



Control Number: 49737



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APPLICATION OF SOUTHWESTERN §
ELECTRIC POWER COMPANY FOR §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY AUTHORIZATION §
AND RELATED RELIEF FOR THE §
ACQUISITION OF WIND §
GENERATION FACILITIES §

PUBLIC UTILITY COMMISSION

OF TEXAS

GOLDEN SPREAD ELECTRIC COOPERATIVE INC.'S
INITIAL BRIEF

March 9, 2020

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GOLDEN SPREAD ELECTRIC COOPERATIVE INC.'S
INITIAL BRIEF

I. INTRODUCTION

Golden Spread Electric Cooperative, Inc. (“Golden Spread”)¹ respectfully submits this initial brief (“Initial Brief”) regarding Southwestern Electric Power Company’s (“SWEPCO”) application for regulatory approvals to acquire almost \$1.9 billion in Oklahoma-sited wind generation (“Application”).² SWEPCO has ignored the transmission costs that these wind projects will inflict on other Southwest Power Pool (“SPP”) transmission ratepayers in Texas, including Golden Spread. SWEPCO Vice President Mr. Brice candidly testified that the Application includes no evidence related to the potential effects on other utilities.³ Golden Spread believes

¹ Golden Spread has sixteen member non-profit distribution cooperatives (“Members”). Fifteen of Golden Spread's sixteen distribution cooperative members operate in Texas. They are Bailey County Electric Cooperative Association (Muleshoe, Texas); Concho Valley Electric Cooperative, Inc. (San Angelo, Texas); Coleman County Electric Cooperative, Inc. (Coleman, Texas); Deaf Smith Electric Cooperative, Inc. (Hereford, Texas); Greenbelt Electric Cooperative, Inc. (Wellington, Texas); Lamb County Electric Cooperative, Inc. (Littlefield, Texas); Lighthouse Electric Cooperative, Inc. (Floydada, Texas); Big Country Electric Cooperative, Inc. (Roby, Texas); North Plains Electric Cooperative, Inc. (Perryton, Texas); Rita Blanca Electric Cooperative, Inc. (Dalhart, Texas); South Plains Electric Cooperative, Inc. (Lubbock, Texas); Southwest Texas Electric Cooperative, Inc. (Eldorado, Texas); Swisher Electric Cooperative, Inc. (Tulia, Texas); and Taylor Electric Cooperative, Inc. (Merkel, Texas). Golden Spread also serves Tri-County Electric Cooperative, Inc. (Hooker, Oklahoma).

Golden Spread’s Members serve about 230,000 retail electric meters serving their Member-Consumers located over an expansive area, including the Panhandle, South Plains and Edwards Plateau regions of Texas (covering twenty-four percent (24%) of the state), the Panhandle of Oklahoma, and small portions of Southwestern Kansas and Southeastern Colorado.

² SWEPCO and its affiliate, Public Service Company of Oklahoma (“PSO”) are seeking to acquire the wind facilities jointly. When referring to SWEPCO and any or all of its affiliates, this Initial Brief uses the term “AEP.”

³ Tr. at 100: 8-22 (Brice Direct) (Feb. 24, 2020).

that SWEPCO failed to meet its burden of proof in showing that this Application is in the public interest⁴ because SWEPCO failed to fully analyze the impacts the Selected Wind Facilities⁵ would have on other SPP transmission ratepayers in Texas. As a condition of any approval in this Docket, Golden Spread asks that SWEPCO be required to expeditiously acquire firm transmission and to accept the direct assignment of upgrade costs associated with the Selected Wind Facilities before this Application is found in the public interest. Further, if SWEPCO ultimately does request to build a generation-tie (“gen-tie”), it should be required to obtain prior approval from the Public Utility Commission of Texas (“Commission”) and its application should be required to consider all transmission alternatives that could come from the SPP, including but not limited to through the SPP Integrated Transmission Planning (“ITP”)¹⁰ process, Network Resource Interconnection Service (“NRIS”), and firm transmission, as well as potential effects each alternative would have on other Texas transmission ratepayers in SPP.

SWEPCO fails on this record to properly consider alternative transmission solutions and the associated cost allocation differences. Because of this, SWEPCO’s currently proposed transmission procurement plan would shift costs onto Golden Spread and other SPP transmission ratepayers in Texas. If SWEPCO waits until the Selected Wind Facilities are considered in the SPP regional transmission planning process, it is likely that the transmission built from the regional transmission planning process will include the upgrades that would otherwise be assigned through the firm transmission service process to AEP, increasing the probability that costs to deliver the generation from the Selected Wind Facilities to the AEP load will be paid by other SPP transmission ratepayers.⁶ Additionally, by postponing decisions on various transmission and congestion issues, AEP has created uncertainty for other SPP transmission ratepayers and has sidestepped Commission scrutiny by waiting to address these material issues until after its Application is approved. The implicit subsidy of the Selected Wind Facilities cannot be in the interest of Texans outside of SWEPCO’s service territory who are being asked to incur higher

⁴ See Tr. at 849: 12-14 (ALJ Neinast) (Feb. 26, 2020) (SWEPCO has burden of proof); Public Utility Regulatory Act, Tex. Util. Code §§ 11.013-66.017 (PURA) at §14.101(b)(4) (requiring acquisitions to be in the public interest).

⁵ The “Selected Wind Facilities” consist of three separate projects totaling 1,485 MW of installed nameplate capacity: Traverse, Maverick, and Sundance.

⁶ Tr. at 504:10-505:5 (Pfeifenberger Direct) (Feb. 25, 2020).

transmission and congestion charges but who will not share in the purported benefits of the Selected Wind Facilities. A public interest review of this Application must look beyond the portion of northeast Texas where SWEPCO's retail customers reside to instead consider *all SPP transmission ratepayers in Texas*.

AEP's consideration of transmission and congestion issues associated with the Selected Wind Facilities has been untimely and haphazard. SWEPCO testified that four months after filing the Application, it submitted a request for firm transmission, which could mitigate the shift of costs onto other SPP members; but SWEPCO has not agreed to pay for the firm transmission, making the acquisition of firm transmission highly uncertain. To date, SWEPCO has not decided whether it is willing to acquire this firm transmission.⁷ Further, SWEPCO employee Mr. Ali testified that SWEPCO might be willing to pay a small amount for transmission facilities to improve congestion for the Selected Wind Facilities, but otherwise intends to rely on other SPP transmission ratepayers, including Golden Spread, to finance it,⁸ seemingly because that would be cheaper for SWEPCO. In addition, SWEPCO failed to disclose its decision to pursue firm transmission and the communication from SPP confirming receipt of the request for approximately a month before supplementing its response to Golden Spread's discovery request on this precise question.⁹ SWEPCO also detailed that its internal decision of whether to add a gen-tie, when it occurs, will not include consideration of the effects on other transmission ratepayers in Texas.¹⁰ This lack of timely and cohesive transmission planning for the Selected Wind Facilities calls to question many of the underlying assumptions regarding congestion costs and the potential need for a gen-tie. In addition, this lack of planning creates uncertainty regarding the impact of the project on Texas transmission ratepayers, like Golden Spread, and exposes them to subsidization of the true costs of the project.

⁷ Tr. at 799: 20-25 (Pfeifenberger Rebuttal) (Feb. 26, 2020).

⁸ Tr. at 778: 7-12 (Ali Rebuttal) (Feb. 26, 2020).

⁹ Tr. at 828:8-829:23 (Ross Rebuttal) (Feb. 26, 2020).

¹⁰ Tr. at 499: 8-11 (Pfeifenberger Direct) (Feb. 25, 2020).

II. CERTIFICATE OF CONVENIENCE AND NECESSITY STANDARD OF REVIEW (P.O. ISSUE NO. 2)

A. SWEPCO Fails Its Burden of Proof by Providing No Evidence to Support Findings Related to the Texas Public Utility Regulatory Act (“PURA”) § 37.056(c)(3) and the Application’s Effects on Other Utilities.

As was noted on several occasions in the hearing on the merits, SWEPCO has the burden of proof in this Docket.¹¹ SWEPCO has failed this burden because it has failed to provide *any evidence* to support a finding that the Application comports with PURA¹² § 37.056(c)(3). PURA § 37.056(c)(3) states:

The commission shall grant each certificate on a nondiscriminatory basis after considering... the effect of granting the certificate on the recipient of the certificate and *any electric utility serving the proximate area.* (emphasis added)

SWEPCO incorrectly seeks to apply PURA § 37.056 without consideration of PURA § 37.056(c)(3).¹³ SWEPCO contends that it need not provide evidence in support of its compliance with PURA § 37.056(c)(3), arguing that “[b]ecause the Selected Wind Facilities are located in Oklahoma, the site-specific factors identified above are not relevant to the Commission’s decision regarding the Company’s request. In a previous [Certificate of Convenience and Necessity] CCN proceeding, the Commission found that a generation facility located outside of Texas would have no effect on site-specific factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the impact on other utilities serving Texas.”¹⁴ Consistent with this errant interpretation of PURA § 37.056, SWEPCO witness Mr. Brice freely acknowledges that SWEPCO has offered no evidence in regards to the factors for consideration

¹¹ See, e.g., Tr. at 849: 12-14 (ALJ Neinast) (Feb. 26, 2020)

¹² Public Utility Regulatory Act, Tex. Util. Code §§ 11.013-66.017 (PURA).

¹³ See Direct Testimony of Thomas P. Brice, SWEPCO Ex. 2 at 24; Application for Certificate of Convenience and Necessity Authorization and Related Relief [hereinafter “Application”] at 8; Application at 9.

¹⁴ SWEPCO Ex. 2 at 24-25.

codified in PURA § 37.056(c)(3).¹⁵ SWEPCO relied upon a single CCN docket¹⁶ for omission of any consideration of other utilities but ignores numerous more recent Commission orders and other non-ERCOT generation CCNs that include consideration of effects on other Texas utilities when the project is outside the state of Texas.

As it relies solely on the Turk CCN, SWEPCO ignores a significant number other CCN dockets related to out-of-state generation where the applicant provided testimonial evidence addressing the impacts to other utilities, including previous SWEPCO dockets where this occurred.¹⁷ For example, in Docket No. 32918, SWEPCO's witness Mr. Hostetler provided testimony describing how other utilities will be benefitted by transmission upgrades.¹⁸ The Commission affirmatively found, "The effect will also be positive from a transmission perspective. SWEPCO's transmission system would benefit from the addition of the generation capacity near the Tontitown substation."¹⁹ The Commission went on to conclude, "The impact upon *other utilities*' transmission systems will also be beneficial. Additional power provided by the Tontitown Project and its black start capability will increase the reliability of the transmission system."²⁰ Similarly, in Docket No. 33048, which SWEPCO also cites, involving a power plant in Louisiana, the Commission made the affirmative finding that the "impact upon other utilities' transmission systems will also be beneficial."²¹ SWEPCO's request that the Commission abruptly

¹⁵ Tr. at 100:5-22 (Brice Direct) (Feb. 24, 2020).

¹⁶ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for a Coal-Fired Power Plant in Arkansas*, Docket No. 33891, Order (Aug. 12, 2008).

¹⁷ Application at 8. Docket Nos. 32918 and 33048 are expressly cited in the Application. *Id.*

¹⁸ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for Power Plant in Arkansas*, Docket No. 32918, Direct Testimony of Timothy A. Hostetler (July 10, 2006) at 7 (describing how the proposed plant addition would provide improved black start capability, which would improve system restoration times for SWEPCO and neighboring utilities).

¹⁹ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for Power Plant in Arkansas*, Docket No. 32918, Final Order (Jun. 19, 2007) at Finding of Fact 57.

²⁰ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for Power Plant in Arkansas*, Docket No. 32918, Final Order (Jun. 19, 2007) at Finding of Fact 59.

²¹ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for a Combined Cycle Plant in Louisiana*, Docket No. 33048, Final Order (Mar. 8, 2007) at Finding of Fact 56. See also, *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for a Combined Cycle Plant in Louisiana*, Docket No. 33048, Direct Testimony of Timothy A. Hostetler (Aug. 8, 2006) at 7 (describing how the project will improve voltage support in the region for both SWEPCO and other utilities).

change from its previous application of the statutory standard for review is not only a call for bad policy and contrary to cases that SWEPCO itself cites, it is a request that the Commission improperly make a 180 degree shift in policy.²² Moreover, SWEPCO's failure to consider PURA § 37.056(c)(3) conflicts with the CCN dockets for generation associated with other non-ERCOT investor-owned utilities in Texas, including dockets more recent than the Turk CCN referenced by SWEPCO and therefore superseding.²³

²² Cf. *Oncor Elec. Delivery Co. v. Public Util. Comm'n*, 406 S.W. 3d 253, 269 (Tex. App.-Austin 2013, no pet.) ("parties may be deprived of procedural due process when an agency adopts new policy in the course of a contested-case hearing without giving the parties pre-hearing notice").

²³ Consideration of effects on other utilities has not always been limited to transmission issues, nor has it been limited to SWEPCO; it relates to other non-ERCOT utilities as well. Below is a summary of recent non-ERCOT generation-related CCNs in which the Commission has made the affirmative finding of fact that the proposed generation would not have adverse effects on other utilities.

El Paso Electric Company

In Docket No. 34494, where El Paso Electric Company received approval for a 288 MW power plant, the Commission made a finding of fact that "There will be no adverse effects on any other electric utility serving in Texas." *Application of El Paso of Texas Electric Company for a Certificate of Convenience and Necessity*, Docket No. 34494, Order (Jan. 31, 2008) at Finding of Fact 62. See also, *Application of El Paso of Texas Electric Company for a Certificate of Convenience and Necessity for a Peaking Generating Unit at the Rio Grande Site in New Mexico*, Docket No. 38717, Order (Apr. 8, 2011) at Finding of Fact 72 ("There will be no adverse effects on any other electric utility"); *Application of El Paso of Texas Electric Company for a Certificate of Convenience and Necessity for Generating Units Montana 1 and 2 at the Montana Site in Texas*, Docket No. 40301, Order (Dec. 13, 2012) at Finding of Fact 72 ("There will be no adverse effects on any other electric utility"); *Application of El Paso of Texas Electric Company for a Certificate of Convenience and Necessity for Two Additional Generating Units at the Montana Power Station in El Paso County*, Docket No. 41763, Order (July 11, 2014) at Finding of Fact 64 ("There will be no adverse effects on any other electric utility").

Southwestern Public Service Company

See *Application of Southwestern Public Service Company for Approval to Amend a Certificate of Convenience and Necessity for a Combustion Turbine in Lubbock County*, Docket No. 39541, Order (Oct. 28, 2011) at Finding of Fact 39 (No noticed utility intervened or expressed opposition to the project); *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy LLC, and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Order (May 25, 2018) at Finding of Fact 97 ("The proposed CCN amendment will not cause interference with or adversely affect other electric utilities serving the proximate area").

Entergy Texas Inc.

See *Application of Entergy Texas, Inc. to Amend Its Certificate of Convenience and Necessity and for Public Interest Determination for Purchase of Unit 1, Union Power Station in Union County, Arkansas*, Docket No. 43958, Pre-filed Direct Testimony of Sallie T. Rainier, Exh. STR-3 at 2 (testifying that the transaction would not have effect on other utilities because the generation facility had already been operating for about a decade).

SWEPCO cannot apply only the provisions of PURA § 37.056 that it wishes and unilaterally decide that the Commission and intervenors should not consider the whole section.²⁴ Factors set forth in statute cannot be ignored or waived, yet SWEPCO asks the Commission to do exactly that. An agency's decision is arbitrary or results from an abuse of discretion if the agency fails to consider a factor the Legislature directs it to consider.²⁵ SWEPCO has asked the Commission to ignore this requirement in PURA § 37.056(c)(3) and to instead apply only select portions of the law. SWEPCO's Application rightly acknowledges, "The Commission has jurisdiction over the Company's Application pursuant to Sections 37.053, 37.056, and 37.058 of the PURA,"²⁶ but its call to wholly ignore material portions of the statute does not comport with Texas law.²⁷ SWEPCO has failed to present even *prima facie* evidence that it meets PURA § 37.056(c)(3), rendering its proposal fatally flawed.

The Commission previously has considered the statewide impacts of CCNs beyond the narrow focus favored by SWEPCO. In interpreting PURA § 37.056, the 3rd Court of Appeals stated:

The Commission's evaluation of public need from the standpoint of a statewide wholesale delivery of electricity is responsive to this legislative policy; and, it is well within the Commission's authority to decide what the statutory standard of 'need' means in any specific situation. ... In this case, *the Commission reasonably interpreted and applied the public-need standard by including a consideration of customers and market participants throughout the state as opposed to only one isolated part of the state.*²⁸

For the majority of Texans whose electricity is delivered through the SPP, *i.e.*, those served by Golden Spread, Southwestern Public Service Company ("SPS"), or East Texas Electric

²⁴ Statutory interpretation begins with the statute's words. Tex. Gov't Code § 312.003; *see Texas Dept. of Transp. v. City of Sunset Valley*, 146 S.W. 3d 637, 642 (Tex. 2004). Courts further consider statutes as a whole rather than their isolated provisions. *Id.*

²⁵ *City of El Paso v. Public Utility Comm'n of Texas*, 883 S.W. 2d 179, 184 (Tex. 1994). *See also, AEP Tex. Cent. Co. v. Public Utility Comm'n of Texas*, 286 S.W. 3d 450, 471 (Tex. App.-Corpus Christi 2008) (same requirement to apply all factors codified in statute).

²⁶ Application at 3 (emphasis added).

²⁷ *See Spradlin v. Jim Walter Homes, Inc.*, 34 S.W. 3d 578, 580 (Tex. 2000); *see also* Tex. Gov't Code § 311.021(2).

²⁸ *Hammack v. Public Util. Comm'n*, 131 S.W. 3d 713, 723-24 (Tex. App. Austin 2004, pet. denied) (emphasis added).

Cooperative (“ETEC”), the Selected Wind Facilities not only are not needed, but do not promote the resource planning of their electricity provider at all, despite costs potentially being imposed on them by SWEPCO. Those SPP transmission ratepayers in Texas who are not served by SWEPCO should be considered in this Docket as well.

Similarly, the Commission is required to exercise its expertise to further the *overall* public interest. Applying a precursor to present-day PURA § 37.056(c), the 3rd Court of Appeals explained, “In making these sometimes-delicate accommodations, the agency is required to exercise its ‘expertise’ to further the *overall* public interest.”²⁹ Even in this 1980s iteration of the statute, consideration of the effects on other utilities appeared in the provision. Consideration of the broader Texas public interest has been a clear part of the CCN review process for decades.

Golden Spread asks the Commission to, as it did in *Hammack* and consistent with the call for an overall public interest assessment in *Texland*, consider the impacts of the Application on SPP transmission ratepayers in Texas as opposed to simply looking at SWEPCO’s customers. Doing so also would be consistent with the Commission’s review of recent non-ERCOT generation CCNs and therefore current Commission policy.

B. PURA §14.101(b)(4)’s Public Interest Finding Must Apply to This Proceeding. The Public Interest Includes *All* Texas Electricity Consumers in SPP, Not Just the Minority Who Are SWEPCO Retail Ratepayers.

SWEPCO’s argument that PURA § 14.101 and its requirement that the acquisition be in the public interest does not apply is fundamentally flawed and erroneous. SWEPCO asserts that the public interest review under PURA § 14.101 does not apply in instances where the relevant facility is sited outside of Texas.³⁰ However, the Commission has a practice of reviewing CCN

²⁹ See *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W. 2d 261, 266 (Tex. App.-Austin 1985, writ ref’d n.r.e.) (emphasis original).

³⁰ Application at 8.

dockets, like this one, by applying PURA § 14.101, even when the facility is cited outside of Texas.³¹

Even when arguing in the alternative that PURA § 14.101 is met, SWEPCO misapplies the public interest standard.³² As part of that argument, SWEPCO asserts in its testimony that the public interest standard under PURA § 14.101(b)(4), is met because the Selected Wind Projects “will produce significant and immediate cost savings for SWEPCO customers by locking in a long-term, low cost power supply.”³³ In focusing only on the benefits to SWEPCO’s customers, SWEPCO has failed to consider the impacts to *all Texans*; SWEPCO only provides evidence regarding issues for electricity users in SWEPCO’s corner of the State. It certainly has not offered any evidence to support an inference that any claimed benefits to SWEPCO customers outweighs the risk of potentially adverse effects on other SPP transmission ratepayers in Texas.

The Commission’s charge in PURA is to protect the public interest.³⁴ The public interest includes all SPP transmission ratepayers in Texas and their customers, not just SWEPCO. This broader reach of public interest connects the general public interest review in PURA § 14.101 with the more specific analysis of the effects on proximate utilities in PURA § 37.056(c)(3).³⁵ As evidenced by the numerous dockets related to other non-ERCOT utilities’ generation CCN proceedings cited above, SWEPCO’s request that the Commission bypass the public interest

³¹ See, e.g., *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy LLC, and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Southwestern Public Service Company’s Application for Approval of a Certificate of Convenience and Necessity and Related Relief (Mar. 21, 2017) at 4 (“SPS requests that the Commission find it is in the public interest for SPS to acquire and develop the SPS Wind Facilities [in Texas and New Mexico] (Public Utility Regulatory Act (“PURA”) § 14.101)”; *Application of Entergy Texas, Inc. for Approval of an Amendment to Certificate of Convenience and Necessity and for Public Interest Determination for Purchase of Unit 1, Union Power Station*, Docket No. 43958 (requesting a Commission determination that the proposed purchase of Union Power Station Power Block 1 [sited in Arkansas] is consistent with the public interest, under PURA § 14.101). See also, PURA § 37.056(a) (“The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public”) (emphasis added).

³² Tr. at 102: 8-20 (Brice Direct) (Feb. 24, 2020).

³³ SWEPCO Ex. 2 at 27.

³⁴ PURA § 11.002(a).

³⁵ See Tex. Gov’t Code § 311.026(a) (“If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.”)

review and the assessment of effects on other utilities deviates from recent Commission precedent both in the application of PURA § 14.101 and in application of PURA § 37.056(c)(3). Further, SWEPCO's request that the Commission abruptly change its previous application of this standard of review is not only a call for bad policy, it is a request that the Commission improperly make a 180-degree policy reversal without providing parties notice that it is doing so.³⁶

C. Because SWEPCO Has Not Addressed the Effects of the Selected Wind Facilities on Increased Transmission Costs to SPP Transmission Ratepayers in Texas, SWEPCO Has Failed to Adequately Show that the Proposed Transaction is in the Public Interest.

AEP has not provided an adequate analysis in this Docket of transmission and congestion options available to it under the SPP Open Access Transmission Tariff ("OATT"). SWEPCO filed the Application and its direct case without even considering the costs and benefits of firm transmission for the Selected Wind Facilities. Similarly, AEP opted to only seek Energy Resource Interconnection Service ("ERIS") from SPP, when it could have requested analysis of NRIS which would have provided AEP with information about both the option of using ERIS and NRIS, allowing for a more complete analysis.³⁷ AEP has failed to perform basic due diligence in determining the most cost-effective transmission, congestion management, and interconnection options available under the SPP OATT. By its own acknowledgement, SWEPCO has only considered costs to those in its service territory. This failure to gather relevant information limits the usefulness of SWEPCO's and other parties' analyses and testimony that relied upon incomplete information.

The lack of cohesive conclusions regarding transmission manifests itself in the testimony SWEPCO has offered in this proceeding. For example, SWEPCO witness Mr. Ali describes forecasted congestion costs as highly uncertain,³⁸ where SWEPCO witness Mr. Sheilendranath forecasts that congestion costs will be constant for 20 years.³⁹ Similarly, Mr. Ali concedes that "it

³⁶ Cf. *Oncor Elec. Delivery Co.*, 406 S.W. 3d at 269 ("parties may be deprived of procedural due process when an agency adopts new policy in the course of a contested-case hearing without giving the parties pre-hearing notice").

³⁷ Rebuttal Testimony of C. Richard Ross, SWEPCO Ex. 21 at 5.

³⁸ Direct Testimony of Kamran Ali, SWEPCO Ex. 7 at 10.

³⁹ Direct Testimony of Akarsh Sheilendranath, SWEPCO Ex. 6 at 10.

has historically been observed that ... wind resources are located further from the load center, so they tend to add more congestion to the grid.”⁴⁰ And consistent with Mr. Ali, Mr. Ross states that “I think the biggest part of SPP’s challenges with congestion have been related to wind resources, predominantly those farther out in the western part of Oklahoma and the Panhandle.”⁴¹ But SWEPCO witness Mr. Pfeifenberger contends that AEP will be able to obtain congestion hedges in the future for the Selected Wind Facilities in this same environment.⁴² All the while AEP does not know whether it will acquire firm transmission, which would carry with it some number of auction revenue rights (“ARRs”) that AEP could use to hedge congestion costs.⁴³

The AEP process related to firm transmission further offers a useful example of SWEPCO’s lack of proper consideration of transmission and congestion options. According to SWEPCO witness Mr. Ali, AEP could have requested firm transmission many months before it chose to do so, even before filing the Application.⁴⁴ SWEPCO witness Mr. Ross described the process used by AEP when it requested firm transmission in late November, 2019--roughly five months after filing the Application.⁴⁵ When Mr. Ross submitted the firm transmission request to SPP, the request included the representation that AEP would not be willing to pay any costs for the firm transmission.⁴⁶ AEP will not review SPP’s response to the firm transmission request until summer 2020, about a year after the SWEPCO Application was filed.

AEP’s delays similarly have limited opportunities for review by intervenors. From late November/early December 2019 to January 3, 2020, SWEPCO did not supplement a discovery request in this Docket asking whether AEP had requested firm transmission, even though it had submitted the firm transmission request and confirmed SPP’s receipt of it.⁴⁷ This left intervenors

⁴⁰ Tr. at 375: 18-21 (Ali Direct) (Feb. 25, 2020).

⁴¹ Tr. at 820: 12-15 (Ross Rebuttal) (Feb. 26, 2020).

⁴² Direct Testimony of Johannes P. Pfeifenberger, SWEPCO Ex. 9 at 16.

⁴³ Tr. at 799: 19-25 (Pfeifenberger Rebuttal) (Feb. 26, 2020).

⁴⁴ Tr. at 768: 21-25 (Ali Rebuttal) (Feb. 26, 2020)..

⁴⁵ Tr. at 821:23-822: 6 (Ross Rebuttal) (Feb. 26, 2020).

⁴⁶ Tr. at 832: 1-3 (Ross Rebuttal) (Feb. 26, 2020).

⁴⁷ Tr. at 829: 4-23 (Ross Rebuttal) (Feb. 26, 2020). *See also* 16 Tex. Admin. Code § 22.144(i) (TAC) (“Duty to supplement. A responding party is under a continuing duty to supplement its discovery responses if that party acquires information upon the basis of which the party knows or should know that the response was incorrect or

in the Docket with 11 days in which to consider the significance of the request. It was only six days before hearing (weeks after the deadline for intervenor testimony), in response to a discovery request necessitated by the incomplete update regarding the November 2019 firm transmission request, that SWEPCO notified parties of the particular open season in which it submitted its firm transmission request.⁴⁸ Information from the firm transmission request could have aided in assessing congestion costs for the Selected Wind Facilities, AEP's ability to hedge its congestion costs with ARRs, and identified transmission upgrades that would not be necessary but for the addition of the Selected Wind Facilities. Despite the fact that a portion of the underlying benefits used by SWEPCO in this Docket are directly related to the assumption of firm transmission, AEP/SWEPCO has not stated that it is willing to pay for such firm transmission.

By SWEPCO's own description, the Application strictly focuses on a cost-benefit analysis of the Selected Wind Facilities from the perspective of SWEPCO's customers. Golden Spread agrees that this should be a focal point of consideration, but it must not be the only factor considered by the Commission when determining whether this Application is in the public interest. By failing to account for the costs associated with transmission built via the regional planning process in this Docket, SWEPCO has failed to prove this Application is in the broader Texas public interest. In analyzing the public interest in this Application, the Commission should consider whether a concerted effort to shift costs on to other SPP transmission ratepayers in Texas, the lack of consideration for NRIS and delayed and non-committal consideration of firm transmission creates the risk of significant cross-subsidies at the expense of Golden Spread and other Texas transmission ratepayers. This is a risk that Golden Spread largely cannot hedge and, absent a hold harmless condition from the Commission in this Docket, a risk that Golden Spread cannot escape. Delays in acquiring material data related to these issues should not be rewarded, especially when those delays could have been minimized or avoided outright. It is Golden Spread's belief that these factors must render a finding that this Application, without conditions, is not in the public interest.

incomplete when made, or though correct or complete when made, is materially incorrect or incomplete. The responding party shall amend its prior response within five working days of acquiring the information.")

⁴⁸ See GSEC Ex. 2.

If the Commission decides based on its analysis of the record that the project should move forward, Golden Spread asks that the Commission condition the project on AEP's acquisition of firm transmission as soon as possible with direct assignment of upgrade costs to help mitigate the shift of costs onto other SPP transmission ratepayers in Texas. A further condition is necessary to address the possibility that AEP will in the future propose a gen-tie. Golden Spread asks that the Commission require AEP to seek Commission approval of any such proposal, and include in its application supporting evidence that analyzes all transmission alternatives, including but not limited to the SPP ITP10 process, NRIS, and firm transmission, as well as evidence addressing potential effects on other Texas transmission ratepayers in SPP.

III. ANALYSIS OF ECONOMICS OF SELECTED WIND FACILITIES (P.O. ISSUE NOS. 2, 3, 5, 6, 19, 23)

Golden Spread does not critique analyses of the economics of the Selected Wind Facilities, but consistent with the description in Section II of this Initial Brief regarding SWEPCO's failure to meet its burden, notes the utter absence of economic analysis regarding the impact of the Selected Wind Facilities on non-SWEPCO SPP transmission ratepayers in Texas.

IV. PROPOSED CONDITIONS (P.O. ISSUE NOS. 10, 19, 20, 24)

Golden Spread does not address the issues identified in Section (IV)(A) or (B) in this Initial Brief.

C. IF THE COMMISSION APPROVES THE APPLICATION, SUCH APPROVAL SHOULD BE CONDITIONED ON SWEPCO MITIGATING ADVERSE EFFECTS OF THE SELECTED WIND FACILITIES ON OTHER SPP TRANSMISSION RATEPAYERS IN TEXAS.

1. Given that the Record Offers Nothing to Support a Finding that the Application Would Not Adversely Affect Other Utilities as Anticipated by PURA § 37.056(c)(3), the Only Way for the Commission to Ensure that Other Utilities Will Not Be Affected, is to Condition Approval on Holding Other SPP Transmission Ratepayers in Texas Harmless.

Because the record does not include any evidence that the Commission can utilize for a finding that the Application does not negatively affect other utilities, the only way that the Commission can make such a finding would be to condition approval of the Application on SWEPCO holding other SPP transmission ratepayers in Texas harmless to the effects of the Selected Wind Facilities on those utilities. The condition would create sufficient protection for Texans who are not SWEPCO customers and would allow the Commission to be able to consider the purported benefits for SWEPCO customers without worry about any adverse effect on other electricity providers. Absent the hold harmless condition, there could be no way of addressing the factor for approval set forth in PURA § 37.056(c)(3), *i.e.*, that the effects on other utilities be taken into account.

A Commission decision approving the Application that lacks consideration of statutorily set factors for consideration, like PURA § 37.056(c)(3), risks being arbitrary and capricious. As explained in *Tex. Ind. Elec. Consumers v. Public Util. Comm'n*, “An agency’s decision is arbitrary and capricious or results from an abuse of discretion if the agency: (1) failed to consider a factor that the legislature directs it to consider; (2) considers an irrelevant factor; or (3) weighs only relevant factors that the legislature directs it to consider but still reaches a completely unreasonable result.”⁴⁹ Additionally, the Third Court of Appeals in *CPS Energy v. Public Util. Comm’n* noted an “agency’s decision is also arbitrary if it is made without regard for the facts, relies on fact findings that are not supported by any evidence, or lacks a rational connection between the facts and the decision.”⁵⁰ SWEPCO has offered no evidence to support a finding that the Application

⁴⁹ *Tex. Ind. Elec. Consumers v. Public Util. Comm’n*, 2018 WL 3353225 (Tex. App. Austin 2018) (citing *City of El Paso v. Public Util. Comm’n*, 883 S.W. 2d 179, 184 (Tex. 1994)).

⁵⁰ *CPS Energy v. Public Util. Comm’n*, 537 S.W. 3d 157, 168-69 (Tex. App. Austin 2017) (citing *City of Waco v. Texas Comm’n on Env’tl. Quality*, 346 S.W. 3d 781, 819-20 (Tex. App. Austin 2011) (analyzing cases), *rev’d*

meets the requirements of PURA § 37.056(c)(3), and Golden Spread asserts that as proposed, the Application fails to properly account for effects on other utilities; and therefore, cannot satisfy statutory requirements.

Adding a hold harmless condition would address the risk that a decision approving the Application would be arbitrary and capricious. First, by its very nature, the addition of the condition would indicate that the Commission considered the factors of PURA § 37.056(c)(3) related to the effects on other utilities, addressing the requirements of *Tex. Ind. Elec. Consumers v. Public Util. Comm'n*. Secondly, a hold harmless condition appears to be the only way that the Application can be approved without relying on fact findings related to the effects on other utilities that are not supported by evidence, which is prohibited under *CPS Energy*. A hold harmless condition would allow the Commission to make an affirmative finding of fact that the Application, as conditioned, would not have adverse effects on other utilities because the condition itself renders the finding true. Without this solution, the record does not support approval of the Application and risks being arbitrary and capricious.

2. SWEPCO Failed to Properly Consider Alternative Transmission Solutions and the Associated Cost Allocation Differences that Result in Golden Spread and Other SPP Transmission Ratepayers in Texas Subsidizing the Selected Wind Facilities Without Receiving Benefits.

The Application plainly and accurately states that all of the generation from the Selected Wind Facilities will be conveyed to AEP.⁵¹ The Application, however, admittedly ignores transmission solutions,⁵² specifically firm transmission, and includes virtually no discussion of how transmission costs associated with the Selected Wind Facilities will be assigned. SWEPCO witness Mr. Pfeifenberger quite candidly acknowledges, “benefits [to SWEPCO customers from the Selected Wind Facilities] include lower power purchase costs (net of changes in off system sales), the avoided costs of deferring conventional generation capacity needs, and the Company’s

on other grounds, 413 S.W. 3d 409 (Tex. 2013)). “A substantial-evidence review requires two inquiries: (1) whether the agency made findings of underlying fact in its order that logically support the findings of ultimate fact and conclusions of law that are the basis for the agency’s decision or action; and (2) if so, whether the agency’s ‘findings, inferences, and conclusions’ are reasonably supported by the evidence.” *Id.* at 179.

⁵¹ Application at 1.

⁵² Tr. at 772: 23-773: 6 (Ali Rebuttal) (Feb. 26, 2020).

ability to take advantage of the federal production tax credit. Costs include the revenue requirement of the Selected Wind Facilities, and the congestion and loss costs associated with delivering the output from the facilities to the AEP load zone.”⁵³ The benefits of the purportedly lower power costs, deferred conventional generation, and production tax credits all inure to SWEPCO and its customers. As Mr. Pfeifenberger explained, additions of wind generation can increase congestion costs significantly which can prompt new transmission upgrades that would be charged to Golden Spread and Texas transmission ratepayers.⁵⁴ And as SWEPCO witness Mr. Sheilendranath testified, if the transmission upgrades are funded through the SPP ITP10 process, AEP only pays a sliver of the overall cost, with other members of SPP, including Golden Spread, paying the rest.⁵⁵ SWEPCO witness Mr. Ross reasonably describes Golden Spread’s view of the hold harmless request:

Denying SWEPCO, through some hold harmless provision, any compensation provided under the SPP OATT would effectively shift the cost burden from Golden Spread and other SPP members to SWEPCO’s customers.⁵⁶

This statement demonstrates that SWEPCO is well aware of the cost shift and resulting subsidization anticipated by its Application. But Mr. Ross clearly has the direction of the subsidy wrong. At issue here is the potential transmission cost caused by the SWEPCO project not any costs caused by “Golden Spread and other SPP members.” It is SWEPCO that proposes the cost burden from the Selected Wind Projects be subsidized by others. The amount of upgrade costs SWEPCO intends to shift has been ignored by SWEPCO in this Docket. Rather than quantify these costs, SWEPCO assumed that someone else will pay them, and then ignored the fact that those paying will include other Texas transmission ratepayers. Further, as described above, requests for information regarding firm transmission have been delayed and poorly communicated to parties in this Docket.

⁵³ SWEPCO Ex. 9 at 46.

⁵⁴ SWEPCO Ex. 9 at 9-10; Tr. at 517: 19-518: 8 (Pfeifenberger Direct) (Feb. 25, 2020).

⁵⁵ Tr. at 319: 2-7 (Sheilendranath Direct) (Feb. 25, 2020).

⁵⁶ SWEPCO Ex. 21 at 10.

SWEPCO had the opportunity to consider additional transmission solutions. SWEPCO stated that it considered low and high “bookends” for transmission solutions,⁵⁷ with the upper end of the cost being the gen-tie.⁵⁸ The other transmission solution SWEPCO considered was the previously mentioned SPP ITP10 process. Without consideration of NRIS and firm transmission, SWEPCO cannot say that it has considered the “bookends” that would apply if other transmission ratepayers in Texas were included in AEP’s calculus. By ignoring evaluations of NRIS and firm transmission, there is no way to determine the bookends for other transmission ratepayers in Texas. In fact, because the cost allocation across the various transmission solutions differ, the bookends for each transmission ratepayer in Texas will differ. SWEPCO witness Mr. Ross initially stated that the cost allocation for SPP ITP10 process and firm transmission for the wind project are exactly the same because SWEPCO’s plan is to utilize both base plan and highway/byway funding.⁵⁹ When pressed, however, Mr. Ross stated that the cost of firm transmission can be directly assigned, as opposed to base plan, *i.e.*, SPP ITP10, funded,⁶⁰ and Mr. Ross also revealed that costs allocated for the Selected Wind Facilities other than Sundance, which is approximately 199 MW, would be direct assigned because the projects exceed the “Wind Rule” threshold.⁶¹ He then stated that SWEPCO has initially reported to SPP that it is unwilling to accept any direct assignment charge as part of its firm transmission request, and he also noted that a portion of the Selected Wind Facilities exceed the threshold of the “Wind Rule” for safe harbor. Even if SWEPCO can agree to accept upgrade costs at a later point in time, it has not been willing to make that commitment and has not offered any explanation or analyses as to what amount it might accept in the future. The SPP ITP10 process does not directly assign costs as does the firm transmission cost allocation, hence the cost allocations are not the same. The SWEPCO analysis of transmission in this Docket largely glosses over these considerations and the related ripple effects on other Texas transmission ratepayers.

⁵⁷ Tr. at 359: 3-10 (Sheilendranath Direct) (Feb. 25, 2020).

⁵⁸ Tr. at 487:12-15 (Pfeifenberger Direct) (Feb. 25, 2020).

⁵⁹ Tr. at 805: 7-20 (Ross Rebuttal)(Feb. 26, 2020).

⁶⁰ Tr. at 810: 6-15 (Ross Rebuttal) (Feb. 26, 2020).

⁶¹ Tr. at 808: 3-13 (Ross Rebuttal) (Feb. 26, 2020). *See also* GSEC Ex. 2.

The difference in cost allocation impacts on Texas transmission ratepayers is important. If SWEPCO fails to procure firm transmission in an expeditious manner, then the congestion that the firm transmission would have alleviated will instead be addressed by transmission built and financed through the SPP ITP10 process. SWEPCO witness Mr. Pfeifenberger admits that upgrades built to facilitate firm transmission can mitigate congestion,⁶² and that if congestion was mitigated in the firm transmission process, it would not otherwise need to be mitigated in the SPP ITP10.⁶³ This same logic applies in the reverse, if upgrades for the Selected Wind Facilities are built as a result of the regional transmission planning process at the SPP, there is a likelihood that this will reduce the upgrades that would otherwise be assigned through the firm transmission service process. The majority of the costs of transmission identified pursuant to a firm transmission request would be directly assigned to SWEPCO. In contrast, the costs of transmission built through the SPP ITP10 process would be socialized among SPP transmission ratepayers. Thus, reliance on the SPP ITP10 process in lieu of firm transmission creates a fundamentally unjust impact on Texas transmission ratepayers outside of SWEPCO. Ideally, SWEPCO should have considered firm transmission much sooner, but given that it has not, if the Application is approved, SWEPCO should now be required to immediately acquire firm transmission to mitigate unjust cost shifts to Golden Spread and other transmission ratepayers in Texas.

While SWEPCO is not requesting approval of the gen-tie in this Application, the option to build the gen-tie was a critical part of SWEPCO's analysis to justify the economics of its Selected Wind Facilities. The cost allocation of the gen-tie to Texas transmission ratepayers could be different in magnitude and method of assignment than either that of firm transmission or the SPP ITP10 process. Notably, if SWEPCO requests a gen-tie in the future, the economics of the Selected Wind Facilities will be a sunk cost such that the economic evaluation of a gen-tie would only consider the cost of the gen-tie as compared to the congestion. While SWEPCO presumably would pay initially for the gen-tie in its entirety, there is a potential that SWEPCO would later attempt to shift the cost of the gen-tie onto other SPP transmission ratepayers by making it an open access, networked line. Should SWEPCO decide to request approval of a gen-tie at a later date, Golden

⁶² Tr. at 503: 12-15 (Pfeifenberger Direct) (Feb. 25, 2020).

⁶³ Tr. at 504: 8-505: 5 (Pfeifenberger Direct) (Feb. 25, 2020).

Spread agrees with SWEPCO's Mr. Brice that SWEPCO should be required to seek Commission approval⁶⁴ and be required to analyze and consider all alternative transmission solutions in its application, including the impacts different cost allocations may have on other Texas transmission ratepayers. At a minimum, if SWEPCO seeks to build a gen-tie, it should be required to consider the different impacts of the SPP ITP10 process, NRIS, and firm transmission as alternative solutions.

If SWEPCO expects to obtain a seventy percent congestion hedge from firm transmission based upon Mr. Pfeifenberger's statements that the Selected Wind Facilities are similarly situated in location and congestion with SWEPCO's other wind facilities, *i.e.*, Canadian Hills and Minco,⁶⁵ this may in itself, obviate the need for a gen-tie. Further, the amount SWEPCO is willing to pay for the firm transmission should be equal to the expected value of the hedge. If the expected hedge from firm transmission is seventy percent of congestion and the expected hedge from the gen-tie is near one hundred percent of congestion, then assuming the gen-tie would be an economic decision, it would follow that SWEPCO should be willing to pay up to seventy percent of the cost of the gen-tie for firm transmission, which could be estimated by the comparison cost of the gen-tie, or seventy percent of the cost of the gen-tie. Similarly, NRIS may facilitate upgrades to reduce congestion, and if SPP models are designed to protect NRIS, as they currently are for firm transmission, there would be a natural ceiling on the congestion exposure.

SWEPCO claimed an assumed benefit of hedging twenty-five percent of the Selected Wind Projects with ARR's,⁶⁶ however, Mr. Pfeifenberger did not discuss the trade-offs within the Company's optimal transmission congestion right ("TCR") portfolio to accomplish this twenty-five percent hedge until rebuttal testimony.⁶⁷ The concept of this trade-off is important when considering how the TCR portfolio is optimized. In the first two rounds of the SPP ARR allocation process, ARR's may only be nominated based upon the path for which transmission service was

⁶⁴ SWEPCO Ex. 2 at 21.

⁶⁵ Tr. at 491:3-492: 25 (Pfeifenberger Direct) (Feb. 25, 2020).

⁶⁶ SWEPCO Ex. 9 at 36.

⁶⁷ Rebuttal Testimony of Johannes P. Pfeifenberger, SWEPCO Ex. 20 at 29.

procured.⁶⁸ This means that in the first two rounds, SWEPCO would not be able to nominate the path from the Selected Wind Facilities to its load using existing ARR's. In the third round of the SPP ARR allocation process, ARR's can be nominated along nearly any path on the SPP system, and the nomination does not have to be from SWEPCO generation to load.⁶⁹ In this third round AEP could use its current ARR's to hedge the Selected Wind Facilities. However, if AEP currently is optimizing its TCR portfolio, it already would be maximizing any replacements available from low congested (low value) paths to the higher congested (higher value) paths. This means at best, the cost to hedge twenty-five percent of the Selected Wind Facilities using existing ARR's is equal to the opportunity cost of a similar path, which would result in a zero net benefit for SWEPCO.⁷⁰ It is likely, though, that this trade off to hedge the Selected Wind Facilities would result in a sub optimized ARR portfolio, which would come at a net cost to SWEPCO.

In addition to the adverse effects on other Texas transmission ratepayers coming from AEP's failure to acquire firm transmission, the failure to acquire firm transmission may have adverse effects on SWEPCO's retail customers as well. SWEPCO admitted that firm transmission is necessary to obtain incremental ARR's for hedging and claimed the benefits presented in this case do not rely on firm transmission. If AEP obtained firm transmission then it would better be able to achieve the claimed twenty-five percent net hedging benefit without forgoing the hedging rights previously allocated to it as a result of firm transmission from its other generators.⁷¹ In fact, SWEPCO witness Mr. Pfeifenger indicated that obtaining firm transmission for the Selected Wind Facilities should allow a seventy percent congestion hedge.⁷² A second adverse impact relates to SWEPCO's anticipated capacity credit of fifteen percent from the Selected Wind Facilities. The fifteen percent threshold was based upon its historical wind farm calculations and SWEPCO witness Mr. Torpey claimed that the retirement of Dolet Hills would boost the capacity

⁶⁸ See Southwest Power Pool, Integrated Marketplace Protocols, available at (<https://spp.org/Documents/61445/Integrated%20Marketplace%20Protocols%2075.zip>) at § 5.3.2(1)-(2).

⁶⁹ *Id.* at § 5.3.2(3).

⁷⁰ *Cf.* Tr. at 491:3-492:25 (Pfeifenger Direct) (Feb. 25, 2020) (describing a plan where ARR's are moved from existing paths to accommodate the Selected Wind Facilities).

⁷¹ SWEPCO Ex. 20 at 29.

⁷² *Id.*

value of the Selected Wind Projects.⁷³ SWEPCO admits that SPP is changing the way it allocates capacity credits yet there is nothing in the record to show that AEP considered this when deriving the fifteen percent capacity credit.⁷⁴ SWEPCO witness Mr. Ross admits that this newer method allocates more capacity credit to resources with firm transmission.⁷⁵ SWEPCO also admits that increases in wind on the system lower the capacity credit wind will receive.⁷⁶ This is particularly true for wind without firm transmission. SWEPCO further admits it expects thirty gigawatts of wind on the system in coming years, yet all other SWEPCO analysis in this Docket utilized much lower amounts of wind.⁷⁷ SWEPCO has not considered the impacts of increasing wind penetration on the system nor the impact that the lack of firm transmission may have on the capacity credit it has claimed. SWEPCO should have evaluated firm transmission as a congestion solution as well as the cost allocation impacts of various transmission solutions on other Texas transmission ratepayers. Further SWEPCO should have considered the specific impact of firm transmission on the congestion hedging and generation capacity credit benefits.

3. The Commission Previously Has Approved Hold Harmless Provisions in the Context of SPP Transmission Cost Shifting.

The Commission has approved hold harmless requirements related to SPP transmission cost increases previously. In Docket No. 47576, the Commission included in its final order a settlement provision that required Lubbock Power & Light (“LP&L”) to pay for the incremental increase in SPP transmission costs on Golden Spread and SPS when LP&L opted to move most of its system to the Electric Reliability Council of Texas (“ERCOT”).⁷⁸ The settlement included a \$24 million hold harmless payment from LP&L to SPS and SPS’s wholesale customers; and, necessarily, the Commission found that this hold harmless provision furthered the public interest.⁷⁹

⁷³ Tr. at 786: 6-15 (Torpey Rebuttal) (Feb. 26, 2020).

⁷⁴ Tr. at 814: 6-815: 23 (Ross Rebuttal) (Feb. 26, 2020). *See also*, GSEC Ex. 12.

⁷⁵ Tr. at 817: 23-818: 9 (Ross Rebuttal) (Feb. 26, 2020).

⁷⁶ *Id.*

⁷⁷ Tr. at 379: 1-380: 5 (Ali Direct) (Feb. 25, 2020). *See also*, TIEC Ex. 55.

⁷⁸ *Application of the City of Lubbock Through Lubbock Power and Light for Authority to Connect a Portion of Its System with the Electric Reliability Council of Texas*, Docket No. 47576.

⁷⁹ Docket No. 47576, Order (Mar. 15, 2018) at Ordering Para. 7.

Further, LP&L was required to pay SPP in order to cover interconnection study costs.⁸⁰ SPP and SPS concluded that moving LP&L's load off of its system would lead to additional transmission costs for SPP members, and SPS successfully argued that it should be held harmless.⁸¹ Just as the Commission had authority to approve the settlement in Docket No. 47576 that protected SPS from increased transmission costs in SPP, so now does the Commission have authority to protect Golden Spread and other Texas members of SPP from incurring higher transmission costs to support SWEPCO's project. Moreover, beyond the question of the Commission's authority to issue a hold harmless order, the Commission's approval of the LP&L settlement indicates that the Commission finds hold harmless provisions can be consistent with the public interest.⁸²

V. REGULATORY APPROVALS IN OTHER JURISDICTIONS (P.O. ISSUE NOS. 7, 8, 9, 10)

This Docket represents the Commission's primary, if not exclusive, opportunity to protect Texas SPP members from the cross-subsidization SWEPCO seeks in its Application. The only other readily apparent opportunity for the Commission to consider the economic effects of the Selected Wind Facilities is in a future SWEPCO retail rate case. The SWEPCO retail tariff cannot address increases in transmission and congestion costs experienced by Golden Spread and other SPP transmission ratepayers in Texas as a result of the Selected Wind Facilities. That issue is outside the proper scope of a retail rate or recovery factor case. Consequently, this Docket offers the best opportunity for the Commission to address the issue.

While the question of whether SWEPCO can recover costs from its customers will be determined in a future docket, such a case offers no opportunity to consider the costs that might be shifted onto Golden Spread and other SPP transmission ratepayers in Texas. If the benefits of the Selected Wind Facilities go to SWEPCO's customers (as SWEPCO states), then assigning a disproportionate amount of the cost burden to Golden Spread, which had no role in the AEP

⁸⁰ *Id.* at Ordering Para. 16.

⁸¹ *Application of the City of Lubbock Through Lubbock Power and Light for Authority to Connect a Portion of Its System with the Electric Reliability Council of Texas*, Docket No. 47576, Affidavit of William A. Grant on Behalf of Southwestern Public Service Company (Feb. 7, 2018) at ¶¶ 5-6.

⁸² Docket No. 47576, Order, Commission Finding ¶ 63 (Mar. 15, 2018) ("The integration into ERCOT of the affected load and that part of LP&L's electric system that serves the affected load, under the terms of the agreement as modified by this Order, is reasonable and in the public interest.")

decision to acquire the Selected Wind Facilities or in their development, equates to an unjust subsidy of SWEPCO by Golden Spread and other SPP transmission ratepayers in Texas. The SWEPCO argument seems to ignore cost causation principles altogether.

SWEPCO tries to re-characterize this public interest and PURA § 37.056(c)(3) issue as a debate on the merits of the SPP OATT that belongs at FERC and not at the Commission. SWEPCO witness Mr. Ross characterizes any controversy over AEP's choice to use particular transmission service options that shift costs to other SPP members as a quibble with the SPP OATT itself, which belongs at FERC and not at the Commission.⁸³ Golden Spread does not challenge any component of the SPP OATT in this proceeding. The issue before the Commission is *how* AEP/SWEPCO has acted relative to the choices that the OATT offers it. Questions regarding the choices that AEP/SWEPCO has made regarding transmission and congestion related to the Selected Wind Facilities belong at this Commission and not FERC as the Commission regulates SWEPCO's activities related to operations in Texas.⁸⁴ SWEPCO's view that the Commission lacks jurisdiction is fundamentally incorrect and, if adopted, would risk divesting the Commission of material portions of its regulatory authority. As the regulator with oversight over SWEPCO's operations and rates, the Commission possesses the oversight authority and obligation to ensure that SWEPCO behaves in a way that is consistent with the Texas public interest, including when it shops for services available in the SPP OATT.⁸⁵

To the extent that the Commission agrees with Golden Spread that holding other SPP transmission ratepayers in Texas harmless is good policy, this Docket offers the best opportunity to effectuate that policy. Assuming *arguendo* that the Commission applied SWEPCO's theory that the hold harmless issue should be heard at FERC, that path would come with serious issues, and there would be no certainty that FERC would agree with the Commission. A FERC decision would not come quickly. In fact, with the currently anticipated Commercial Operation Dates of the Selected Wind Facilities, it is likely that the projects would be operating and interconnected to

⁸³ SWEPCO Ex. 21 at 2.

⁸⁴ See PURA § 14.001 (the Commission has broad authority "to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction.") The Commission also has jurisdiction under PURA § 37.051, which prescribe the conditions under which an entity may provide transmission service in Texas.

⁸⁵ See PURA § 11.002(a).

SPP transmission before any decision came from FERC. Moreover, a FERC decision would not apply PURA, meaning that it would ignore the public interest requirement in PURA § 14.101 and the consideration of other utilities in PURA § 37.056(c)(3). Acquiescing to FERC jurisdiction would not serve the Commission's best interests or that of Texas generally.

VI. CONCLUSION

Accordingly, Golden Spread prays that if the Commission grants SWEPCO's Application it condition that approval on SWEPCO holding other SPP transmission ratepayers in Texas harmless from any potential increases in transmission charges and congestion that might result from the Selected Wind Facilities. Golden Spread further prays that it be awarded all such other and further relief to which it may show itself entitled, both in law and equity.

Respectfully submitted,



Todd F. Kimbrough
Texas Bar No. 24050878
HOLLAND & KNIGHT, LLP
111 Congress Ave. Suite 540
Austin, Texas 78701
Telephone: (512) 954-6520
Fax: (512) 472-7473
Email: todd.kimbrough@hklaw.com

Maggie E. Berry
Texas Bar No. 24094541
Golden Spread Electric Cooperative, Inc.
P. O. Box 9898
Amarillo, Texas 79105-5898
Telephone: 806-349-4069
Fax: 806-374-2922
Email: mberry@gsec.coop

**ATTORNEYS FOR GOLDEN SPREAD
ELECTRIC COOPERATIVE INC.**

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been hand delivered or sent via facsimile transmission, electronic mail, or first class United States mail, postage prepaid, to all parties of record in this proceeding on this the 9th day of March, 2020.

A handwritten signature in black ink, appearing to read "Todd Kimbrough", written over a horizontal line.

Todd Kimbrough