



Control Number: 51415



Item Number: 461

Addendum StartPage: 0

SOAH DOCKET NO. 473-21-0538

PUC DOCKET NO. 51415

RECEIVED

2021 MAY 11 PM 2:43

FILED IN DOCKET NO. 473-21-0538
PUC CLERK

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

**SIERRA CLUB'S MOTION TO COMPEL
SOUTHWESTERN ELECTRIC POWER COMPANY'S
RESPONSE TO SIERRA CLUB'S SIXTH SET OF REQUESTS FOR INFORMATION**

Under 16 Texas Administrative Code ("TAC") § 22.144(e), Sierra Club respectfully submits this Motion to Compel seeking a full response to Sierra Club's Sixth Set of Requests for Information ("RFI") Question Nos. 6.6 through 6.9 from the Southwestern Electric Power Company ("SWEPCO" or "the Company").¹ Responses to these requests are relevant to several issues in this case including the Company's test year spending for the Flint Creek power plant, the Company's decision to retrofit the Flint Creek power plant to comply with U.S. EPA coal ash and wastewater requirements ("CCR/ELG" requirements), and the Public Utilities Commission of Texas's ("Commission's") oversight of the Company's generation resources planning. Sierra Club respectfully asks that the Administration Law Judges ("ALJs") issue an order compelling SWEPCO to fully respond to each of these RFIs. This motion is timely.²

¹ Attached as Exhibit 1.

² Sierra Club received SWEPCO's objection to the Sixth Set of RFIs on May 6, 2021; thus, any Motion to Compel is due May 11, 2021. 16 TAC § 22.144(e).

461

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Sierra Club filed the Direct Testimony of Devi Glick in this proceeding that addresses, as relevant here, the prudence of the Company's ongoing spending at the Flint Creek coal-burning plant, including the Company's decision to retrofit the plant to comply with the U.S. Environmental Protection Agency's coal ash and wastewater regulations, known as the Coal Combustion Residuals and Effluent Limitations Guidelines ("CCR/ELG") rules. On April 27, 2021 the ALJs issued ordered SOAH Order No. 7 granting SWEPCO's motion to strike Section V of Sierra Club's Direct Testimony that addresses the Company's analysis supporting its CCR/ELG retrofit decision. On May 7, 2021 Sierra Club filed an appeal to the ALJs Order No. 7 because the ruling impermissibly decides ultimate issues of fact and law without any evidentiary basis, erroneously prevents Sierra Club from presenting factual evidence and argument challenging the prudence of the Company's ongoing non-retrofit spending at the Flint Creek power plant, and effectively strips the Commission of its authority to regulate and supervise ongoing utility planning and investments.

Meanwhile, on April 23, 2021, SWEPCO filed the Rebuttal Testimony of Mark A. Becker, which responds to Ms. Glick's testimony and describes the Company's "comprehensive unit disposition analyses" supporting the decision to retrofit the Flint Creek coal-burning power plant to comply with the CCR/ELG rules.³ Sierra Club submitted its Sixth Set of RFIs to the Company seeking information directly related to the Flint Creek retrofit analyses described in Company witness Becker's Rebuttal Testimony. In refusing to produce responses to the Sierra Club's Question Nos. 6.6 through 6.9, citing to SOAH Order No. 7, the Company objected that "a decision to retrofit Flint Creek [] was made after the conclusion of the historical test year" and

³ Rebuttal Testimony of Mark A. Becker at 9.

that “the costs associated with that decision [] are not being reviewed for recovery in this case.”⁴ The Company stated that it “does not intend to offer Section IV of Mr. Becker’s testimony into evidence.”⁵ Although SWEPCO’s analyses modeled the total costs associated with continuing to operate Flint Creek, including fixed O&M and future and ongoing capital costs,⁶ the Company’s Objections do not address the relevance of Sierra Club’s RFIs or the Company’s unit disposition analyses to SWEPCO’s ongoing non-retrofit spending at Flint Creek.

As Sierra Club explained in the Appeal of SOAH Order No. 7, the ALJs erroneously decided that CCR/ELG costs are “not being reviewed for recovery in this case,” as there remains a factual dispute about whether the Company has included in Texas customers’ rates at least one dollar of the CCR/ELG costs that it incurred before and during the test year.⁷ Even putting aside the CCR/ELG costs, though, the Company’s unit disposition analyses are relevant to the “total cost” of operating Flint Creek, including “annual fixed O&M” and other “on-going capital expenditures” the Company has proposed to include in its test year costs. As Mr. Becker explains, the Flint Creek disposition analysis is relevant to whether Flint Creek is the “least-cost” option for meeting customer needs, and whether the plant should be maintained as a long-term generation resource.⁸ Thus, if the ALJs or the Commission reverse SOAH Order No. 7, compelling responses to the disputed RFIs in Sierra Club’s 6th set would necessarily follow. But

⁴ Southwestern Electric Power Company’s Objections to Sierra Club’s Sixth Set of Requests for Information at 4, PUC Docket 51415 (Interchange Doc. 444, May 6, 2021), attached as Exhibit 2.

⁵ *Id.*

⁶ Rebuttal Testimony of Mark A. Becker at 10-11.

⁷ See Sierra Club’s Motion for Reconsideration, or in the Alternative, Appeal of SOAH Order No. 7 Granting SWEPCO’s Motion to Strike a Section of Sierra Club’s Direct Testimony at 7-11 (Interchange No. 453, filed May 7, 2021).

⁸ Rebuttal Testimony of Mark A. Becker at 4-5, 11.

even if Order No.7 stands, the ALJs should compel responses to Question Nos. 6.6 through 6.9 because they are relevant to ongoing test year spending at the Flint Creek coal-burning plant, which SWEPCO proposes to include in rates in this case.

II. LEGAL STANDARDS

The Texas Rules of Civil Procedure provide that a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action.⁹ Relevant information to the proceeding is any information that “has any tendency to make a fact more or less probable than it would be” without the evidence and “is of consequence in determining the action.”¹⁰ Parties may also obtain the discovery of information that is reasonably calculated to lead to the discovery of admissible evidence.¹¹ The scope of discovery under the Texas rules are broad.¹²

Moreover, the APA imposes additional requirements designed to ensure the fundamental due process rights of the parties in any proceeding before SOAH.¹³ Specifically, Section 2001.051 of the Texas Government Code provides, “[i]n a contested case, each party is entitled to an opportunity . . . to respond and to present evidence and argument on each issue involved in the case.”

⁹ Texas Rules of Civil Procedure (TEX R. CIV. P., Rule 192.3; and 16 Tex. Admin. Code (“TAC”) § 22.141(a)

¹⁰ Tex. R. Evid. 401.

¹¹ *Id.*

¹² TAC § 22.141

¹³ *West Texas Utilities Co. v. Office of Public Utility Counsel*, 896 S.W.2d 261, 273 (Tex.App. Austin 1995).

III. ARGUMENT

The Commission should compel responses to Sierra Club RFI Questions 6.6 through 6.9 for two reasons. First, as explained in Sierra Club’s Appeal of Order No. 7, the responses are relevant to the timing, amount, prudence, and public’s interest related to “any” of SWEPCO’s capital expenditures, which the Commission established as issues that “*must* be addressed” in this proceeding.¹⁴ Sierra Club’s RFIs seek information relevant to SWEPCO’s CCR/ELG expenditures and the Company’s own justification for the Flint Creek retrofit decision, which the Company provided to the parties in this case. Although SWEPCO argues that these RFIs at issue seek irrelevant information because they pertain to a Flint Creek retrofit decision described in Sierra Club’s Direct Testimony that was stricken by SOAH Order No. 7,¹⁵ Sierra Club has timely submitted a motion for reconsideration and appeal, which has not been resolved and may not be fully resolved before the hearing in this case. At this stage of the proceeding, it is premature to preclude discovery on these issues and thus SWEPCO should be compelled to respond and Sierra Club should be allowed to adduce evidence supporting its claims that the Flint Creek retrofit costs are, in fact, at issue.¹⁶ At a minimum, the Commission should compel SWEPCO to respond to Sierra Club’s RFIs and allow Sierra Club to establish the relevance of any responses through further discovery and cross-examination.

¹⁴ Preliminary Order, Issues 15, 44, PUC Docket 51415 (Interchange Doc. 117, December 17, 2020).

¹⁵ SWEPCO Objection to Sierra Club Sixth RFIs at 4.

¹⁶ *See* Tex. R. Evid. 104(b) (“[w]hen the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.”).

Second, the responses to those questions are relevant to the “total cost” of operating Flint Creek,¹⁷ and whether SWEPCO’s ongoing test-year spending at Flint Creek, including fixed O&M and other ongoing capital expenditures, are reasonable and necessary, which the Commission’s Preliminary Order also identified as an ultimate issue in this case.¹⁸ SWEPCO has the burden of proof to show that every dollar of the \$9.8 million in O&M and \$3.4 million in test-year capital and O&M expenses are justified.¹⁹ Order No. 7 makes clear that those test-year costs are at issue in this case, and that Sierra Club may “attempt to develop a record that would justify disallowance of some or all of capital and O&M actually incurred by SWEPCO in the test year to maintain Flint Creek.”²⁰ Each of the Sierra Club RFIs at issue are directly relevant to evaluating those test-year spending issues:

- 1) **Sierra Club 6.6.** This RFI asks Mr. Becker to explain why SWEPCO studied a Flint Creek retirement in 2027 as opposed to the actual CCR and ELG compliance dates (which are both in 2028).
- 2) **Sierra Club 6.7.** This RFI asks Mr. Becker to explain whether the Company’s modeling allowed Flint Creek to be retired earlier based on economics, and also asks him to provide the energy efficiency cost assumptions used in the CCR/ELG modeling.
- 3) **Sierra Club 6.8.** This RFI asks Mr. Becker to provide certain information about the capacity factors of generating units in the CCR/ELG modeling.
- 4) **Sierra Club 6.9.** This RFI asks Mr. Becker to provide the certain characteristics of solar and battery resources in the CCR/ELG modeling.

Answers to each of these questions would aid the development of a record demonstrating that SWEPCO’s economic analysis of Flint Creek was flawed and biased toward continuing to operate Flint Creek and, if corrected, would tend to call into question the prudence of all of the

¹⁷ Rebuttal Testimony of Mark A. Becker at 10.

¹⁸ *Id.*, Issue 24.

¹⁹ Direct Testimony of Devi Glick at 11, Table 1.

²⁰ Order No. 7 at 5.

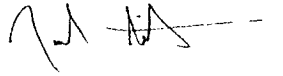
Company's test year capital and O&M spending at the plant, which are ultimate issues in this case.

IV. CONCLUSION

For these reasons, Sierra Club respectfully asks that the ALJs issue an order requiring SWEPCO to respond to Sierra Club's Sixth Set of RFIs Question Nos. 6.6 through 6.9.

Dated: May 11, 2021

Respectfully submitted,

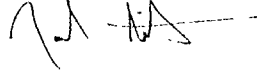


Joshua Smith
Tony Mendoza
Dru Spiller
Sierra Club Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
Tele: 415-977-5560
Email: joshua.smith@sierraclub.org
tony.mendoza@sierraclub.org
dru.spiller@sierraclub.org

Counsel for Sierra Club

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 May 11, 2021, by First-class U.S. mail, hand delivery, and/or e-mail, as permitted by the presiding officer.

A handwritten signature in black ink, appearing to read 'J. Smith', is positioned above a horizontal line.

Joshua Smith
Sierra Club Environmental Law Program

Exhibit 1

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 SIXTH SET OF REQUESTS FOR INFORMATION TO
SOUTHWESTERN ELECTRIC POWER COMPANY**

Sierra Club submits this Sixth Set of Requests for Information ("RFI") to Southwestern Electric Power Company ("SWEPCO"). Under 16 TAC §§ 22.141-145, Sierra Club requests that SWEPCO provide the following information and answer the following questions under oath. Please answer the questions and sub-questions in the order in which they are listed and in sufficient detail to provide a complete and accurate answer to the question. These question(s) are continuing in nature, and if there is a relevant change in circumstances, submit an amended answer, under oath, as a supplement to your original answer. Please state the name of the witness in this proceeding who will sponsor the answer to the question.

Responses to the RFIs should be served on the following individuals within four working days of service, or by May 5, 2021, or as modified by order in this case:

Joshua Smith
Tony Mendoza
Dru Spiller
Sierra Club Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
joshua.smith@sierraclub.org
tony.mendoza@sierraclub.org
dru.spiller@sierraclub.org

DEFINITIONS

Unless otherwise specified in each individual interrogatory or request, “you,” “your,” the “Company,” or “SWEPCO,” refers to Southwestern Electric Power Company, and its affiliates, directors, officers, employees, consultants, attorneys, and authorized agents.

“And” and “or” shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these interrogatories and requests for production of documents any information which might be deemed outside their scope by another construction.

“Any” means all, each and every example of the requested information.

“Communication” means any transmission or exchange of information between two or more persons, whether orally or in writing, and includes, without limitation, any conversation or discussion by means of letter, telephone, note, memorandum, telegraph, telex, telecopy, cable, email, or any other electronic or other medium.

“Control” means, without limitation, that a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual possession thereof. If a document is responsive to a request, but is not in your possession or custody, identify the person with possession or custody. If any document was in your possession or subject to your control, and is no longer, state what disposition was made of it, by whom, the date on which such disposition was made, and why such disposition was made.

“Document” refers to written matter of any kind, regardless of its form, and to information recorded on any storage medium, whether in electrical, optical or electromagnetic form, and capable of reduction to writing by the use of computer hardware and software, and includes all copies, drafts, proofs, both originals and copies either (1) in the possession, custody or control of the Company regardless of where located, or (2) produced or generated by, known to or seen by the Company, but now in their possession, custody or control, regardless of where located whether or still in existence. Such “documents” shall include, but are not limited to, applications, permits, monitoring reports, computer printouts, contracts, leases, agreements, papers, photographs, tape recordings, transcripts, letters or other forms of correspondence, folders or similar containers, programs, telex, TWX and other teletype communications,

memoranda, reports, studies, summaries, minutes, minute books, circulars, notes (whether typewritten, handwritten or otherwise), agenda, bulletins, notices, announcements, instructions, charts, tables, manuals, brochures, magazines, pamphlets, lists, logs, telegrams, drawings, sketches, plans, specifications, diagrams, drafts, books and records, formal records, notebooks, diaries, registers, analyses, projections, email correspondence or communications and other data compilations from which information can be obtained (including matter used in data processing) or translated, and any other printed, written, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated or made. For purposes of the production of “documents,” the term shall include copies of all documents being produced, to the extent the copies are not identical to the original, thus requiring the production of copies that contain any markings, additions or deletions that make them different in any way from the original.

“Identify” means:

- a. With respect to a person, to state the person’s name, address and business relationship (e.g., “employee”) vis-à-vis the Company;
- b. With respect to a document, to state the nature of the document in sufficient detail for identification in a request for production, its date, its author, and to identify its custodian. If the information or document identified is recorded in electrical, optical or electromagnetic form, identification includes a description of the computer hardware or software required to reduce it to readable form.

“Person” means, without limitation, every natural person, corporate entity, partnership, association (formal or otherwise), joint venture, unit operation, cooperative, municipality, commission, governmental body or agency.

“Relating to” or “concerning” means and includes pertaining to, referring to, or having as a subject matter, directly or indirectly, expressly or implied, the subject matter of the specific request.

“Workpapers” are defined as original, electronic, machine-readable, unlocked, unlocked, in native format, and with formulae and links intact.

INSTRUCTIONS

1. The Definitions, Instructions, and Claim of Privilege set out in this Request for Information apply to these questions.
2. In answering these questions, furnish all information that is available to you, including information in the possession of your agents, employees, and representatives, all others from whom you may freely obtain it, and your attorneys and their investigators.
3. Please answer each question based upon your knowledge, information, or belief, and any answer that is based upon information or belief should state that it is given on that basis.
4. If you have possession, custody, or control (as defined by Tex. R. Civ. P. 192.7(b)) of the originals of these documents requested, please produce the originals or a complete copy of the originals and all copies that are different in any way from the original, whether by interlineation, receipt stamp, or notation.
5. If you do not have possession, custody, or control of the originals of the documents requested, please produce copies of the documents, however made, in your possession, custody, or control. If any document requested is not in your possession or subject to your control, please explain why not, and give the present location and custodian of any copy or summary of the document.
6. If any question appears confusing, please request clarification from the undersigned counsel.
7. In providing your responses, please start each response on a separate page and type, at the top of the page, the question that is being answered.
8. As part of the response to each question, please state, at the bottom of the answer, the name and job position of each person who participated in any way, other than providing clerical assistance, in the preparing of the answer. If the question has sub-parts, please identify the person or persons by sub-part. Please also state the name of the witness in this docket who will sponsor the answer to the question and who can vouch for the truth of the answer. If the question has sub-parts, please identify the witness or witnesses by sub-part.

9. Rather than waiting to provide all of the responses at the same time, please provide individual responses as each becomes available.

10. Wherever the response to a request for information consists of a statement that the requested information is already available to Sierra Club, please provide a detailed citation to the document that contains the information. The citation shall include the title of the document, relevant page number(s), and to the extent possible paragraph number(s) and/or chart(s)/table(s)/figure number(s).

11. In the event that any document referred to in response to any request for information has been destroyed, specify the date and the manner of such destruction, the reason for such destruction, the person authorizing the destruction and the custodian of the document at the time of its destruction.

12. These questions are continuing in nature. If there is a change in circumstances or facts or if you receive or generate additional information that changes your answer between the time of your original response and the time of the hearings, then you should submit, under oath, a supplemental response to your earlier answer.

13. If you consider any question to be unduly burdensome, or if the response would require the production of a voluminous amount of material, please call the undersigned counsel as soon as possible in order to discuss the situation and to try to resolve the problem. Likewise, if you object to any of the questions on the grounds that the question seeks confidential information, or on any other grounds, please call the undersigned counsel as soon as possible.

14. If the response to any question is voluminous, please provide separately an index to the materials contained in the response.

15. If the information requested is included in previously furnished exhibits, workpapers, or responses to other discovery inquiries or otherwise, in hard copy or electronic format, please furnish specific references thereto, including Bates Stamp page citations and detailed cross-references.

16. Data should be provided in native electronic format including active EXCEL workbooks and all linked workbooks, with all formulas, cell references, links, etc., intact, functioning, and complete for all tables, figures, and attachments in the testimony.

17. To the extent that a question asks for the production of copyrighted material, it is sufficient to provide a listing of such material, indicating the title, publisher, author, edition, and page references relied on or otherwise relevant to the question.

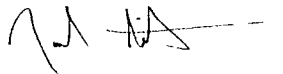
18. Sierra Club reserves the right to serve supplemental, revised, or additional discovery requests as permitted in this proceeding.

PRIVILEGE

If you claim a privilege including, but not limited to, the attorney-client privilege or the work product doctrine, as grounds for not fully and completely responding to any request for information or request for production, describe the basis for your claim of privilege in sufficient detail so as to permit meaningful evaluation of the validity of the claim. With respect to documents for which a privilege is claimed, produce a "privilege log" that identifies the author, recipient, date and subject matter of the documents or interrogatory answers for which you are asserting a claim of privilege and any other information pertinent to the claim that would likewise enable evaluation of the validity of such claims.

Dated: April 29, 2021

Respectfully submitted,

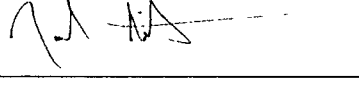


Joshua Smith
Tony Mendoza
Dru Spiller
Sierra Club Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
Email: joshua.smith@sierraclub.org
tony.mendoza@sierraclub.org
dru.spiller@sierraclub.org

Counsel for Sierra Club

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 29, 2021, by First-class U.S. mail, hand delivery, and/or e-mail, as permitted by the presiding officer.

A handwritten signature in black ink, appearing to read 'J. Smith', is written above a solid horizontal line.

Joshua Smith
Sierra Club Environmental Law Program

- ii. If yes, please identify each transmission project and the year each project costs are projected to be incurred.
 - c. For Pirkey, what was the expected end of useful life for that unit in Mr. Becker's lowest cost scenario?
 - d. For Welsh, what was the expected end of useful life for that unit in Mr. Becker's lowest cost scenario?
 - e. Refer to the Rebuttal Testimony of Mr. Becker at 4-6. Admit that none of these scenarios includes the cost to comply with the CCR or ELG rules.
 - f. Refer to the Rebuttal Testimony of Mr. Becker at 4-6. Provide the annual outputs from all model runs associated with Flint Creek and Welsh, including generation, fuel costs, FOM, VOM, and annualized capital costs.
- 6.4 Refer to Becker Rebuttal, page 7, lines 10-13
- a. Does Mr. Becker believe it is appropriate to exclude capital costs from a going-forward analysis?
 - b. Explain how capital and fixed costs are incorporated into the Company's unit disposition analysis
- 6.5 Refer to Becker Rebuttal, page 8, lines 4-11
- a. Produce a document that supports Mr. Becker's estimate of the \$150 million for the transmission project.
 - b. Is SWEPCO developing such a transmission line today? If not, why not. If yes, describe the status of such project.
 - c. Does Mr. Becker believe that the transmission constraint will not exist in 2038 when Flint Creek is projected to retire? If so, explain the basis of that belief.
 - d. Explain how and where the transmission cost was incorporated into the unit disposition analysis for Flint Creek.
 - e. State when this transmission constraint in northwest Arkansas was first identified by the Company.
 - f. Describe all actions undertaken by the Company to address the transmission constraint in Northwest Arkansas.
 - g. Indicate whether the Commission in any state has ever issued any orders or instructions regarding SWEPCO's role in addressing transmission constraints in northwest Arkansas.
- 6.6 Refer to Becker Rebuttal, page 9. Explain why Mr. Becker assumed a Flint Creek retirement in 2027 in the CCR/ELG disposition analysis, instead of using the CCR and ELG compliance deadline(s).
- 6.7 Refer to Becker Rebuttal, page 10-11 regarding the Company's use of the PLEXOS model.
- a. State whether the model was allowed to endogenously retire units at any time, or if the model was only allowed to retire units on their designated retirement dates.
 - b. Provide the energy efficiency cost assumptions modeled in PLEXOS.

- 6.8 Refer to Becker Rebuttal, page 11 regarding unit utilization across scenarios.
- State whether the capacity factors for each unit varied across scenarios.
 - Provide the annual capacity factors for each of the Company's fossil units for all scenarios.
- 6.9 Refer to Becker Rebuttal, pages 12-13 regarding the Company's modeling of solar PV and battery storage.
- State where in the modeling output files battery storage appears.
 - State the size (MW) and duration (MWh) of the battery storage resource available to the model.
 - Provide the cost by year for battery storage as modeled by the Company.
 - State whether the Company modeled paired battery storage and solar PV resources.
 - If yes, provide the size and output of each resource, and the resource per year.
 - If no, explain why paired battery storage was not modeled.
 - Provide the ELCC applied to solar for each year of the study period in native format or Excel.
- 6.10 Refer to the Rebuttal Testimony of Monte A. McMahon for SWEPCO ("McMahon Rebuttal").
- Because SWEPCO has decided to install a dry coal ash handling system at Flint Creek, has the Company reduced O&M expenses for the wet ash handling systems currently in use?
 - If yes, state the amount of such savings and the date(s) on which SWEPCO reduced spending on those systems.
 - If not, explain why SWEPCO has not reduced O&M for systems to be retired during 2021.
 - Because SWEPCO has decided to install a dry coal ash handling system at Flint Creek, has the Company reduced capital maintenance expenses for the wet ash handling systems currently in use?
 - If yes, state the amount of such savings and the date(s) on which SWEPCO reduced spending on those systems.
 - If not, explain why SWEPCO has not reduced O&M for systems to be retired during 2021.
- 6.11 McMahon Rebuttal, page 7.
- Provide the Company's current best estimate or when it expects to have sufficient information to perform the disposition analysis for post-coal-burning operations at Welsh
- 6.12 Refer to the Rebuttal Testimony of Jason M. Stegall for SWEPCO ("Stegall Rebuttal"), page 3.
- Is Mr. Stegall a member of the Commercial Operations Group?

- b. If not, what basis does he have to testify about the activities of this Group.
- 6.13 Refer Stegall Rebuttal, page 4.
 - a. Does Mr. Stegall believe the unit dispatch and resource planning require identical analysis?
 - b. If not, why does he discuss unit dispatch in his testimony? If yes, explain why these analyses are identical.
- 6.14 Refer Stegall Rebuttal, page 4, lines 11-13.
 - a. Produce, in native format, the referenced analysis that Welsh 1&3 and Flint Creek produced \$196 million in revenues exceeding variable costs.
 - b. Produce, in native format, all inputs for such calculations.
- 6.15 Refer Stegall Rebuttal, page 6, and the referenced net revenues calculations.
 - a. Produce, in native format, the referenced net revenue calculations.
 - b. Produce, in native format, all inputs for such calculations.

Exhibit 2

**SOAH DOCKET NO. 473-21-0538
DOCKET NO. 51415**

| | | |
|---|----------------------|---|
| APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES | § § § | BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS |
|---|----------------------|---|

**SOUTHWESTERN ELECTRIC POWER COMPANY’S OBJECTIONS TO
SIERRA CLUB’S SIXTH SET OF REQUESTS FOR INFORMATION**

Southwestern Electric Power Company (SWEPCO) objects to Sierra Club’s Sixth Set of Requests for Information (RFIs), Question Nos. 6.1 and 6.6-6.9 because the requests seek irrelevant information and are not calculated to lead to the discovery of admissible evidence in this proceeding.

I. NEGOTIATIONS

SWEPCO received Sierra Club’s Sixth Set of RFIs on April 29, 2021. Counsel for SWEPCO and Sierra Club have attempted to negotiate these objections diligently and in good faith. The negotiations were unsuccessful. In accordance with SOAH Order No. 2, these objections are timely filed.

II. RESERVATION OF RIGHTS

Based on diligent inquiry, SWEPCO believes that all necessary objections have been raised in this pleading. SWEPCO does not; however, waive its right, if documents are subsequently found that are responsive to these requests, to claim that such documents are privileged if such an objection is determined to be appropriate.

III. OBJECTIONS

Request for Information

- 6.1 Refer to the Rebuttal Testimony of Mark A. Becker for SWEPCO (“Becker Rebuttal”). Admit that other than Flint Creek and plants located in West Virginia, American Electric Power (“AEP”) has not chosen to invest in CCR and ELG compliance to operate any coal unit beyond 2028. If AEP is making such investments, identify all of the unit(s) at which the AEP has invested to comply with the CCR or ELG rules.

Objection

SWEPCO objects to this request because it seeks information that is irrelevant and outside the scope of permissible discovery.¹ The Commission’s rules define the scope of permissible discovery: “Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”² Information is relevant to the subject matter of a proceeding if the information “has any tendency to make a fact more or less probable than it would be” without the information and that “fact is of consequence in determining the action.”³ Although the scope of discovery in Commission proceedings is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute’s resolution.⁴ Therefore, discovery requests must be reasonably tailored to include only relevant matters.

The information sought in Sierra Club 6.1 is not related to SWEPCO’s request for relief in this case. As explained in SOAH Order No. 7, the retrofitting of SWEPCO’s Flint Creek plant for continued operations in compliance with the Coal Combustion Residuals (CCR) and Effluent

¹ See Tex. R. Civ. Proc. 192.3(a); 16 TAC § 22.141 (noting scope of discovery to the subject matter in the proceeding); *In re Master Flo Valve Inc.*, 485 S.W.3d 207, 213 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (“Discovery requests must be limited to the relevant time, place and subject matter.”).

² 16 TAC § 22.141(a).

³ Tex. R. Evid. 401.

⁴ *In re Nat’l Lloyd’s Ins. Co.*, 532 S.W.3d 794, 808 (Tex. 2017) (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding)).

Limitations Guidelines (ELG) rules is not relevant to this proceeding because that decision to retrofit Flint Creek was made after the conclusion of the historical test year and the costs associated with that decision are not being reviewed for recovery in this case.⁵ Further, in this request, Sierra Club does not seek information concerning solely SWEPCO's generating plants or that relates to the economic evaluations of those SWEPCO plants addressed in Mr. Becker's rebuttal testimony but rather broadly seeks information concerning *any* investments by AEP for CCR and ELG. Not only does the information requested exceed the scope of Mr. Becker's rebuttal,⁶ it does not concern any projects identified for inclusion in SWEPCO's cost of service in this case or to any particular investments that have been placed in service. To that end, the information Sierra Club seeks through this RFI is not intended to aid the resolution of any matter at issue in this case. Accordingly, the request is not reasonably calculated to lead to the discovery of admissible evidence.⁷

Requests for Information

- 6.6 Refer to Becker Rebuttal, page 9. Explain why Mr. Becker assumed a Flint Creek retirement in 2027 in the CCR/ELG disposition analysis, instead of using the CCR and ELG compliance deadline(s).
- 6.7 Refer to Becker Rebuttal, page 10-11 regarding the Company's use of the PLEXOS model.
 - a. State whether the model was allowed to endogenously retire units at any time, or if the model was only allowed to retire units on their designated retirement dates.
 - b. Provide the energy efficiency cost assumptions modeled in PLEXOS.
- 6.8 Refer to Becker Rebuttal, page 11 regarding unit utilization across scenarios.
 - a. State whether the capacity factors for each unit varied across scenarios.

⁵ SOAH Order No. 7, at 6 (April 27, 2021) (granting SWEPCO's objection and motion to strike Section 5 of Devi Glick's testimony).

⁶ Mr. Becker's rebuttal expressly responds to the allegations made in Sections 4 and 5 of Devi Glick's testimony. In particular, Mr. Becker responds to Ms. Glick's assertions that the Flint Creek and Welsh plants have been uneconomic and SWEPCO's decision to retrofit the Flint Creek plant to operate in compliance with CCR/ELG requirements. *See* Rebuttal Testimony of Mark A. Becker at 2.

⁷ Tex. R. Civ. Proc. 192.3(a).

- b. Provide the annual capacity factors for each of the Company's fossil units for all scenarios.
- 6.9 Refer to Becker Rebuttal, pages 12-13 regarding the Company's modeling of solar PV and battery storage.
- a. State where in the modeling output files battery storage appears.
 - b. State the size (MW) and duration (MWh) of the battery storage resource available to the model.
 - c. Provide the cost by year for battery storage as modeled by the Company.
 - d. State whether the Company modeled paired battery storage and solar PV resources.
 - i. If yes, provide the size and output of each resource, and the resource per year.
 - ii. If no, explain why paired battery storage was not modeled.
 - e. Provide the ELCC applied to solar for each year of the study period in native format or Excel.

Objections

SWEPCO objects to each of these requests because they seek information that is irrelevant, outside the scope of permissible discovery, and will not aid in the resolution of matters in this case.⁸ These requests pertain to rebuttal testimony of Mr. Becker that is explicitly identified as responding to the section of Ms. Glick's testimony that was struck in this proceeding pursuant to SOAH Order No. 7.⁹ As explained in SOAH Order No. 7, Section V of Devi Glick's testimony is not relevant to this proceeding because that section of testimony concerns a decision to retrofit Flint Creek that was made after the conclusion of the historical test year and the costs associated with that decision that are not being reviewed for recovery in this case.¹⁰ Accordingly, and consistent with this order, SWEPCO does not intend to offer Section IV of Mr. Becker's testimony into evidence.

⁸ See *supra* at 2 (providing standard for relevance).

⁹ SOAH Order No. 7, at 6 (April 27, 2021) (granting SWEPCO's objection and motion to strike Section 5 of Devi Glick's testimony).

¹⁰ *Id.*

These requests are not tailored to address matters relevant to this proceeding. The information sought in Sierra Club 6.6 concerns the disposition analysis supporting SWEPCOs decision to retrofit Flint Creek. Sierra Club 6.7 requests information regarding the use of PLEXOS for the unit disposition analysis supporting SWEPCO's decision to retrofit Flint Creek. Sierra Club 6.8 relates to Ms. Glick's unit utilization criticisms of the unit disposition analysis supporting SWEPCO's decision to retrofit Flint Creek. Finally, Sierra Club 6.9 seeks specific information concerning SWEPCO's modeling and assumptions used in its unit disposition analysis. These requests seek information that is not related to SWEPCO's request for relief in this case, does not bear on a fact of consequence in this case, and is beyond the scope of this proceeding. Simply put, the information Sierra Club seeks through RFIs 6.6-6.9 are not intended to aid the resolution of any matter at issue in this case. Accordingly, these requests are not reasonably calculated to lead to the discovery of admissible evidence.¹¹

IV. CONCLUSION

For the foregoing reasons, SWEPCO respectfully requests that its objections to Sierra Club's Sixth Set of RFIs be sustained. SWEPCO further requests any other relief to which it may be justly entitled.

¹¹ Tex. R. Civ. Proc. 192.3(a).

Respectfully submitted,

Melissa Gage
State Bar No. 24063949
Email: magage@aep.com
aepaustintx@aep.com (Service)

Leila Melhem
State Bar No. 24083492
Email: lmelhem@aep.com
aepaustintx@aep.com (Service)

400 West 15th Street, Suite 1520

Austin, Texas 78701

Telephone: (512) 481-3320

Facsimile: (512) 481-4591

**AMERICAN ELECTRIC POWER SERVICE
CORPORATION**

William Coe
State Bar No. 00790477
Email: wcoe@dwmrlaw.com

Kerry McGrath
State Bar No. 13652200
Email: kmcgrath@dwmrlaw.com

Patrick Pearsall
State Bar No. 24047492
Email: ppearsall@dwmrlaw.com

Stephanie Green
State Bar No. 24089784
Email: sgreen@dwmrlaw.com

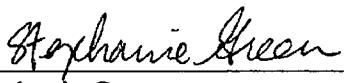
P.O. Box 1149

Austin, Texas 78767

Telephone: (512) 744-9300

Facsimile: (512) 744-9399

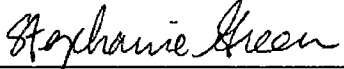
DUGGINS WREN MANN & ROMERO, LLP

By: 
Stephanie Green

**ATTORNEYS FOR SOUTHWESTERN
ELECTRIC POWER COMPANY**

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 6, 2021, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter.



Stephanie Green