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PUC DOCKET NO. 41763
SOAH DOCKET NO. 473-14-1419

APPLICATION OF EL PASO ELECTRIC COMPANY TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR TWO ADDITIONAL GENERATING UNITS AT THE MONTANA POWER STATION IN EL PASO COUNTY	§ § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER

This Order addresses the application of El Paso Electric Company to amend its certificate of convenience and necessity for two additional generating units at the Montana power station in El Paso County. On June 5, 2014, the administrative law judge at the State Office of Administrative Hearings issued a proposal for decision finding that EPE established a need for additional capacity and recommending that the Public Utility Commission of Texas approve the application. The Commission agrees that the utility met its burden to establish need and that the application should be approved. The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. El Paso Electric (EPE) is an investor-owned electric utility providing retail electric service in Texas under certificate of convenience and necessity (CCN) No. 30050.

2. On September 6, 2013, EPE filed with the Commission an application for CCN authorization to build and operate two additional 88 megawatt (MW) natural gas-fired generating units, Montana units 3 and 4. The site for the proposed units is the Montana power station, in EPE's service area in eastern El Paso County, just east of the city of El Paso.

3. EPE published notice of the application on September 13, 2013 in the *El Paso Times,* a newspaper having general circulation in EPE's Texas jurisdictional service territory.

4. On September 6, 2013, EPE delivered direct notice of the application to the city of El Paso and the county of El Paso and mailed notice of the filing to all parties in EPE's most recent base rate case, *Application of El Paso Electric Company to Change Rates and to Reconcile Fuel Costs,* Docket No. 40094 (May 23, 2012).

5. On September 6, 2013, EPE mailed a complete copy of the filing, including the environmental assessment studies (minus some of the appendices of one of the studies) to the Texas Parks and Wildlife Department (TPWD). On September 24, 2013, EPE mailed a complete copy of all three environmental assessments (including all the appendices) to TPWD.

6. On September 25, 2013, EPE filed proof that notice of this proceeding had been provided.

7. The city of El Paso, Texas Industrial Energy Consumers, Rockney Bacchus, the Far East El Paso Citizens United, and the county of El Paso filed requests to intervene and were granted intervener status in this matter.

8. The Far East El Paso Citizens United and the county of El Paso requested to withdraw their interventions, and the requests were granted.

9. TPWD did not seek intervention in this docket. TPWD filed comments in this docket on October 30, 2013, but the comments were not offered or admitted into evidence.

10. On December 17, 2013, the Commission referred this docket to the State Office of Administrative Hearings (SOAH) for assignment of an administrative law judge to conduct a hearing and issue a proposal for decision, if necessary.

11. On January 9, 2014, the Commission issued the preliminary order in this matter. The preliminary order identified the issues to be addressed by SOAH.

12. The hearing on the merits was held on February 19, 20, and 21, 2014.

13. The record closed on April 15, 2014, with the filing of reply briefs.

Background on EPE

14. EPE serves retail customers in Texas and New Mexico, where it is subject to the jurisdiction of the New Mexico Public Regulation Commission.

15. Retail competition has not been implemented in EPE's service area. As a result, EPE continues to provide bundled, regulated service to its Texas customers.

16. EPE's 2011 annual planning process indicated that, based on its load forecasts, expected generating unit retirements, and reserve margin criteria, EPE would need additional peaking capacity beginning in 2014 and would be faced with an increasing need for capacity thereafter.

17. To meet this need for additional resources, EPE issued a request for proposals (RFP) in June 2011, seeking 80 to 100 MW in 2014, 80 to 100 MW in 2015, and 160 to 200 MW in 2016.

18. EPE retained Wayne Oliver, of the Merrimack Energy Group, Inc., as independent evaluator to oversee EPE's RFP process by monitoring the bid evaluation and selection process.

19. In response to its RFP, EPE received 38 proposals from 23 different companies.

20. Of the 38 proposals, five were solar-powered, 19 were gas-fired, four were wind-powered and 10 were demand-side or used power-storage technology.

21. EPE's generation projects group submitted eight self-build options.

22. EPE, during the RFP process, treated the generation projects group as a different entity and did not communicate with them.

23. EPE and Mr. Oliver evaluated the bids and determined that the optimal resource was a combination of two bids—a solar purchased power agreement and one of EPE's self-build proposals.

24. The RFP process that EPE undertook was reasonable.

25. The EPE self-build proposal consisted of four General Electric (GE) LMS100 units to be built in phases and located east of the city of El Paso on a new power plant site, the Montana power station.

26. EPE received CCN authorization for the first two of these four Montana units—Montana units 1 and 2—in December 2012 in *Application of El Paso Electric Company to Amend Its Certificate of Convenience and Necessity for Generating units Montana 1 and 2 at the Montana Site in Texas,* Docket No. 40301 (Dec. 13, 2012).

27. Montana units 3 and 4 are expected to be added in 2016 and 2017, respectively.

28. EPE's recent 2013 load forecast continues to confirm the need for Montana units 3 and 4.

Description of Montana Units 3 and 4

29. Montana units 3 and 4 will each consist of a GE LMS100 simple-cycle, aero-derivative combustion turbine that will be fueled by natural gas, with the capability to burn fuel oil as their secondary fuel source.

30. Montana units 3 and 4 will be the same size as, use the same technology as, and will be built at the same site as Montana units 1 and 2.

31. The relatively high elevation (approximately 4,020) and high temperatures in the area will affect the performance of the units, compared to their performance if located at sea level and under other International Organization for Standardization (ISO) site reference conditions (which are sea level elevation, temperature of 59 degrees Fahrenheit and 60% relative humidity). Thus, although it would have a nameplate rating of 103 MW at ISO conditions, each unit will deliver 88 MW net to EPE under summer peak conditions.

32. The high elevation in the area also means that the units' heat rate will be higher than it would be at ISO conditions.

33. The units' guaranteed full load heat rate is 9,074 British thermal units per kilowatt-hour, with a thermal efficiency ranging from 44% to 50%.

34. The units' relatively low heat rate compared to the average heat rate of EPE's other gas-fired generating units will result in fuel savings for EPE's customers.

35. The units will be used for peaking service and also intermediate service and are expected to operate at approximately a 40% capacity factor.

36. The units will be quick start units because they can be brought on-line within three minutes and reach full load within 10 minutes.

37. There is no limit on the units' number of starts or on its minimum off-line or on-line time.

38. The units can be ramped up and down as needed (for example, they can be shut down during off-peak hours) without negatively impacting maintenance costs.

39. Evaporative coolers will be used to cool the combustion turbine–inlet air for maximum operating efficiency.

40. No other existing EPE operating generation unit (except Rio Grande unit 9, an LMS100 generating unit) has this combination of features.

41. EPE's system will also benefit from the units by the additional voltage support, an additional type of contingency reserves, and additional flexibility in scheduling maintenance outages.

42. Montana units 3 and 4 are expected to be operational by the summer peaks of 2016 and 2017, respectively.

43. No other utility is or will be directly served by or connected to the proposed facilities or involved in their construction.

44. The total estimated cash capital cost of the units is $151.2 million.

45. The estimated amount of allowance for funds used during construction is $17.9 million, for an overall estimated total cost of $169.1 million.

Statutory CCN Factors Adequacy of Existing Service/Need for Additional Service

46. For reliability reasons, EPE needs the additional resources that Montana units 3 and 4 will provide, and EPE's system will benefit from the units' operational features.

47. Through its 2011 RFP process, EPE properly considered and rejected alternatives to Montana units 3 and 4.

48. As a member of the Western Electricity Coordinating Council (WECC), EPE maintains a 15% annual reserve margin, an amount of firm supply-side resources in excess of its firm demand.

49. Although WECC does not require utilities to maintain a specific annual margin level, EPE's 15% annual reserve margin is reasonable considering EPE's location on the grid.

50. EPE will have a capacity deficit starting in 2016. In 2018, the deficit will grow to an amount greater than the 176 MW output from Montana units 3 and 4, which EPE proposes to build in this proceeding.

51. EPE's need for additional capacity cannot be significantly addressed by delaying the retirement of Four Corners units 4 and 5 and Rio Grande unit 6.

52. EPE's need for additional capacity cannot be significantly resolved by importing purchased power because EPE's remote transmission system is being used to the maximum extent feasible.

53. EPE's need for additional capacity is greater than the amount of interruptible capacity on its system.

54. EPE cannot replace its need for capacity solely with renewable resources.

55. Expanded energy efficiency programs could not meet EPE's projected need for peaking and intermediate capacity.

The Effect of Granting the CCN on EPE and Any Electric Utility Serving the Proximate Area

56. There will be a two-fold effect on EPE in granting the CCN authorization for Montana units 3 and 4—financial and operational.

57. The financial impact on EPE of Montana units 3 and 4 will be minimal. The construction costs will be financed with cash generated from operations or debt or a combination of the two.

58. The financing will not impair EPE's ability to attract additional capital on reasonable terms and at reasonable prices.

59. Operationally, the effect on EPE of granting the CCN will be positive.

60. Montana units 3 and 4 will enhance EPE's ability to provide reliable service, since the generating units are needed to meet customers' demand and EPE's reserve margin criteria.

61. The effect will also be positive from a system and transmission perspective. With the addition of local generation in Montana units 3 and 4, EPE will receive flexibility in scheduling maintenance outages and voltage support in the local system.

62. Montana units 3 and 4 will provide voltage support in EPE's local system, an additional type of contingency reserves, and additional flexibility in scheduling maintenance outages.

63. Montana units 3 and 4 will not be located in the certificated service area of any other utility.

64. There will be no adverse effects on any other electric utility.

Community Values

65. When EPE selected the Montana power station site, it was undeveloped, open desert scrubland, which people have used as a dumping ground.

66. The Montana site is surrounded by a mixture of different developments: industrial (Magellan fuel farm), commercial (mostly automotive salvage yards), military development (U.S. Army–Fort Bliss), but with very little residential development.

67. The Montana site is bounded on the north by Fort Bliss. An industrial facility, the Magellan oil storage/transfer facility is located adjacent, to the south of the proposed Montana units 1 and 2. The southernmost portion of the site is bounded by Montana Avenue (State Highway 62/180).

68. There are no residents on-site, and no significant populations are anticipated in the near future.

69. There is some residential development near the western boundary of the Montana site, where residential areas are located approximately one quarter of a mile to the west of the units.

70. By the time they are constructed, Montana units 3 and 4 will be located on an existing power plant site.

71. The location of the units is approximately 1,200 feet from the nearest residential structures.

72. Existing development in the area will be minimally affected by the addition of the units.

73. While the Montana units 3 and 4 will create an incremental amount of noise, they are not likely to significantly impact the closest noise receiver.

74. The units and associated access route are located in a rural area of El Paso County. Residences in the area are sparse and are located on large lots (greater than 0.75 acres), and the residential structures are some distance (1,200 feet or more) from the proposed units.

75. During construction, noise levels may increase, but this activity will be only temporary. Additionally, the new units are not expected to operate continuously.

76. The units employ newer technology, and the design incorporates sound reduction features to protect workers. These aspects result in less noise at the site boundaries.

77. To a large extent, the incremental noise produced by the construction and operation of the units will likely not stand out given the existing background noise from the existing development, including roads, in this area.

78. The effect on community values will be minimal.

Recreational and Park Areas

79. There are no parks or recreational areas within one-half mile of the units.

80. Because there are no recreational or park areas in proximity to the proposed units, there will be no adverse effect on any recreational or park areas.

Historical and Aesthetic Values

81. By the time they are constructed, Montana units 3 and 4 will be located on an existing power plant site.

82. The site of the units is an undeveloped desert scrubland.

83. No areas listed on the National Register of Historic places in Texas are located in proximity to the units.

84. Any effect on historical or aesthetic values will be minimal.

Environmental Integrity

85. By the time they are constructed, Montana units 3 and 4 will be located on an existing power plant site.

86. The Montana units 3 and 4 fall under the jurisdiction of the Texas Commission on Environmental Quality (TCEQ), and the U.S. Environmental Protection Agency (EPA) has authority over some of the permitting aspects.

87. Various types of environmental permits, including air quality permits, must be obtained from the TCEQ or EPA.

88. The environmental permitting regime, to which the units are and will be subject, along with EPE's compliance with those permits, will help ensure the environmental integrity of the surrounding area.

89. The units' design will reduce the area of influence of potential environmental impacts from emissions. In addition, mandatory compliance with the environmental components of those permits issued by state and federal agencies will help ensure that the environmental integrity of the surrounding area is retained.

90. Montana units 3 and 4 will be equipped with emissions technology that is considered best available control technology.

91. The city of El Paso Water Utilities/Public Service Board has agreed to provide water for the units.

92. Montana units 3 and 4 are expected to have at most a minimal impact on the environmental integrity of the area.

Probable Improvement of Service or Lowering of Cost to Consumers in Area if CCN is Granted

93. The capacity that will be provided by Montana units 3 and 4 will improve electric service because of the reliability and operational flexibility they will add to EPE's system, their relatively lower heat rate within EPE's system, and their contribution to meeting EPE's reserve margin needs.

94. In addition, EPE's transmission system will benefit because the new units can be started to provide voltage support for the eastern part of the EPE high-voltage system during normal conditions or during transmission outages.

95. A PROMOD operating simulation to calculate the impact of Montana units 3 and 4 on annual fuel costs estimated that fuel costs would decline approximately $2.3 million in the first full year of operation for both units.

96. EPE predicted that the cost impact of the new generation units, considering the combination of both base rates and fuel, would be $1.77 or a 2.41% increase in rates for an average Texas residential customer using 600 kilowatt-hours per month, for the first year of operation.

To Extent Applicable, Effect of Granting CCN on Ability of this State to Meet PURA Goal for Adding Renewable Energy Resources in § 39.904(a)

97. This statutory factor is not directly applicable because this application does not include renewable generating facilities.

98. Because of the ability of the GE LMS100 units to ramp up and down easily, however, the addition of Montana units 3 and 4 to EPE's fleet will accommodate the addition of renewable energy resources.

Whether CCN Is Necessary for Service, Accommodation, Convenience, or Safety of the Public under PURA § 37.056

99. Considering all the above factors, EPE's requested CCN authorization to construct, own and operate Montana units 3 and 4 is necessary for the service, accommodation, convenience or safety of the public.

Effect of CCN on Implementation of Customer Choice

100. Customer choice has been delayed in EPE's Texas service area.

101. Under Public Utility Regulatory Act (PURA), Texas Utilities Code §§ 11.001-66017, and § 39.553 and P.U.C. SUBST. R. 25.421, the timeline for implementation of retail competition in EPE's service territory is dependent upon completion of a five-stage process, the first of which is development, approval and operation of a regional transmission organization (RTO) for the EPE region.

102. No plan is in place to form or request FERC approval of an RTO, and EPE cannot unilaterally form an RTO.

103. Approval of a CCN for the proposed generating units will not affect the development of an RTO in which EPE could participate.

104. The approval of this CCN will also not affect any subsequent stage toward full retail competition in EPE's service area.

II. Conclusions of Law

1. EPE is an electric utility as defined in § 31.002 of PURA.

2. The Commission has jurisdiction over the application pursuant to PURA §§ 14.001, 14.002, 37.051, 37.053, and 37.056.

3. SOAH has jurisdiction over this proceeding, including the preparation of this proposal for decision with findings of fact and conclusions of law, pursuant to PURA § 14.053 and Texas Government Code §§ 2001.058 and 2003.049.

4. Notice of the application was provided in compliance with PURA § 37.054 and P.U.C. PROC. R. 22.52(a).

5. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act, Texas Government Code Chapter 2001, and Commission rules.

6. EPE has met its burden to show that it has a need for additional generation pursuant to PURA § 37.056(c)(2).

7. EPE has met its burden to show that the Montana units 3 and 4 would improve service or lower costs to retail customers pursuant to PURA § 37.056(c)(4)(e).

8. EPE is entitled to approval of its application because it demonstrated that the Montana units 3 and 4 are necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a), taking into consideration the factors set out in PURA § 37.056(c).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. EPE's application to amend its CCN No. 30050 to include Montana units 3 and 4 is granted.

2. The rate recovery of the costs of Montana units 3 and 4 was not considered and is not determined in this docket.

3. EPE shall take reasonable and feasible precautions for the protection of state-listed threatened species and rare or protected species.

4. EPE shall implement the following noise mitigation measures:

   a. All construction equipment should be operated and maintained to minimize noise generation, should be kept in good repair and fitted with "manufacturer recommended" mufflers.

   b. Construction activities that may create noise and vibration exceeding the city of El Paso chapter 9.40 noise standards shall not take place between the hours of 8 p.m. and 7 a.m. on weekdays and Saturdays, or at any time on Sunday or a holiday.

   c. Portable noise screens or enclosures to provide shielding for high noise activities or equipment should be used as necessary during construction.

   d. Noisy operations during construction should be combined to occur in the same period.

   e. The measures to reduce adverse sound effects on the surrounding community during operation of the facility that have been planned in the design of Montana units 3 and 4 should be implemented, including silencers for both the gas turbines air inlets and exhaust stacks and containment of the major components of the power turbine within an acoustical enclosure.

5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 11th day of July 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER

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