



Control Number: 49737



Item Number: 96

Addendum StartPage: 0

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

STAFF AND INTERVENORS' JOINT PROPOSED PROCEDURAL SCHEDULE AND ARGUMENT IN SUPPORT

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), and files on behalf of itself Texas Industrial Energy Consumers, Office of Public Utility Council, Cities Advocating Reasonable Deregulation, East Texas Electric Cooperative, Inc., and Northeast Texas Electric Cooperative, Inc., this Joint Proposed Procedural Schedule and Argument in Support.¹ In support thereof, Staff shows the following:

I. BACKGROUND

On July 15, 2019, Southwestern Electric Power Company (SWEPCO) filed an application for a certificate of convenience and necessity (CCN) authorization and related relief to acquire an interest in three wind generation facilities. Through a request for proposals process, SWEPCO and its sister company, Public Service Company of Oklahoma, have contracted to acquire project companies owning the following wind facilities: Traverse, Maverick, and Sundance, subject to regulatory approval and satisfaction of other conditions.

On August 22, 2019, the Commission referred this docket to the State Office of Administrative Hearings (SOAH). On August 23, 2019, the SOAH Administrative Law Judges (ALJs) issued Order No. 1 scheduling a prehearing conference for September 12, 2019 to discuss the procedural schedule. The parties were not able to reach a consensus on the procedural schedule during the prehearing conference and informed the ALJ that the parties would be filing

¹ Intervening party Golden Spread Electric Cooperative does not oppose any element of this pleading.

96

competing procedural schedules. Specifically, Staff and Intervenors would be filing one joint proposed procedural schedule and SWEPCO would be filing an opposing proposed procedural schedule. Staff and Intervenors are specifically concerned with dates for filing direct testimony,² the dates for the hearing on the merits, and ensuring that there is at least a two-week interval between SWEPCO’s rebuttal testimony and the hearing on the merits.³

II. PROPOSED PROCEDURAL SCHEDULE

Staff and Intervenors propose the following procedural schedule:

EVENT	DEADLINE
Intervention Deadline	September 30, 2019
Proof of Notice	October 15, 2019
Objections to SWEPCO’s Direct Testimony	December 18, 2019
Deadline for serving written discovery on SWEPCO’s Direct Testimony	January 15, 2020
Intervenor Direct testimony	January 14, 2020
Responses to objections to SWEPCO’s Direct	January 18, 2020
Objections to Intervenor Direct Testimony	January 22, 2020
Hiatus on Discovery and Pleadings for Intervening Holidays: Discovery will not be served on any party and the days will not be counted for any discovery related deadlines; additionally no pleading will be filed by any party and no party will be required to respond to any pleading	December 20, 2019 – January 3, 2020
Responses to objections to Intervenor Direct	January 29, 2020
Staff Direct Testimony	January 22, 2020
Objections to Staff Direct Testimony	January 29, 2020
Responses to objections to Staff Direct	February 5, 2020
SWEPCO’s Rebuttal and Staff and Intervenor Cross-Rebuttal Testimony	February 12, 2020

² Staff and intervenors request that the Administrative Law Judges (ALJs) not move up the proposed dates for Staff and intervenor testimony given the press of other matters described below as well as the holiday season. However, if the ALJs decide to do so, Staff and intervenors request that the schedule adopted by the ALJs maintain an interval of 5 working days between the deadline for intervenor direct testimony and Staff direct testimony to best ensure that these parties have adequate time to develop their direct cases given the same concerns.

³ It is important that there be an adequate time between SWEPCO’s rebuttal and the hearing in order to facilitate the development of a record in this case, particularly given its complexity and the possibility that SWEPCO may propose new conditions in its rebuttal as it did during the Wind Catcher case. *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project*, Docket No. 47461, Rebuttal Testimony of Thomas P. Brice at 4-8 (Jan. 4, 2018); *id.*, Rebuttal Testimony of Paul Chodak at 1-3 (Jan. 4, 2018).

Deadline for serving written discovery on Intervenor and Staff direct and SWEPCO rebuttal	February 18, 2020
Objections to SWEPCO's Rebuttal Testimony	February 18, 2020
Responses to objections to SWEPCO's Rebuttal; Deadline for depositions	February 20, 2020
Hearing on the Merits	February 24 – February 28, 2020
Initial Brief	March 9, 2020
Reply Brief	March 17, 2020

Additional Requirements:

In addition to the above, Staff and intervenors propose that:

- (i) drafts of testimony are not discoverable;
- (ii) email service is a valid method of service;
- (iii) any party serving electronically must include the Commission docket number and a description of the document in the subject line of the transmitting email;
- (iv) workpapers are due one (1) working day after the testimony is filed. Workpapers may be provided to the parties on CDs or USB flash drives, but hard copies will be provided to the ALJs;
- (v) For written discovery on SWEPCO, Staff, and Intervenor direct and cross-rebuttal testimony
 - a. responses are due within 10 calendar days of the discovery request;
 - b. objections are due within 5 calendar days of the discovery request;
 - c. motions to compel are due within 5 calendar days of an objection; and
 - d. responses to motions to compel are due within 3 calendar days of the motion to compel.
- (vi) For written discovery on SWEPCO's rebuttal testimony
 - a. responses are due within four working days of the discovery request;

- b. objections are due within four working days of the discovery request;
- c. motions to compel are due within 2 working days of the objection; and
- d. responses to a motion to compel is due within 2 working days of the motion to compel.

III. ARGUMENT IN SUPPORT

Staff and Intervenors' Proposed Schedule Allows Sufficient Time to Meet the Statutory Deadline

During the prehearing conference on September 12, 2019, SWEPCO asserted that a hearing on the merits scheduled for February 24 – 28, 2019 would not allow enough time for the Commission to issue an order in this docket before the 366-day deadline as set out in Public Utility Regulatory Act (PURA) § 37.058(d). SWEPCO's assessment is inaccurate. SWEPCO filed its application in this docket on July 15, 2019; therefore, the deadline for a decision in this proceeding is July 15, 2020. Further, although PURA § 37.058(d) sets a 366-day deadline, the lack of the language in the statute that requires it to be "approved, modified or rejected" within that time allows for the applicant to extend the time. The procedural schedule proposed above complies with the timeline set out in SOAH Order No. 1. Under that schedule, the record will close on March 17, 2020. Allowing another 60 days for the ALJs to issue a Proposal for Decision brings the date for issuance of a Proposal for Decision to May 18, 2020. Allowing another three weeks for exceptions and replies to exceptions and another five weeks to allow for two open meetings and provides for a final order to be issued between July 6, 2020 and July 13, 2020.⁴

During the prehearing conference, SWEPCO relied on Docket No. 47461⁵ to support its assertion that a procedural schedule with a hearing on the merits that begins after February 10, 2019 provides enough time for the issuance of a final order before the 366-day deadline. The application in Docket No. 47461, the previous SWEPCO wind generation case, was filed on July

⁴ SOAH Order No. 1 at 2-3; *see also Application of Southwestern Electric Power Company to Amend its Transmission Cost Recovery Factor*, Docket No. 49042, SOAH Order No. 1 at 2-3 (Jan. 8, 2019) (describing timeline for Commission consideration of PFD).

⁵ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relied for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461 (Aug. 13, 2018).

31, 2017 and a final order was issued by the Commission on August 13, 2018. However, each case is different, and Docket No. 47461 was the first contested large-scale wind project CCN application the Commission had considered. It is also worth noting that the Commission voted to deny the Certificate of Convenience and Necessity (CCN) at the open meeting on July 26, 2018, prior to the expiration of the 366-day deadline. Furthermore, the Staff and intervenor proposal is reasonable in light of schedules in recent CCN cases before the Commission. For example, in Docket No. 46936, Southwestern Public Service Company's (SPS) wind generation CCN case, followed a similar timeline to the timeline in Staff and Intervenor's Proposed Procedural Schedule. SPS's application was filed on March 21, 2017 and the hearing on the merits was scheduled for November 6-17, 2017. Allowing 60 days for the issuance of a Proposal for Decision and another eight weeks for the issuance of final order by the Commission allows for the almost the same amount of time to complete this proceeding that is currently proposed by Staff and Intervenor. Additionally, the proposed schedule, which has the hearing on the merits beginning on February 24, 2020 (224 days after the filing of the application), is essentially the same as the procedural schedule adopted in Entergy Texas, Inc.'s recent CCN proceeding, Docket No. 46416, in which the hearing on the merits was scheduled 227 days after the filing of the application.⁶

In addition to following the guidance provided in SOAH Order No. 1, Staff and Intervenor's procedural schedule more appropriately takes into account the following circumstances:

- Many of the attorneys representing parties in this docket are representing parties in Docket No. 49849, the El Paso Electric Merger proceeding, which is scheduled for a Commission-held hearing on November 20, 2019 – November 22, 2019 with briefing due on December 20, 2019.
- Attorneys in this case are also working on other matters that will require substantial attention during the next few months, including the pending AEP Texas rate case (Docket No. 49494) and the SPS fuel reconciliation case (Docket No. 49873), both of which will be in the exceptions/replies to the exceptions phase towards the end of this year.

⁶ *Application of Entergy Texas Inc. to Amend its Certificate of Convenience and Necessity to Construct Montgomery County Power Station in Montgomery County*, Docket No. 46416, SOAH Order No. 3 at 2 (Nov. 10, 2016).

- One of Staff's two attorneys assigned to this docket is the lead attorney in the SPS rate case, which has Staff Direct Testimony due on February 18, 2019. A hearing on the merits during the week of February 18, 2019 at the same time Staff's testimony in an electric rate case is due would render Staff unable to adequately prepare for hearing in this docket. Similarly, intervenor testimony in the SPS rate case is due on February 10, 2019, and several of the intervenor attorneys in this case are also working on that case.
- The proposed procedural schedule allows the hearing on the merits to start on Monday and end on Friday saving SWEPCO the inconvenience and the expense of having to pay for out of town witnesses to stay in Austin over the weekend or make multiple trips to Austin.
- Additionally, the proposed procedural schedule provides SWEPCO with more than enough time to prepare its rebuttal testimony, which is often a concern of the utility in these types of cases. Staff and intervenor's proposal sets the deadline for SWEPCO rebuttal four weeks after intervenor direct testimony and three weeks after Staff testimony.⁷ Staff and Intervenors' Proposed Procedural Schedule takes into account the intervening holidays.
- As explained at the prehearing conference, both Staff and the Office of Public Utility Counsel are operating with very limited legal resources. Particularly, Staff is operating with half its normal number of attorneys, all of whom have a crushing caseload.

Given that Staff and Intervenors' Proposed Procedural Schedule allows for the above considerations and still meets the statutory deadline, Staff and Intervenors respectfully request the issuance of an order adoption the above procedural schedule.

⁷ Additionally, Staff and intervenors note that SWEPCO's deadline to provide a Notice to Proceed with respect to the wind projects is August 15, 2020, roughly a month after the statutory deadline. Direct Testimony of Jay F. Godfrey at 28.

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney



Rashmin J. Asher
State Bar No. 24092058
Eleanor D'Ambrosio
State Bar No. 24097559
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7216
(512) 936-7268 (facsimile)
Rashmin.Asher@puc.texas.gov

**SOAH DOCKET NO. 473-19-6892
PUC DOCKET NO. 49737**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the
September 16, 2019 in accordance with 16 TAC § 22.74.



Rashmin J. Asher