct the proposed transmission line.
39. The proposed transmission line is needed to provide improved transmission reliability in the area by providing a second 230 kV source to the transmission in the Perryton, Texas area, and thereby mitigate overloads and low voltage conditions.
40. SPS demonstrated a reasonable need for the proposed project in order to provide more adequate and reliable service. The need for the proposed project was not disputed in this docket.

**Resolution of Landowner Concerns**

41. Neither Jennifer Willard nor Amy Kathleen Brillhart own property that is affected by the location of the proposed transmission line on the Settlement Route.
42. There are five landowners that will be affected by the modifications to Route 1 that are a part of the Settlement Route. Kirby Brillhart, Amy Booth, and Susan Cummings, jointly own Section 4, Hansford County, Texas, WCRR Survey, Block 1. Candice Brillhart owns Section 16, Hansford County, Texas, H&TC Survey, Block 45. Paul Stavlo owns Sections 17 and 18, Hansford County, Texas, H&TC Survey, Block 45.
43. A portion of the Settlement Route, beginning at the end point of Segment V, crosses Sections 4, 16, 17, and 18, paralleling the north border of those sections for approximately 21,335 feet. The Settlement Route turns south at the northeast corner of Section 18, and parallels the east border of Section 18 for approximately 5,200 feet, intersecting with Segment M in the southeast corner of the section.
44. SPS provided the landowners a map that shows the location of the Settlement Route. In individual letters to the Commission, the landowners have stated that they have no objection to the approval of the Settlement Route. The landowner letters have been attached as Exhibit B to the Unanimous Stipulation.

**Project Alternatives**

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45. SPS considered distribution, transmission, and generation alternatives to the proposed transmission line.
46. SPS considered constructing 40 miles of 115 kV line from the Hitchland Substation to the proposed Ochiltree County Substation. Although this alternative would have saved the project the cost of the 230/115 kV transformer at Ochiltree County Substation, it would not provide the needed upgrades for reliability. The 230/115 kV transformer mitigates system intact and contingency overloads of the Hitchland and Moore County 230/115 kV transformers. Because this project alternative would not provide the same level of reliability benefits, this is not a reasonable alternative.
47. SPS also considered re-conductoring the existing 115 kV transmission lines from Texas County to Cole to Perryton to Texas Farms to Spearman Substation. Again, this would leave the area transmission short on the 230/115 kV transformer capacities at Hitchland Substation and Moore County Substation. Further, because existing structures are inadequate, this alternative would require SPS to wreck out an existing line and rebuild a new line in its place with larger conductors, potentially costing \$35,000,000. Because this alternative would be less reliable and more expensive than the proposed project, this is not a reasonable alternative.
48. SPS considered adding a 230/115 kV transformer to the Hitchland Substation. Although this alternative would have mitigated the contingency based overloads of the Hitchland and Moore County 230/115 kV transformers, this alternative would not provide the additional reliability of another transmission source to the Perryton, Texas area. Because this would not provide the reliability performance of the proposed project, this is not a reasonable alternative.
49. SPS considered employing either series compensation of the existing 115 kV transmission line or the installation of shunt capacity banks at Perryton Substation to mitigate the contingency-based low voltage conditions. SPS did not consider either one of these measures as a viable alternative because compensating for only the low voltage conditions would not mitigate the line or transformer overloads.
50. SPS considered an alternative that would seek to mitigate the contingency overloading and low voltage conditions through a distribution alternative. However, the current

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loads in the Spearman, Perryton, and Booker Texas cannot be served during critical contingencies on the existing transmission. Further, the nearest distribution served by other transmission is more than 33 miles away from the Perryton area and another 19 miles from the Booker area. Therefore, SPS did not consider this alternative viable.

51. SPS finally considered the construction of a natural gas generation plant at or near Perryton Substation. To mitigate line overload and low voltage conditions, SPS would need at least 30 MW of generation. However, the current transmission lines do not have sufficient capacity to accommodate that level of added generation. Considering the prohibitive capital costs for a 30 MW plant (\$27,000,000 not considering permitting, fuel supply interconnection, or transmission interconnection) and the need for additional transmission lines even with the added generation, this alternative is not reasonable.

Routes

52. SPS retained PBS&J to prepare an Environmental Assessment and Alternative Route Analysis for the proposed transmission line.
53. SPS considered and submitted a sufficient number of geographically diverse routes for the proposed transmission line.
54. The proposed transmission line complies with all aspects of PURA §37.056 and P.U.C. SUBST. R. 25.101.
55. Consistent with the Application, as modified by the Stipulation, the proposed transmission line shall be constructed along the Settlement Route.
56. The Settlement Route complies with all aspects of PURA §37.056 and P.U.C. SUBST. R. 25.101 and is a reasonable alternative weighing the factors contained therein.
57. Similar to the originally proposed Route 1, the Settlement Route has the least amount of impact to habitable structures and has the least impact on the visual foreground zone of parks and recreational areas. The Settlement Route would also have the least amount of impact on streams, open water, emergent wetlands and length of route parallel to streams within 100 feet.

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58. All parties to this docket support the Settlement Route for the proposed transmission line.

*Community Values*

59. SPS and PBS&J conducted two public open-house meetings. The meetings were held at the Museum of the Plains in Perryton, Texas on May 28, 2009 and March 30, 2010.
60. Information received from the public open-house meetings and from local, state, and federal agencies was considered and incorporated into both PBS&J's routing analysis and SPS's selection of preferred and alternative routes.
61. Commission Staff recommends that SPS cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the proposed transmission line.
62. There are two habitable structures located within 300 feet of the proposed transmission line along the Settlement Route.
63. There are no AM radio towers within 10,000 feet of the proposed transmission line along the Settlement Route.
64. There are two electronic communication towers located within 2,000 feet of the Settlement Route.
65. There are no FAA registered airfields within 20,000 feet of the centerline of the Settlement Route. There are no known heliports within 5,000 feet of Route 3. There is one private airstrip within 10,000 feet of the centerline of the Settlement Route.
66. A portion of each alternative route for the proposed transmission line crosses cropland irrigated by a center pivot irrigation system. The Settlement Route will not interfere with any of the existing center pivot sprinkler systems and no rolling type irrigation systems exist near the proposed transmission line. Where the sprinklers overlap the potential easement location, SPS will design the line in such a manner as to span the length of the sprinkler overlap areas.



**Park and Recreational Areas**

- 67. There are no parks within 1,000 feet of the proposed centerline of the Settlement Route.
- 68. The proposed transmission line will have no adverse impact on parks and recreational areas.

**Historical and Archeological Areas**

- 69. The Settlement Route crosses one previously recorded archeological site, Site 41HF55.
- 70. This route has approximately 59,000 feet of High Probability Areas. SPS's preferred form of mitigation for cultural resources found within the proposed right-of-way (ROW) will be avoidance.

**Aesthetic Values**

- 71. The aesthetic impacts of the proposed transmission line have been considered and minimized to the extent reasonable. Approximately 59,302 feet of the 201,042 feet that make up the Settlement Route will be located within the visual foreground zone of the study area's US and State highways. This project will have minimal impact on aesthetic values.

**Effect of Granting the CCN on Other Utilities**

- 72. The proposed transmission line will not adversely affect service by other utilities in the area and will result in SPS being able to provide more reliable service.

**Environmental Impact**

- 73. SPS contracted with PBS&J to perform an EA and Alternative Route Analysis of the proposed transmission line.

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74. Construction of the proposed transmission line will not have a significant effect on the geologic or physiographic features of the area.
75. The proposed transmission line will have little long-term impact on soils that will mainly consist of erosion and soil compaction. SPS will inspect the ROW during and after construction to identify problem erosion areas, and will take special precautions to minimize vehicular traffic over areas with very shallow soils. SPS will also exercise special care when clearing near waterways.
76. The proposed transmission line will have minimal impact on prime farmland and will be limited to the physical occupation of small areas at the base of support structures.
77. The construction of the proposed transmission line should have little impact on surface water.
78. The proposed transmission line will span all streams. During construction of the proposed transmission line, SPS will use existing bridges and culverts whenever possible, and will employ selective clearing to minimize erosion problems. SPS will employ selective clearing of vegetation to minimize erosion problems. Highly erodible areas adjacent to streams will not be cleared unless necessary.
79. The FEMA designated 100-year floodplain data is unmapped for Hansford and Ochiltree Counties, Texas and Beaver and Texas Counties, Oklahoma.
80. Although it is possible that transmission line structures will be located within a floodplain, careful siting will eliminate the possible impacts and will not significantly affect flooding. SPS will coordinate with the appropriate floodplain administrators for Hansford and Ochiltree counties.
81. The main impact of both segments of the proposed transmission line on vegetation will be the removal of herbaceous vegetation along the proposed ROW. When clearing vegetation, SPS will make efforts to retain native ground cover, where possible, and to minimize impacts to local vegetation. As soon as reasonably possible after construction, SPS will reseed the ROW in herbaceous species or a cover of forage crop, if necessary, to facilitate erosion control.

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82. The Settlement Route crosses six streams and does not parallel any streams within 100 feet. The proposed transmission line will have only a minor impact on aquatic/hydric habitat.
83. The proposed transmission line will have only a minor impact on local wildlife.
84. The proposed transmission line is not located within the boundaries of the Texas Coastal Management Program Boundary.
85. There are ten federal and/or state-listed endangered and threatened species that potentially occur in Hansford and Ochiltree Counties, Texas and Beaver and Texas Counties, Oklahoma. The only species known to occur in the general area, if suitable habitat is present, is the state listed (threatened) Texas horned lizard. There is no evidence that the proposed transmission line is likely to adversely affect the species.
86. There is no United States Fish and Wildlife Service (USFWS) designated critical habitat in the counties comprising the study area.
87. SPS has conducted an adequate evaluation of potential environmental impacts of the proposed transmission line in the impacted area.

**Prudent Avoidance**

88. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance.

**TPWD Written Comments and Recommendations**

89. SPS is obligated to comply with all environmental laws and regulations independent of any language included by the Commission in an Order.
90. In addition to obtaining a CCN from the Commission, SPS may need additional permits and may be required to make additional notification in order to construct the project.
91. After a transmission line route has been selected and approved by the Commission, qualified individuals will conduct a field assessment of the entire length of the project to identify water resources, cultural resources, potential migratory bird issues, and

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threatened or endangered species habitat that may be impacted as a result of the project. As a result of these assessments, SPS will identify additional permits that are necessary, will obtain all necessary environmental permits, and will comply with the relevant permit conditions during construction and operation of the transmission line.

92. SPS will utilize permitted biological monitors to ensure compliance with the Endangered Species Act.
93. SPS's construction practices are sufficient and thus no additional permitted biological monitors are necessary during clearing and construction activities for state-listed species.
94. SPS will undertake measures necessary to comply with the Migratory Bird Treaty Act.
95. The standard mitigation requirements included in the ordering paragraphs in this Order, coupled with SPS's construction and mitigation practices are reasonable measures for a utility to undertake when constructing a transmission line.
96. SPS will use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
97. To the extent prairie dog towns are in the immediate proximity of the route, SPS will undertake the measures described in the letter dated January 10, 2011 from TPWD that is in the record in this docket regarding the Black-Tailed Prairie Dog, Western Burrowing Owl and the Mountain Plover.

## II. Conclusions of Law

1. SPS is an electric utility as defined in PURA §§11.004 and 31.002(6).
2. SPS is not a participant in the retail competition market under PURA, Chapter 39, Subchapter I.
3. The Commission has jurisdiction over this matter pursuant to PURA §§14.001, 32.001, 37.051, 37.053, 37.054 and 37.056.
4. SPS provided proper notice of the Application in compliance with PURA §37.054 and P.U.C. PROC. R. 22.52(a).

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5. This docket was processed in accordance with the requirements of PURA and Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2008 & Supp. 2009).
6. SPS is entitled to approval of the Application described in the Findings of Fact, utilizing the Settlement Route, having demonstrated that the proposed transmission line facilities are necessary for the service, accommodation, convenience, and safety of the public within the meaning of PURA §37.056(c).
7. The Settlement Route complies with all aspects of PURA §37.056 and P.U.C. SUBST. R. 25.101, as well as the Commission's policy of prudent avoidance.
8. This Application does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
9. Consistent with the Signatories' Stipulation, the Application is reasonable, in the public interest, and should be approved.
10. The requirements for informal disposition under P.U.C. PROC. R. 22.35 have been met in this proceeding.

**III. Ordering Paragraphs**

In accordance with these Findings of Fact and Conclusions of Law, the Commission issues the following Order:

1. Consistent with the Stipulation, SPS's Application and the Stipulation are approved.
2. Consistent with the Stipulation, CCN No. 30153 is amended to include the construction and operation of the transmission line facilities requested in the Application. SPS will use the Settlement Route. The Settlement Route is described as follows:
  - the Settlement Route begins at the Hitchland Substation and uses Links A, E, U, and V as originally proposed for Route 1;
  - at the end of Link V, the Settlement Route continues due east for approximately 21,335 feet, following just south of the north section lines of Sections 4 (Hansford

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County, Texas, WCRR Survey, Block 1) and Sections 16, 17, and 18 (Hansford County, Texas, H&TC Survey, Block 45);

- at the northeast corner of Section 18, the Settlement Route then turns due south and parallels the east boundary of Section 18 for approximately 5,200 feet, until it reaches the southeast corner of Section 18 where it intersects with Link M;
  - the Settlement Route then uses the remaining portion of Link M and all of Links O, P, and R as originally proposed for Route 1, ending at the proposed Ochiltree County Substation;
  - the Settlement Route does not use Link W.
3. Resolution of this docket was the product of negotiation and compromise between the Signatories. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Stipulation. Neither shall entry of this Order be regarded as binding precedent as to the appropriateness of any principle underlying the Stipulation.
  4. In the event SPS or its contractors encounter any artifacts or other cultural resources during project construction, work shall cease immediately in the vicinity of the resource and the discovery shall be reported to the Texas Historical Commission (THC). In that situation, SPS shall take action as directed by the THC.
  5. SPS shall implement erosion control measures as appropriate. Also, SPS shall return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner.
  6. SPS shall follow the procedures for raptor protection outlined in the *Avian Power Line Interaction Commission (APLIC), Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 2006* (2006); and in the APLIC and USFWS in the *Avian Protection Plan Guidelines* (2005). SPS shall take precautions to avoid disturbing occupied nests and will take steps to minimize the impact of construction on migratory birds, especially during nesting season.
  7. SPS shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW.

**EXHIBIT A**

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8. SPS shall minimize the amount of flora and fauna disturbed during construction of the transmission line, except to the extent necessary to establish appropriate ROW clearance for the transmission line. Additionally, SPS shall re-vegetate using native species and shall consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practicable, SPS shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and the USFWS.
9. SPS shall coordinate with TPWD and USFWS and conduct presence/absence surveys as necessary;
10. SPS shall comply with the requirements of the Migratory Bird Treaty Act in connection with construction and maintenance of the Project;
11. SPS shall allow state-listed threatened species observed during construction to leave the site or be relocated to a suitable nearby area by a permitted individual;
12. To the extent prairie dog towns are in the immediate proximity of the route, SPS will undertake the measures described in the letter dated January 10, 2011 from TPWD that is in the record in this docket regarding the Black-Tailed Prairie Dog, Western Burrowing Owl and the Mountain Plover.
13. SPS shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the transmission line. Any minor deviation to the approved route shall only directly affect landowners who received notice of the transmission line in accordance with P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation and shall not add any significant cost to the project.
14. SPS shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. First, SPS shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line and not cause an unreasonable increase in cost or

**EXHIBIT A**

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delay. Unless these two conditions are met, this paragraph does not authorize SPS to deviate from the approved route except as allowed by the other ordering paragraphs of this Order.

15. SPS shall comply with the reporting requirements of P.U.C. SUBST. R. 25.83.
16. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_\_ day of January 2011.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**BARRY T. SMITHERMAN, CHAIRMAN**

\_\_\_\_\_  
**DONNA L. NELSON, COMMISSIONER**

\_\_\_\_\_  
**KENNETH W. ANDERSON, JR., COMMISSIONER**



Exhibit B

Paul Stavlo  
PO Box 1096  
Gruver, TX 79040-1096

December 9, 2010

Public Utility Commission of Texas  
Central Records  
1701 North Congress Ave.  
P.O. Box 13326  
Austin, TX 78711-3326

Re: Docket No. 38524, SOAH Docket No. 473-11-1312, Application of Southwestern Public Service Company to Amend its Certificate of Convenience and Necessity for a Proposed 230 kV Transmission Line within Hansford and Ochiltree Counties.

Dear Commissioners:

My name is Paul Stavlo and I own land in Hansford County, Texas. Specifically, I own Section 17, Hansford County, Texas, H&TC Survey, Block 45.

I received notice of the public landowner meetings in April, 2009 and March, 2010 that Southwestern Public Service Company (SPS) intended to file an application with the Public Utility Commission of Texas (PUC) for a Certificate of Convenience and Necessity (CCN) to build a transmission line within Hansford and Ochiltree Counties, Texas, and Beaver County, Oklahoma. The notice I received indicated that one of the potential transmission line routes could affect my property. I also received notice in August and September, 2010 that SPS had filed its CCN application with the PUC. These notices indicated that SPS's preferred route crossed over my property. Although I was aware that part of SPS's preferred route crossed my property, I chose not to intervene or file comments in the proceeding.

On December 1, 2010, SPS contacted me regarding a potential settlement agreement among the parties to the above reference proceeding. The potential settlement involves establishing a new Settlement Route that will parallel the northern and eastern boundaries of my property instead of the southern boundary. SPS provided me a revised routing map that indicates where the Settlement Route will be located. The revised routing map is attached to this letter. I have no objection to the PUC approving SPS's proposed transmission line in this docket using the Settlement Route crossing my property as reflected on the revised routing map. This route change would not have affected my decision not to intervene or file comments in this proceeding. I understand that the compensation I will be paid for the right of way for the transmission line is not a part of this proceeding.

Thank you for your consideration.

Sincerely,

  
Paul Stavlo

Candice Brillhart  
2417 S. Grinnell  
Perryton, TX 79070

December 9, 2010

Public Utility Commission of Texas  
Central Records  
1701 North Congress Ave.  
P.O. Box 13326  
Austin, TX 78711-3326

Re: Docket No. 38524, SOAH Docket No. 473-11-1312, Application of Southwestern Public Service Company to Amend its Certificate of Convenience and Necessity for a Proposed 230 kV Transmission Line within Hansford and Ochiltree Counties.

Dear Commissioners:

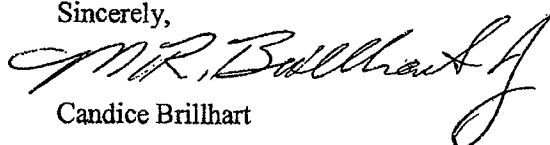
My name is Candice Brillhart and I own land in Hansford County, Texas. Specifically, I own Section 16, Hansford County, Texas, H&TC Survey, Block 45.

I received notice of the public landowner meetings in April, 2009 and March, 2010 that Southwestern Public Service Company (SPS) intended to file an application with the Public Utility Commission of Texas (PUC) for a Certificate of Convenience and Necessity (CCN) to build a transmission line within Hansford and Ochiltree Counties, Texas, and Beaver County, Oklahoma. The notice I received indicated that one of the potential transmission line routes could affect my property. I also received notice in August and September, 2010 that SPS had filed its CCN application with the PUC. These notices indicated that SPS's preferred route crossed over my property. Although I was aware that part of SPS's preferred route crossed my property, I chose not to intervene or file comments in the proceeding.

On December 7, 2010, SPS contacted me regarding a potential settlement agreement among the parties to the above reference proceeding. The potential settlement involves establishing a new Settlement Route that will parallel the northern boundary of my property instead of the southern boundary. SPS provided me a revised routing map that indicates where the Settlement Route will be located. The revised routing map is attached to this letter. I have no objection to the PUC approving SPS's proposed transmission line in this docket using the Settlement Route crossing my property as reflected on the revised routing map. This route change would not have affected my decision not to intervene or file comments in this proceeding. I understand that the compensation I will be paid for the right of way for the transmission line is not a part of this proceeding.

Thank you for your consideration.

Sincerely,

  
Candice Brillhart

Amy Booth  
9605 S. Outback Path  
Talala, OK 74080

December 9, 2010

Public Utility Commission of Texas  
Central Records  
1701 North Congress Ave.  
P.O. Box 13326  
Austin, TX 78711-3326

Re: Docket No. 38524, SOAH Docket No. 473-11-1312, Application of Southwestern Public Service Company to Amend its Certificate of Convenience and Necessity for a Proposed 230 kV Transmission Line within Hansford and Ochiltree Counties.

Dear Commissioners:

My name is Amy Booth and I own land in Hansford County, Texas. Specifically, I own a one-third interest in Section 4, Hansford County, Texas, WCRR Survey, Block 1.

I received notice of the public landowner meetings in April, 2009 and March, 2010 that Southwestern Public Service Company (SPS) intended to file an application with the Public Utility Commission of Texas (PUC) for a Certificate of Convenience and Necessity (CCN) to build a transmission line within Hansford and Ochiltree Counties, Texas, and Beaver County, Oklahoma. The notice I received indicated that one of the potential transmission line routes could affect my property. I also received notice in August and September, 2010 that SPS had filed its CCN application with the PUC. These notices indicated that SPS's preferred route crossed over my property. Although I was aware that part of SPS's preferred route crossed my property, I chose not to intervene or file comments in the proceeding.

On December 1, 2010, SPS contacted my brother Kirby Brilhart regarding a potential settlement agreement among the parties to the above-referenced proceeding. The potential settlement involves establishing a new Settlement Route that will parallel the northern boundary of my property instead of the southern boundary. SPS provided me a revised routing map, see enclosure, that indicates where the Settlement Route will be located. I have no objection to the PUC approving SPS's proposed transmission line in this docket using the Settlement Route crossing my property as reflected on the revised routing map. This route change would not have affected my decision not to intervene or file comments in this proceeding. I understand that the compensation I will be paid for the right-of-way for the transmission line is not a part of this proceeding.

Thank you for your consideration.

Sincerely,

Amy Booth



Susan Cummings  
637 Covered Wagon Trail  
Crawford, TX 76638

December 9, 2010

Public Utility Commission of Texas  
Central Records  
1701 North Congress Ave.  
P.O. Box 13326  
Austin, TX 78711-3326

Re: Docket No. 38524, SOAH Docket No. 473-11-1312, Application of Southwestern Public Service Company to Amend its Certificate of Convenience and Necessity for a Proposed 230 kV Transmission Line within Hansford and Ochiltree Counties.

Dear Commissioners:

My name is Susan Cummings and I own land in Hansford County, Texas. Specifically, I own a one-third interest in Section 4, Hansford County, Texas, WCRR Survey, Block 1.

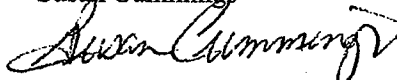
I received notice of the public landowner meetings in April, 2009 and March, 2010 that Southwestern Public Service Company (SPS) intended to file an application with the Public Utility Commission of Texas (PUC) for a Certificate of Convenience and Necessity (CCN) to build a transmission line within Hansford and Ochiltree Counties, Texas, and Beaver County, Oklahoma. The notice I received indicated that one of the potential transmission line routes could affect my property. I also received notice in August and September, 2010 that SPS had filed its CCN application with the PUC. These notices indicated that SPS's preferred route crossed over my property. Although I was aware that part of SPS's preferred route crossed my property, I chose not to intervene or file comments in the proceeding.

On December 1, 2010, SPS contacted my brother Kirby Brillhart regarding a potential settlement agreement among the parties to the above-referenced proceeding. The potential settlement involves establishing a new Settlement Route that will parallel the northern boundary of my property instead of the southern boundary. SPS provided me a revised routing map, see enclosure, that indicates where the Settlement Route will be located. I have no objection to the PUC approving SPS's proposed transmission line in this docket using the Settlement Route crossing my property as reflected on the revised routing map. This route change would not have affected my decision not to intervene or file comments in this proceeding. I understand that the compensation I will be paid for the right-of-way for the transmission line is not a part of this proceeding.

Thank you for your consideration.

Sincerely,

Susan Cummings



Kirby Brillhart  
P.O. Box 1006  
Spearman, TX 79081

December 9, 2010

Public Utility Commission of Texas  
Central Records  
1701 North Congress Ave.  
P.O. Box 13326  
Austin, TX 78711-3326

Re: Docket No. 38524, SOAH Docket No. 473-11-1312, Application of Southwestern Public Service Company to Amend its Certificate of Convenience and Necessity for a Proposed 230 kV Transmission Line within Hansford and Ochiltree Counties.

Dear Commissioners:

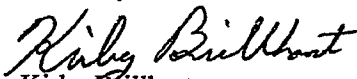
My name is Kirby Brillhart and I own land in Hansford County, Texas. Specifically, I own a one-third interest in Section 4, Hansford County, Texas, WCRR Survey, Block 1.

I received notice of the public landowner meetings in April, 2009 and March, 2010 that Southwestern Public Service Company (SPS) intended to file an application with the Public Utility Commission of Texas (PUC) for a Certificate of Convenience and Necessity (CCN) to build a transmission line within Hansford and Ochiltree Counties, Texas, and Beaver County, Oklahoma. The notice I received indicated that one of the potential transmission line routes could affect my property. I also received notice in August and September, 2010 that SPS had filed its CCN application with the PUC. These notices indicated that SPS's preferred route crossed over my property. Although I was aware that part of SPS's preferred route crossed my property, I chose not to intervene or file comments in the proceeding.

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Thank you for your consideration.

Sincerely,

  
Kirby Brillhart