



Control Number: 49737



Item Number: 244

Addendum StartPage: 0

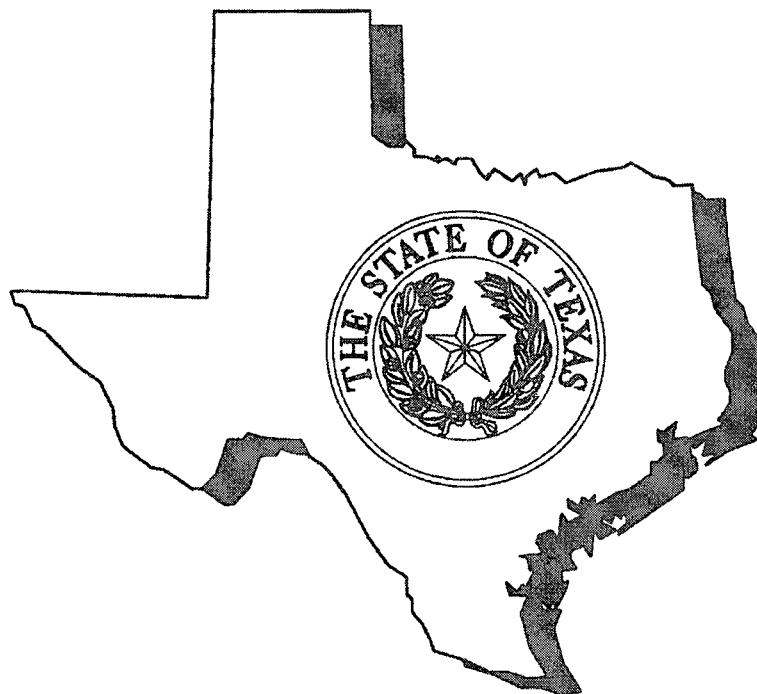
RECEIVED

2020 JAN 22 PM 2:30

PUBLIC UTILITY COMMISSION  
FILING CLERK

~~~~~

BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS



OF

RATE REGULATION DIVISION

JANUARY 22, 2020

0000001

00000001  
244

## **TABLE OF CONTENTS**

|                                        |   |
|----------------------------------------|---|
| I. QUALIFICATIONS.....                 | 1 |
| II. PURPOSE OF TESTIMONY .....         | 2 |
| III. SUMMARY OF SWEPCO'S REQUEST ..... | 3 |
| IV. STAFF RECOMMENDATION.....          | 5 |

## **ATTACHMENTS**

|                  |                                                                           |
|------------------|---------------------------------------------------------------------------|
| ATTACHMENT RS-1  | List of Previous Testimony                                                |
| ATTACHMENT RS-2  | Docket No. 47461, Supplemental Rebuttal Testimony Thomas P. Brice, Page 4 |
| ATTACHMENT RS-3  | SWEPCO's Response to Staff RFI 1-4                                        |
| ATTACHMENT RS-4  | SWEPCO's Response to Staff RFI 1-3                                        |
| ATTACHMENT RS-5  | Docket No. 47461, Supplemental Rebuttal Testimony Thomas P. Brice, Page 3 |
| ATTACHMENT RS-6  | PSO Joint Stipulation and Settlement Agreement, Page 3                    |
| ATTACHMENT RS-7  | SWEPCO's Response to CARD RFI 1-21                                        |
| ATTACHMENT RS-8  | Docket No. 47461 SWEPCO Response to TIEC RFI 8-30                         |
| ATTACHMENT RS-9  | Docket No. 47461 SWEPCO Response to TIEC RFI 8-32                         |
| ATTACHMENT RS-10 | Docket No. 47461 SWEPCO Supplemental Response to TIEC RFI 8-30            |

**I. QUALIFICATIONS**

**Q. Please state your name and business address.**

A. Ruth Stark, 1701 North Congress Avenue, Austin, Texas 78711.

**Q. By whom are you employed and in what capacity?**

A. I am employed by the Public Utility Commission of Texas (Commission) as a Senior Regulatory Accountant in the Rate Regulation Division.

**Q. What are your principal responsibilities?**

A. My responsibilities include testifying as a witness on accounting matters in rate cases and other proceedings filed at the Commission and participating in the overall examination, review, and analysis of rate change and other applications.

**Q. Please state briefly your educational background and professional experience.**

A. I received a Bachelor of Business Administration degree with a major in Accounting from the University of Texas at Austin in 1983. I am a Certified Public Accountant licensed in the State of Texas. I have accounting experience in public practice, industry, and state government.

My public accounting responsibilities included tax and financial services to individuals, private enterprises, and non-profit organizations. As the accountant for a multi-divisional construction, engineering, and surveying company, I oversaw all accounting functions from maintaining the general ledger through financial statements and tax return preparation. At the Texas Water Development Board, I administered a federal construction grant program and state revolving loan fund related to municipal capital improvement projects.

**DIRECT TESTIMONY OF RUTH STARK**

0000003

1 Except for the three-month period encompassing October through December of  
2 2015, I have been employed with the Public Utility Commission of Texas since  
3 September of 1990. Prior to my retirement in September of 2015, I held the position of  
4 Director of Financial Review in the Rate Regulation Division for sixteen years.

5 **Q. Have you previously testified before the Commission?**

6 A. Yes. Attachment RS-1 presents a summary of the dockets in which I have testified.

7 **II. PURPOSE OF TESTIMONY**

8 **Q. What is the purpose of your testimony in this proceeding, Docket No. 49737,**  
9 ***Application of Southwestern Electric Power Company for Certificate of Convenience***  
10 ***and Necessity Authorization and Related Relief for the Acquisition of Wind Generation***  
11 ***Facilities?***

12 A. The purpose of my testimony in this proceeding is to provide Staff's recommendation  
13 regarding the request by Southwestern Electric Power Company (SWEPCO or the  
14 Company) for pre-approval to include any unrealized production tax credits (PTCs)  
15 associated with the proposed wind facilities as a deferred tax asset to be included in rate  
16 base and recovered in the rates set in subsequent rate proceedings.<sup>1</sup>

17 **Q. On whose behalf are you testifying?**

18 A. I am testifying on behalf of the Commission Staff, which represents the public interest.

---

<sup>1</sup> Application at 3.

1     **Q.     What is the basis of your recommendation?**

2     A.     My recommendation is based on my review and analysis of the application filed in this  
3             proceeding by SWEPCO as well as its responses to various requests for information.

4     **Q.     What statutory authority has SWEPCO identified as the basis for the Commission's**  
5             **jurisdiction over its requests in this proceeding?**

6     A.     The Company has identified Public Utility Regulatory Act (PURA)<sup>2</sup> §§ 37.053, 37.056,  
7             and 37.058 as providing the Commission's jurisdiction over its requests. These sections  
8             of PURA all relate to the Commission's authority over certificates of convenience and  
9             necessity (Chapter 37).

10    **Q.     Are there any other statutory provisions that are relevant to your review of**  
11          **SWEPCO's application?**

12    A.     Although not explicitly stated in its application, the requested ratemaking treatment  
13             related to deferred tax assets falls under the Commission's ratemaking authority  
14             contained in Chapter 36 of PURA. I am not an attorney; however, I am familiar with  
15             many of the provisions of PURA Chapter 36 because they set out the regulatory  
16             framework that is used to evaluate applications for base rate increases.

17    **III.    SUMMARY OF SWEPCO'S REQUEST**

18    **Q.     Please summarize SWEPCO's request in this proceeding.**

19    A.     On July 15, 2019, SWEPCO filed an application for an amendment to its certificate of  
20             convenience and necessity (CCN) for the acquisition of a 54.5% share of three wind

---

<sup>2</sup> Tex. Util. Code Ann. §§ 11.001-66.017.

1 facilities located in Oklahoma.<sup>3</sup> The remaining 45.5% ownership share is proposed to be  
2 acquired by SWEPCO's affiliate, Public Service Company of Oklahoma (PSO).<sup>4</sup> Among  
3 other claimed benefits, the Company maintains that the projects are expected to earn  
4 PTCs over the first ten years of operation.<sup>5</sup> SWEPCO's application indicates that it  
5 intends to begin to flow the benefit of the PTCs to customers through a Generation Cost  
6 Recovery Rider (GCRF) under PURA § 36.213 and proposes that the rider take effect on  
7 the date the wind facilities begin providing service.<sup>6</sup> In addition to approval of its  
8 proposed acquisition of the wind facilities, SWEPCO requests Commission pre-approval  
9 in this proceeding to include a deferred tax asset related to the amount of unrealized  
10 PTCs in the rate base used to set rates in future rate proceedings.<sup>7</sup>

11 **Q. What is meant by "unrealized" PTCs?**

12 A. Section 38(c) of the Internal Revenue Code imposes limits on the use of General  
13 Business Credits (which include PTCs).<sup>8</sup> In general, the limit is 75% of regular tax  
14 liability prior to application of credits.<sup>9</sup> General Business Credits that cannot be used  
15 (realized) to offset regular tax in a particular year can be carried forward for 20  
16 subsequent years and used to reduce tax liability.<sup>10</sup> Subsidiaries of American Electric  
17 Power Company (AEP), including SWEPCO and its affiliates, are included in the  
18 consolidated tax return for the AEP group. As such, the amount of the General Business

---

<sup>3</sup> Application at 1 (Jul. 15, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 26 U.S.C. § 38(c).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Credits (including PTCs) that are able to be utilized in a given tax year are determined at the consolidated group level.<sup>11</sup>

**Q. Has SWEPCO quantified the amounts of PTCs that it expects to be generated by the proposed wind facilities?**

A. The Company's application indicates that the proposed wind projects are expected to generate \$750 million of PTCs net of deferred tax asset carrying charges.<sup>12</sup>

**Q. Has the Company provided a schedule of the projected unrealized PTCs that it anticipates will be booked as a deferred tax asset and included in rate base under its request?**

A. Exhibit JJM-2 outlines SWEPCO's projections of the generation, utilization, and deferral of the PTCs by year under two different capacity factor scenarios.

#### **IV. STAFF RECOMMENDATION**

**Q. You indicated previously that the purpose of your testimony is to address SWEPCO's request for pre-approval in this case to include unrealized PTCs as a deferred tax asset in rate base in future rate proceedings. What is your recommendation with respect to this request?**

A. If the Commission approves SWEPCO's request to amend its CCN for the addition of the three wind facilities, I recommend that the Commission deny the Company's request for pre-approval of inclusion of unrealized PTCs as a deferred tax asset to be included in rate base used to set rates in future rate proceedings.

---

<sup>11</sup> Direct Testimony of Joel J. Multer at 8 (Jul. 15, 2019).

<sup>12</sup> Application at 5.



1     **Q.     What is the basis of your recommendation?**

2     A.     My recommendation is based on several factors. First, with the exception of cost caps  
3             imposed in certain cases, the Commission's general practice does not include approving  
4             future ratemaking treatment in CCN proceedings. As noted by the Commission in  
5             Docket No. 33891 (the CCN proceeding for SWEPCO's Turk Plant): "The Commission's  
6             approval of the CCN for the Turk Plant does not constitute authority for rate recovery for  
7             any of the costs of the Turk Plant."<sup>13</sup> In fact, up until the past two years when utilities  
8             began including ratemaking requests in their CCN applications related to wind facilities,  
9             the staff of the Rate Regulation Division did not participate in CCN proceedings that did  
10            not also involve some type of sale, transfer, or merger transaction. Second, SWEPCO  
11            indicated in a previous wind CCN proceeding<sup>14</sup> that its request is "standard  
12            ratemaking."<sup>15</sup> The Company makes the same claim in this case:

13                     However, the Company's proposed rate base treatment of the deferred tax  
14                     asset is no different than any other component of accumulated deferred  
15                     income taxes which are included in rate base, all of which are timing  
16                     differences between tax return treatment and ratemaking treatment.<sup>16</sup>

17  
18            If the ratemaking treatment for the deferred tax asset sought by SWEPCO in this  
19            proceeding is indeed "standard ratemaking" and "no different" than any other component  
20            of accumulated deferred income taxes, there is no need for a specific pre-approval of  
21            such treatment now, rather than in SWEPCO's next base rate case.

---

<sup>13</sup> *Application of Southwestern Electric Power Company for a Certificate of Convenience and Necessity Authorization for Coal Fired Power Plant in Arkansas*, Docket No. 33891, Order at 9 (Aug. 12, 2008).

<sup>14</sup> *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461, Order (Aug. 13, 2018).

<sup>15</sup> *Id.* Supplemental Rebuttal Testimony of Thomas P. Brice at 4 ("Although SWEPCO's application requests approval to include a DTA in rate base, this is standard ratemaking. A DTA will arise on the Company's books when the Company earns more PTCs than it can use (monetize) in a given year. This is a matter of accounting under the FERC Uniform System of Accounts.") (Feb. 12, 2018). *See* Attachment RS-2.

<sup>16</sup> SWEPCO Response to Staff's First RFI, Question No. 1-4. *See* Attachment RS-3.

1     **Q.     What concerns do you have with Commission pre-approval of future ratemaking**  
2           **treatment with respect to the deferred tax asset?**

3     A.     While the Commission's CCN approval process relies on estimates of future construction  
4           costs as a matter of necessity, with very few exceptions its ratemaking process has, as a  
5           rule, relied on historical costs adjusted for known and measurable changes. Additionally,  
6           although the Commission has previously granted approval for utilities to accumulate  
7           certain costs as regulatory assets, it has required them to seek approval for the associated  
8           ratemaking treatment (inclusion in rate base, recovery through a rider amortized of a  
9           specific number of years, etc.) in a subsequent proceeding when the costs are actually  
10          known and measurable. An important fact to consider is that the prudence of the costs  
11          associated with construction of the proposed wind facilities will not be determined until  
12          after they are complete and actually in service. Any prudence disallowance by the  
13          Commission could impact the amount of the deferred tax asset that should appropriately  
14          be included in rates. A blanket pre-approval of the deferred tax asset ratemaking  
15          treatment in this proceeding could compromise the Commission's ability to properly  
16          include or exclude an amount in future rate proceedings. SWEPCO has provided  
17          estimates of the timing and costs related to the wind facilities and the amount of the  
18          deferred tax asset that might exist at certain points in time and potentially be requested to  
19          be included in rate base, but they are just that – estimates. They are neither known nor  
20          measurable at this time.

1 **Q. Do you take issue with the estimates of the timing or amounts of the deferred tax**  
2 **asset SWEPCO predicts will be included in rate base in future ratemaking**  
3 **proceedings?**

4 **A.** In response to discovery in this proceeding, the Company explained the following with  
5 respect to the utilization of PTCs and the deferred tax asset balances:

6 As a member of the AEP consolidated group, the maximum deferral  
7 period is 4 years with a peak deferral of \$300 million. On a SWEPCO  
8 stand-alone basis, the maximum deferral period is 8 years with a peak  
9 deferral of \$460 million.

10 Therefore, SWEPCO would benefit through a more timely recognition of  
11 the cash tax benefits associated with PTCs when determined as a member  
12 of the AEP consolidated group as the sum of the group's taxable income  
13 provides for the ability to utilize more PTCs than SWEPCO would be able  
14 to use based upon its stand-alone taxable income.<sup>17</sup>

15  
16 I do not have any reason to believe that the information provided by SWEPCO is not the  
17 Company's best information available at this time. However, as Company witness  
18 Thomas Brice has previously acknowledged, projecting taxable income is difficult.<sup>18</sup>  
19 SWEPCO's membership in the AEP consolidated group means its ability to utilize the  
20 PTCs is dependent on the taxable income of the consolidated group. This makes it even  
21 harder to predict the timing of the future utilization of PTCs and is another reason the  
22 Commission should not pre-approve the inclusion of the deferred tax asset in SWEPCO's  
23 rate base in this proceeding.

24 **Q. Why is SWEPCO's inclusion in the AEP consolidated group concerning?**

25 **A.** As noted above, SWEPCO has provided estimates of the timing of utilization of the PTCs  
26 and the balance of the deferred tax asset it could seek to include in rate base. However, it

---

<sup>17</sup> SWEPCO Response to Staff 's First RFI, Question No. 1-3. See Attachment RS-4.

<sup>18</sup> Docket No. 47461, Brice Supplemental Rebuttal Testimony at 3 ("As Mr. Pollock notes, it is challenging to forecast AEP's tax liability for ten years or more, particularly in light of the recent tax law changes..."). See Attachment RS-5.

1 is possible that existing affiliates, or new affiliates acquired or created by AEP  
2 subsequent to this proceeding, could incur unexpected or unplanned taxable losses that  
3 would preclude the utilization of the PTCs at the rate anticipated by SWEPCO. If, as  
4 requested by the Company, the Commission pre-approves inclusion of the deferred tax  
5 asset in rate base for recovery in future rates, this could mean that the unrealized PTCs in  
6 the deferred tax asset could sit in rate base at a much higher balance for a much longer  
7 period of time than currently estimated.

8 **Q. Could that impact the benefits of the wind projects to SWEPCO's customers?**

9 A. While I cannot quantify the potential dollar impact, any increase in the amount of the  
10 deferred tax asset, or length of time that the deferred tax asset is included in rate base,  
11 would increase the revenue requirement (carrying charges) related thereto. Since the  
12 deferred tax asset carrying charges are an offset to the benefits of the wind project, this  
13 would have the effect of reducing economic benefits of the projects.<sup>19</sup>

14 **Q. Does SWEPCO's request for pre-approval include any limitations with respect to**  
15 **the balance of the deferred tax asset or the length of time it would be included in**  
16 **rate base?**

17 A. No, it does not. If the Commission in this case pre-approves inclusion of the deferred tax  
18 asset in rate base to be recovered in the rates set in future rate proceedings, Texas  
19 ratepayers could find themselves in the position of paying higher rates because the tax  
20 losses of an affiliate preclude SWEPCO from utilizing the PTCs as predicted.

---

<sup>19</sup> Errata Testimony of John F. Torpey, Errata JFT-3 at 1 (Aug. 23, 2019). The (\$212) of Deferred Tax Asset Carrying Charges on Line 5 are a reduction to the Total Net Customer Benefits on Line 8.

1 **Q. Has the Company previously proposed limitations with respect to deferred tax**  
2 **assets attributable to wind PTCs?**

3 A. Yes. In Docket No. 47461, SWEPCO offered measures to mitigate the impact of the  
4 deferred tax asset on rates:

5 To reduce the impact of a deferred tax asset, SWEPCO proposes to cap the  
6 balance at a cumulative annual average of \$560 million, to limit the return  
7 on any deferred tax asset balance to the weighted average cost of capital  
8 for 60% of the balance and the cost of debt for 40% of the balance, and to  
9 seek no return after year 13 of the Project. SWEPCO asserts that along  
10 with its commitments to establish a cost cap of 109% and to provide a  
11 production guarantee equivalent to a 44.7% capacity factor the deferred  
12 tax asset cap will preserve a benefit level of approximately \$260 million  
13 (SWEPCO Total Company NPV) under Mr. Pearce's revised Exhibit  
14 KDP-1R.<sup>20</sup>  
15

16 **Q. Did the Commission approve SWEPCO's requested pre-approval for rate base**  
17 **treatment of the deferred tax asset in Docket No. 47461?**

18 A. Although the Commission ultimately denied SWEPCO's CCN application in Docket No.  
19 47461, the ALJs in that proceeding relied on the mitigation measures proposed by the  
20 Company as justification for recommending adoption of the requested pre-approval of the  
21 deferred tax asset inclusion in rate base as follows:

22 The ALJs find that SWEPCO's proposed solution will mitigate the effect  
23 of the deferred tax asset and recommend the Commission adopt  
24 SWEPCO's proposal.<sup>21</sup>

---

<sup>20</sup> Docket No. 47461, Proposal for Decision at 73 (May 18, 2018).

<sup>21</sup> *Id.* at 74.

1 **Q. Has the Company agreed to any limitations with respect to the potential amount of**  
2 **the deferred tax asset related to the currently proposed acquisition of wind projects**  
3 **in this proceeding?**

4 A. SWEPCO's proposal does not include any limits related to the amount that it will request  
5 be included in rate base as a deferred tax asset or any limit on the number of years it will  
6 seek to include the deferred tax asset in rate base. PSO, SWEPCO's sister company that  
7 is proposing to acquire the balance of the wind facilities at issue in this proceeding, has  
8 entered into a settlement agreement with the staff of the Oklahoma Corporation  
9 Commission and intervening parties. One of the terms of that agreement addresses the  
10 deferred tax asset:

11 The Company will earn a return on the DTA balance resulting from  
12 unused production tax credits over the first twenty (20) years of operation  
13 of the SWFs using its then applicable cost of long term debt (currently  
14 4.72%) on any deferred tax asset balance.<sup>22</sup>  
15

16 At this time, I am not aware of any such agreements by SWEPCO in its other  
17 jurisdictions (Arkansas and Louisiana) related to the proposed wind projects. However,  
18 even if agreements are reached in the other jurisdictions, the Company has indicated that  
19 a most favored nation provision is not included in the guarantees it is offering in this  
20 proceeding.<sup>23</sup> The agreement of PSO, the Oklahoma commission staff, and intervenors

---

<sup>22</sup> Before the Corporation Commission of the State of Oklahoma, *Application of Public Service Company of Oklahoma (PSO) for Approval of the Cost Recovery of the Selected Wind Facilities (SWFs); A Determination There is a Need for the SWFs; Approval for Future Inclusion in Base Rates Cost Recovery of Prudent Costs Incurred by PSO for the SWFs; Approval of a Temporary Cost Recovery Rider; Approval of Certain Accounting Procedures Regarding Federal Production Tax Credits; and Such Other Relief the Commission Deems PSO is Entitled, Cause No. PUD 201900048, Joint Stipulation and Settlement Agreement at page 3. See Attachment RS-6.*

<sup>23</sup> SWEPCO's Response to Cities Advancing Reasonable Deregulation's First RFI Question No. 1-21. See Attachment RS-7.

1           cited above does contain a most favored nation clause with respect to terms adopted for  
2           SWEPCO in this proceeding and in its other jurisdictions.<sup>24</sup>

3       **Q.   Hasn't the Commission previously pre-approved rate base inclusion for wind**  
4       **generation-related deferred tax assets in a CCN proceeding?**

5       A.   Yes.   In a Southwestern Public Service Company case, Docket No. 46936, the  
6       Commission pre-approved rate base treatment for wind-related deferred tax assets as part  
7       of a settlement agreement reached between the parties in that proceeding.<sup>25</sup> The order in  
8       that case includes limitations related to inclusion of the deferred tax asset in rate base.<sup>26</sup>  
9       As explained previously, SWEPCO is proposing no such limitations in this proceeding.

10      **Q.   Is there another other reason to deny SWEPCO's request to pre-approve the**  
11      **ratemaking treatment for the deferred tax asset in this CCN proceeding?**

12      A.   Yes.   It is possible that there could be changes to either the federal income tax code,  
13      PURA, or both between now and the time the proposed wind facilities are completed and  
14      placed in service. For example, SWEPCO filed its previous request for approval to  
15      acquire wind facilities in Docket No. 47461 in July of 2017. The Tax Cuts and Jobs Act  
16      of 2017 (TCJA) was subsequently enacted in December of 2017.<sup>27</sup> In response to  
17      discovery in Docket No. 47461, the Company initially stated that it would have sufficient

---

<sup>24</sup> Attachment RS-6.

<sup>25</sup> *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy LLC, and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Order (May 25, 2018).

<sup>26</sup> *Id.*, at 18-19.

<sup>27</sup> Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, 113 Stat. 2054 (Dec. 22, 2017).

1 tax liability to offset the PTCs in the 10-year period,<sup>28</sup> and when asked if it was willing to  
2 agree to a cap on the amount of unrealized PTCs that it would include in rate base,  
3 SWEPCO replied that it had not considered such a cap and at that time did not believe  
4 such a guarantee was appropriate or necessary.<sup>29</sup> Then, just eight days later, SWEPCO  
5 filed supplemental responses to these discovery requests acknowledging that, due to the  
6 TCJA, there was a likelihood of the existence of unrealized PTCs and proposed the  
7 mitigation measures discussed in the PFD in that case as noted above:

8 The Company's latest assessment from its ongoing analysis of the Tax  
9 Cuts and Jobs Act of 2017 indicates a likelihood that the Corporation may  
10 not have adequate taxable income in each year that the PTCs are earned.  
11 The Company's updated long-term financial forecast incorporating the  
12 changes to the change in tax law will not be completed until later this year,  
13 so the Company cannot provide a definitive forecast of the taxable income  
14 over the first 10 years. TIEC 8-30 Supplemental Attachment 1 includes  
15 the Company's current preliminary assessment of the Corporation's tax  
16 appetite and the PTCs utilized in each year.

17  
18 In light of the new information described above, for ratemaking purposes  
19 the Company proposes to earn the then approved weighted average cost of  
20 capital on 60% of the Wind Catcher Deferred Tax Asset balance and the  
21 then approved cost of debt on the remaining Wind Catcher Deferred Tax  
22 Asset balance. SWEPCO's Wind Catcher Deferred Tax Asset balance  
23 shall not exceed a cumulative, annual average of \$560 million. If the  
24 PTCs are not utilized after year 13 of the project, the Company agrees to  
25 no return on the asset through retail rates after year 13.

26  
27 To offset the effect of this potential increased revenue requirement the  
28 Company agrees to modify two of the guarantees set forth in Mr. Brice's  
29 rebuttal testimony:

- 30  
31 1. Lower the Cost Cap Guarantee to 109%,  
32 2. Increase the Production Guarantee to 5,481 GWH or 44.7%  
33 capacity factor.<sup>30</sup>

<sup>28</sup> Docket No. 47461, SWEPCO's Response to TIEC's Eighth RFI, Question No. 8-30 (Jan. 11, 2018). *See* Attachment RS-8.

<sup>29</sup> Docket No. 47461, SWEPCO's Response to TIEC's Eighth RFI, Question No. 8-32 (Jan. 11, 2018). *See* Attachment RS-9.

<sup>30</sup> Docket No. 47461, SWEPCO's Supplemental Response to TIEC's Eighth RFI, Question Nos. 8-30 and 8-32 (Jan. 19, 2018). *See* Attachment RS-10.



1  
2 This is an example of how a change in the tax law can impact both the benefits and costs  
3 (rate impacts) of transactions such as this. The Commission's determination of  
4 ratemaking treatment with respect to any deferred tax asset should be made with the  
5 benefit of all pertinent information available at the time the wind projects are completed,  
6 placed in service, and requested in rates and within the parameters of the relevant statutes  
7 that exist at that point in time. This is especially critical since the PTCs net of deferred  
8 tax asset carrying charges contribute significantly (\$750 million) to the claimed economic  
9 benefits of the wind facilities.<sup>31</sup>

10 **Q. Please summarize your recommendation regarding SWEPCO's request for pre-**  
11 **approval to include the deferred tax asset related to any unrealized PTCs in rate**  
12 **base in future rate proceedings.**

13 A. The uncertainties related to potential changes in law combined with the uncertainties  
14 related to the amount and timing of the deferred tax asset balance and the future tax  
15 positions of SWEPCO's affiliates argue against the Commission providing an open-  
16 ended pre-approval of the ratemaking treatment for the deferred tax asset requested in  
17 this case. It is therefore premature to definitively pre-approve ratemaking treatment for a  
18 deferred tax asset in this proceeding. Additionally, as SWEPCO has indicated that its  
19 proposed deferred tax asset is standard ratemaking treatment, no such pre-approval is  
20 necessary at this time.

21 **Q. Does this conclude your testimony?**

22 A. Yes.

---

<sup>31</sup> Direct Testimony of A. Malcolm Smoak at 6 ("Yet, SWEPCO's customers will receive the benefit of \$750 million of PTCs net of deferred tax asset (DTA) carrying costs.") (July 15, 2019).

# ATTACHMENTS

**LIST OF PREVIOUS TESTIMONY**  
**Before the Public Utility Commission of Texas**

**Docket No. 9874:**

*Application of Kimble Electric Cooperative, Inc. for Authority to Change Rates*

**Docket No. 9981:**

*Inquiry of the General Counsel into the Reasonableness of the Rates and Services of Central Telephone Company of Texas*

**Docket No. 13050:**

*Application of Rayburn Country Electric Cooperative, Inc. for Authority to Change Rates*

**Docket No. 12065:**

*Complaint of Kenneth D. Williams Against Houston Lighting and Power Company*

**Docket No. 14980:**

*Application of Southwestern Public Service Company Regarding Proposed Business Combination with Public Service Company of Colorado*

**Docket No. 17751:**

*Texas-New Mexico Power Company's Application for Approval of the TNMP Transition Plan and Statement of Intent to Decrease Rates, and Appeal of Municipal Rate Actions*

**Docket No. 29206:**

*Application of Texas-New Mexico Power Company, First Choice Power, Inc., and Texas Generating Company, L.P. to Finalize Stranded Costs Under PURA §39.262*

**Docket No. 28813:**

*Petition to Inquire into the Reasonableness of the Rates and Services of Cap Rock Energy Corporation*

**Docket No. 31994:**

*Application of Texas-New Mexico Power Company to Establish a Competition Transition Charge*

**Docket No. 32766:**

*Application of Southwestern Public Service Company for: (1) Authority to Change Rates; (2) Reconciliation of its Fuel Costs for 2004 and 2005; (3) Authority to Revise the Semi-Annual Formulae Originally Approved in Docket No. 27751 used to Adjust its Fuel Factors; and (4) Related Relief*

**Docket No. 34800:**

*Application of Entergy Gulf States, Inc. for Authority to Change Rates and to Reconcile Fuel Costs*

**Docket No. 40627:**

*Petition for Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055*

**Docket No. 41430:**

*Joint Report and Application of Sharyland Utilities, LP, Sharyland Distribution & Transmission Services, and Southwestern Public Service Company for Approval of Purchase and Sale of Facilities, for Regulatory Accounting Treatment of Gain on Sale, and for Transfer of Certificate Rights*

**Docket No. 41906**

*Compliance Tariff of CenterPoint Energy Houston Electric LLC Related to Non-Standard Metering and Service Pursuant to PUC SUBST.R.25.133*

**Docket No. 41901**

*Compliance Tariff of Texas-New Mexico Power Company LLC Related to Non-Standard Metering and Service Pursuant to PUC SUBST.R.25.133*

**Docket No. 41890**

*Compliance Tariff of Oncor Electric Delivery Company LLC Regarding the Rulemaking Related to Advanced Metering Alternatives, Pursuant to PUC SUBST.R.25.133(E)(1)*

**Docket No. 45747**

*Application of CenterPoint Energy Houston Electric, LLC to Amend its Distribution Cost Recovery Factor and to Reconcile Docket No. 44572 Revenues*

**Docket No. 46449**

*Application of Southwestern Electric Power Company for Authority to Change Rates*

**Docket No. 48371**

*Entergy Texas Inc.'s Statement of Intent and Application for Authority to Change Rates*

**Docket No. 48233**

*Application of Southwestern Electric Power Company to Implement a Base Rate Decrease in Compliance with Docket No. 46449*

**Docket No. 48071**

*Joint Application of NextEra Energy Transmission Southwest, LLC and Rayburn Country Electric Cooperative, Inc. to Transfer Certificate Rights to Facilities in Cherokee, Smith, and Rusk Counties*

**Docket No. 47141**

*Review of Rate Case Expenses Incurred by Southwestern Electric Power Company and Municipalities in Docket No. 46449*

**Docket No. 48439**

*Review of the Rate Case Expenses Incurred in Docket No. 48371*

1 Q. DO YOU AGREE WITH MR. POLLOCK'S CHARACTERIZATION OF THE DTA  
2 IN HIS SECOND SUPPLEMENTAL REBUTTAL TESTIMONY? (PP. 7-8)

3 A. No. Although SWEPCO's application requests approval to include a DTA in rate  
4 base, this is standard ratemaking. A DTA will arise on the Company's books when  
5 the Company earns more PTCs than it can use (monetize) in a given year. This is a  
6 matter of accounting under the FERC Uniform System of Accounts. The DTA does  
7 not arise, as Mr. Pollock suggests, because the Company has proposed to flow the  
8 PTC benefits through to customers when they are earned. A DTA is an asset properly  
9 recorded on the Company's balance sheet just like any other asset. Like any other  
10 balance sheet asset, a DTA must be financed by the Company, and it is entirely  
11 appropriate for the Company to earn a return on that asset regardless of whether the  
12 PTC benefits are provided to customers in the year they are earned. The DTA will  
13 offset the Company's accumulated deferred federal income tax (ADFIT) liability  
14 balance that is used to reduce rate base as a matter of standard ratemaking practice.

15 Q. IS MR. POLLOCK CORRECT THAT THE DTA WILL RESULT IN HIGHER  
16 RATES? (P. 9)

17 A. Only when viewed in isolation. Mr. Pollock's assertion ignores the fact that the PTCs  
18 that give rise to the DTA will be flowed through to customers in the year they are  
19 earned, resulting in lower rates. The net effect of flowing the PTCs through to  
20 customers when earned, reduced by the carrying costs on the DTA, is a significant  
21 cost reduction to customers. Mr. Pollock also ignores that under a wide range of  
22 reasonable assumptions, unlike his Scenarios 3 and 4, the Wind Catcher Project will  
23 result in lower rates for customers, as demonstrated in Mr. Pearce's testimony.

**SOAH DOCKET NO. 473-19-6862  
PUC DOCKET NO. 49737**

**SOUTHWESTERN ELECTRIC POWER COMPANY'S RESPONSE TO  
COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION**

**Question No. Staff 1-4:**

Provide all instances (PUCT docket numbers) for which the Company is aware that the Commission has included (as deferred tax assets) the unutilized balance of tax credits (for example, the investment tax credit) in utility rate base. Provide separately those that were unutilized on a stand-alone basis and those that were unutilized because of the filing of a consolidated tax return. Please also note if a consolidated tax savings adjustment was included in each cited case for ratemaking purposes.

**Response No. Staff 1-4:**

At this time, SWEPCO has not performed the legal research into the publicly available PUCT decisions that are required to answer this request. However, the Company's proposed rate base treatment of the deferred tax asset is no different than any other component of accumulated deferred income taxes which are included in rate base, all of which are timing differences between tax return treatment and ratemaking treatment. Some are a reduction to rate base and some are an increase.

Prepared by: Counsel

Sponsored By: John O. Aaron  
Sponsored by: Counsel

Title: Dir Reg Pricing & Analysis

**SOAH DOCKET NO. 473-19-6862  
PUC DOCKET NO. 49737**

**SOUTHWESTERN ELECTRIC POWER COMPANY'S RESPONSE TO  
COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION**

**Question No. Staff 1-3:**

Refer to Exhibit JJM-2 to the testimony of Mr. Multer. What is the projected utilization of PTCs by year on a separate SWEPCO (stand-alone) basis? In other words, what is the projected utilization of PTCs by year assuming that SWEPCO does not file its federal income tax return as part of the consolidated group?

**Response No. Staff 1-3:**

Please reference Staff\_1\_3\_Attachment\_1 for a comparison of SWEPCO's tax credit utilization and deferral of cash tax benefits as both a member of the AEP consolidated group and on a stand-alone basis.

As a member of the AEP consolidated group the maximum deferral period is 4 years with a peak deferral of \$300 million. On a SWEPCO stand-alone basis, the maximum deferral period is 8 years with a peak deferral of \$460 million.

Therefore, SWEPCO would benefit through a more timely recognition of the cash tax benefits associated with PTCs when determined as a member of the AEP consolidated group as the sum of the group's taxable income provides for the ability to utilize more PTCs than SWEPCO would be able to use based upon its stand-alone taxable income.

Prepared By: David A. Hodgson

Title: Tax Mgr

Sponsored By: Joel J. Multer

Title: Dir Tax Acctg & Reg Support



1 "INHERENTLY UNKNOWABLE" SO HIS "SCENARIO 4" ASSUMES THAT  
2 SWEPCO WILL BE ABLE TO MONETIZE ONLY 50% OF THE PRODUCTION  
3 TAX CREDITS (PTC'S) FORECAST IN ITS REVISED REBUTTAL  
4 TESTIMONY. (PP. 4-6) IS THIS REASONABLE?

5 A. No, Mr. Pollock's Scenario 4 is random and unreasonable. As Mr. Pollock notes, it is  
6 challenging to forecast AEP's tax liability for ten years or more, particularly in light  
7 of the recent tax law changes, but there is little basis for his Scenario 4 assumption  
8 that the deferred tax asset (DTA) could be much larger than the Company's forecast.  
9 The Company's proposal to voluntarily underearn on the DTA (i.e., to receive its  
10 weighted average cost of capital (WACC) on 60% of the DTA and its cost of debt on  
11 the remaining 40%) creates a strong incentive to manage the Company's tax liability  
12 to reduce the size of the DTA. More broadly, AEP and SWEPCO will have an  
13 incentive going forward to manage their tax liability to maximize the value of their  
14 PTCs by using them as rapidly as possible. As a result, it is likely that the DTA will  
15 be smaller than AEP's preliminary forecast rather than much larger as Mr. Pollock's  
16 Scenario 4 assumes.

17 In addition, SWEPCO has proposed to cap the DTA at \$560 million on a  
18 cumulative annual average basis, which further limits the DTA on which SWEPCO  
19 would be allowed to recover a carrying cost. As shown in Mr. Pearce's supplemental  
20 rebuttal testimony, the DTA balance approaches the cap in the forecast period, so  
21 from the customers' perspective, the DTA balance could not increase materially from  
22 the forecast provided by SWEPCO without SWEPCO foregoing a return on the  
23 balance above the cap.

- (d) **Most Favored Nations (MFN)**. The MFN will apply to the Cost Cap, NCE Guarantee, PTC Eligibility Guarantee and any other term or condition adopted for SWEPCO in any of the state jurisdictions on behalf of which it acquires a share of the Selected Wind Facilities, whether through settlement or order issued by any such jurisdiction, to the extent such terms or conditions are more favorable to PSO's Oklahoma customers. The respective terms of this Joint Stipulation shall be deemed to be modified to incorporate those more favorable terms provided the term or condition is not unique to the SWEPCO jurisdiction (for example, the MFN will not apply to issues related to customer cost allocation, jurisdictional allocation and rate design). The Company will serve the Stipulating Parties with the orders and settlements described above promptly after they are issued and identify any provisions to which this clause applies.

### 3. **Other Settlement Terms and Conditions.**

- (a) **Deferred Tax Asset (DTA)**. The Company will earn a return on the DTA balance resulting from unused production tax credits over the first twenty (20) years of operation of the SWFs using its then applicable cost of long term debt (currently 4.72%) on any deferred tax asset balance.
- (b) **Off-system sales (OSS)**. PSO's fuel adjustment clause (FCA) Rider shall be modified such that PSO customers shall be credited with 100% of PSO's off-system sales margins effective January 1, 2021.
- (c) **Wind Facility Asset (WFA) Rider**. The Stipulating Parties agree that the Company should be authorized to implement the WFA Rider as set forth in the Company's testimony, except as set forth below.
- (i) The Company will seek to include each Selected Wind Facility in base rates as soon as practical after each Selected Wind Facility achieves commercial operation. For each Selected Wind Facility that can be included in the general base rate proceeding to be filed by the Company between October 2020 and October 2021, either as a test year item or a post-test year adjustment, the WFA Rider will sunset for that Selected Wind Facility on the date the revenue requirement associated with that Selected Wind Facility is included in base rates. If a Selected Wind Facility is not included in that general base rate proceeding, then the WFA Rider will sunset on the earlier of (A) July 1, 2023 and (B) the date that the revenue requirement associated with that Selected Wind Facility is included in base rates through a general base rate proceeding that will be filed by the Company within one year of the date that the facility achieves commercial operation. In either case, true-up of costs included in the rider, including any unrecovered deferrals, during the period it was in effect are excluded from the sunset. Revenues collected through the WFA Rider are subject to refund based upon the Commission's final determination of prudence.

**SOAH DOCKET NO. 473-19-6862  
PUC DOCKET NO. 49737**

**SOUTHWESTERN ELECTRIC POWER COMPANY'S RESPONSE TO CITIES  
ADVOCATING REASONABLE DEREGULATION'S FIRST SET OF REQUESTS FOR  
INFORMATION**

**Question No. 1-21:**

Provide a comparison of the major financial and operational guarantees offered by SWEPCO for the proposed wind energy facilities in this case to guarantees offered by the Company for the previously proposed Wind Catcher project.

**Response No. 1-21:**

The North Central Wind facilities have a very different risk profile than Wind Catcher did, and thus any comparison between the two projects or their guarantees must be done with the understanding that it would be a comparison of two distinctly different projects. See the Company's response to CARD 1-22 for a discussion of the impacts of these differences on the benefits to customers.

As a result of these material differences, a package of guarantees for North Central could be quite different from Wind Catcher to account for these differences in risks and still result in an equitable sharing of risks and benefits between the Company and customers. A direct comparison of individual components of an overall guarantee package is not meaningful. It is only a comparison of the entire package of guarantees that is meaningful. The Company believes the package of guarantees offered in this proceeding as a whole represent a fair sharing of risks and benefits, as did the guarantees offered by the Company during multiple rounds of negotiations in Wind Catcher.

Notwithstanding the preceding comments about the material differences between the projects, the Company offers the following comparison between its direct case offer in this proceeding and its initial offer in the Wind Catcher Proceeding offered in revised rebuttal testimony on January 19, 2018:

1. Cost Cap - The Wind Catcher offer was 109% with exceptions for force majeure and change in law excluding AFUDC of wind facility, gen-tie and SPP assigned generation assets. The guarantee offered in this proceeding is a cap at 100% of the expected cost including AFUDC with no exceptions including force majeure or change in law.
2. PTC Eligibility - In each proceeding AEP offered to guarantee eligibility at the maximum level available based on the planned in service dates of the facilities.

SOAH Docket No. 473-1 9-6862  
PUC Docket No. 49737  
CARD's 1<sup>st</sup>, Q. # CARD 1-21  
Page 2 of 2

3. Performance guarantee - In Wind Catcher we offered a guarantee of 5,481 GWh on a 5 year average for the first 10 years, which equated to a P99 capacity factor, subject to force majeure exceptions. In this proceeding we have offered to guarantee a P95 capacity factor over two 5 year time periods within the first 10 years, subject to exceptions for force majeure and SPP curtailment.
4. Most Favored Nation - The Wind Catcher offer included this with respect to approval by other states of stronger guarantees related to performance, cost cap, or PTC eligibility. An MFN provision is not included in this proceeding's offer.
5. Off-System Sales and REC's - In Wind Catcher the Company offered 100% of incremental OSS margins and REC sales to customers. In this proceeding the Company has offered to share 90% of OSS Margins and 100% of REC sales with customers.

Prepared By: Jonathan M. Griffin  
Prepared By: Lynn M. Ferry-Nelson

Title: Regulatory Consultant Staff  
Title: Dir Regulatory Svcs

Sponsored By: Thomas P. Brice

Title: VP Regulatory & Finance

SOAH DOCKET NO. 473-17-5481  
PUC DOCKET NO. 47461

**SOUTHWESTERN ELECTRIC POWER COMPANY'S RESPONSE TO**  
**TEXAS INDUSTRIAL ENERGY CONSUMER'S**  
**EIGHTH REQUEST FOR INFORMATION**

**Question No. TIEC 8-30:**

*Referring to the Rebuttal Testimony of John O. Aaron:*

Considering the recently enacted federal tax legislation, does SWEPCO believe that AEP will be able to monetize all of the PTCs generated by the Wind Catcher project in the year in which they are generated? Please provide any workpaper or underlying analysis that supports your answer.

**Response No. TIEC 8-30:**

No. The current forecast shows that the Company has sufficient tax liability to offset the PTCs in the 10-year period. However, if there are years in which the PTC cannot be fully utilized in the year the credit is earned, these credits can be carried forward to the succeeding 20 years and are eligible for utilization in those years.

Prepared By: Earlyne Reynolds  
Sponsored By: John Aaron

Title: Regulatory Consultant Staff  
Title: Reg Pricing & Analysis Mgr

SOAH DOCKET NO. 473-17-5481  
PUC DOCKET NO. 47461

**SOUTHWESTERN ELECTRIC POWER COMPANY'S RESPONSE TO**  
**TEXAS INDUSTRIAL ENERGY CONSUMER'S**  
**EIGHTH REQUEST FOR INFORMATION**

**Question No. TIEC 8-32:**

*Referring to the Rebuttal Testimony of John O. Aaron:*

Is SWEPCO willing to agree to a cap on the amount of unutilized PTCs generated by Wind Catcher that it would include in rate base? If so, what cap would SWEPCO agree to? If not, please explain why not.

**Response No. TIEC 8-32:**

The Company has not considered such a cap, and at this time SWEPCO does not believe that such guarantee is appropriate or necessary.

Prepared By: Earlyne Reynolds  
Sponsored By: John Aaron

Title: Regulatory Consultant Staff  
Title: Reg Pricing & Analysis Mgr

**SOAH DOCKET NO. 473-17-5481  
PUC DOCKET NO. 47461**

**SOUTHWESTERN ELECTRIC POWER COMPANY'S SUPPLEMENTAL  
RESPONSE TO TEXAS INDUSTRIAL ENERGY CONSUMER'S  
EIGHTH REQUEST FOR INFORMATION**

**SUPPLEMENTAL RESPONSE**

**JANUARY 19, 2018**

**Question No. TIEC 8-30:**

Referring to the Rebuttal Testimony of John O. Aaron:

Considering the recently enacted federal tax legislation, does SWEPCO believe that AEP will be able to monetize all of the PTCs generated by the Wind Catcher project in the year in which they are generated? Please provide any workpaper or underlying analysis that supports your answer.

**Supplemental Response No. TIEC 8-30:**

No. The Company's latest assessment from its ongoing analysis of the Tax Cuts and Jobs Act of 2017 indicates a likelihood that the Corporation may not have adequate taxable income in each year that the PTCs are earned. The Company's updated long-term financial forecast incorporating the changes to the change in tax law will not be completed until later this year, so the Company cannot provide a definitive forecast of the taxable income over the first 10 years. TIEC 8-30 Supplemental Attachment 1 includes the Company's current preliminary assessment of the Corporation's tax appetite and the PTCs utilized in each year.

In light of the new information described above, for rate making purposes the Company proposes to earn the then approved weighted average cost of capital on 60% of the Wind Catcher Deferred Tax Asset balance and the then approved cost of debt on the remaining Wind Catcher Deferred Tax Asset balance. SWEPCO's Wind Catcher Deferred Tax Asset balance shall not exceed a cumulative, annual average of \$560 million. If the PTCs are not utilized after year 13 of the project, the Company agrees to no return on the asset through retail rates after year 13.

To offset the effect of this potential increased revenue requirement the Company agrees to modify two of the guarantees set forth in Mr. Brice's rebuttal testimony:

1. Lower the Cost Cap Guarantee to 109%,
2. Increase the Production Guarantee to 5,481 GWH or 44.7% capacity factor.

Prepared By: James Martin

Title: Regulatory Case Mgr

Sponsored By: Kelly Pearce  
Thomas Finn

Title: Dir FERC Regulatory & Analysis  
Dir Tax Planning & Analysis

# **WORKPAPERS**



granted. The Commission found these assurances were necessary for granting the CCN as being in Texas ratepayers' best interest.

Further, the granting of the CCN does not waive the Commission's rights in subsequent rate cases, fuel reconciliations, rulemakings, or other proceedings to make determinations as to the appropriate allocation of costs related to contracts that SWEPCO enters into with wholesale customers. Additionally, in approving this CCN the Commission does not approve or otherwise validate any ratemaking treatment applicable to SWEPCO power sales to wholesale customers for resale, directly or indirectly, to other wholesale customers. The Commission's approval of the CCN for the Turk Plant does not constitute authority for rate recovery for any of the costs of the Turk Plant. The Commission specifically disallows any allocation of the Turk Plant base-rate costs that are not used for retail purposes to Texas retail ratepayers.

SWEPCO is required to provide the Arkansas and Louisiana Commissions with certain reports and updates. The Arkansas Commission requires SWEPCO to provide: (1) construction progress reports by the independent monitor to be provided every six months; (2) reports regarding completion or delay of construction; (3) monthly updates of the status of all federal and state permitting required for the facility, all activities SWEPCO has engaged in to comply with the requirements of all state and federal agencies that could have a material impact on construction, timing, or cost of the Turk Plant, and the estimated impact on construction, timing or cost of the Turk Plant resulting from the action by any entity; (4) a base-line mercury study and periodic updates over the life of the Turk Plant; and (5) an annual analysis of the technical and economic feasibility of CO<sub>2</sub> recapture and sequestration at the plant.<sup>17</sup> SWEPCO is required to provide the Louisiana Commission with (1) an updated analysis of the technical and economic feasibility of CO<sub>2</sub> recapture and sequestration at the Turk Plant within one year of the Turk Plant entering service; and (2) reports on construction updates.<sup>18</sup>

The Commission concludes that it is appropriate to require SWEPCO to provide the Commission with all updates, studies, reviews, reports, and analyses required to be submitted to

---

<sup>17</sup> Arkansas Public Service Commission, Docket No. 06-154-U, Order No. 11 (Nov. 21, 2007) at 73-76.

<sup>18</sup> Louisiana Public Service Commission, Order No. U-27866 Subdocket-B, (April 29, 2008) at 37-38.

will be another asset on which SWEPCO could earn a return, thereby further reducing the estimated economic benefits of the Project.

To reduce the impact of a deferred tax asset, SWEPCO proposes to cap the balance at a cumulative, annual average of \$560 million, to limit the return on any deferred tax asset balance to the weighted average cost of capital for 60% of the balance and the cost of debt for 40% of the balance, and to seek no return after year 13 of the Project.<sup>193</sup> SWEPCO asserts that along with its commitments to establish a cost cap of 109% and to provide a production guarantee equivalent to a 44.7% capacity factor the deferred tax asset cap will preserve a benefits level of approximately \$260 million (SWEPCO Total Company NPV) under Mr. Pearce's revised Exhibit KDP-1R.<sup>194</sup>

TIEC requests that the Commission not address the issue of how to handle the deferred tax asset, if any. According to Mr. Pollock, it is uncertain whether and how large any deferred tax asset may be.<sup>195</sup> TIEC would put off making a determination regarding any deferred tax asset until such time as the amount of the deferred tax asset was known.

Walmart requests that the Commission limit any return to SWEPCO's cost of debt for the entire asset. In support of its argument, Walmart asserts that SWEPCO has not shown that the deferred tax asset presents any incremental risk to shareholders that would warrant an equity return. Walmart notes that customers bear the risk of bill increases due to cost recovery of deferred tax assets, and thus, the benefit of the PTCs could be lowered by the cost of the deferred tax asset in rates.

Staff notes that the deferred tax asset further diminishes the estimated benefits. Staff states that SWEPCO's estimate is that the deferred tax asset would reduce the projected benefits assignable to SWEPCO by \$241 million NPV.<sup>196</sup>

---

<sup>193</sup> SWEPCO Ex. 14 at 9-10.

<sup>194</sup> SWEPCO Ex. 14 at 9-10.

<sup>195</sup> TIEC Ex. 1 at 65.

<sup>196</sup> Staff's Amended Initial Brief at 24, citing SWEPCO Ex. 25 at Exh. KDP-1R.

The ALJs find that SWEPCO's proposed solution will mitigate the effect of the deferred tax asset and recommend the Commission adopt SWEPCO's proposal. The deferred tax asset will be carried on SWEPCO's books and not earning some return on it would reduce SWEPCO's rate of return, thereby potentially affecting its credit rating and investor desirability. By recovering only its cost of debt on 40% of the asset, SWEPCO has shifted some of the risk to shareholders and away from ratepayers. The ALJs find that Walmart's proposal goes too far in assigning risk to shareholders, thereby risking the rate of return SWEPCO is eligible to earn.

**5. Proposal to Defer PTCs to "Shape" the Revenue Requirement (PO Issue 24)**

In the Application, SWEPCO proposes to shape the revenue requirement to moderate customer impact of the expiration of the PTCs after 10 years by deferring a portion of the PTCs in a regulatory liability that will be used to offset the revenue requirement in years 11 through 17 of the Project.<sup>197</sup> SWEPCO's goal is to prevent rate shock following the expiration of the PTCs. SWEPCO notes that the NPV of the Project to customers is the same with or without shaping.<sup>198</sup> The deferred PTCs would be returned to customers with interest at SWEPCO's weighted average cost of capital.<sup>199</sup>

Staff recommends denying SWEPCO's request to defer a portion of the PTCs. Staff asserts that deferring a portion of the PTCs is contrary to Commission precedent and that benefits of the credits should not be shifted to customers who likely did not incur the costs.<sup>200</sup>

TIEC suggests that addressing this issue is premature prior to having all the data and should be saved for a future rate case.<sup>201</sup>

---

<sup>197</sup> SWEPCO Ex. 2 at 24; SWEPCO Ex. 7 at 18-20, Exhs. KDP 5 and KDP-6; SWEPCO Ex. 11 at 5-6.

<sup>198</sup> SWEPCO Ex. 7 at 20.

<sup>199</sup> SWEPCO Ex. 26 at 5.

<sup>200</sup> Staff Ex. 2A at 19.

<sup>201</sup> TIEC Ex. 1 at 66.

87. SPS agreed that the calculation and mechanism set forth in findings of fact 79 through 85 are not obviated or subject to waiver or excused based on events of force majeure or due to any change in law.
88. SPS's agreement to return to Texas retail customers any estimated net costs as set forth in findings of fact 79 through 84 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers and to ensure that savings accrue to Texas retail customers.

**Production-Tax-Credit Commitment**

89. SPS has agreed to credit customers with 100% of the production tax credits related to the actual output generated by turbines placed in service at the Hale and Sagamore projects after December 31, 2020 even if SPS receives no production tax credits associated with that output due to the Hale or Sagamore projects' failure to qualify for the production tax credit. Except as provided in finding of fact 79, SPS is not guaranteeing against any reduction in the value Congress assigns to production tax credits for income tax purposes or any elimination by Congress of the production tax credits.
90. The production-tax-credit commitment set forth in finding of fact 89 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers.

**Deferred-Tax Asset**

91. In future rate cases in which a final order is issued before December 31, 2025, it is appropriate that SPS be allowed to include in rate base the actual end-of-test-year balance of unused production tax credits, if any, associated with the Hale and Sagamore projects. It is also appropriate that any unused production tax credits included in rate base earn a return at the weighted average cost of capital set for that rate case. It is appropriate that in rate cases in which a final order is issued after December 31, 2025 that SPS not be allowed to include unused production tax credits in rate base.
- a. The end-of-test year balance under finding of fact 91 is the end of the twelve-month period used for determining SPS's cost of service.

- b. The unused production tax credits included in rate base under finding of fact 91 will not include the production tax credits that SPS retains for the initial 60-day period as stated in finding of fact 67.
- c. The term *unused production tax credits* means production tax credits that SPS or the Xcel Energy consolidated group are unable to use to offset taxable income on their federal income tax return. Both SPS and the Xcel Energy consolidated group have agreed to use the production tax credits associated with generation from the Hale and Sagamore projects as rapidly as allowed under the Internal Revenue Code and treasury regulations. Unused production tax credits shall include only actual production tax credits and shall not include any underproduction credits identified in finding of fact 73 or any payments for guaranteed savings identified in finding of fact 89.

**Production Tax Credits through Fuel**

- 92. Except as allowed under finding of fact 67, SPS has agreed to refund to customers, as a credit through fuel, the grossed-up production tax credits associated with generation from the Hale and Sagamore projects.
- 93. Good cause exists to grant SPS an exception to 16 Texas Administrative Code (TAC) § 25.236 to the extent necessary to allow the grossed-up production tax credits to flow through fuel, or to develop an alternative method for refunding the production tax credits to customers.

**Renewable-Energy Credits**

- 94. 100% of the Texas retail jurisdictional portion of the margins from the sale of renewable energy credits or renewable energy certificates generated from the Hale and Sagamore projects after the first 60 days following each project's commercial operation date will be credited to SPS's Texas retail customers through base rates.

**Consideration of Statutory CCN Factors**

- 95. The Hale and Sagamore projects are not being proposed to meet a need for additional service or because of the inadequacy of existing service.