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Addendum StartPage: 0

SOAH DOCKET NO. 473-14-1665
PUC DOCKET NO. 42004

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APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY FOR § BEFORE THE STATE OFFICE
AUTHORITY TO CHANGE RATES §
AND TO RECONCILE FUEL AND § OF
PURCHASED POWER COSTS FOR §
THE PERIOD JULY 1, 2012 § ADMINISTRATIVE HEARINGS
THROUGH JUNE 30, 2013 §

**TEXAS INDUSTRIAL ENERGY CONSUMERS' RESPONSE TO JOINT MOTION TO
STRIKE SUPPLEMENTAL TESTIMONY OF STAFF WITNESS ABBOTT**

Texas Industrial Energy Consumers (TIEC) supports the motion to strike portions of the pre-filed testimony of William Abbott filed today by Alliance of Xcel Municipalities (AXM), Office of Public Utility Counsel (OPUC), and several other parties.

The issue for the September 11 hearing is the reasonableness of a Non-Unanimous Stipulation (NUS) that has been submitted to the Commission and is being opposed by one party. The issue is not the reasonableness of Southwestern Public Service Company's (SPS) original filing, the way SPS categorizes rate classes, or any one of a thousand other issues on which Staff and Intervenors may disagree with SPS's as-filed case. If the Commission rejects the NUS, then all parties will have an opportunity to fully vet their objections to SPS's as-filed case.

Despite the fact that the PUC Staff has stipulated that the NUS "results in just and reasonable rates,"¹ Mr. Abbott's testimony argues that certain rate classes (as Mr. Abbott defines rate classes) "*might*" have rates significantly below cost or above cost and that "potentially significant and unreasonable departures from cost-based rates *may* be persisting for some rate classes" (again, as Mr. Abbott defines rate classes).² To the extent that Mr. Abbott is asserting that the NUS results in unreasonable rates, his testimony is flatly inconsistent with the NUS and in violation of the Staff's obligation to support the NUS. To the extent that Mr. Abbott is merely suggesting that rates "may" or "might" be unreasonable but he does not really know, his testimony is speculative and irrelevant. In either case, the testimony should be struck.

¹ NUS, Exhibit F at 13.

² Abbott Testimony at 5 (emphasis supplied).

At the heart of Mr. Abbott's concern about the reasonableness of rates is his idiosyncratic view of how rate classes should be characterized. For decades, the Commission has used five to eight rate classes in the cost allocation process. In the most recent contested Entergy rate case, for example, the Commission approved the use of six classes.³ In the recent Southwestern Electric Power Company (SWEPCO) rate case, Docket 40443, the Commission approved the use of eight rate classes. In that case, Mr. Abbott and another Staff witness filed testimony seeking to allocate costs and design rates at what they called the "subclass" level, breaking the traditional eight rate classes into 21 subclasses, several of which had only one or two customers. The four Administrative Law Judges (ALJs) unequivocally rejected that proposal.⁴ The Staff then filed six pages of exceptions on that single issue, re-urging Mr. Abbott's and Mr. Murphy's proposal, and the Commission unanimously rejected the PUC Staff's proposal.⁵ Attached hereto as Exhibit A and incorporated herein is an excerpt from TIEC's reply to the PUC Staff's exceptions in that case on this issue.

Mr. Abbott's testimony on the NUS seeks to raise the same issue he unsuccessfully argued in the SWEPCO case, redefining SPS's five rate classes into 21 different rate subclasses (which he now calls classes), including putting several customers in classes all of their own, such as Amarillo Recycling, WRB Refining, and Orion Engineered Carbons. If this issue were to be re-litigated in this case, it is likely that TIEC, SPS, and other parties would oppose Staff's attempt to overturn 30 years of Commission precedent in cost-of-service ratemaking. That issue is not before the ALJs in the hearing on the NUS, however, and there is simply no reason for Staff to try to inject it. While TIEC and other parties disagree with Mr. Abbott's characterization of what the "rate classes" are for cost allocation purposes, all signatories have agreed on the rates that should be approved, and all, including Staff, have stipulated that those rates would be just and reasonable. Mr. Abbott may well believe that there should be 21 rate classes for allocation purposes as opposed to the five used by SPS,⁶ but the PUC Staff has stipulated to the reasonableness of the rates in the NUS. An NUS hearing is not the place for parties to vent their

³ *Application of Entergy Texas, Inc. for Authority to Charge Rates*, Docket No. 39896, Proposal for Decision at Attachment A (Jul. 6, 2012).

⁴ *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Proposal for Decision at 267-269 (May 20, 2013).

⁵ *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Order on Rehearing, Findings of Fact at 287-290 (Mar. 6, 2014).

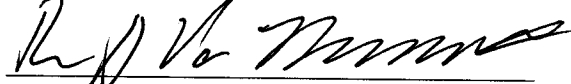
⁶ Luth Direct at 30-31, attached as Exhibit B.

dissatisfaction with the underlying methodologies in a utility's as-filed case. If it were, these hearings would be considerably longer.

For the above reasons and those stated in the Joint Motion, TIEC supports the motion to strike portions of Mr. Abbott's testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rex D. VanMiddlesworth, Attorney for Texas Industrial Energy Consumers, hereby certify that a copy of the foregoing instrument was served on all parties of record in this proceeding on September 10, 2014 by electronic mail, facsimile, and/or First Class, U.S. Mail, Postage Prepaid.



Rex D. VanMiddlesworth

EXHIBIT A

SOAH DOCKET NO. 473-12-7519
PUC DOCKET NO. 40443

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

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§
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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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TEXAS INDUSTRIAL ENERGY CONSUMERS'
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

June 17, 2013

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use the much higher load factor (65%) associated with the Texas retail jurisdiction alone.²⁷⁶ That of course is inconsistent with their own admission that it is appropriate to use the SWEPCO system load factor, not the Texas jurisdictional load factor.²⁷⁷

Despite the disjointed nature of the Cities' attacks on the PFD and Mr. Pollock, this issue is relatively straight-forward—what is SWEPCO's system load factor? The PFD properly finds that SWEPCO's system load factor is 58%.

B. Revenue Distribution.

TIEC finds little objectionable in the *text* of the Commission Staff's exceptions on this issue. TIEC and virtually all parties in the case support the position that the rates for SWEPCO's customer classes should be set based on the cost of service for each customer class. Indeed, that is the position set forth by SWEPCO in its filing and supported by parties as diverse as TIEC, CARD and the Office of Public Utility Counsel.²⁷⁸ It is also the position adopted by the PFD.²⁷⁹

The problem with the Commission Staff's exceptions on this point is that they ignore the actual recommendations of the Commission Staff witness that they purport to adopt. Staff witness Brian Murphy's objections to SWEPCO's approach was not that it fails to move rates to cost for the *classes* (which it did), but that in Mr. Murphy's terms, it "shifts costs among *subclasses*."²⁸⁰ Mr. Murphy's testimony is all about revenue allocation at the subclass level, not at the class level. A copy of the relevant portion of Mr. Murphy's testimony is attached hereto as Attachment A. As can be seen, Mr. Murphy's entire testimony was focused on the subclass level, not at the rate class level.²⁸¹ Mr. Murphy refers to "subclass" 140 times in his testimony in this case,²⁸² but Staff's exceptions do not even mention that term. It was Mr. Murphy's focus on *subclasses* as opposed to *classes* that brought the opposition of SWEPCO, TIEC, and other

²⁷⁶ Cities' Exceptions at 52.

²⁷⁷ Supplemental Cross Rebuttal Testimony of Clarence Johnson, Cities Ex. 11 at 5-6. (Feb. 1, 2013).

²⁷⁸ Direct Testimony and Exhibits of Jennifer L. Jackson, SWEPCO Ex. 51 at 36; TIEC In. Br. at 80; CARD In. Br. at 68; Cross Rebuttal Testimony of Lacy L. Seybold OPUC Ex. 4 at 8.

²⁷⁹ PFD at 269.

²⁸⁰ Direct Testimony of Brian T. Murphy, Staff Ex. 5, at 17-25 (reference to "subclass" highlighted throughout).

²⁸¹ Tr. at 799 (Feb. 6, 2013); Staff Ex. 5 at 13.

²⁸² Staff Ex. 5 at 6-15, 17-25, 32, 44-50.

parties to the Commission Staff's unprecedented proposal. Not a single party to this case supported Staff's novel recommendation to apply a cost study to ratemaking at the subclass level.

The Commission Staff's exceptions, however, substitute the word "class" everywhere Mr. Murphy had used the word "subclass." That is not a semantic difference, it goes to the essence of the Commission Staff's proposal. Indeed, in its prior briefing in this case, the Commission Staff consistently and properly referred to its proposal as one to allocate costs "among the 21 retail *subclasses*" and to set "each *subclass* target revenues as close as possible to cost."²⁸³ In its exceptions, however, the Staff for the first time abandons the very term that is at the heart of both Mr. Murphy's recommendation and Staff's prior argument.

The distinction between classes and subclasses is critical and was the subject of considerable testimony at the hearing. It is the entire basis for the rejection of Staff's proposal, and it cannot be ignored. SWEPCO has eight rate classes—Residential, General Service, Lighting and Power, Electric Furnace, Industrial, Municipal Pumping, Municipal Lighting and Lighting.²⁸⁴ This is similar to the rate class structure for the other Texas utilities, such as Entergy, which has six rate classes. Typically, when the Commission directs that rates be set at cost—as it did in the recent Entergy cases—that means that rates are set at cost for each of the rate *classes*.

The key point in Mr. Murphy's testimony, and the point where the Commission Staff departed from past practice, was the focus on subclasses, rather than classes. SWEPCO's eight rate classes have a number of subclasses. In the industrial class for example, there are eight different subclasses. Two of these subclasses have only one customer each, one has only two customers, one has only three customers, and one has only five customers.²⁸⁵ The Staff's approach would require a cost-of-service study for each of the eight industrial subclasses, in some cases for a single customer, and that rates then be set for that individual customer or small subclass based on whatever the test year cost-of-service analysis showed. There was no attempt

²⁸³ Staff In. Br. at 62-63.

²⁸⁴ Tr. at 798 (Feb. 6, 2013).

²⁸⁵ *Id.* at 800-01 (Feb. 6, 2013).

by the Staff to determine whether the test year usage for a particular customer or small subclass was representative.²⁸⁶

While cost-of-service is certainly a worthwhile objective, there are a number of problems with trying to do a cost-of-service study at the individual customer level, or for subclasses of two to five customers, as explained by SWEPCO witness Jennifer Jackson. Where there are only a few customers in a rate class, there could be a significant volatility from year to year in the cost allocation, depending on the particular circumstances of that year.²⁸⁷ An outage at a particular time or an aberrational usage in a month could significantly affect the cost allocation if done on a customer-by-customer basis. In a rate class as a whole such as the industrial class, any individual customer fluctuations within the class would tend to average out to eliminate any aberrations.²⁸⁸ Moving rate *classes* to cost-of-service accordingly makes complete sense, and is supported by all the parties and Commission precedent. Singling out individual customers or groups of two or three customers for dramatic shifts in rates based on a single year's usage, however, is both inappropriate and inconsistent with Commission policy.

The aberrations in Mr. Murphy's recommendation would result in dramatic rate shifts and disparities between customers receiving essentially the same type of service. For example, Mr. Murphy's approach would dramatically increase the rates for the one-customer "special contract" class, setting those rates at 10% to 15% higher than the corresponding LLP rate, even though the tariffs are for essentially the same type of service.²⁸⁹ Yet, Mr. Murphy had no idea whether that single special contract customer's usage during the test year was representative of the normal usage in previous years, or of what would be expected in the future.²⁹⁰ If, in the next SWEPCO case, that single customer's cost study showed different results, the Staff's approach would dramatically change the rates in that case. Such instability in ratemaking is extremely problematic for industrial customers and other customers as well.

²⁸⁶ Tr. at 1624-25, 1643 (Feb. 12, 2013)

²⁸⁷ Rebuttal Testimony of Jennifer Jackson, SWEPCO Ex. 88 at 8; Tr. at 801-02 (Feb. 6, 2013).

²⁸⁸ Tr. at 802 (Feb. 6, 2013).

²⁸⁹ Cross Rebuttal Testimony of Jeffry Pollock, TIEC Ex. 2 at 22-23.

²⁹⁰ Tr. at 1643 (Feb. 12, 2013).

The record demonstrated that attempting to do cost studies and set rates based on a single year's usage for a single customer, or even a subclass of two to five customers, would result in unstable rates and drastic shifts from year to year. While the PUC Staff witness hypothesizes that one could normalize test year usage at the individual customer level, he had not attempted to make any such adjustments himself, and he was not aware of any such adjustments.²⁹¹ Since SWEPCO proposed to set cost-based rates at the class level, not the subclass level, SWEPCO had no reason to review individual customer aberrations. In the absence of such adjustments, as Mr. Murphy admitted at the hearing, Staff's proposal would set rates based on a single test year for individual customers even though there is no indication that usage in the test year is representative of the individual customers' normal usage.²⁹²

The entire objection to Staff's proposal was its attempt to move rates to cost at the "subclass" level. That objection is not resolved by the Staff's decision to eliminate the term "subclass" from its exceptions and refer to those subclasses as classes. The Staff's position presumes a precision in cost studies at the individual customer level that has never been adopted by this Commission.

It may well be that SWEPCO's twenty-one subclasses should be grouped differently, or, more likely, that there should be some rate consolidation to merge or eliminate unnecessary subclasses. But it is not appropriate to have widely varying base rate increase—ranging from 0% to 32.5% under Staff's proposal—among the handful of customers in the industrial class in this case, many of which have very similar load characteristics.²⁹³ The Commission Staff's proposal should be rejected and the proposal of the PFD to continue to set class revenue requirements at cost based on rate classes, not subclasses, should be adopted in this case.

The Commission Staff's argument that its gradualism recommendations warrant adopting its position is misguided. The need to apply gradualism constraints is strictly a function of the Staff's attempt to apply the cost study at the subclass level. Given the problems discussed above with trying to run a cost study for a single customer or a handful of customers, it is not surprising

²⁹¹ Tr. at 1624-25 (Feb. 12, 2013).

²⁹² Tr. at 1643 (Feb. 12, 2013).

²⁹³ TIEC Ex. 2 at 22.

that the Staff's recommendation would lead to drastic proposed increases or decreases for subclasses, which the Staff seeks to temper through the application of arbitrary gradualism constraints. Such constraints are entirely unnecessary under the more traditional rate class approach supported by SWEPCO and the intervenors. At the PFD revenue level, all classes could be brought to cost-of-service with no class receiving an increase of more than 25% (compared to a Texas retail average increase of 16.07%).²⁹⁴

The PFD has recommended an approach to revenue distribution that is consistent with past Commission practice and supported by SWEPCO and all ratepayer groups. It moves rate classes to cost and is supported by SWEPCO's cost-of-service study. It is Staff's idiosyncratic approach of attempting to apply a cost-of-service study in a manner in which it was never intended—to small subclasses—that would distort and destabilize SWEPCO's rates. The approach recommended in the PFD and supported by SWEPCO and intervenors should be adopted.

C. Rate Design [PO Issue 32, 34] - Not Briefed.

- 1. Residential - Not Briefed.**
- 2. Commercial - Not Briefed.**
- 3. Industrial - Not Briefed.**

XI. Other Issues

- A. Request to Recover Purchased Capacity Through Fuel - Not Briefed.**

XII. Conclusion

For the reasons stated above, the exceptions addressed herein should be denied.

²⁹⁴ Staff's May 31, 2013 Number Runs.

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CERTIFICATE OF SERVICE

I, Benjamin Hallmark, Attorney for TIEC, hereby certify that a copy of TIEC's Reply Brief was served on all parties of record in this proceeding on this 17th day of June, 2013 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.



Benjamin Hallmark

EXHIBIT B

1 classifications of costs: demand, energy, and customer-related. In effect, with the
2 allocation of Retail Only costs according to the relative cost of other functions,
3 Retail Costs represents an addition to total costs previously allocated to other
4 functions and is zeroed-out as a separate cost function prior to allocation among
5 customer classes.

6 **Q. Have you provided the classification of costs reflected in the CCOSS?**

7 A. Yes. The final classification of costs into customer, demand, and energy
8 components is reflected in Attachment RML-RD-4.

9 **C. Allocation**

10 **Q. The third step of the CCOSS that you refer to is allocation of SPS's Texas**
11 **Retail costs to each of SPS's Texas Retail rate classes. What are the classes?**

12 A. The Texas Retail rate classes are:

- 13 • Residential - consisting of:
 - 14 ○ Residential Service⁴
 - 15 ○ Residential Service with Electric Space Heating
- 16 • Small General Service
- 17 • Commercial and Industrial - consisting of:
 - 18 ○ Secondary General
 - 19 ○ Primary General (including service agreement customers)
 - 20 ○ LGS-T
 - 21 ○ Standby Service at each of these voltage levels
- 22 • Municipal and Schools - consisting of:
 - 23 ○ Small Municipal and Schools
 - 24 ○ Large Municipal
 - 25 ○ Large Schools
 - 26
 - 27

⁴ Customers take service under this tariff when electricity is not the primary source for space heating.

- 1 • Street and Area Lighting - consisting of:
- 2 ○ Guard Light Service
- 3 ○ Municipal and State Street Lighting Service
- 4 ○ Flood Light Systems
- 5 ○ Highway Sign Lighting

6 **Q. Is SPS recommending the same retail rate classes as those approved in**
7 **Docket No. 40824?**

8 A. Yes.

9 **Q. How are the functionalized costs from the CCOSS allocated or assigned to**
10 **the Texas Retail rate classes?**

11 A. The method of allocation differs by function. For example, the costs for the
12 following functions are allocated to the rate classes using the demand and energy
13 allocation factors listed in Attachment RML-RD-4:

- 14 • Production Capacity (includes Production Demand, Purchased
- 15 Capacity and Transmission Interconnect costs),
- 16 • Production Energy,
- 17 • Transmission (includes System and Radial Lines),
- 18 • Distribution Substations,
- 19 • Distribution Primary, and
- 20 • Distribution Secondary.

21 The costs for the following functions, which I refer to as “customer-related,” are
22 allocated to customer classes based on number of customers and relative costs of
23 the specific facilities required to provide service to each customer class:

- 24 • Distribution Service Laterals,
- 25 • Metering,
- 26 • Meter Reading, and
- 27 • Customer Accounting.