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SOAH DOCKET NO. 473-21-0538

PUC DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	)))))	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS** **REFERRED TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SIERRA CLUB'S RESPONSE TO SOUTHWESTERN ELECTRIC POWER COMPANY'S OBJECTION AND MOTION TO STRIKE THE TESTIMONY OF DEVI GLICK AND, IN THE ALTERNATIVE, REQUEST TO DISALLOW ALL FLINT CREEK TEST YEAR SPENDING

Just three years after charging customers $700 million to install pollution controls at four coal-burning power plants—three of which will retire early or convert to burning gas, forcing customers to pay millions in stranded pollution control costs—Southwestern Electric Power Company ("SWEPCO" or "the Company") has decided to invest an additional $26.8 million in yet another coal plant retrofit project—this time, to comply with the U.S. Environmental Protection Agency's ("EPA's") coal ash and wastewater regulations at the Flint Creek Power Plant. As explained by Sierra Club witness Devi Glick, however, SWEPCO failed to conduct a reasonable evaluation of less costly alternatives to retrofitting Flint Creek, such as retiring the plant by 2028, which would save ratepayers at least $17.8 million in compliance costs.[1] For those reasons, Ms. Glick concludes that SWEPCO's decision to lock customers into additional

[1] *See generally* Direct Testimony of Devi Glick at 29-40 (Mar. 31, 2021). SWEPCO does not dispute Ms. Glick's assertion that a substantial portion of the coal ash and wastewater retrofit costs could be avoided by retiring or replacing Flint Creek, and has confirmed that fact in discovery. *See, e.g.*, SWEPCO Resp. to Sierra Club 3-2, included in Exhibit DG-3 to Direct Testimony of Devi Glick ("[A]n option is available in the rule to allow the plant to cease combustion of coal (i.e., retire or repower) and to continue to operate without further ELG-related retrofits until no later than December 31, 2028.").

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and unnecessary retrofit costs is imprudent. Indeed, based on SWEPCO's own data, Ms. Glick estimates that Flint Creek will incur approximately $166 million in net losses over the next decade, making it increasingly likely that SWEPCO's decision to retrofit Flint Creek will (like the Company's previous retrofits for Dolet Hills, Pirkey, and Welsh) result in significant stranded pollution control costs that ratepayers will be forced to bear.[2]

In its motion to strike Ms. Glick's testimony, SWEPCO does not dispute that the Company already made a "decision to retrofit Flint Creek,"[3] has invested millions in capital in the retrofit project before and during the test year,[4] plans to invest $26.8 million in the project in total, which will be complete by 2023, or that a substantial portion of those retrofit costs could be avoided by retiring or converting the plant to gas before EPA's 2028 compliance deadline. Instead, the Company insists that its "decision to retrofit Flint Creek and any associated investment" are irrelevant until some future case "when SWEPCO requests to include such investment in its rate base."[5] In effect, SWEPCO asserts that the Commission has no authority to consider the prudence of costs included in the test year or the Company's retrofit decision until after the project is "placed in service in 2021,"[6] and no authority to protect ratepayers from ongoing and unnecessary capital and operational costs that SWEPCO seeks to recover in this proceeding.

SWEPCO is wrong, and the Company's motion to strike Section 5 of the Direct Testimony of Ms. Glick should be denied, for the following independent reasons:

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[2] Direct Testimony of Devi Glick at 40.

[3] SWEPCO Objection and Mot. to Strike at 3.

[4] *Id.* at 3 n.9 ("some CCR/ELG capital expenditures were made prior to 2021").

[5] *Id.* at 3.

[6] *Id.*

(1) SWEPCO admits that it "made a decision" to retrofit Flint Creek,[7] and therefore the utility bears the burden of demonstrating that it conducted a "reasoned investigation of all relevant factors and alternatives ***before*** reaching its decision."[8]

(2) SWEPCO has decided to retrofit Flint Creek and seeks to recover at least some of the associated capital expenses "for the first time in this case,"[9] including $401,396[10] in avoidable compliance costs included in the test year of this case.

(3) Ms. Glick's evaluation of SWEPCO's retrofit analysis, including the Company's failure to reasonably evaluate less costly alternatives such as retirement or replacement, is relevant to the prudence of the costs SWEPCO seeks to recover in this case. Ms. Glick's alternatives analysis is also relevant to the prudence of SWEPCO's fixed and variable operations and maintenance test year expenditures necessary to continue operating Flint Creek.

(4) Ms. Glick's testimony is relevant to rebutting the Direct Testimony of SWEPCO witnesses concerning the prudence of the Company's capital and O&M investment planning processes.[11]

(5) Finally, contrary to SWEPCO's suggestion that the Company's decision to retrofit Flint Creek is outside the scope of review in this case, the Commission has broad authority—indeed, an obligation—to consider factual information and analysis necessary to protect ratepayers from imprudent utility investment decisions.

In the alternative, if the Commission accepts SWEPCO's position that some test year spending at Flint Creek is not at issue in this case, then the Commission should take SWEPCO at

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[7] SWEPCO Objection and Mot. to Strike at 3; *see also* https://aep.com/news/releases/read/5846 (AEP press release announcing decision to retrofit Flint Creek).

[8] *Gulf States Utilities Co. v. Public Utility Comm'n of Texas*, 841 S.W.2d 459, 475-76 (Tex. App—Austin 1992, writ denied).

[9] SWEPCO Resp. to CARD RFI 1-16, Supp. Attach. 2, included as Exhibit DG-3 to Direct Testimony of Devi Glick (CARD: "Provide annual capital expenditures at each SWEPCO power plant for each of the last four calendar years, the test year, and as requested in rates for the first time in this case." SWEPCO: "See Schedule H 5-3.b"). SWEPCO may dispute the precise amount of capital retrofit costs at issue in this case, but the Company's discovery responses indicate that the Company seeks to recover at least some of those costs. Any order striking portions of Ms. Glick's testimony would improperly preclude Sierra Club from proving its case that those costs were imprudently incurred.

[10] SWEPCO Response to CARD 1-16, Supp. Attach. 2 (providing test year capital spending, which includes costs for CCR/ELG dry bottom ash conversion).

[11] *See, e.g.*, Direct Testimony of Monte A. McMahon at 38.

its word and disallow all requested capital and O&M for Flint Creek that has been included in the test year. All of this ongoing spending can be justified only if SWEPCO is making reasonable and prudent resource planning decisions at Flint Creek. Specifically, as an alternative to denying SWEPCO's motion, the Commission should disallow $9.8 million in O&M and $3.4 million in capital expense that SWEPCO has proposed to include in the test year for Flint Creek.[12] Disallowing all of these Flint Creek test year expenses would be a more efficient approach than SWEPCO's apparent preference to address some Flint Creek test year costs in this case and others in some future case. In a future proceeding, when SWEPCO is prepared to defend its compliance decision at Flint Creek, the Company could ask for recovery of these costs as well.

BACKGROUND

On October 13, 2020, SWEPCO filed an application for authority to change rates, seeking, among other things, approval to recover test year O&M expenses totaling $91.9 million and capital expenditures totaling $34.6 million at its four coal burning units—Flint Creek, Welsh 1 and 3, and Turk—and two lignite plants—Dolet Hills and Pirkey.[13] SWEPCO's application, its discovery responses, and its motion to strike make clear that the Company has made a "decision to retrofit Flint Creek," and to commit $26.8 million to comply with EPA's coal ash and wastewater regulations, known as the Coal Combustion Residuals ("CCR") and the Effluent Limitations Guidelines ("ELG") rules, and to operate the plant beyond EPA's 2028 compliance

[12] Direct Testimony of Devi Glick at 11, Table 1.

[13] SWEPCO Application, Schedule H-1.2b; Schedule H-12c; SWEPCO Response to CARD Request 1-16, Supp. Attach. 2. Relevant here, the Company seeks recovery of $9.8 million in O&M and $3.4 million in test-year expenses to continue operating Flint Creek.

deadline.[14] As of the test year ending March 31, 2020, the Company has already invested at least $1.2 million in CCR/ELG project costs at Flint Creek,[15] at least some of which SWEPCO seeks to include in rates "for the first time in this case."[16] Specifically, the Company has included $401,396 in test year spending related to dry bottom ash conversion, a project that is unnecessary if the plant retires by 2028.[17] In November 2020, AEP announced its decision to retrofit the Flint Creek plant.[18]

The total capital cost of retrofitting Flint Creek will be at least $26.8 million, and the Company does not dispute that it will seek recovery of those costs from Texas ratepayers. Nor does the Company dispute that there are alternatives to retrofitting Flint Creek. Specifically, EPA's ELG and CCR rules contain compliance exemptions for power plants that cease burning

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[14] SWEPCO Objection and Mot. to Strike at 3; SWEPCO Application, Schedule H-5-3.b at 7 (Project "000020379 FLC U1 DBA Convert (CCR/ELG)"); *see also* SWEPCO Response to Sierra Club Request 1-9, Attach. 1 and SWEPCO Response to Sierra Club Request 2-6, HS Attach. 2, included in Ex. DG-3 to Direct Testimony of Devi Glick; Ex. DG-2, Flint Creek APDES Permit Modification Application, Attach. 1 at 1.

[15] SWEPCO Application, Schedule C-4.1 at 4. It is also worth noting that, as part of this proceeding, SWEPCO has claimed a $1,492,488 "allowance for funds used during construction" ("AFUDC") for the Flint Creek retrofit project. *Id.* AFUDC allows the Company to capitalize (i.e., accrue interest) on the cost of borrowed funds and a reasonable rate on the Flint Creek costs that will ultimately be passed on to customers. By allowing AFUDC on those capital expenditures in this case, the Commission is effectively approving the eventual recovery of those costs from customers.

[16] SWEPCO Response to CARD 1-16, included in Ex. DG-3 to Direct Testimony of Devi Glick.

[17] *Id.*, Supp. Attach. 2.

[18] On November 5, 2020, AEP publicly announced the decision to install "Dry bottom ash handling" at Flint Creek, rather than elect to retire the plant in 2028. *See* "AEP CCR And ELG Compliance Plans Will Remove Additional 1,633 MW Of Coal-fueled Generation From Company Fleet," AEP Press Release, available online at: https://aep.com/news/releases/read/5846.

coal by 2028.[19] In fact, SWEPCO has announced that it will convert the Welsh coal units to burn gas in 2028, rather than invest in retrofitting that facility.[20] SWEPCO could likewise operate Flint Creek through 2028 and avoid at least $17.3 million in ELG and CCR compliance costs, provided it commits to retire the plant by 2028.[21]

SWEPCO's Application does not include adequate analysis supporting the reasonableness of the Company's decision to retrofit Flint Creek, or the alternatives to sinking another $26.8 million into a plant that is increasingly uneconomic to operate—it ran only 30% of the time in 2020[22]—and SWEPCO estimates that it will run significantly less than that over the next decade.[23] Accordingly, Sierra Club witness Devi Glick conducted an analysis of the forward-looking economics of the plant, and the alternatives to retrofitting it.

Relying on the Company's own production cost data and revenues, Ms. Glick estimates that Flint Creek incurred $153 million in net losses over the past six years. This includes approximately $114 million associated with SWEPCO's installation of flue-gas desulfurization controls at Flint Creek to comply with EPA's Mercury Air Toxics Standards ("MATS").[24] Even excluding those MATS retrofit costs from the analysis, Flint Creek lost approximately $35 million over the last six years.

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[19] U.S. EPA, Steam Electric Reconsideration Rule, 85 Fed. Reg. 64,650, 64,661, 64,680 (Oct. 13, 2020); 40 CFR § 257.103(f); SWEPCO Response to Sierra Club Request 3-2(d)-(e), included in Ex. DG-3 to Direct Testimony of Devi Glick.

[20] *See* https://aep.com/news/releases/read/5846.

[21] SWEPCO Response to Sierra Club Request 2-7, Attach. 1, included in Ex. DG-3 to Direct Testimony of Devi Glick.

[22] Direct Testimony of Devi Glick at 20.

[23] *Id.*

[24] SWEPCO Application, Schedule H-5-3.b.

It gets worse. Based on SWEPCO's own projections, continuing to operate Flint Creek through 2030 will cost customers $161 million *more* to operate than the estimated market value of the energy and capacity provided by the resource. This is due, in part, to the precipitous decline in the plant's capacity factor. Ms. Glick's economic analysis suggests Flint Creek should not be operating at all. Indeed, based on a comparison of prevailing energy market prices and SWEPCO's own production and capital cost projections, Flint Creek will lose money *every year* for the next decade even if the capacity of the plant were valued at the SPP Cost of New Entry, a very conservative and unjustified assumption. In other words, customers would be better off replacing Flint Creek with energy and capacity market purchases or even replacing the unit with an expensive new gas peaking facility, rather than continuing to operate the plant as a peaking coal unit.

SWEPCO's Application not only fails to disclose any of this critical context, but fails to include any analysis supporting the Company's contention that either the ongoing spending at the plant or the Company's decision to retrofit Flint Creek are reasonable, necessary, or in the public interest. Although SWEPCO now contends that its decision to retrofit Flint Creek is outside the scope of review, the Company conducted an internal "Unit Disposition Study" in February 2020 purporting to demonstrate that retrofitting Flint Creek to comply with EPA's coal ash and wastewater regulations, rather than retiring the unit, would save customers only a few million dollars over the next decade—a tiny fraction of the Company's multi-billion total system revenue requirement.[25]

As Ms. Glick explains in her testimony, however, that Unit Disposition Analysis is based on a series of unreasonable and unsupported assumptions that bias the analysis in favor of

[25] Direct Testimony of Devi Glick at 32.

SWEPCO's preferred outcome: to retrofit and continue operating Flint Creek. Specifically, as Ms. Glick explains in detail: (1) The savings SWPECO found that were used to justify retrofitting Flint Creek to comply with the CCR and ELG rules are extremely small and would likely disappear with more robust modeling assumptions; (2) the Company was not transparent around key cost and operational assumptions and inputs that drove its findings; (3) the Company did not utilize optimized capacity expansion and production cost modeling to evaluate and consider alternatives; (4) SWEPCO modeled solar with very conservative and low operational assumptions; and (5) SWEPCO considered limited replacement options. Based on these unexplained or flawed assumptions, which SWEPCO evidently is fearful of having to defend in this case, Ms. Glick concluded that SWEPCO's decision to lock its customers into $26.8 million in additional retrofit costs at Flint Creek, when at least $17.8 million of those costs could be avoided by retiring the unit in 2028, was imprudent.

SWEPCO's ill-conceived Flint Creek retrofit decision is regrettably a familiar one. Indeed, the Company's decision to retrofit Flint Creek yet again comes on the heels of the Commission's 2018 approval of SWEPCO's decision to invest $700 million in pollution controls at its four coal plants, including its $212.7 million investment in a "scrubber" to control sulfur dioxide at Flint Creek. In that case, Sierra Club filed testimony demonstrating that the Company had options other than investing in the expensive coal plant retrofits. It could have replaced several of its coal-burning boilers, including Flint Creek, with more cost-effective, affordable renewable energy, or it could have converted the boilers into gas-burning peakers, which could have served spikes in demand while also ensuring reliability. Instead, the Company insisted each of its five solid-fuel plants were "valuable and reliable generating resource[s]," would remain

economic to operate well into the future, and that spending $700 million to retrofit the coal fleet was in the "best interest of customers."[26]

SWEPCO's optimistic projections have proven wrong at nearly every turn. Now, just three years after obtaining Commission approval to charge customers for the Company's $700 million coal-fleet retrofits, SWEPCO has announced that its Dolet Hills and Pirkey lignite units will retire by the end of 2021 and 2023, respectively, forcing customers to pay for nearly $100 million in stranded pollution control costs.[27] SWEPCO announced that the 1,056 MW Welsh power plant will convert to burn gas in 2028, resulting in further stranded coal plant pollution controls that are no longer used or useful.[28] As a result, SWEPCO customers are now forced to pay for hundreds of millions of dollars in coal-plant pollution controls that will only be used for a fraction of their projected life. SWEPCO has apparently failed to learn from that mistake, as it has now decided to commit its customers to another $26.8 million in environmental retrofits at Flint Creek.

In its motion, SWEPCO insists that its decision to retrofit Flint Creek is beyond the scope of the Commission's review until the project is placed into service and the Company chooses to place the full project costs into rates in some future case. But there is no dispute that the

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[26] *See* Rebuttal Testimony of Paul W. Franklin at 14, 22, PUCT Docket 46449, Application of Southwestern Electric Power Company for Authority to Change Rates (May 19, 2017); *see also* Rebuttal Testimony of Thomas P. Brice at 5, 11, PUCT Docket 46449, Application of Southwestern Electric Power Company for Authority to Change Rates (May 19, 2017); *see generally* Rebuttal Testimony of Mark A. Becker, PUCT Docket 46449, Application of Southwestern Electric Power Company for Authority to Change Rates (May 19, 2017).

[27] SWEPCO's share of the MATS and CSAPR retrofit costs at Dolet Hills was $56.2 million and $37 million at Pirkey. Direct Testimony of Venita McCellon-Allen at 26, 30, PUCT Docket 46449, Application of Southwestern Electric Power Company for Authority to Change Rates (Dec. 16, 2016).

[28] SWEPCO invested $388.4 million in the Welsh coal plant pollution controls. *Id.* at 28.

Company has already begun investing in the project and that some of the ELG/CCR costs are included in the test year spending, and that it will one day include those costs in Texas rates. The Commission need not—and should not—idly stand by until SWEPCO completes the Flint Creek retrofit and chooses to bill customers another $26.8 million to prop up an already uneconomic plant, when information available at the time SWEPCO made the retrofit decision makes clear the investment is imprudent. To the contrary, the Commission has broad authority—indeed, an obligation—to monitor the economic viability and prudence of the Company's continuing investment in the Flint Creek power plant in this case.[29] As SWEPCO's previous $700 million coal plant retrofits make clear, by waiting to evaluate the prudence of the Flint Creek retrofit until the project is complete, the Commission faces a choice between imposing significant and potentially unnecessary costs on ratepayers or forcing the Company's shareholders to bear those costs, undermining the financial stability of the utility.

Because SWEPCO's decision to retrofit Flint Creek and its continuing investment in the plant is relevant to the rates the Company seeks to recover *in this case*, the Commission should deny the motion to strike. At a minimum, the Commission should permit Sierra Club to establish through further discovery and cross-examination the precise retrofit costs SWEPCO seeks to recover in this matter. On this record, it would be arbitrary, capricious, and reversible error for the Commission to preclude testimony relevant to the prudence of capital and operational costs SWEPCO seeks to recover in this case.

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[29] *Id.*

ARGUMENT

I. SWEPCO bears the burden of demonstrating that it conducted a reasoned investigation of all relevant factors and alternatives before reaching its decision to retrofit Flint Creek.

The Public Utilities Regulatory Act requires the Commission to set just and reasonable retail rates, but a rate "cannot be deemed just and reasonable unless the utility was prudent in incurring the operating expenses it seeks to pass through to consumers."[30] Moreover, SWEPCO enjoys no presumption of prudence by "simply opening its books to inspection."[31] Rather, the utility bears the burden of demonstrating the prudence and reasonableness of "each dollar" of its expenditure.[32] SWEPCO therefore has an obligation to demonstrate the prudence of the Flint Creek retrofit costs that the utility admittedly seeks to include in customer rates "for the first time in this case."[33]

Ms. Glick's testimony is directly relevant to the prudence of the retrofit costs SWEPCO seeks to recover in this case. SWEPCO may dispute the precise amount of capital retrofit costs at issue in this case, but the Company's discovery responses make clear that the Company seeks to recover at least some of those costs. Any order striking portions of Ms. Glick's testimony would improperly preclude Sierra Club from challenging the prudence of those costs and whether they should be passed on to customers.

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[30] *Gulf States Utilities Co. v. Pub. Util. Comm'n of Tex.*, 841 S.W.2d 459, 465–66 (Tex. App. Austin,1992) (citing *Arkansas Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n,* 461 U.S. 375, 377 (1983)).

[31] *Entergy Gulf States, Inc. v. Pub. Util. Comm'n of Tex.*, 112 S.W.3d 208, 214 (Tex. App.-Austin, 2003).

[32] *Id.*; *see also Coalition of Cities for Affordable Util. Rates v. Pub. Util. Comm'n of Tex.*, 798 S.W.2d 560, 563 (Tex. 1990), *receded from on other grounds by Barr v. Resolution Trust Corp. ex rel. Sunbelt Federal Sav.*, 837 S.W.2d 627, 629 (Tex. 1992).

[33] SWEPCO Resp. to CARD RFI 1-16, Supp. Attach. 2, included in Ex. DG-3 to Direct Testimony of Devi Glick.

In addition to the portion of the Flint Creek retrofit costs SWEPCO actually seeks to recover in this case, the Commission has authority—indeed, the obligation—to review the prudence of SWEPCO's decision to lock its customers into $26.8 million in coal ash and wastewater retrofits at Flint Creek. As SWEPCO itself has recognized, the prudence standard requires the utility to demonstrate:

> the exercise of that judgment and the choosing of one of that select range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available ***at the point in time such judgment is exercised or option is chosen***.[34]

Thus, the relevant inquiry is whether SWEPCO reasonably "investigated all relevant factors and alternatives ***as they existed at the time the decision was made***," [35] not some later date when SWEPCO choses to put the capital investment in service.[36]

Here, SWEPCO does not dispute that it has decided to retrofit Flint Creek, already incurred substantial capital expenses, and committed its customers to tens of millions in retrofit costs. Ms. Glick's testimony evaluating the Company's *own* justification for that retrofit decision, which the Company provided to the parties *in this case*,[37] is plainly relevant to the

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[34] *Entergy Gulf States,* 112 S.W.3d at 210; *see also* Initial Br. of SWEPCO at 8, Docket 46449, Application of Southwestern Electric Power Company for Authority to Change Rates SWEPCO Initial Brief (July 6, 2017).

[35] *Gulf States Utilities*, 841 S.W.2d at 475-76.

[36] In fact, when Sierra Club and other parties challenged SWEPCO's $700 million MATS retrofits, the Company repeatedly argued that the criticism was impermissibly second-guessing based on hindsight. Initial Br. of SWEPCO at 8, 31, 39, 40, 42, Docket 46449, Application of Southwestern Electric Power Company for Authority to Change Rates SWEPCO Initial Brief (July 6, 2017). In SWEPCO's view, any scrutiny of the Flint Creek retrofit in this case is premature, while any after-the-fact challenge to its retrofit investment (after it completes the project) would impermissibly second-guess the Company's decisions.

[37] As noted, in February 2020, SWEPCO conducted a Unit Disposition Analysis purporting to demonstrate that retrofitting (rather than retiring) Flint Creek provides a net benefit to customers.

reasonableness of the Company's operational and spending decisions in this case. Moreover, there is no reason for the Commission to defer consideration of the Company's actual retrofit decisions until some later date. Indeed, the Commission has broad authority to evaluate existing factual information necessary to protect customers against imprudent utility investment decisions that will ultimately affect customer rates.

II. SWEPCO has decided to retrofit Flint Creek and seeks to recover at least some of the associated capital expenses "for the first time in this case,"[38] including ELG/CCR compliance expenses in the test year.

SWEPCO does not dispute that it decided to retrofit Flint Creek to incur the CCR and ELG expenses that could be avoided by 2028 retirement. Nor does it dispute that it intends to charge Texas customers for the costs of this retrofit decision. These projects include the cost of converting the Flint Creek unit to dry ash handling and the costs of building a new coal ash landfill at the site (among others), which in total to amount to $17.8 million.[39] SWEPCO evidently believes that because it has represented that these projects will be in service during 2021 (i.e., after the test year) that this retrofit decision issue is not relevant in this case. SWEPCO is wrong.

First, some of the ELG and CCR costs at Flint Creek are in fact included in the historic test year expenses. Specifically, according to SWEPCO's discovery responses, the Company has incurred $401,396 in costs associated with the dry bottom ash conversion project during the test year.[40] Because ***all*** of the bottom ash conversion project costs (which represent approximately

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[38] SWEPCO Resp. to CARD RFI 1-16, Supp. Attach. 2, included in Ex. DG-3 to Direct Testimony of Devi Glick.

[39] Direct Testimony of Devi Glick at 40.

[40] SWEPCO Resp. to CARD 1-16, Supp. Attach. 2 (listing in row 51 a test year capital project for Flint Creek called "FLC U1 DBA Conver (CCR/ELG)" at a test year cost of $401,396), included in Ex. DG-3 to Direct Testimony of Devi Glick. "DBA" refers to "dry bottom ash."

$17 million of the total project cost) could be avoided by retirement in 2028, to demonstrate the prudence of SWEPCO's decision to incur these $401,396 in expenses during the test year, SWEPCO has the burden to demonstrate those specific costs, and the retrofit decision itself, are prudent in light of information available at the time. Ms. Glick's testimony is directly relevant to that question, and SWEPCO's motion should be denied on that basis alone. At a minimum, Sierra Club should be allowed to investigate through additional discovery and cross examination whether some of the other retrofit costs SWEPCO seeks to recover *in this case* are also avoidable by retirement.

Second, more broadly, SWEPCO's preferred approach of seeking approval of some CCR and ELG rule costs in its current test year (as it has requested) and avoiding a review of its *decision* to incur the overall project costs is both needlessly inefficient and could arguably hamper the Commission's ability to review the retrofit decision in a future proceeding. If the Commission were to approve the CCR and ELG costs that SWEPCO has included in its test year expenses, the Company could argue in a future proceeding the Commission has tacitly approved the overall project decision. Contrary to SWEPCO's suggestions,[41] there is no administrative-resources reason to wait for the development of a decision-making record, and it would not waste the parties or the Commission's resources to address the prudence of the Flint Creek retrofit project. Indeed, SWEPCO concedes that the Company has already made its decision to retrofit and provided its flawed February 2020 Unit Disposition Analysis it provided to the parties in this case. There is no reason to wait: The Commission plainly has authority and ability to evaluate that information and alternatives available to the Company "*at the time* the decision was

[41] SWEPCO Objection and Mot. to Strike at 4.

made."[42] Simply put, the Company must choose between recovering no Flint Creek CCR/ELG costs from Texas customers or justifying its decision to incur those costs here.

III. The Company's failure to reasonably evaluate less costly alternatives to operate Flint Creek, such as retirement and replacement, is relevant to the prudence of all costs SWEPCO seeks to recover in this case.

SWEPCO's motion to strike should be denied for the independent reason that Ms. Glick's analysis of the going forward economics of Flint Creek, and her criticisms of SWEPCO's February 2020 unit disposition study, are relevant to the non-ELG/CCR costs that SWEPCO has proposed for the plant. SWEPCO has the burden to demonstrate that "every dollar" of its test year O&M and capital expenses at Flint Creek are reasonable. SWEPCO has included $9.8 million in O&M and $3.4 million in capital expense in the test year for Flint Creek.[43] To justify these costs at this level, the Company must defend the prudence of its plan to operate the unit through the current proposed retirement date, which in SWEPCO's filing is projected to be 2037. Section 5 of Ms. Glick's testimony is relevant to these test year expenses and to the issue of whether SWEPCO has met its burden to justify them.

A prudent utility would only include the O&M and capital maintenance costs in customers' rates that are necessary to maintain the unit in operation through the end of the expected useful life of the unit. If Flint Creek were to be retired sooner than SWEPCO currently expects, then O&M and capital maintenance expenses would be reduced. Ms. Glick's alternatives analysis—that shows that customers benefit if Flint Creek is retired and replaced with other resources—is relevant to the prudence of SWEPCO's fixed and variable operations and maintenance test year expenditure necessary to continue operating Flint Creek. Thus, even

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[42] *Gulf States*, 841 S.W.2d at 475-76.

[43] Direct Testimony of Devi Glick at 11, Table 1.

putting aside the specifics of the ELG/CCR retrofit decision, the long-term economics of Flint Creek are at issue here, and SWEPCO's motion must therefore be denied.

IV. Ms. Glick's testimony is relevant to rebutting the Direct Testimony of SWEPCO witnesses concerning the prudence of the Company's planning processes.

SWEPCO's motion to strike should be denied for a further independent reason: Ms. Glick's testimony is relevant to, and directly rebuts, SWEPCO witness testimony regarding the reasonableness of the Company's capital and O&M planning process and the prudence of the Company's coal plant expenditures, including capital additions at Flint Creek.[44] SWEPCO witness McMahon, for example, describes the Company's process for determining whether to make capital additions at its power plants. According to Mr. McMahon, SWEPCO "regularly review[s]" potential capital projects, evaluates all alternatives that may exist, and "perform[s] cost-benefit analyses" of any capital project's value as well as the potential cost to replace the generation with another source.[45] Mr. McMahon also testifies that the Company "scrutinizes" O&M expenses at each of its coal plants to ensure reliable service at reasonable prices.[46] Based on the Company's capital and O&M decision-making processes, Mr. McMahon asserts that SWEPCO's "generation-related O&M expenses and capital investments are prudently incurred."[47] Notably, Mr. McMahon specifically references the "comprehensive list of capital

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[44] *See* Tex. R. Evid. 401 (a)-(b) (Evidence is relevant when "it has a tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action.").

[45] Direct Testimony of Monte A. McMahon at 17.

[46] *Id.* at 21; *see also* Direct Testimony of Drew W. Seidel at 24 ("every project is evaluated and expenses are scrutinized").

[47] Direct Testimony of Monte A. McMahon at 39.

additions" in Schedule H-5.2b, which, as discussed, includes significant capital costs associated with the Flint Creek retrofits.[48]

Ms. Glick's evaluation of the prudence of SWEPCO's Flint Creek retrofit decision and the Company's continued O&M investments in the plant is directly relevant to, and rebuts, SWEPCO's evidence concerning the prudence of its capital and O&M decision-making process. Contrary to Mr. McMahon's testimony, Ms. Glick concludes that SWEPCO's capital and O&M investment decisions at Flint Creek were based on unreasonable or unsupported assumptions that skewed the analysis in favor of SWEPCO's preferred outcome: locking in the continued operation of the plant and rate basing capital and O&M expenses.[49] Ms. Glick further demonstrates that, contrary to Mr. McMahon's testimony, the Company did not properly evaluate all alternatives to its Flint Creek retrofit and O&M investments, and its economic analysis was flawed in multiple respects. In short, Ms. Glick's testimony directly addresses, and tends to refute, the prudence of the Company's capital and O&M investment decisions, including the Flint Creek retrofit costs the Company seeks to recover "for the first time in this proceeding."[50] Accordingly, her testimony is plainly relevant and SWEPCO's motion to strike should be denied.

V. The Commission has broad authority to consider factual information and analysis necessary to protect ratepayers from imprudent utility investment decisions.

Setting aside the test year costs in this case (which include a portion of the Flint Creek ELG and CCR costs), the Commission retains broad authority to evaluate the prudence of a

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[48] *Id.* at 19.

[49] Direct Testimony of Devi Glick at 30.

[50] SWEPCO Resp. to CARD RFI 1-16, Supp. Attach. 2, included in Ex. DG-3 to Direct Testimony of Devi Glick.

utility's continued investment and construction projects. The CCR/ELG retrofits for Flint Creek are a necessary expense in order to operate the plant beyond 2028 and these costs will inevitably be passed onto Texas ratepayers, absent intervention from this Commission. Therefore, the prudence of SWEPCO's decision to retrofit Flint Creek affects both the current and future project costs that customers will bear.

The Commission has the discretion to choose what projects and costs to consider in a general rate case.[51] The Commission can and should consider all costs and investments that arise out of the same facts.[52] Related issues can be addressed in a rate case if they "involve common questions of law or fact and consolidation would be more time and cost efficient."[53] Here, the fact that the decision to incur retrofit costs and some of the costs occurred during the test year, counsels in favor of addressing the full consequences of that decision, including future costs that flow from it. Because the issue must be judged by the information available at the time of the decision—i.e., approximately February 2020—there is no conservation of administration resource rationale for delaying adjudication.

The Commission has previously decided questions of estimated and foreseeable costs related to whether it is prudent to continue to complete construction.[54] SWEPCO has a duty to

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[51] PURA § 14.001; *see also Reliant Energy, Inc. v. Pub. Util. Comm'n of Tex.*, 153 S.W.3d 174, 193 (Tex. App. 2004) (Section 16(a) does state the PUC's power "to do all things, whether specifically designated by this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction . . . this Court has recognized that the Commission has the power to control its own docket"), citing *City of El Paso v. Pub. Util. Comm'n*, 839 S.W.2d 895, 926 (Tex. App.-Austin 1992), *rev'd in part on other grounds*, 883 S.W.2d 179 (Tex. 1994).

[52] *Coalition of Cities for Affordable Utility Rates*, 798 S.W.2d at 565.

[53] 16 Tex. Admin. Code § 22.34(a) (2004); *see also Reliant Energy*, 153 S.W.3d at 194.

[54] *See e.g., Texas Industrial Energy Consumers v. Pub. Util. Comm'n of Tex.*, 608 S.W.3d 817, 824 (Tex. App. 2018), *rev'd and remanded on other grounds*, No. 18-1061, 2021 WL 1148227 (Tex. Mar. 26, 2021).

continue to monitor the economic viability and re-evaluate the prudence of continuing construction during the entire process.[55] In reviewing, the Commission must independently conduct a review of a utility's decision-making without deference to the decision that the utility actually made.[56] By waiting until construction is fully completed to evaluate the prudence of constructing environmental retrofits at Flint Creek there is a higher risk that customers will be saddled with costs that the Commission might later deem imprudent (and could still be avoided).[57] Therefore, it is in the public interest and economic interest for the Commission to receive evidence on the prudence of the overall Flint Creek ELG/CCR compliance project, even though some of the costs are yet to be incurred.

VI. In the alternative, the Commission should disallow all test year spending at Flint Creek.

In the alternative, the Commission should take SWEPCO at its word and disallow all requested capital and O&M for Flint Creek that has been included in the test year. All of this ongoing spending can be justified only if SWEPCO is making reasonable and prudent resource planning decisions at Flint Creek. Specifically, as an alternative to denying SWEPCO's motion, the Commission should disallow $9.8 million in O&M and $3.4 million in capital expense that SWEPCO has proposed to include in the test year for Flint Creek.[58] Disallowing all of those Flint Creek test year expenses would be a more efficient approach than SWEPCO's apparent preference to address some Flint Creek test year costs in this case and others in some future case.

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[55] *Id.*

[56] *Id.*

[57] *Pub. Util. Comm'n of Tex. v. Tex. Indus. Energy Consumers*, No. 18-1061, 2021 WL 1148227, at *9 (Tex. Mar. 26, 2021)

[58] Direct Testimony of Devi Glick at 11, Table 1.

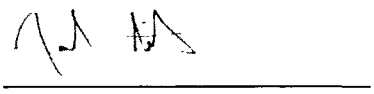
In a future proceeding, when SWEPCO is prepared to defend its compliance decision at Flint Creek, the Company could ask for recovery of these costs as well. In the meantime, the Commission has no basis on which to approve the test year spending at Flint Creek, as SWEPCO is unwilling to defend its resource planning and ongoing spending at the plant.

CONCLUSION

Because the Direct Testimony of Devi Glick is relevant to the prudence of capital and O&M expenses SWEPCO seeks to recover in this case, as well as the prudence of the Company's decision to commit ratepayers to the $26.8 million Flint Creek retrofit, SWEPCO's motion to strike should be denied. Alternatively, if Commission accepts SWEPCO's position that all Flint Creek retrofit and O&M costs are outside the scope of this proceeding, the Commission should disallow all of those costs.

Dated: April 16, 2021

Respectfully submitted,



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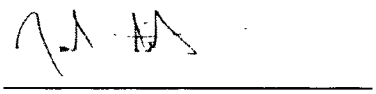
CERTIFICATE OF SERVICE

I, Joshua Smith, certify that a copy of the foregoing Sierra Club submission was served upon all parties of record in this proceeding on April 16, 2021, by First-class U.S. mail, hand delivery, and/or e-mail, as permitted by the presiding officer.



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