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

SOAH ORDER NO. 11
GRANTING MOTIONS TO COMPEL

This order addresses the motions to compel filed by Texas Industrial Energy Consumers (TIEC) on May 11, 2021, and Eastman Chemical Company (Eastman) on May 13, 2021. Southwestern Electric Power Company (SWEPCO) filed a response to TIEC's motion on May 14, 2021.[1] For the reasons discussed below, the motions to compel are **GRANTED**.

SWEPCO objects to the following TIEC and Eastman requests for information (RFIs) on the basis that they seek irrelevant information, require disclosure of confidential information, and are unduly burdensome:

TIEC 13-2. Please provide all responses to the 2017 and 2019 surveys identified on page 22 of Mr. Locke's testimony.

TIEC 13-4. Please provide all SPP documents relating to or discussing the educational information referenced in the preceding RFI.[2]

TIEC 13-10. Identify all other SPP network customers that have load served by retail BTM generation but have not reported it as part of monthly network load in the past 5 years.

Eastman 2-3. Referring to the rebuttal testimony of SWEPCO witness Charles J. Locke, page 23, lines 6-9:

a. Provide the number of entities that made adjustments to their BTMG load reporting practices relative to the total number of respondents to the 2017 SPP survey.

[1] This order addresses Eastman's motion without waiting for a response from SWEPCO because Eastman's and TIEC's motions address the same topic, SWEPCO raises the same objections to both, and the hearing on the merits is imminent.

[2] TIEC clarified that this RFI is intended to capture drafts of the presentations, communications related to the development of the presentations, and communications with network customers about the presentations.

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b. Explain specifically how each entity changed its load reporting practices.

c. Provide the date when each of the entities changed its respective reporting practice.

d. Provide the number of survey respondents that did not make adjustments to their load reporting practices.

e. Provide all workpapers, written communications, and documents that support your responses to subparts (a) through (d) of this RFI.

Relevance

SWEPCO contends that all of these RFIs seek information that is irrelevant. As SWEPCO notes, the requests concern the rebuttal testimony of SWEPCO witness Charles J. Locke. In his rebuttal testimony, Mr. Locke disagrees with the contention of TIEC witness Jeffry Pollock and Eastman witness Ali Al-Jabir that SWEPCO is not required to include retail behind-the-meter generation (BTMG) when reporting its monthly network load to the Southwest Power Pool (SPP) under the SPP Open Access Transmission Tariff (OATT). SWEPCO contends that the competing interpretations involve a legal question regarding the SPP OATT that is properly raised before the Federal Energy Regulatory Commission (FERC), and that none of the requested documents can assist in resolving the question. According to SWEPCO, extrinsic evidence, such as the beliefs or practices of other SPP members, may not be used to create an ambiguity in the OATT, and any ambiguity should also be raised before FERC.

SWEPCO further argues that resolving the legal question is not required in this base rate case because the requested information does not bear on SWEPCO's understanding of SPP's directives, and the survey responses, communications, and practices of other network customers do not clarify or dispute the basis for SWEPCO's SPP OATT-related transmission charges. At most, according to SWEPCO, the survey responses may enable SPP to seek FERC approval of exceptions to the general current policy, and the knowledge of load-reporting practice changes of other SPP members only shows whether other members are complying with the OATT. As to TIEC RFI No. 13-4, SWEPCO argues that the drafts and materials related to development and

preparation of the educational materials are not relevant because they were not provided to SPP members.

TIEC responds that, by offering Mr. Locke's testimony regarding the SPP surveys, educational information, and load-reporting practices of network customers, SWEPCO acknowledges that these topics are relevant. TIEC and Eastman also take issue with SWEPCO's framing of the issue as a legal question regarding the interpretation of the SPP OATT. Instead, they contend there is a fact issue regarding whether SPP directed SWEPCO to include retail BTMG in reporting its network load. Further, they argue that the interpretation of the SPP OATT, where ambiguous, can be aided by the use of extrinsic evidence, such as the practices of other network customers. TIEC also asserts that the drafts and communications requested in TIEC RFI No. 13-4 regarding the development of the presentations provided to SPP stakeholders are relevant to interpreting the SPP OATT, as the presentations contain the same arguments that Mr. Locke makes in his testimony.

The Administrative Law Judges (ALJs) conclude that the RFIs address topics raised by Mr. Locke's rebuttal testimony and are reasonably calculated to lead to the discovery of admissible evidence.[3] Accordingly, SWEPCO's relevance objections are **DENIED**.

Confidentiality

SWEPCO's objections contend that the RFIs seek company-specific load information that is confidential and that SPP may not disclose such information absent an order from the ALJs. TIEC and Eastman each respond that confidential information is covered by the Protective Order in this case, to which they will abide. SWEPCO's response to TIEC's motion did not address the confidentiality issue.

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[3] *See* Tex. R. Civ. P. 192.3(a).

The ALJs conclude that SWEPCO has not demonstrated that the Protective Order is insufficient to address the confidentiality of the requested information. Accordingly, SWEPCO's objection is **DENIED**.

Undue burden

SWEPCO claims that TIEC RFI No. 13-4 is unduly burdensome because the burden and expense to respond will far exceed the likely benefits associated with the information, especially considering that SWEPCO responded to TIEC RFI No. 13-3, which requested the educational information SPP provided to its stakeholders. TIEC responds that the request is reasonably tailored to the relevant issues in this proceeding because it is limited to documents and communications relating to a specific set of presentations that Mr. Locke referenced in his rebuttal testimony.

The ALJs conclude that SWEPCO has not demonstrated that responding to TIEC RFI No. 13-4 is unduly burdensome. Given the nature of the information requested, the RFI is limited in time and scope. Accordingly, SWEPCO's objection is **DENIED**.

Having denied SWEPCO's objections, the motions to compel SWEPCO's responses to TIEC RFI Nos. 13-2, 13-4, and 13-10, and Eastman RFI No. 2-3 are **GRANTED**. SWEPCO shall provide complete responses to these discovery requests within three working days of the date of this order.

SIGNED May 14, 2021.

STEVEN H. NEINAST
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

ROBERT H. PEMBERTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS