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

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZATION AND RELATED RELIEF FOR THE ACQUISITION OF WIND GENERATION FACILITIES	§ § § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

REPLY BRIEF OF EAST TEXAS ELECTRIC COOPERATIVE, INC. AND NORTHEAST TEXAS ELECTRIC COOPERATIVE, INC.

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Mark C. Davis
State Bar No. 05525050
Adrianne M. Waddell
State Bar No. 24098556
Jacob J. Lawler
State Bar No. 24076502
HOLLAND & KNIGHT, LLP
111 Congress Avenue, Suite 540
Austin, Texas 78701
(512) 472-1081 OFFICE
(512) 472-7473 FAX

William H. Burchette
DC Bar No. 957308
W. Patrick Burchette
DC Bar No. 1010944
F. Alvin Taylor
DC Bar No. 468545
HOLLAND & KNIGHT, LLP
800-17th Street, N.W., Suite 1100
Washington, DC 20006
(202) 955-3000 OFFICE
(202) 955-5564 FAX

ATTORNEYS FOR EAST TEXAS ELECTRIC COOPERATIVE, INC.
AND
NORTHEAST TEXAS ELECTRIC COOPERATIVE, INC.

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NOW COMES East Texas Electric Cooperative, Inc. ("ETEC") and Northeast Texas Electric Cooperative, Inc. ("NTEC") and files its Reply Brief and would respectfully show as follows:[1]

I. Introduction

Only one party—Southwestern Electric Power Company ("SWEPCO")—supports approval of the application as filed. Each of the other parties recommends certain conditions or outright denial of the application.[2] These positions are understandable. The evidence shows SWEPCO will earn a return of approximately $1.4 billion on the Selected Wind Facilities, which does not depend on the project's economic performance.[3] On the other hand, SWEPCO's

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1 ETEC and NTEC are FERC wholesale customers of SWEPCO and SPP transmission customers in SWEPCO's zone. As such, ETEC and NTEC are concerned about the multiple ways the Selected Wind Facilities may affect their nearly 350,000 retail customer-members in Texas. ETEC and NTEC believe that robust participation by all affected entities in Texas is helpful to the Commission in making informed decisions.

2 *See* Cities Advocating Reasonable Deregulation's Initial Post-Hearing Brief at 15-16 (Mar. 9, 2020) (recommending certain conditions or denial) ("CARD Initial Brief"); Commission Staff's Initial Brief at 4, 26-27, 35) (recommending certain conditions or denial) (Mar. 9, 2020); Initial Brief of East Texas Electric Cooperative, Inc. and Northeast Texas Electric Cooperative, Inc. at 22 (recommending denial based on failure to meet burden of proof) (Mar. 9, 2020) ("ETEC/NTEC Initial Brief"); Golden Spread Electric Cooperative, Inc.'s Initial Brief at 2, 24 (recommending certain conditions) (Mar. 9, 2020) ("GSEC Initial Brief"); Office of Public Utility Counsel's Post-Hearing Initial Brief at 2, 21-22, 25-28, 31 (recommending certain conditions or denial) (Mar. 9, 2020); Texas Industrial Energy Consumers' Initial Brief at 6-8, 70 (recommending denial) (Mar. 9, 2020) ("TIEC Initial Brief"); Initial Post-Hearing Brief of Walmart Inc. at 2, 7 (recommending certain conditions) (Mar. 12, 2020) ("Walmart Initial Brief").

3 Dollar figure stated in nominal dollars; *See* CARD Initial Brief at 11-12; *See also* SWEPCO Ex. 8, Torpey Direct at Exhibit JFT-3 pages 1-12 of 12, bates 329-340 (showing line 6, Wind Facility Revenue Requirement, remaining the same at $3.233 billion nominal in each of the 12 scenarios presented).

customers—including large industrials, residential and commercial, FERC wholesale, and Southwest Power Pool ("SPP") transmission customers—all bear known costs with the promise of unknown benefits.[4] Although SWEPCO offers certain customer groups a few guarantees, these limited guarantees are insufficient given the circumstances. This asymmetric risk is not in the public interest. Accordingly, the ALJs should find that SWEPCO failed to meet its burden of proof and recommend denial of the application.

The parties disagree about the level of risk associated with the Selected Wind Facilities. Intervenors have highlighted a number of uncertainties and possible scenarios that render the Selected Wind Facilities marginal or harmful for ratepayers.[5] SWEPCO downplays this risk, calling it "an unlikely series of events," "extremely unlikely," and an "overly negative 'the sky is falling' analysis."[6] At the same time, SWEPCO refuses to accept such risk.[7] SWEPCO cannot have it both ways. If the risk is remote, SWEPCO should be willing to accept it. Instead, SWEPCO protests, claiming the risk is an unreasonable burden.[8] Concerning the risk associated with natural gas prices differing from SWEPCO's estimates, SWEPCO states: "SWEPCO's approved return on equity does not compensate it for such as increase in risk."[9] In other words, SWEPCO doesn't get paid enough to accept that risk. If SWEPCO's $1.4 billion in return on the Selected Wind Facilities is not enough compensation to accept that risk, it is doubtful that SWEPCO's customers' should accept the risk given their alleged benefits are similar, at $1.455 billion on average.[10] Because the Selected Wind Facilities place unreasonable risks on Texas ratepayers, the ALJs should recommend denial of the application.

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4 However, some costs are unknown or understated. For example, transmission and congestion costs associated with the Selected Wind Facilities are discussed in Section III.D. below.

5 *See, e.g.*, TIEC Initial Brief at 7 *et seq.*; PUC Staff Initial Brief at 7-20; OPUC Initial Brief at 8-21.

6 *See* SWEPCO Initial Brief at bates 11, 49 (citing and implicitly adopting the testimony of another party's witness from another proceeding on the subject of PTCs).

7 *See* SWEPCO Initial Brief at bates 11, 49-50.

8 *Id* at 49-50.

9 *See* SWEPCO Initial Brief at bates 50.

10 *See* CARD Initial Brief at 6 (calculating the average alleged customer benefits using SWEPCO's assumptions). This average gives equal weight to all the scenarios SWEPCO presented. In fact, more weight should be given to the lower net benefits scenarios to account for the optimistic and unsupported assumptions included in SWEPCO's analysis, which are discussed by other intervenors.

II. Certificate of Convenience and Necessity Standard of Review (P.O. Issue No. 2)

SWEPCO's initial brief fails to establish that the Selected Wind Facilities will result in cost savings and thus has not met its burden under PURA § 37.056. SWEPCO points to Docket No. 49636 as in instance where the Commission has approved a CCN application on the basis of probable lowering of costs to customers.[11] However, SWEPCO's reliance on Docket No. 49636 is misplaced. In that case, the Commission conditionally granted the *settlement* in SPS's CCN application after requiring SPS *prove up the cost savings and make numerous guarantees protecting customers*—proof and guarantees that are simply not present in this case.[12] As numerous intervenors have pointed out, the cost savings are premised on optimistic assumptions and there are a number of guarantees SWEPCO has not made that would protect ratepayers. Until cost savings are proved up and guarantees that protect all Texas customers are made, this proceeding is unlike the proposal in Docket No. 49636.

III. Analysis of Economics of Selected Wind Facilities (P.O. Issue Nos. 2, 3, 5, 6, 19, 23)

A. Request for Proposals Selection Process

SWEPCO claims that it utilized industry standard methods (*i.e.,* DFAX and FCITC) to analyze the transmission impacts in the RFP process.[13] However, as other intervenors have also stated, there are a number of assumptions and inputs SWEPCO made that create compounding errors in its overall analysis.[14] These errors are also discussed in the direct testimony of ETEC/NTEC witness Mr. John Chiles and in ETEC and NTEC's initial brief.[15]

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11 SWEPCO Initial Brief at 5. SWEPCO also points to the Wind Catcher proceeding as an instance in which the Commission has recognized that the probable lowering of costs to customers can be the primary basis for granting a CCN.

12 Docket No. 46936, Final Order (stating "In the settlement agreement, SPS agreed to four important conditions to protect customers" and "At the request of the Commission. SPS provided further economic modeling demonstrating that under various future assumptions, the Hale and Sagamore project are likely to result in savings to customers."; also "To ensure an economic benefit to customers, the Commission further concludes that SPS must comply with all the provisions of the settlement agreement and this Order."). *See also* Conclusion of Law No. 7 "The Hale and Sagamore projects, *subject to the customer benefits and protections provided by the settlement agreement and this Order*, are necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a)." (emphasis added).

13 SWEPCO Initial Brief at 11.

14 *See* TIEC Initial Brief at 13 ("In order to ensure that ratepayers are not harmed by the Wind Facilities, SWEPCO's modeling results should be interpreted in a way that accounts for the large margin of error.")

15 ETEC/NTEC Ex. 2; ETEC/NTEC Initial Brief at 5-9.

B. Project Description and Cost

Please refer to the discussion in ETEC and NTEC's initial brief.

C. Economic Modeling

1. Modeling Methodology

Not addressed.

2. Projected Production Cost Savings

a. Natural Gas Prices

Not addressed.

b. Other Assumptions Affecting Locational Marginal Prices

Not addressed.

c. Capacity Factor

Not addressed.

d. Useful Life of Wind Facilities

Not addressed.

e. Congestion and Losses (including Gen-Tie)

In its initial brief, SWEPCO offered no meaningful support for holding the cost of congestion and losses constant (in nominal dollars) for the 20+ year period beginning in 2029.[16] Instead, SWEPCO simply reiterated the testimony of Mr. Sheilendranath.[17] As discussed at length in ETEC and NTEC's initial brief, this ignores the fundamental concept of the time value of money.[18] The Commission recognizes the time value of money when it approves interest rates annually for customer deposits and over- and undercharges, for example.[19] Moreover, in numerous other areas of SWEPCO's analysis, it takes the time value of money into account. For

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16 SWEPCO Initial Brief at 37.

17 *Id.*

18 ETEC/NTEC Initial Brief at 11-14.

19 Summary available at https://www.puc.texas.gov/industry/electric/reports/HRates/HistRates.pdf. The interest rates for each year are approved by the Commission at an open meeting.

example, SWEPCO used a 2.0% annual escalation factor when projecting O&M and capital costs in its models.[20] SWEPCO's failure to annually escalate the cost of congestion and losses beginning in 2030 is an error in the analysis that underestimates those costs over the life of the project. By underestimating the costs, the benefits are correspondingly overestimated.

Relatedly, SWEPCO's assertion that transmission will substantially reduce congestion and transmission costs will decrease is similarly erroneous. SWEPCO's own witness, Mr. Ali, who is the Managing Director of Transmission Planning at AEPSC agreed that the cost of transmission is expected to increase over time. During the hearing, he discussed the increase in the estimated cost of the Gen-Tie from $443 million in 2021 dollars to $480 million is 2026 dollars:

> Q: So the costs would increase, right, from 2021 to 2026? Right?
> A: Absolutely. Commodity prices will go up. Inflation will be there.[21]

SWEPCO's assumption regarding a substantial decrease in congestion costs is thoroughly addressed in numerous parties' initial briefs.[22]

SWEPCO also offered the Gen-Tie as a "bookend" solution to high congestion costs. However, as ETEC and NTEC, as well as other parties have identified, this cost is uncertain and likely understated for a variety of reasons.[23] For example, SWEPCO has not identified whether the Gen-Tie will be a networked facility eligible for inclusion in its SPP Annual Transmission Revenue Requirement. Nor has SWEPCO stated what rate treatment or functionalization it intends to seek for the Gen-Tie in either the short- or long-term. Because the Gen-Tie will likely have a significantly longer useful life than the Selected Wind Facilities, there are additional complications associated with the line's cost recovery. As addressed in ETEC and NTEC's initial brief, however, once the Selected Wind Facilities are approved, the Commission will lose a valuable opportunity to consider the Gen-Tie holistically with the Selected Wind Facilities.[24]

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20 SWEPCO Initial Brief at bates 21.

21 Tr. (Ali Direct) at 394 (Feb. 25, 2020).

22 ETEC/NTEC Initial Brief at 11-14; TIEC Initial Brief at 52-55; PUC Staff Initial Brief at 12-15.

23 ETEC/NTEC Initial Brief at 11-14; TIEC Initial Brief at 57; PUC Staff Initial Brief at 15-18.

24 ETEC/NTEC Initial Brief at 14-15. ETEC and NTEC agree with other intervenors that SWEPCO's decision to understate congestion costs allows SWEPCO to show artificially high benefits and avoid having to justify a Gen-Tie—which will likely be needed—until after the project is a sunk cost. *See Id.*, ETEC/NTEC Ex. 2 at bates JWC_00023, and TIEC Initial Brief at 55-57.

3. Capacity Value

Not addressed.

4. Production Tax Credits

Not addressed.

5. Deferred Tax Asset

ETEC and NTEC's initial brief addresses the $123 million (present value) or $212 million (nominal value) cost in DTA carrying costs associated with SWEPCO's decision not to solicit power purchase agreements ("PPAs"). Procuring wind generation with a PPA would have eliminated this cost through the use of tax equity investors capable of efficiently monetizing the PTCs and timely reflecting the PTC benefit as part of the PPA all-in rate.[25]

6. Wind Facility Revenue Requirement

Not addressed.

D. Economic Evaluation and Summary

SWEPCO claims that it demonstrated customer benefits "under a range of plausible future circumstances."[26] However, one likely circumstance SWEPCO failed to consider—which ETEC/NTEC witness James Daniel addressed—is the application of a production demand allocation factor to the customer rate impact study. As SWEPCO admitted at the hearing, it requested Commission approval of a production demand allocation factor in its Wind Catcher case.[27] Similar to the present case, Wind Catcher was proposed for an economic, rather than a reliability, purpose.[28] As detailed in ETEC and NTEC's initial brief, Mr. Daniel demonstrated that the proposed acquisition of the Selected Wind Facilities will not provide any immediate rate benefits to most Texas retail customers, instead increasing their costs, if a production demand allocation factor is applied.[29] When SWEPCO calculated its customer rate impact study in this case, however, it used an energy allocator which allowed SWEPCO to show benefits to all of its

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25 ETEC/NTEC Initial Brief at 15.

26 SWEPCO Initial Brief at bates 43.

27 Tr. (Aaron Rebuttal) at 842 (Feb. 26, 2020).

28 *Id.* at 840 (Feb. 26, 2020).

29 ETEC/NTEC Initial Brief at 16-17.

customers. But SWEPCO has not proposed an allocation factor be approved in this case, nor does SWEPCO know what allocation factor the Commission will apply to the project's costs in its future rate case.[30] This is putting the cart before the horse and putting most of SWEPCO's customers at risk of incurring higher costs rather than realizing any customer benefits. In this case the Commission does not have any evidence to decide this cost allocation issue because SWEPCO has not requested this issue be addressed. This puts the Commission in a predicament. If it approves SWEPCO's CCN now, and later approves a demand allocation factor like SWEPCO proposed in the Wind Catcher case, most customers will see their bills increase.

IV. Proposed Conditions (P.O. Issue Nos. 10, 19, 20, 24)

A. SWEPCO Proposed Conditions

Please refer to the discussion in ETEC and NTEC's initial brief.

B. Conditions Contained in Settlements Filed in Other Jurisdictions

In its initial brief, SWEPCO offered no clarity about whether it would extend to Texas the commitments made in other jurisdictions. Reiterating its rebuttal testimony, SWEPCO offered only to "entertain" guarantees if they are part of a "reasonable suite" of conditions in a final order approving the application.[31] This vague commitment provides the ALJs and Commission with incomplete information with which to make a finding.

C. Staff/Intervenor Proposed Conditions

Not addressed.

V. Regulatory Approvals in Other Jurisdictions (P.O. Issue Nos. 7, 8, 9, 10)

A. Status Update

Not addressed.

B. Scalability of Acquisition

Please refer to the discussion in ETEC and NTEC's initial brief.

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30 Tr. (Aaron Rebuttal) at 842 (Feb. 26, 2020).

31 *See* SWEPCO Initial Brief at bates 46, 48.

VI. Other CCN Issues (P.O. Issue Nos. 1, 2, 3, 4, 11, 12)

Please see Section II (Certificate of Convenience and Necessity Standard of Review) above.

VII. Rate Issues (P.O. Issue Nos. 21, 22, 25, 26, 27, 28, 29, 30, 31)

Not addressed.

VIII. Sale, Transfer, Merger Issues (P.O. Issue Nos. 13, 14, 15, 16, 17, 18)

SWEPCO argues a public interest finding overlaps with the CCN standard.[32] That is, SWEPCO asserts that because there are probable cost savings, the project is in the public interest.[33] However, as discussed in ETEC and NTEC's initial brief and Section II (Certificate of Convenience and Necessity Standard of Review) above, the cost savings are questionable and there are numerous assumptions and few guarantees that this project is indeed in the public interest. SWEPCO has not met its burden under the CCN standard and accordingly has failed to do so under PURA § 14.101.

IX. Conclusion

For the reasons discussed above and in ETEC and NTEC's initial brief, the ALJs should find that SWEPCO has not met its burden and recommend denial of the application.

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32 SWEPCO Initial Brief at 53.

33 *Id.*

Respectfully submitted,

/s/ Jacob Lawler

Mark C. Davis
State Bar No. 05525050
Adrianne M. Waddell
State Bar No. 24098556
Jacob J. Lawler
State Bar No. 24076502
HOLLAND & KNIGHT, LLP
111 Congress Avenue, Suite 540
Austin, Texas 78701
(512) 472-1081 OFFICE
(512) 472-7473 FAX

William H. Burchette
DC Bar No. 957308
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F. Alvin Taylor
DC Bar No. 468545
HOLLAND & KNIGHT, LLP
800-17th Street, N.W., Suite 1100
Washington, DC 20006
(202) 955-3000 OFFICE
(202) 955-5564 FAX

**ATTORNEYS FOR EAST TEXAS ELECTRIC COOPERATIVE, INC.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered, electronically emailed and/or mailed this 17th day of March, 2020 by First Class, U.S. Mail, postage pre-paid to all parties of record.

/s/ Jacob Lawler
Jacob J. Lawler