



Control Number: 40443



Item Number: 448

Addendum StartPage: 0

**PUC DOCKET NO. 40443
SOAH DOCKET NO. 0473-12-7519**

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**APPLICATION OF SOUTHWESTERN §
ELECTRIC POWER COMPANY FOR §
AUTHORITY TO CHANGE RATES §
AND RECONCILE FUEL COSTS §**

**BEFORE THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS**

JOINT RESPONSE TO SWEPCO'S MOTION TO MODIFY ORDER NO. 8

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Cities Advocating Reasonable Deregulation ("CARD"), the Cities Served by SWEPCO ("Cities"), the Office of Public Utility Counsel ("OPC"), State of Texas' agencies and institutions of higher education ("State Agencies"), and the Texas Industrial Energy Consumers ("TIEC"), (collectively, "Joint Respondents"), respond to SWEPCO's Motion to Modify SOAH Order No. 8, which set deadlines for filing objections to testimony. State Agencies are authorized to file this Joint Response on behalf of the Joint Respondents. SWEPCO's Motion to Modify was filed on November 6. This Response is therefore timely under P.U.C. PROC. R. 22.7(b) and 22.78(a). In summary, the reasons asserted by SWEPCO in its Motion to Modify are groundless, and the alternative dates it proposes compromise the rights of the other parties to preserve valid objections to SWEPCO's evidence. SWEPCO's Motion to Modify should be denied, and the dates in Order No. 8 reinstated.

Sequence of events

The ALJs issued Order No. 8 on October 29, after a unilateral motion filed by SWEPCO. SWEPCO did not suggest any dates in that original motion nor did it consult with other parties before filing it. However, the ALJs judiciously considered the nature of case, the existing agreed procedural schedule including the hearing date, and set deadlines that would allow full and fair

448

resolution of any objections that may be raised to pre-filed testimony. The January 15, 2013, deadline for objections to SWEPCO's pre-filed direct testimony allows for completion of discovery and resolution of any discovery disputes before finalizing motions to strike.

SWEPCO did not appeal Order No. 8, but waited eight days to file a Motion to Modify that order, again without the courtesy of prior contact with any of the joint respondents. In its Motion, SWEPCO does not assert that it is harmed by Order No. 8, nor does it contend that there is good cause for the proposed modifications. Instead, the Company asserts that the deadlines in Order No. 8 should be changed: a) to provide "the parties with guidance on the range of admissible testimony before the parties are required to file their own responsive testimony;" b) to "allow the workload involved with making and responding to objections to be spread out over time;" and c) to be consistent with a "pattern" filed in other Commission rate cases. None of these reasons are valid.

The parties did not request, and do not need, "guidance" about admissibility of testimony before filing their direct cases.

This assertion by SWEPCO purports to seek relief on behalf of the non-utility parties in this case. The Joint Respondents were not consulted on this point, do not need, and did not request, guidance about the admissibility of SWEPCO's direct testimony prior to filing their own direct cases. Order No. 8 already provides enough time for resolving any questions about admissibility. It is not likely that any party's case will be contingent on what part of SWEPCO's case is, or is not, admissible. Presupposing for purposes of argument that guidance was needed, it would come too late under SWEPCO's proposed schedule to be of significant use. SWEPCO's Motion to modify requests a December 3 deadline to respond to objections, only a week before intervenor testimony must be filed, and the ALJs would also need time to consider any objection and response before ruling upon admissibility.

A proposed deadline of November 26 for objections to SWEPCO Direct Testimony will compress and increase the parties' workload, not allow it to be spread over time.

Order No. 8 provided a January 15, 2013, deadline (not a due date) for objecting to testimony. This date already allows the workload relating to objections to be "spread out over time." SWEPCO's proposed alternative would create a workload crunch for the parties by moving their objection time up by nine weeks. The proposed November 26 deadline ensures that the parties will not have received all answers to discovery before they must file objections to testimony. The proposed deadline would also require the parties, over a truncated period including the Thanksgiving holidays, to analyze and prepare objections during the time that they are preparing their own direct cases. SWEPCO's expressed concern about the parties' "workload" might have left the impression that this had been discussed among the parties in advance of SWEPCO's filing the Motion to Modify, but as noted earlier no such consultation took place.

There is no commission precedent requiring the revised objection dates requested by SWEPCO.

With no apparent sense of irony, SWEPCO attached a stack of orders issued for *agreed* procedural schedules, then asserted that its unilaterally-proposed dates would be consistent with this "pattern" of orders. In addition to being run on negotiated and agreed schedules, none of these cases involved a prudence review of a major generation plant.

The dates set by the ALJs in Order No. 8 preserve the rights of the parties and afford all parties due process; the dates requested by SWEPCO in its Motion to Modify do not.

This is one of the first rate cases in recent memory to address the prudence of a major generation plant, the TURK plant, a fact that makes the objection deadlines in Order No. 8 more reasonable than those proposed in SWEPCO's Motion to Modify. TURK is not currently used and useful to Texas ratepayers. SWEPCO does not expect full operation until "December

2012.”¹ Therefore, much of the testimony relating to TURK costs can be characterized as “best guess” or conditional rather than facts certain.

Parties are required to timely object to evidence or the objection will be waived.² Objecting to pre-filed testimony preserves the limited time dedicated to the hearing for developing and testing the admissible evidence. Due process requires that the parties, prior to the deadline, have enough information to determine if there is a basis for making valid objections.

The January 15, 2013, deadline in Order No. 8 enables the parties to react to the maturation of facts underlying the direct testimony as well as to the supplementation of outstanding discovery or errata to testimony. By contrast, SWEPCO’s proposed November 26 deadline for objecting to its direct testimony is grossly premature because it requires objection before TURK is even operational.

Order No. 8, although sought unilaterally, accommodates the agreed procedural schedule but SWEPCO’s proposed modifications do not.

When the parties negotiated the procedural schedule adopted by the ALJs in Order No. 2, they considered the procedural schedule as an entirety with the deadlines interrelated. Order No. 2 incorporates this interplay, including an agreement that discovery on SWEPCO’s direct case ends November 16. The parties also agreed to the usual 20-day turnaround period for answers.

Under this schedule, answers to written discovery propounded on November 16 will not be received by the parties until December 6th. Order No. 8 allows the responses to this discovery as well as deposition testimony to be considered in determining whether the parties have objections to SWEPCO’s direct testimony. SWEPCO’s proposal of a November 26th

¹ See, e.g., Direct Testimony of Venita McCellon-Allen at 17:14.

² P.U.C. PROC. R. §22.221(c).

deadline insures that the parties will not be able to raise all objections that discovery responses might support.

SWEPCO's asserted need for objection deadlines has come only after questions have arisen about whether it will answer certain RFIs posed by the other parties. Order No. 8 sets reasonable deadlines, agreeable to the Joint Respondents, that harmonize with the procedural schedule adopted in Order No. 2. It should not be modified at the unilateral request of a single party to impose dates that are at odds with the deadlines in the original and agreed procedural schedule.

PRAYER

SWEPCO's Motion to Modify SOAH's No. 8 should be denied. SWEPCO lacked any authority from the intervenors to seek the modification on their behalf. No party has contended that they will be harmed by the dates established in Order No. 8. The justifications the Company has given for modifying SOAH's earlier order are without merit, and its proposed dates adversely impact the rights of the parties to a full and fair resolution of evidentiary issues. The Joint Respondents pray that Order No. 12 be withdrawn and that the more reasonable dates set out in Order No. 8 be reinstated, and for any other relief to which they may be entitled.

Respectfully submitted,

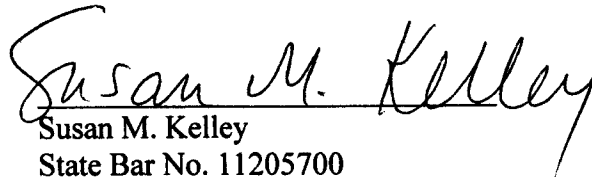
GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

DAVID A. TALBOT, JR.
Chief, Administrative Law Division

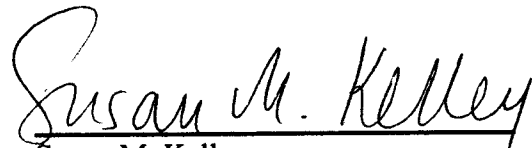
BRYAN L. BAKER
Managing Attorney, Energy Rates Section


Susan M. Kelley
State Bar No. 11205700
Bryan L. Baker
State Bar No. 00790256

Assistant Attorneys General
Office of the Attorney General
P.O. Box 12548– Mail Code 018-12
Austin, Texas 78711
Voice: (512) 475-4173
Fax: (512) 936-0674
E-mail: susan.kelley@texasattorneygeneral.gov
bryan.baker@texasattorneygeneral.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Joint Response to SWEPCO's Motion to Modify Order No. 8** has been served upon SWEPCO and all other parties to PUC Docket No. 40443, by hand delivery, facsimile, or e-mail, and/or First Class U.S. Mail, on or before November 13, 2012.


Susan M. Kelley