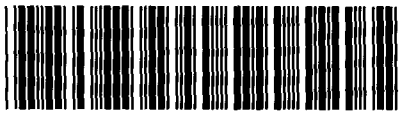

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DOCKET NO. 50546

APPLICATION OF AEP TEXAS INC. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE UNION CARBIDE TO LOMA ALTA CUT-IN TO POMPANO 138-KV DOUBLE CIRCUIT TRANSMISSION LINE IN CAMERON COUNTY	§ § § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Final Disposition. In support thereof, Staff shows the following:

I. BACKGROUND

On March 10, 2020, AEP Texas Inc. (AEP) filed an application to amend its Certificate of Convenience and Necessity (CCN) for a proposed 138-kilovolt (kV) transmission line in Cameron County. The proposed transmission line is designated as the Union Carbide to Loma Alta Cut-in to Pompano transmission line.

On April 9, 2020, the Administrative Law Judge (ALJ) issued Order No. 3. Order No. 3 requires Staff to request a hearing on the merits or file a recommendation on final disposition by May 6, 2020. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff recommends approval of the application for the new 138-kV transmission line and new substation to be built along proposed Route 8, as supported by the attached memorandum of John Poole of the Infrastructure Division. Staff further recommends that AEP be ordered to comply with the reporting requirements of 16 Texas Administrative Code (TAC) § 25.83 and to follow the Measures to Mitigate Construction Impacts as addressed in Mr. Poole's memorandum.

III. CONCLUSION

Staff respectfully requests that an order be issued consistent with this recommendation.

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DATE: May 6, 2020

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Rachelle Nicolette Robles
Division Director

/s/ Rashmin J. Asher
Rashmin J. Asher
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DOCKET NO. 50546

CERTIFICATE OF SERVICE

I hereby certify that, unless otherwise ordered by the presiding officer, a true and correct copy of the foregoing document was transmitted by electronic mail to the parties of record on May 6, 2020 in accordance with the Order Suspending Rules issued in Docket No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher

Public Utility Commission of Texas

Memorandum

TO: Rashmin Asher
Legal Division

FROM: John Poole, P.E.
Infrastructure Division

DATE: May 6, 2020

RE: ENGINEERING REVIEW
Docket No. 50546, *Application of AEP Texas, Inc. to Amend a Certificate of Convenience and Necessity for the Proposed Union Carbide to Loma Alta Cut-in to Pompano 138-kV Double-Circuit Transmission Line in Cameron County*

On March 10th, 2020 AEP Texas Inc. (AEP Texas) filed an Application to amend their Certificate of Convenience and Necessity (CCN) to allow them to build a new double circuit 138 kilovolt (kV) transmission line to be built on mostly steel monopole structures in Cameron County, Texas. This transmission line will connect the cut-in of the existing AEP Texas Union Carbide to Brownsville Public Utility Board Loma Alta 138-kV Transmission Line and extend to the east until it reaches the proposed AEP Texas Pompano Substation which will be constructed near the proposed Rio Grande Liquified Natural Gas facility located along State Highway 48 southwest of Port Isabel, Texas.[1] The following are my recommendations and conclusions regarding this application.

I. Recommendations

I recommend that the Commission:

A. Approve the application for the new 138-kV transmission line and new substation to be built along proposed Route 8.

B. Order AEP Texas to comply with the reporting requirements of 16 Texas Administrative Code (TAC) §25.83; and

C. Order AEP Texas to follow the below-listed measures to mitigate construction impacts.

Measures to Mitigate Construction Impacts

1. AEP Texas shall conduct surveys, if not already completed, to identify metallic pipelines that could be affected by the proposed project and

[1] Application at 4 (Mar. 10, 2020).

cooperate with pipeline owners in modeling and analyzing potential hazards because of alternating-current interference affecting metallic pipelines being paralleled.

2. If AEP Texas encounters any archeological artifacts or other cultural resources during project construction, work must cease immediately in the vicinity of the artifact or resource, and the discovery must be reported to the Texas Historical Commission. In that situation AEP Texas must take action as directed by the Texas Historical Commission.

3. AEP Texas 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. AEP Texas 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.

4. AEP Texas must exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way. AEP Texas must ensure that the use of chemical herbicides to control vegetation within the right-of-way complies with rules and guidelines established in the Federal Insecticide Fungicide and Rodenticide Act and with Texas Department of Agriculture regulations.

5. AEP Texas must minimize the amount of flora and fauna disturbed during the addition of the transmission line, except to the extent necessary to establish appropriate right-of-way clearance. In addition, AEP Texas must revegetate, using native species and must consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practical, AEP Texas must avoid adverse environmental influence on sensitive plant and animal species and their habitats, as identified by the Texas Parks and Wildlife Department (TPWD) and the United States Fish and Wildlife Service.

6. AEP Texas must implement erosion control measures as appropriate. Erosion control measures may include inspection of the right-of-way before and during construction of the proposed project to identify erosion areas and implement special precautions as determined necessary to minimize the burden of vehicular traffic over the areas. AEP Texas must return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner or the landowner's representative. AEP Texas is not required to restore the original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the lines.

7. AEP Texas must use best management practices to minimize the potential burden to migratory birds and threatened or endangered species.

8. AEP Texas must cooperate with directly affected landowners to implement minor deviations from the approved route to minimize the burden of the transmission lines. Any minor deviations from the approved route must only directly affect landowners who were sent notice of the transmission line in accordance with 16 TAC § 22.52(a)(3) and landowners that have agreed to the minor deviation.

9. AEP Texas must include the transmission line approved by this Order on their monthly construction progress reports before the start of construction to reflect the final estimated cost and schedule in accordance with 16 TAC § 25.83(b). In addition, AEP Texas must provide final construction costs, with any necessary explanation for cost variance, after completion of construction when all costs have been identified.

10. AEP Texas shall, to the greatest extent practicable, span any coastal wetlands or submerged aquatic vegetation as defined by 31 TAC § 501.3(b) and Texas Water Code § 11.502.

11. AEP Texas shall avoid or minimize any potential impacts to any coastal wetlands or submerged aquatic vegetation through utilization of Best Management Practices (BMPs) and its Stormwater Pollution Prevention Plan (SWPP).

12. AEP Texas shall coordinate with the United States Army Corps of Engineers (USACE) prior to clearing and construction to ensure compliance with applicable requirements in order to avoid, minimize, and mitigate impacts to waters of the United States and Coastal Natural Resource Areas (CNRAs), including associated coastal wetlands and

submerged aquatic vegetation.

II. Project Justification

A. Description of Project

The proposed project can be described as follows:

1. AEP Texas is requesting to construct and operate a new approximately 9.54-10.28 mile double circuit 138-kV transmission line on mostly steel monopole structures between the cut-in of the existing AEP Texas Union Carbide to Brownsville Public Utility Board Loma Alta 138-kV Transmission Line and extend to the east until it reaches the proposed AEP Texas Pompano Substation which will be constructed near the proposed Rio Grande Liquified Natural Gas facility located along State Highway 48 southwest of Port Isabel, Texas. The proposed project will also consist of the construction of the new AEP Texas Pompano Substation and tap point facilities to accommodate the new transmission line. The majority of the routing will be constructed within a utility corridor developed by the Brownsville Navigation District (BND).[2]

2. This proposed project will be located in Cameron County, Texas.[3]

3. The project is estimated to cost between $37,781,666 and 39,644,671 along with an estimated $40,665 to $52,740 BND annual easement cost and $21,231,833 for the substation costs and $15,484 BND annual lease for substation property.[4]

4. Based on Staff's recommendations the application was deemed sufficient and materially complete on April 7, 2020 in Order No. 3, and AEP Texas was found to have complied with the notice requirements of 16 Tex. Admin. Code §22.52(a) and Order No. 1.[5]

B. Need for the Project

This project is needed to provide service to the load created by the proposed New Decade, LLC Rio Grande LNG facility.[6] This facility is currently schedule to have 50 Megawatts (MW) of load by the 3rd quarter of 2023, 200 MW of load by

[2] Application at 3 (Mar. 10, 2020).
[3] Application at 7 (Mar. 10, 2020).
[4] Application, Attachment 3 (Mar. 10, 2020).
[5] Order No. 3 at 1 (Apr. 9, 2020).
[6] Application at 9 (Mar. 10, 2020).

the 4th quarter of 2024, and approximately 600 MW by the 2nd quarter of 2026. This project will be able to provide 300 MW of service before further transmission projects will be required, which are currently under review by The Electric Reliability Council of Texas (ERCOT).[7]

Given the nature of the load involved and the necessity of using the utility corridor developed by the BND, I can see no practical alternative to the project to provide service to this facility.

III. Routing

A. AEP Texas's Recommendation

The study area was defined by the project endpoints plus the utilization of the BND utility corridor. An environmental assessment was prepared by POWER Engineers, Inc. (POWER).

POWER and AEP Texas developed 8 different proposed alternative routes that connect the cut-in of the existing AEP Texas Union Carbide to Brownsville Public Utility Board Loma Alta 138-kV Transmission Line to the BND utility corridor where they come together at link N through the corridor to the location of the proposed the proposed AEP Texas Pompano Substation.

Out of the 8 proposed alternative routes, POWER and AEP Texas selected Route 4 as the route that best meets the criteria of PURA and the Commission's rules. They based this selection on the following criteria:[8]

a. Route 4 has the longest length of right-of-way paralleling other existing right-of-way, at 8.9 miles;
b. Route 4 has the third shortest length across upland shrublands/brushlands, at 9.0 miles;
c. Route 4 has the third shortest length across all National Wetlands Inventory (NWI) mapped wetlands, at 5.53 miles;
d. Route 4 is tied with Route 3 for the third shortest length across known habitat of federally listed endangered or threatened species, at 0.1 mile;
e. Route 4 is tied with Routes 1, 2, and 3 as having the fewest number of additional archeological sites within 1,000 feet of its right-of-way, at three; and
f. Route 4 has the shortest length of right-of-way across areas of high archeological/historic site potential, at 1.9 miles.

[7] Application at 9 (Mar. 10, 2020).
[8] Application at 10 (Mar. 10, 2020).

Commission Staff selected Route 8 as the as the route that best meets the criteria of PURA and the Commission's rules for reasons I will explain in the remainder of my recommendation.

B. Community Values

As there were no habitable structures within 300 feet of the centerline of any of the proposed alternative routes[9] and the proposed project only crosses property owned by four different landowners[10] the prerequisites for a public meeting under 16 TAC § 22.52(a)(4) were not met. Therefore, there was no requirement for open house meetings.

Notice of the application for this project was published in *The Brownsville Herald* and *The Valley Morning Star* which are of general circulation in Cameron County.[11] Notice also was mailed to landowners, local utilities, municipal and county governments.[12]

C. Recreational and Park Areas

All the proposed alternative routes cross the Jaime J. Zapata Memorial Boat Ramp for approximately 0.04 miles. No other known recreational or park areas are within 1,000 feet of the centerline of any of the proposed alternative routes in this project.[13]

D. Historical Values

There are three historical or archaeological sites within 1,000 feet of all the proposed alternative routes.[14] Proposed alternative routes 5,6,7, and 8 have an additional historical or archaeological site within 1,000 feet of their centerlines along State Highway 48.[15] There are no known cemeteries in the study area nor do any of the proposed alternative routes cross any known historical or archaeological sites.[16]

If any further archeological or cultural resources are found during construction of the proposed project, AEP Texas should immediately cease work in the vicinity of the archeological or cultural resources and should immediately notify the Texas Historical Commission.

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[9] Application at 13 (Mar. 10, 2020).
[10] Application, Attachment 7 (Mar. 10, 2020).
[11] AEP Texas Inc.'s Proof of Notice & Publication at 7, 10 (Mar. 30, 2020).
[12] Application at 14 (Mar. 10, 2020).
[13] Application, Attachment 2 at 4-11 (Mar. 10, 2020).
[14] Application, Attachment 2 at 4-13 (Mar. 10, 2020).
[15] Application, Attachment 2 at 4-13 (Mar. 10, 2020).
[16] Application, Attachment 2 at 4-13 (Mar. 10, 2020).

I believe Route 8 is acceptable from a historical values perspective.

E. Aesthetic Values

In my opinion, all of the proposed alternative routes would result in a negative impact in aesthetic values, some routes more than others, depending on the visibility from homes and public roadways. Temporary effects would include views of the actual transmission line construction (e.g. assembly and erection of the structures) and of any clearing of ROW. Permanent effects would involve the visibility of the structures and the lines. I therefore conclude that aesthetic values would be impacted throughout the study area, and that these temporary and permanent negative aesthetic effects will occur on any route approved by the Commission. However, Route 8 is only a half mile longer than the shortest route and parallels the most existing transmission line right-of-way out of any of the proposed alternative routes, which would help to mitigate the negative aesthetic impacts.[17]

F. Environmental Integrity and the Texas Coastal Management Program

This project is located, in whole, within the Texas Coastal Management Program (TCMP) as defined by 31 TAC § 503.1.[18] Additionally the project is, in whole, located seaward of Coastal Facilities Designation Line as defined by 31 TAC § 19.2(a)(21).[19] Therefore the proposed project must comply with the goals of the TCMP and with 16 TAC § 25.102. In order to do this the Commission must find that the proposed project will not have any direct or significant impacts on any of the applicable Coastal Natural Resource Areas (CNRAs) specified in 31 TAC § 501.3(b).

POWER identified three CNRAs located along the proposed alternative routes.[20] A table showing the length crossing these CNRAs is shown below:

[17] Application, Attachment 2 at 4-3 (Mar. 10, 2020).
[18] Application at 16 (Mar. 10, 2020).
[19] Application at 16 (Mar. 10, 2020).
[20] Application, Attachment 2 at 4-17 and 4-18 (Mar. 10, 2020).

Route	Length Crossing Potential Coastal Wetlands and Submerged Aquatic Vegetation (NWI Mapped Wetlands) (miles)	Length Crossing potential Tidal Sands or Mud Flats (NWI Mapped Estuarine Wetlands) (miles)	Length Crossing Special Hazard Areas (Federal Emergency Management Agency (FEMA) Mapped 100-yr Floodplains) (miles)
1	6.29	3.09	8.7
2	6.04	2.58	8.5
3	6.36	2.02	9.0
4	5.33	2.02	9.1
5	5.62	2.02	8.5
6	4.59	2.02	8.6
7	5.54	2.02	7.9
8	**4.51**	**2.02**	**8.0**

As can be seen on this chart Route 8 has the lowest length crossing CRNAs overall than any other route. Further, most of this impact is along Links A and N which are shared by every other proposed alternative route in this project. The other impacts to the CRNAs on Route 8 are along Link J and that can be mitigated by that link mostly paralleling State Highway 48.

Route 4, the route selected by POWER and AEP Texas as most in compliance with the criteria of PURA and the Commission's rules, passes through extensive NWI mapped wetlands on Links E and G, with over 80% of both links passing through those areas. AEP Texas has stated, in its response to Staff RFI to AEP Texas 1-1, that this would require the temporary construction of a timber matting road for construction and that any link passing through this CRNA would potentially require "some structures would be constructed in wetlands."[21]

In order to minimize the impacts to CRNAs and comply, to the maximum extent possible, with the goals of the TCMP and 16 TAC § 25.102, I recommend the Commission select Route 8.

G. Engineering Constraints

I am not aware of any specific engineering constraints outside of the CRNA issue discussed in section F, but those that exist can be addressed adequately by utilization of appropriate design and construction practices.

[21] AEP Texas Response to Commission Staff's First Request for Information at 2 (Apr. 27, 2020).

H. Costs

Attachment 3 of the Application lists AEP Texas's estimated costs of constructing each proposed route. The table below shows the total estimated cost for the transmission facilities for each of the routes from least expensive to the most expensive proposed alternative route:

Route	Estimated Cost of the Route
2	$37,781,666.00
4	$38,239,233.00
1	$38,307,044.00
3	$38,476,199.00
7	$38,747,156.00
6	$39,378,991.00
8	**$39,558,563.00**
5	$39,644,671.00

Additionally, each proposed alternative route has a different estimated annual BND easement cost to use the right-of-way in the BND utility easement. This amount is also listed in Attachment 3 of the Application and is listed from the least expensive to the most expensive proposed alternative route:

Route	Estimated annual easement cost
5	$40,665.00
6	$42,000.00
8	**$42,065.00**
7	$42,471.00
3	$44,610.00
4	$45,290.00
2	$48,065.00
1	$52,740.00

AEP Texas reports that this estimate is based on the 2020 easement amount and it can increase each year.[22]

In addition to the transmission facilities costs and the BND easement annual costs the project also includes $21,231,833.00 for the substation costs and an additional $15,484.00 to lease the land for the proposed AEP Texas Pompano Substation from the BND.[23]

Therefore, the total cost to construct this project utilizing Route 8 is estimated to be $60,790,396.00 plus an estimated $57,549.00 annually for BND easement and leasing

[22] Application, Attachment 3 at 1 (Mar. 10, 2020).
[23] Application, Attachment 3 at 5 (Mar. 10, 2020).

costs. This is an estimated $1,776,897.00 dollars more expensive (2.92%) higher than the cheapest proposed alternative route, Route 2, but is an estimated $6,000 cheaper (10.43%) in annual easement and leasing costs.

I. Moderation of Impact on the Affected Community and Landowners

While the proposed links in this project cross the property of four landowners,[24] no parties have intervened in this docket.

J. Right-of-Way

Each proposed alternative route parallels apparent property boundaries and existing compatible right-of-way. The percentage of Route 8's length that parallels existing compatible right-of-way and apparent property boundaries is approximately 87.97% of its length. The table below summarizes the overall length, the length parallel to a compatible right-of-way or to a property boundary, and the total percentage of parallel right-of-way used by each proposed alternative route. 16 TAC § 25.101(b)(3)(B) does not consider existing pipeline right-of-way as compatible right-of-way.

Route	Length (Miles)	Length Parallel to Right-of-Way (Miles)	Percentage
8	**10.07**	**8.86**	**87.97%**
4	10.23	8.72	85.27%
6	10.28	8.48	82.49%
7	9.89	7.35	74.33%
3	10.05	7.21	71.80%
5	10.09	6.97	69.02%
2	9.54	6.42	67.26%
1	9.75	6.42	65.84%

As the chart shows, Route 8 is the 5th shortest route and has the highest percentage of compatible right-of-way compared to the other proposed alternative routes.

K. Prudent Avoidance

There are no habitable structures within 300 feet of the centerline of any of the proposed alternative routes.[25]

[24] Application, Attachment 7 (Mar. 10, 2020).
[25] Application at 13 (Mar. 10, 2020).

IV. Conclusions and Recommendation

I conclude that:

1. The application is adequate, and that AEP Texas's proposed routes are adequate in number and geographic diversity under the constraints of the project.
2. The application complies with the notice requirements in 16 TAC § 22.52(a).
3. The proposed project is necessary for the service, accommodation, convenience and safety of the public taking into account the factors set out in PURA § 37.056(c).
4. The proposed project is the best option to meet the need and that there are no practical alternatives.
5. This project, constructed along Route 8, is in compliance with 16 TAC § 25.102 and consistent with the goals and policies of the Coastal Management Program.
6. I conclude that Route 8 is the best route when weighing, as a whole, the factors set forth in PURA § 37.056(c)(4), in 16 TAC § 25.101(b)(3)(B), and in 16 TAC § 25.102 because:

    a. Route 8 is only 0.53 miles longer than the shortest proposed alternative route;
    b. Route 8 has the shortest length crossing potential coastal wetlands and submerged aquatic vegetation (NWI mapped wetlands), at 4.51 miles;
    c. Route 8 is tied with the shortest length crossing potential tidal sands or mud flats (NWI mapped estuarine wetlands), at 2.02;
    d. Route 8 has the second shortest length crossing special hazard areas (FEMA mapped 100-yr floodplains), at 8.0 miles;
    e. Route 8 has the most length of right-of-way paralleling existing transmission lines or other compatible right-of-way, at 8.86 miles;
    f. Route 8 has the largest percentage of its length paralleling compatible right-of-way, at 87.97%.
    g. Route 8 has the third lowest estimated annual easement and land lease cost to BND, at $57,549.00 which is 2.43% higher than the least expensive ($56,149.00 for Route 5 and 18.55% lower than the most expensive ($68,224.00 for Route 1)

Therefore, I recommend approval of AEP Texas's application to be constructed along Route 8 and that they be ordered to construct the project, subject to the conditions stated above in Section I.