Control Number: 49737

Item Number: 300

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SOAH DOCKET NO. 473-19-6862
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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	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF PUBLIC UTILITY COUNSEL'S POST-HEARING INITIAL BRIEF

Lori Cobos
Chief Executive & Public Counsel
State Bar No. 24042276

Chris Ekoh
Senior Managing Public Counsel
State Bar No. 06507015
Zachary Stephenson
Assistant Public Counsel
State Bar No. 24073402

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)

March 9, 2020

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Utility Counsel ("OPUC"), representing the interests of residential and small commercial consumers in Texas, respectfully submits this initial post-hearing brief and shows the following:

I. Introduction

Southwestern Electric Power Company ("SWEPCO" or the "Company") seeks to amend its certificate of convenience and necessity ("CCN") to allow for the acquisition of the Sundance, Traverse, and Maverick wind generation facilities (collectively, the "Project") currently under construction in Oklahoma. SWEPCO estimates that the total project cost is $1.996 billion, with SWEPCO's 54.5% interest in the Project representing $1.09 billion and an estimated Texas retail jurisdiction cost of approximately $415 million.[1] The total nameplate generation capacity of the Project is 1,485 megawatts ("MW"), with SWEPCO's 54.5% share being 810 MW.[2] The Company acknowledges that it does not have a current need for the additional generation capacity that will be provided by the Project,[3] but it is instead proposing the Project in order to diversify its

[1] Revised Direct Testimony of Thomas Brice, SWEPCO Ex. 2 at 7:3 - 5.

[2] *Id.* at 6:20.

[3] Tr. at 154:13-22 (Brice Cross) (Feb. 24, 2020).

energy mix and provide cost savings benefits to its ratepayers.[4] However, under the Company's current proposal, the Company's ratepayers will disproportionately bear the burden of the risk on whether the Project will actually result in cost savings benefits for ratepayers. Importantly, the majority of SWEPCO's adjustments and assumptions that were made in its analysis to justify the Project do not reflect current market realities and actually result in the Project's estimated cost savings benefits for ratepayers being greatly reduced or even eliminated entirely. Therefore, without SWEPCO's provision of additional important guarantees to ensure that the Project will provide net cost savings benefits for its ratepayers, the Public Utility Commission of Texas ("Commission") should find that the Project is not necessary for the service, accommodation, convenience, or safety of the public pursuant to Public Utility Regulatory Act ("PURA") § 37.056 and should thereby deny SWEPCO's application.[5]

II. Certificate of Convenience and Necessity Standard of Review (P.O. Issue No. 2)

In order for an electric utility to obtain Commission approval of a CCN application, the CCN application must comply with the requirements of PURA § 37.056.[6] Under PURA § 37.056(a), the Commission may approve an application and grant a CCN only if it finds that the CCN is necessary for the service, accommodation, convenience, or safety of the public. PURA § 37.056(c) sets forth the following factors that the Commission must consider:

(1) the adequacy of existing service;

(2) the need for additional service;

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[4] SWEPCO Ex. 2 (Brice Revised Direct) at 4:15-16.

[5] Public Utility Regulatory Act § 37.056(a) (PURA). *See* also, *Pub. Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

[6] PURA §§ 11.001-66.016.

(3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and

(4) other factors, such as:

(A) community values;

(B) recreational and park areas;

(C) historical and aesthetic values;

(D) environmental integrity;

(E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and

(F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.[7]

Of these required factors, SWEPCO's CCN application is based on its contention that the Project will result in a probable lowering of cost to consumers under PURA § 37.056(c)(4)(E).[8] SWEPCO admits that its CCN application is not premised on the adequacy of existing service or need for additional service under PURA § 37.056(c)(1) and (2).[9] Further, SWEPCO contends that, because the Project is located in Oklahoma, the site-specific factors in PURA§ 37.056(c)(3) and (c)(4)(A)-(D) identified above, are not relevant to the Commission's decision in this proceeding.[10] In addition, SWEPCO maintains that granting the CCN application would not affect

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[7] PURA § 37.056(c).

[8] PURA § 37.056(c)(4)(E).

[9] Tr. at 154:13-22 (Brice Cross) (Feb. 24, 2020). *See* PURA § 37.056(c)(1) and (2).

[10] SWEPCO Ex. 2 (Brice Revised Direct) at 29:9-18. *See* PURA § 37.056(c)(3) and (c)(4)(A), 4(B), 4(C), and 4(D).

the state's ability to meet the renewable energy goal set forth in PURA § 39.904(a) as required by PURA § 37.056(c)(4)(F).[11]

The Commission has broad authority in considering whether to grant a CCN application based on the factors provided in PURA § 37.056(c).[12] The Commission weighs these factors on a case-by-case basis.[13] Because some of the factors may compete with one another, the Commission "may in some cases be required to adjust or accommodate the competing policies and interests involved... None of the statutory factors are intended to be absolute in the sense that any one should prevail in all possible circumstances."[14] In weighing these competing factors, the Commission is required to exercise its expertise to further the overall public interest.[15]

In this proceeding, the possibility that the Project will lower cost to customers must be weighed against the lack of need for the Project to meet any reliability, capacity, or renewable energy goal requirements. Moreover, PURA § 37.056(c)(4)(E) specifically refers to a "probable" lowering of cost to consumers. As a result, a key factor in the Commission's evaluation of the Company's CCN application is the actual likelihood that cost savings benefits will actually materialize for ratepayers.[16] If the Project's costs exceed its customer cost savings benefits under reasonable assumptions, the Commission should conclude that the Project is not necessary for the service, accommodation, convenience, or safety of the public and deny the Company's CCN

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[11] *Id.* at 28:14-17. *See* PURA § 37.056(c)(4)(F).

[12] *Pub. Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

[13] *Id.* ("To implement in particular circumstances such broadly stated legislative objectives and standards, the Commission must necessarily decide what they mean in those circumstances.").

[14] *Id.* at 267.

[15] *Id.*

[16] *Hammack v. Public Utility Com'n of Texas*, 131 S.W.3d 713, 726 (Tex. App. – Austin 2004) ("Therefore, the Commission concluded that there was a sufficient showing of probable improvement of service or lowering of costs to consumers. We hold there is a reasonable basis in the record to support the Commission's finding that the proposed line will result in the probable improvement of service or lowering of cost to consumers.").

application. Alternatively, if the Commission seeks to approve the Company's CCN application, the Commission should require conditions or guarantees to ensure that the risk that customer cost savings benefits will not occur is more evenly shared among the Company and its ratepayers.[17]

III. Analysis of the Economics of the Project (P.O. Issue Nos. 2, 3, 5, 6, 19, 23)

In order to determine the economic benefits of the Project for the Company's ratepayers, the cost of the Project must be netted against the potential customer cost savings benefits to determine whether it is likely that the Project will result in a net cost savings benefit for the Company's ratepayers. This section discusses the estimated costs and benefits of the Project and the assumptions that influence each positive and negative economic factor set forth in the Commission's Preliminary Order.[18]

A. Request for Proposals and Selection Process

In response to regulatory requirements in Louisiana and Arkansas, SWEPCO periodically prepares an Integrated Resource Plan ("IRP") in order to guide its resource planning activities. According to SWEPCO, the IRP shows an increasing need for renewable energy generation resources, including wind and solar to provide energy cost savings and capacity benefits.[19] As a result, SWEPCO and the Public Service Company of Oklahoma ("PSO"), SWEPCO's sister company in Oklahoma, issued Requests for Proposals in January 2019 to acquire additional wind

[17] "In order to effectuate the general factors expressed in [PURA § 37.056(c)], the Commission may find it necessary to specify and employ more *particular* factors, either in an exercise of its rulemaking power *or* in an exercise of its power to determine, in contested cases, the facts upon which depend the applicability of any of the statutory factors ... The Commission's choice of one method or the other is ordinarily a matter within its discretion." *Pub. Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 267 (Tex. App.—Austin 1985, writ ref'd n.r.e.); *See* also PURA § 37.056(b) and (c).

[18] Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Acquisition of Wind Generation Facilities, Docket No. 49737, Preliminary Order (Sept. 12, 2019).

[19] Direct Testimony of Jay Godfrey, SWEPCO Ex. 3 at 5:9 – 11.

generation.[20] The combined RFPs sought up to 2,200 MW of additional wind generation capacity.[21]

SWEPCO and PSO sought projects "that: (1) are physically located in, and interconnected to the Southwest Power Pool ("SPP") in Arkansas, Louisiana, Texas or Oklahoma; (2) are not currently experiencing, or anticipated to experience, significant congestion or deliverability constraints; and (3) balance project performance and deliverability to the AEP (American Electric Power) West load zone in the Tulsa area."[22] Additionally, SWEPCO and PSO sought projects that would qualify for at least 80% of the value of the federal Production Tax Credit ("PTC"). In order to qualify for at least 80% of the PTC value, the Project would have to be placed in service by December 15, 2021.[23]

SWEPCO and PSO conducted a detailed scoring analysis considering price and the following non-price factors: "(1) impact on wildlife, the environment and identified cultural resources; (2) proximity to tribal or government lands; (3) exceptions to AEP Wind Generation Facility Standards; (4) exceptions to Requirements for the Connection Facilities; (5) exceptions to the [Purchase Sale Agreement ("PSA")] Term Sheet; (6) the scope and terms of proposed [operating and maintenance ("O&M")] services; (7) development status of the project; (8) operating history of other wind facilities developed by the bidder; and (9) the credentials of the bidder's independent wind resource consultant."[24] The end result of the Companies' scoring analysis was presented in Table 3 in Mr. Jay Godfrey's Direct Testimony.[25] The top three scoring

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[20] Revised Direct Testimony of Malcolm Smoak, SWEPCO Ex. 1 at 5:1 – 5.

[21] SWEPCO Ex. 3 (Godfrey Direct) at 20:3-4.

[22] *Id.* at 8:15-19.

[23] *Id.* at 8:19 – 21.

[24] *Id. at 18:3-11.*

[25] *Id.* at 19.

projects were revealed in Table 4 of Mr. Godfrey's Direct Testimony as the Traverse, Maverick, and Sundance wind generation facilities, which comprise the Project that is the subject of this proceeding.[26]

B. Project Description and Cost

The Project consists of three separate wind generation facilities, which include Traverse, Maverick, and Sundance, located in central Oklahoma.[27] The Project consists of a total of 1,485 MW of nameplate generation capacity. The nameplate generation capacity for each wind generation facility is 999 MW for Traverse, 287 MW for Maverick, and 199 MW for Sundance.[28]

The Project is being built by Invenergy Services, LLC ("Invenergy") and will be transferred to SWEPCO through a fixed-price PSA on a turnkey basis.[29] The manufacturer of the wind turbines for the Project is General Electric.[30] The PSA between Invenergy and SWEPCO is contingent on the appropriate state regulatory approvals.[31]

SWEPCO is seeking to purchase a 54.5% share of the Project; PSO will acquire the remaining 45.5%.[32] The total project cost, including construction cost, PSA price adjustments and owners' costs, is $1.996 billion. SWEPCO's 54.5% share is approximately $1.09 billion.[33] The estimated Texas retail jurisdiction cost is approximately $415 million.[34]

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[26] *Id.* at 20.

[27] SWEPCO Ex. 1 (Smoak Revised Direct) at 4.

[28] SWEPCO Ex. 2 (Brice Revised Direct) at 6.

[29] SWEPCO Ex. 3 (Godfrey Direct) at 25:4 – 31:9.

[30] *Id.* at 22:8-9.

[31] *Id.* at 27:17 – 28:2.

[32] SWEPCO Ex. 2 (Brice Revised Direct) at 3:9 – 13.

[33] SWEPCO Ex. 2 (Brice Revised Direct) at 16:17 - 18.

[34] Direct Testimony of Karl Nalepa, OPUC Ex. 1 at 6:10.

In its CCN application, SWEPCO proposes a capital cost cap guarantee for its share of the Project, and OPUC supports SWEPCO's capital cost cap guarantee. The proposed capital cost cap should place a hard cap on the Project's capital costs at $1.996 billion with no exception for force majeure.[35]

C. Economic Modeling

1. Modeling Methodology

In order to evaluate the potential customer cost savings benefits of the Project, SWEPCO developed a baseline scenario ("Base Case"), using a variety of generous assumptions. SWEPCO's Base Case assumes the imposition of a carbon tax, no future gen-tie lines, and higher natural gas prices.[36] SWEPCO then calculated the potential customer cost savings benefits of the Project using thirteen different scenarios based on a variety of assumptions regarding the wholesale power market, wind availability, congestion risk, a breakeven case, P50 power output scenarios, P95 power output scenarios, and gen-tie/no gen-tie line scenarios.[37]

OPUC has concerns with the majority of the assumptions that were used in SWEPCO's economic modeling methodology to derive the Base Case. In particular, OPUC is concerned with SWEPCO's inclusion of a hypothetical carbon tax, use of a P50 power output scenario to calculate customer cost savings benefits in the Base Case with guarantees only being made on the basis of a P95 power output scenario, lack of sufficient acknowledgment of potential significant future gen-tie line costs if necessary transmission upgrades do not come to fruition in the Southwest Power Pool ("SPP"), and use of outdated and inflated natural gas price forecasts that result in the

[35] *Id.* at 29:18 – 20.

[36] *Id.* at 12:13 – 13:7.

[37] Revised Direct Testimony of Johannes Pfeifenberger, SWEPCO Ex. 9 at 37:1 – 39:6.

overstatement of ratepayer cost savings benefits from the Project.[38] OPUC believes that the Company's economic modeling methodology is too generous in its assumptions, disproportionately favors the Company at the risk of its ratepayers, and discounts significant risks to ratepayers.

2. Projected Production Cost Savings

In order to calculate net customer cost savings benefits, SWEPCO calculated its Base Case over the assumed 30-year life of the Project from 2021 through 2051. The Company then compared these results to its Project Case, which makes the same faulty assumptions as the Base Case without the Project. SWEPCO then calculated the difference between these two cases to arrive at its net customer cost savings benefits.[39] In its Base Case, SWEPCO projects $567 million in Net Present Value Savings compared to the Project Case.[40]

a. Natural Gas Prices

Natural gas, being a lower cost fuel for power generation in the current market, often sets the marginal price for electricity in the wholesale market. Therefore, as natural gas prices increase, the economic benefits of other power generation resources, such as wind generation, correspondingly increase. As natural gas prices decrease, the economic benefits of other power generation resources, such as wind generation, shrink, or in some cases, could be negative, which results in the cost of using a less economic power generation resource.[41] Therefore, using an inflated natural gas price would serve to overstate the economic benefits of other power generation resources, like wind generation.

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[38] OPUC Ex. 1 (Nalepa Direct) at 14:8 - 10.

[39] SWEPCO Ex. 2 (Brice Revised Direct) at 9:1 - 5.

[40] Tr. at 95:5 (Brice Direct) (Feb. 24, 2020).

[41] OPUC Ex. 1 (Nalepa Direct) at 20:19 – 21:6.

In order to calculate natural gas prices, SWEPCO uses AEP's own internal long-term weather normalized commodity forecast, known as its Fundamentals Forecast. The Fundamentals Forecast uses various inputs, including a third-party model known as Aurora, AEP's own internal expertise, industry reports, third party consultants, government agencies, the investment community, and other inputs.[42]

By contrast, the New York Mercantile Exchange ("NYMEX") Forecast is a market-based forecast that reflects the expectations of market participants. OPUC witness Mr. Karl Nalepa explains the difference between the NYMEX market-based forecast and SWEPCO's Fundamentals Forecast in his Direct Testimony as follows:

> A market-based forecast reflects market participants' expectations for future prices. These prices are gathered and reported daily by various outlets. The [New York Mercantile Exchange ("NYMEX")] provides a daily report of natural gas prices that are not strictly a forecast, but rather a set of future prices at which market participants are willing to enter into natural gas transactions. These prices will move up and down over time as market participants' expectations change. On the other hand, a fundamentals forecast relies on a model that considers the relationship between fundamental components of the economy. For example, model inputs might include natural gas supply and demand forecasts, forecasts of competing energy resources, and inflation rates. The model will generate a set of gas prices based on the relationship between these inputs.[43]

NYMEX prices represent the natural gas prices at which market participants are actually willing to enter into a transaction.[44] The Commission agreed with this assessment in SWEPCO's prior CCN proceeding for the Wind Catcher Project and recognized NYMEX futures as representative of "actual transactions between buyers and sellers who put real money at risk in

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[42] Direct Testimony of Karl Bletzacker, SWEPCO Ex. 5 at 4:13 – 5:11.

[43] OPUC Ex. 1 (Nalepa Direct) at 21:14 – 22:4.

[44] OPUC Ex. 1 (Nalepa Direct) at 21:19-20.

their day-to-day operations.[45] In addressing SWEPCO's Fundamentals Forecast in the *Wind Catcher* case, the Commission's Final Order stated in Finding of Fact No. 92A that "the record of the proceeding fails to show that the assumptions made by SWEPCO regarding gas prices will result in probable lowering of cost to consumers."[46] Nonetheless, SWEPCO continues to use the same flawed natural gas price predictions in its Fundamentals Forecast in this proceeding even though the Commission has already concluded that these assumptions will not result in the probable lowering of cost to consumers. Despite the Commission's recognition of the real-world representation of NYMEX natural gas prices, SWEPCO completely ignores the NYMEX natural gas prices, or actual market pricing, in its forecasts, outside of immediate spot pricing prior to the model years.[47] The Company refuses to use NYMEX natural gas prices, even in the approximately two years where there are larger NYMEX contract volumes that more reliably predict shorter term future market prices for natural gas.[48] However, it is worth noting that the Company has no issue using NYMEX natural gas prices to validate their own current five-year contract purchases of natural gas futures.[49]

OPUC believes that the NYMEX natural gas price forecast is more tethered to actual market prices, because NYMEX projections are based on market transactions between willing buyers and sellers for the sale of natural gas, including as noted above, natural gas futures purchased by SWEPCO.[50] On the other hand, AEP's Fundamentals Forecast, relied upon by

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[45] *See Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461, Order at 18 (Aug. 13, 2018).

[46] *Id.*

[47] Tr. at 271:24 – 272:17 (Bletzacker Cross) (Feb. 24, 2020).

[48] Rebuttal Testimony of Karl Bletzacker, SWEPCO Ex. 17 at 2:11 – 3:36.

[49] Tr. at 210:6 – 220:22 (Bletzacker Cross) (Feb. 24, 2020).

[50] OPUC Ex. 1 (Nalepa Direct) at 21:14 – 22:14.

SWEPCO, only references market prices as a current starting position and then immediately becomes untethered from the reality of market prices.[51] The Commission should reject SWEPCO's use of the Fundamentals Forecast in this proceeding for the same reasons expressed in the *Wind Catcher* case.[52]

In addition to the already recognized issues with the Fundamentals Forecast natural gas price assumptions, AEP's Fundamentals Forecast uses a thirty-year weather normalization period.[53] Weather normalization is the averaging of weather patterns over a set period of time in order to predict future trends of normalcy. The Commission's established standard for weather normalization is ten years.[54] OPUC believes that using a longer rolling average period for weather normalization will only serve to discount more recent weather trends, such as recent warmer weather, which directly affects natural gas prices as warmer weather usually yields lower natural gas prices. The Commission's shorter ten-year weather normalization period would more accurately capture and take into account recent weather trends, allowing the natural gas forecasts to more quickly adjust and better reflect market reality.

In sum, the same Fundamentals Forecast used by SWEPCO in the *Wind Catcher* case, is at issue in this proceeding. Since 2016, AEP has made no changes to the methodology used to calculate its Fundamentals Forecast.[55] Even using SWEPCO's Low Gas Forecast, which

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[51] Tr. at 271:24 – 272:17 (Bletzacker Cross) (Feb. 24, 2020).

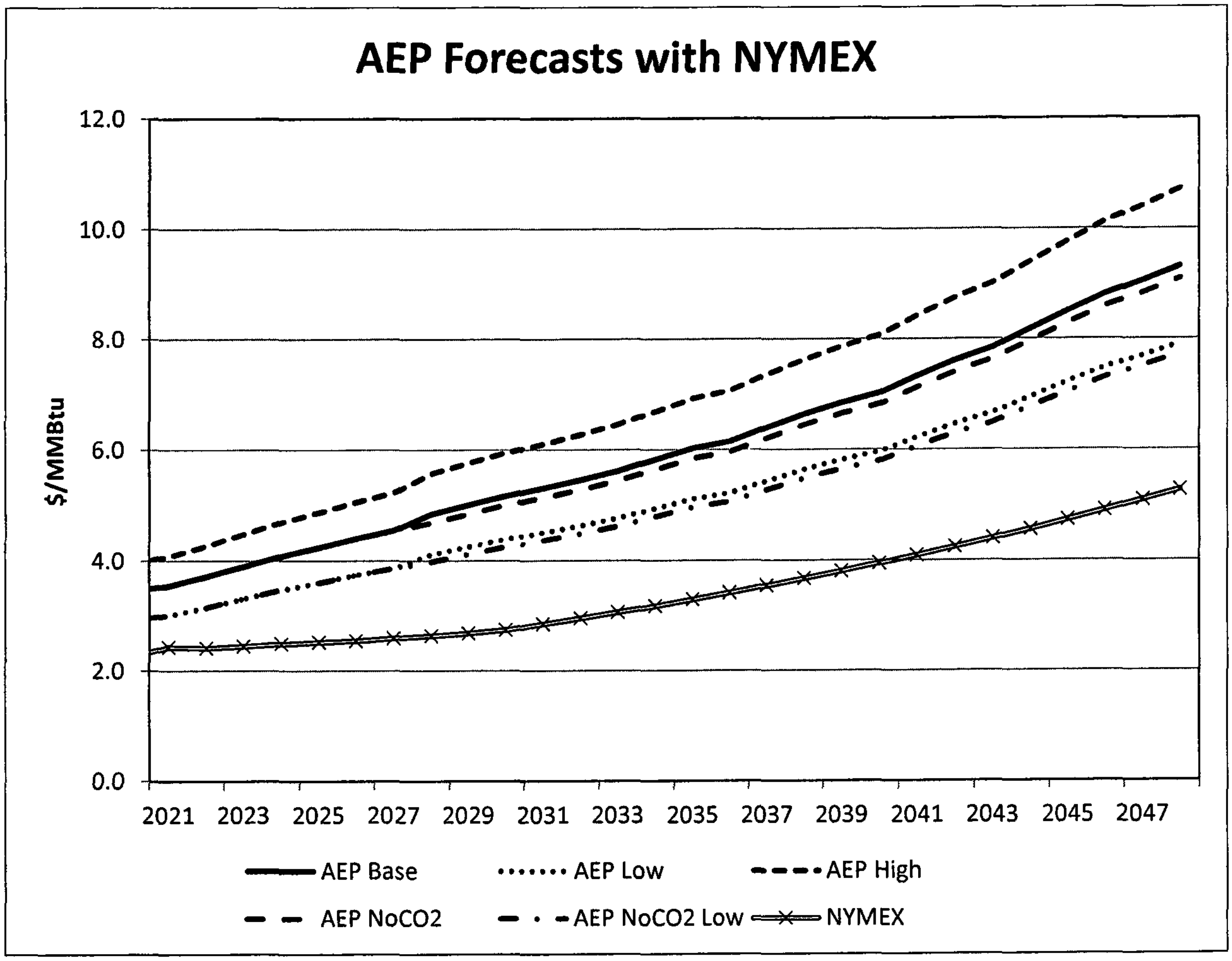
[52] For the Commission's discussion of the evidence presented regarding the NYMEX forecast in the *Wind Catcher* case, see *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461, Order at 4-5; and 17-18 (Aug. 13, 2018).

[53] Tr. at 258:5 – 260:13 (Bletzacker Cross) (Feb. 24, 2020).

[54] Tr. at 710:7 – 12 (Nalepa Re-Direct) (Feb. 24, 2020). *See: Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs,* Docket No. 40443, Order on Rehearing at 43 - 44, FoFs 256 – 258 (Mar. 6, 2014).

[55] Tr. at 236:18 – 237:4 (Bletzacker Cross) (Feb. 24, 2020).

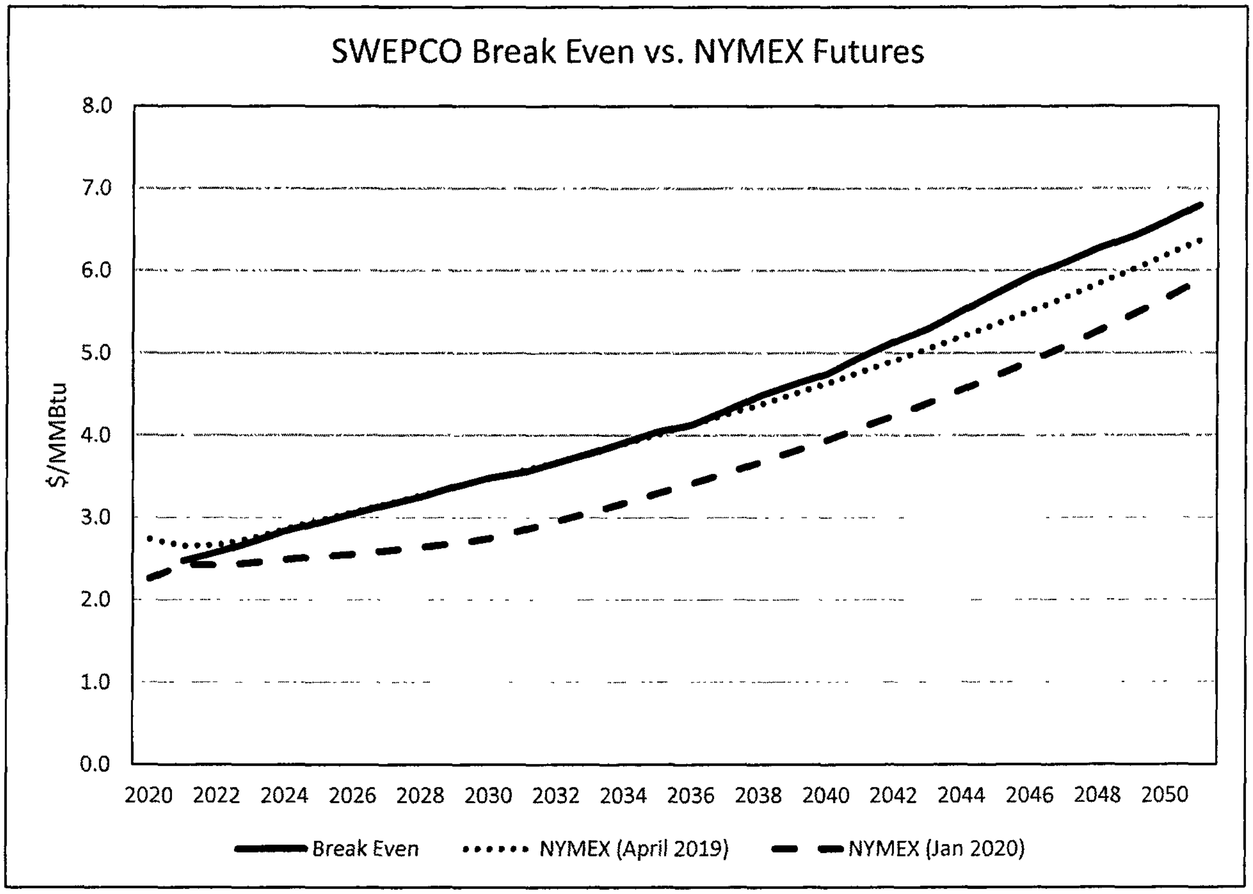
represents SWEPCO's view of the low end of probable natural gas pricing, the Company's projected natural gas prices range between 24% to 40% higher than NYMEX futures.[56] To put this into perspective, for 2020, SWEPCO's Base Case natural gas price projection was $3.44, while the actual Henry Hub spot price for the third week of February was between $1.90 and $2.00.[57]



[56] *Id.* at 208:25 – 209:4.

[57] *Id.* 224:7-12.

SWEPCO did calculate a lower Break Even Forecast to show the level of natural gas prices at which the Project would provide no cost savings benefit to ratepayers. Projected NYMEX futures are below that breakeven point throughout the entirety of the Project's life.[58]



Even when the Company uses a more generous projection, which blends NYMEX natural gas prices with other natural gas price forecasts, the Project results in a net loss to ratepayers for the first few years of operation.[59]

Based on this analysis of SWEPCO's natural gas price forecasts, OPUC believes that the risk of over-inflated natural gas prices will fall squarely on the Company's ratepayers. While SWEPCO uses higher natural gas prices to tout the customer cost savings benefits of the Project,

[58] OPUC Ex. 1 (Nalepa Direct) at 28:1.

[59] SWEPCO Ex. 17 (Bletzacker Rebuttal) at 19:3 – 16.

the risk of lower than estimated natural gas prices is borne by the Company's ratepayers. The Company has admitted that adverse shifts in natural gas prices are a risk to its ratepayers.[60] When asked if its ratepayers face the risk of a change in natural gas prices, SWEPCO witness Mr. Thomas Brice responded, "In part. I'll acknowledge that."[61] Contrary to SWEPCO's acknowledgement that its ratepayers will bear part of the risk associated with the Project, OPUC believes that the Company's ratepayers will disproportionately bear the majority of the risk associated with this uneconomic project due to the Company's faulty natural gas price assumptions.

b. Other Assumptions Affecting Locational Marginal Prices

One of SWEPCO's main distinctive assumptions in its Base Case is the imposition of a carbon tax. There is currently no federal or state carbon tax in effect in the United States ("U.S."), and even by SWEPCO's calculations in its Base Case the earliest projected date for the imposition of a carbon tax is 2028.[62] SWEPCO nonetheless assumes the imposition of a carbon tax in its Base Case, despite the fact that a carbon tax has never been implemented in the U.S. and there is no real indication that a carbon tax will be imposed in the foreseeable future.[63]

It is important to note that the imposition of a carbon fee would raise the price of natural gas, making it a more expensive fuel for electric generation, thus increasing SWEPCO's projected customer cost savings benefits from the Project.[64] Using SWEPCO's P50 Base Case, the removal of the carbon tax reduces projected ratepayer cost savings benefits by $171 million. The removal of the carbon tax assumption results in an approximately 30% reduction in net cost savings benefits

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[60] Tr. at 157:13-15 (Brice Cross) (Feb. 24, 2020).

[61] *Id.*

[62] OPUC Ex. 1 (Nalepa Direct) at 15:1 – 16.

[63] Tr. at 622:3 – 11 (Pollock Cross) (Feb. 26, 2020).

[64] OPUC Ex. 1 (Nalepa Direct) at 15:17 – 16:2.

for ratepayers.[65] OPUC, therefore, believes that the imposition of a carbon tax is an unreasonable assumption in SWEPCO's Base Case, since a carbon tax has never been implemented in the U.S. and the assumption of a carbon tax would only serve to inaccurately inflate the customer cost savings benefits from the Project.[66]

c. Capacity Factor

According to OPUC witness Mr. Nalepa, the Net Capacity Factor ("NCF") is the ratio of the actual output of a generating unit over a period of time to its potential output if it were able to operate at full nameplate generating capacity. The NCF is important because it relates to the amount of energy that can be delivered from the wind generation facilities that comprise the Project.[67] In addressing the Project's NCF, SWEPCO used a P50 level of output in its Base Case, which means that the Company expects the wind generation facilities to meet the 44.01% capacity factor production level 50% of the time throughout the Project's life.[68] However, while SWEPCO calculated its Base Case at the P50 level, its minimum production guarantee for ratepayers was calculated at a much more conservative P95 level of output, which means that the Company expects the wind generation facilities to meet the lower 38.13% capacity factor production level 95% of the time throughout the Project's life.[69] Using the more conservative P95 level to calculate the Project's customer cost savings benefits results in a 42% reduction, or $237 million reduction, to the projected customer cost savings benefits in SWEPCO's Base Case.[70] It is OPUC's position that a 50% projection overstates the potential benefits for ratepayers.

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[65] OPUC Ex. 1 (Nalepa Direct) at 16:3 – 13.

[66] Tr. at 682:19 – 21 (Nalepa Cross) (February 26, 2020).

[67] OPUC Ex. 1 (Nalepa Direct) at 18:7 – 10.

[68] OPUC Ex. 1 (Nalepa Direct) at 17:9 – 18:12.

[69] SWEPCO Ex. 2 (Brice Revised Direct) at 19:14 – 22.

[70] OPUC Ex. 1 (Nalepa Direct) at 18:13 – 19:3.

d. Useful Life of Wind Generation Facilities

The Project's wind turbines are manufactured by General Electric to have a design useful life of thirty years.[71] At this time, OPUC does not dispute the projected useful life of the Project's wind turbines.

e. Congestion and Losses

As currently filed, the Company's CCN application does not include the need for gen-tie lines, nor does SWEPCO currently anticipate the need for gen-tie lines.[72] SWEPCO does not include gen-tie lines in its CCN application, in part, because its Base Case assumes that SPP will construct the necessary transmission upgrades to accommodate the Project if the cost of congestion increases.[73] Although SWEPCO is not proposing to install the gen-tie lines right away, its gen-tie line cases assume the gen-tie lines would be needed and installed in 2026.[74] The Company explains that if congestion increases and SPP transmission upgrades are not implemented to address the higher congestion, the likelihood increases that the Company will need to mitigate the congestion through dedicated transmission upgrades, such as a gen-tie line between the proposed wind generation facilities and the Company's Tulsa load center.[75]). If the gen-tie lines are installed, the additional costs would further reduce any customer cost savings benefits of the Project.

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[71] Direct Testimony of Jospeh DeRuntz, SWEPCO Ex. 4 at 3:8 – 14.

[72] Tr. at 96:15 – 20 (Brice Cross) (Feb. 24, 2020).

[73] SWEPCO Ex. 9 (Pfeifenberger Direct) at 29:17 – 30:8.

[74] *Id.* at 20:1 – 5.

[75] SWEPCO Ex. 9 (Pfeifenberger Direct) at 35:16 – 21.

	Traverse	Maverick	Sundance	Total
Gen-Tie Cost	$248,452,400	$80,813,460	$76,868,445	$406,134,305
AFUDC@ 9.263%	$23,014,146	$7,485,751	$7,120,324	$37,620,221
Total 2021 Cost	$271,466,546	$88,299,211	$83,988,769	$443,754,526

As reflected in the Table above, the total projected cost of the necessary gen-tie lines for all three wind generation facilities that comprise the Project is estimated to be $443,754,526.[76] When this total projected cost is added to SWEPCO's rate base, the Net Present Value of the customer cost savings benefits from the Project would be reduced by approximately $26 million. This amount would reduce the Company's Base Case customer cost savings benefits from $567 million to $541 million.[77]

Since SWEPCO's CCN application does not consider the need for gen-tie lines, the Company is offering no ratepayer protection guarantees regarding the cost of any future potential gen-tie lines that may be needed for the Project if the necessary transmission upgrades in SPP do not come to fruition to address increased congestion. The Company is essentially leaving its ratepayers exposed to the potential risk of having to absorb significant gen-tie transmission line

[76] OPUC Ex. 1 (Nalepa Direct) at 19:15 – 16.

[77] *Id.* at 20:2 – 5.

costs in the future that could be approximately $443,754,526.[78] OPUC recommends that in the current proceeding, the Commission consider the cost of potential future gen-tie lines and the effect on the Company's ratepayers should SWEPCO's optimistic hope that SPP's construction of necessary transmission upgrades not come to pass.

Furthermore, the Company has made assurances that it would seek future Commission approval for the construction of any necessary gen-tie lines.[79] In order to help ensure that ratepayers are protected from these potential significant future costs, OPUC recommends that the Commission require the Company to seek Commission approval of the construction of any future gen-tie lines if the Commission approves the Company's CCN application in this proceeding.

3. Capacity Value

As previously discussed above, SWEPCO has no current need for additional capacity.[80] However, the Company believes that the addition of the Project will defer or reduce the need to add generation capacity in the future.[81] SWEPCO estimates that the capacity value of the Project in its Base Case scenario is approximately $311 million nominally and $70 million in net present value.[82] SWEPCO, therefore, expects to save approximately $311 million by deferring or reducing the need for more generation capacity in the future with the Project.

SPP requires the Company to maintain a sufficient reserve capacity. In the Company's 2018 IRP for Arkansas, the estimated surplus above the required reserve capacity never goes below 123 MW. The projected capacity value of the Project is 123 MW.[83] Put simply, according to the

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[78] Tr. at 96:15 – 20 (Brice Cross) (Feb. 24, 2020).

[79] Tr. at 97:3 – 10 (Brice Cross) (Feb. 24, 2020).

[80] Tr. at 154:13-22 (Brice Cross) (Feb. 24, 2020).

[81] Revised Direct Testimony of John Torpey, SWEPCO Ex. 8 at 22:4 – 7.

[82] *Id.* at 16.

[83] Tr. at 428:9 – 430:16 (Torpey Cross) (Feb. 25, 2020).

Company's own estimates, there will be no foreseeable need for the Project's generation capacity. The Company has indicated that any potential capacity benefits from the Project will not be realized until 2037 at the earliest.[84]

For these reasons, OPUC maintains that there is no capacity value benefit associated with the addition of the Project. SWEPCO has failed to demonstrate the need for any additional generation capacity from the Project outside of the potential deferral of future generation until 2037.[85] Therefore, OPUC recommends that the Commission find that there is no need for the additional generation capacity from the Project.

4. Production Tax Credits

Under federal law, certain electricity production is eligible for the PTC throughout the first ten years of the life of the project.[86] The PTC is scheduled to be gradually phased out over the coming years, being reduced by 20% per year after December 31, 2020.[87]

5. Deferred Tax Asset

OPUC does not take a position on this issue.

6. Wind Facility Revenue Requirement

OPUC does not take a position on the projected amount of revenue requirement for the Project in this proceeding. OPUC reserves the right to litigate this issue in a future rate case in which SWEPCO seeks to recover its investment in the Project if the CCN application is granted by the Commission in this proceeding.

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[84] Tr. at 476:24 – 25 (Torpey Re-Direct) (Feb. 25, 2020).

[85] *Id.*

[86] Direct Testimony of Joel Multer, SWEPCO Ex. 10 at 2:11 – 3:5.

[87] *Id.* at 3:6 – 11.

D. Economic Evaluation and Summary

Based on the analysis of the economics of the Project, as discussed above, OPUC believes that SWEPCO's projected customer cost savings benefits from the Project are uncertain and the Company's ratepayers will disproportionately bear most of the risk if the Project's projected customer cost savings benefits do not materialize as purported by the Company.[88] SWEPCO's use of the flawed Fundamentals Forecast, devoid of any connection to actual market-based natural gas prices, serves to inflate the Project's projected customer cost savings benefits by overstating natural gas prices. Inflated natural gas prices, combined with the inclusion of an illusory carbon tax that has never been imposed in the U.S., exclusion of potentially significant future gen-tie line costs, overstated capacity value, and a generous projection of capacity output, all serve to greatly overestimate the likely customer cost savings benefits of the Project. The Commission, therefore, should find that SWEPCO's CCN application has failed to demonstrate a probable lowering of costs to consumers.[89]

As discussed in Section IV below, the Commission could grant the Company's CCN application if it imposes the following conditions:

1. The wind generation facilities' total project capital costs must be capped at $1.996 billion, which is inclusive of the purchase price and all associated costs.

2. Customers must receive the benefit in reduced fuel expenses and PTCs based on a P50 minimum wind generation facilities' net capacity factor ("NCF") of 44.01%, regardless of whether the actual NCF is lower.

3. The production guarantee must be in place for the entire 30-year life of the wind generation facilities (not just the first 10 years).

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[88] OPUC Ex. 1 (Nalepa Direct) at 9:10 – 21.

[89] *Hammack v. Public Utility Com'n of Texas*, 131 S.W.3d 713, 726 (Tex. App. – Austin 2004) ("Therefore, the Commission concluded that there was a sufficient showing of probable improvement of service or lowering of costs to consumers. We hold there is a reasonable basis in the record to support the Commission's finding that the proposed line will result in the probable improvement of service or lowering of cost to consumers.").

4. The production guarantee must have no exception for force majeure.
5. Customers must be credited for PTCs at the 100% level for Sundance and the 80% level for Traverse and Maverick, regardless of whether or not SWEPCO qualifies for the PTCs.
6. SWEPCO must guarantee minimum energy savings to customers based on its Base Case natural gas price forecast, regardless of actual market prices.[90]

IV. Proposed Conditions

A. SWEPCO Proposed Conditions

1. Capital Cost Cap

SWEPCO has proposed a Capital Cost Cap guarantee equal to 100% of the filed aggregated capital cost of the Project, with no exception for force majeure.[91] OPUC believes this guarantee is necessary to protect ratepayers from cost overruns that are within the Company's ability to control. Without the Capital Cost Cap guarantee, ratepayers may be saddled with unnecessary capital costs which were not considered by the Commission during the CCN application approval process in this proceeding. OPUC, therefore, recommends that the Commission require this important guarantee if it approves the Company's CCN application.[92]

2. Production Tax Credit Eligibility Guarantee

The Company's PTC Eligibility Guarantee ensures that ratepayers will be made whole for any lost PTC value associated with the Project, essentially ensuring that the associated PTC value for the Project will be realized by the ratepayers regardless of whether or not SWEPCO qualifies

[90] OPUC Ex. 1 (Nalepa Direct) at 8:14 – 31.

[91] SWEPCO Ex. 2 (Brice Revised Direct) at 18:27 – 19:5.

[92] OPUC Ex. 1 (Nalepa Direct) at 29:18-20.

for the credits.[93] The Company includes an exception for changes in federal law that affect SWEPCO's eligibility for PTCs in the future.[94]

OPUC believes this important guarantee is necessary to protect ratepayers from the possibility that the Project will fail to qualify for the PTC. Customers should not have to bear the economic burden of SWEPCO's inability to obtain the PTCs that it relied upon in deciding to embark on pursuing this Project. OPUC, therefore, recommends that the Commission require this important and necessary guarantee if it approves the Company's CCN application.[95]

3. Minimum Production Guarantee

SWEPCO's Minimum Production Guarantee provides a minimum level of production guaranteed to ratepayers at a P95 output level over a five-year period for the first ten years of the Project's life with an exception for force majeure and an exception for curtailments required by SPP.[96] It is OPUC's position that the Minimum Production Guarantee should not have an exception for force majeure as these unforeseen events would necessarily reduce the anticipated benefits promised by SWEPCO.[97] Additionally, PSO agreed to exclude force majeure events in its proposed settlement in Oklahoma.[98] As OPUC witness Mr. Nalepa recommended in his Direct Testimony, the Minimum Production Guarantee must be in place for the entire 30-year life of the Project.[99] This guarantee should be for the entire life of the wind generation facilities to match the

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93 SWEPCO Ex. 2 (Brice Revised Direct) at 19:7-13.

94 *Id.*

95 OPUC Ex. 1 (Nalepa Direct) at 30:11 – 14.

96 SWEPCO Ex. 2 (Brice Revised Direct) at 19:14 – 22.

97 OPUC Ex. 1 (Nalepa Direct) at 30:7-10.

98 *Id.* 30:9-10.

99 *Id.* 30:1-6.

base rate cost burden on customers.[100] This is not an unfounded request, especially because SWEPCO's sister company, PSO, agreed to a minimum production guarantee for the entire life of the project in its proposed settlement in Oklahoma.[101]

SWEPCO offered to provide a guaranteed minimum production level at the average P95 output level.[102] At this level, the Company anticipates exceeding the anticipated output 95% of the time. This is not much of a commitment.[103] OPUC recommends that the Commission require that customers receive the minimum production guarantee benefits in reduced fuel expenses and PTCs based on a P50 minimum wind generation facilities' NCF of 44.01%, regardless of whether the actual NCF is lower.[104] Furthermore, if the Commission seeks to approve the Company's CCN application, OPUC recommends that the Commission require the Company to amend this guarantee to include a P50 output level over the entire thirty-year life of the Project.[105] OPUC also believes that this guarantee should not include an exception for force majeure.[106] OPUC maintains that guaranteeing a level of output that is expected to be exceeded 95% of the time and only during the first third of the Project's life is a *de minimis* guarantee that does not sufficiently protect ratepayers from the failure of the Project to produce amounts of power that will yield net cost savings benefits for ratepayers.[107]

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[100] *Id.* 30:2-4.

[101] *Id.* 30:4-6.

[102] *Id.* 29:23-26.

[103] *Id.* 29:25-26.

[104] *Id.* 29:21-23.

[105] *Id.* at 29:21 – 30:6.

[106] *Id.* at 30:7 – 10.

[107] *Id.* at 29:21 – 30:6.

B. Conditions Contained in Settlements Filed in Other Jurisdictions

In settlements filed in Arkansas and Oklahoma, SWEPCO agreed to a Capital Cost Cap, Minimum Production Guarantee, PTC Eligibility Guarantee, and a Most Favored Nations Clause.[108] In addition to these conditions, OPUC and the intervenors in this proceeding have proposed additional conditions.

C. Staff/Intervenor Proposed Conditions

As discussed above in Section III.D., OPUC has proposed the following conditions that should be required if the Commission approves the Company's CCN application:

1) Capital Cost Cap Guarantee (SWEPCO has already agreed to this condition in this proceeding and in Arkansas and Oklahoma);
2) Minimum Production Guarantee level of P50 (SWEPCO has only guaranteed a P95 minimum production level in this proceeding);
3) The Minimum Production Guarantee should be in place for the entire thirty-year life of the Project (PSO agreed to a life production guarantee in Oklahoma);
4) The Minimum Production Guarantee should have no exception for force majeure (PSO agreed to remove force majeure from this guarantee in Oklahoma);
5) PTC Eligibility Guarantee (SWEPCO has already agreed to this guarantee in this proceeding); and
6) Guaranteed Minimum Energy Savings (SWEPCO must guarantee minimum energy savings to customers based on its Base Case natural gas price forecast, regardless of actual market prices).

[108] Rebuttal Testimony of Thomas Brice, SWEPCO Ex. 14 at 2:7 – 21.

7) Commission Gen-Tie line Approval (SWEPCO must seek Commission approval of the construction of any future gen-tie lines)

At this time, OPUC will not address Condition Nos. 1, 3, 4 and 5 as these conditions are likely acceptable conditions given that the Company has either offered to include the guarantees or the guarantees have been approved in another jurisdiction. This section will focus on the importance of using the P50 output level for SWEPCO's minimum production guarantee and the need for a guarantee of minimum energy savings.

SWEPCO offered to provide a guaranteed minimum production level at the average P95 output level.[109] Setting the Minimum Production Guarantee at a P95 output level, as proposed by SWEPCO, a level that the Company is expected to meet 95% of the time, is hardly a commitment.[110] OPUC believes the Minimum Production Guarantee should be set at the P50 output level to strengthen the guarantee and mirror SWEPCO's projections of the Project's customer cost savings benefits, which SWEPCO calculated using the P50 output level.[111]

SWEPCO's Base Case results in net customer cost savings benefits of $567 million to customers using the following assumptions: (1) wind generation output at the P50 level, (2) SWEPCO's natural gas price Fundamentals Forecast, (3) a carbon fee, and (4) no gen-tie line costs.[112] While SWEPCO's Base Case assumes the combined wind generation facilities' output at a P50 level, or 5,724 GWh per year, the Company also ran sensitivity cases assuming a P95 output level, or 4,959 GWh per year. If the combined wind generation facilities produced power at the P95 level, SWEPCO's Base Case would result in $237 million lower NPV customer cost savings

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[109] OPUC Ex. 1 (Nalepa Direct) at 29:23-25.

[110] *Id.* at 29:21 - 26.

[111] *Id.* at 14:1 – 3.

[112] *Id.* 13:4-6.

benefits than does its Base Case at the P50 level. The effect would be a 42% reduction from SWEPCO's Base Case at the P50 level. Furthermore, the cumulative impact on the Company's Base Case assuming no carbon fee and P95 output level reduces the purported customer cost savings benefits by $386 million, or more than two-thirds. It is safe to conclude that if the wind generation facilities generate at a level less than P50, then SWEPCO's asserted customer cost savings benefits would be overstated.[113] The Commission should strengthen SWEPCO's Minimum Production Guarantee by benchmarking it at the P50 output level.

OPUC strongly supports the inclusion of Guaranteed Minimum Energy Savings that would require SWEPCO to guarantee cost savings benefits to its ratepayers based on its Base Case natural gas price forecast. This important safeguard would guarantee cost savings to ratepayers based on SWEPCO's own natural gas price projections used to justify the Project.[114] Essentially, SWEPCO would have to guarantee minimum energy savings to customers based on its Base Case natural gas price forecast, regardless of actual market prices for natural gas. Natural gas prices have a significant impact on the anticipated customer cost savings benefits from the Project. Therefore, in order to help secure customer cost savings benefits for the Company's ratepayers, OPUC believes it is reasonable for the minimum energy savings to reflect SWEPCO's Base Case natural gas price forecast, regardless if actual market prices for natural gas are lower.[115] As previously discussed, natural gas prices are important because natural gas prices set the marginal price in the wholesale electricity market.[116] The price for natural gas caps the price for wind generation

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[113] *Id.* 18:14-20 and 19:1-3.

[114] *Id.* at 30: 15 – 21.

[115] *Id.* at 30:15-21.

[116] *Id.* at 21:1-2.

resources.[117] The price of natural gas (high or low) will therefore impact the customer cost savings benefit of the Project. The higher the natural gas price, the higher the wind energy prices can go.[118] Conversely, if natural gas prices are low, wind energy prices will be low, which will result in a reduction of the Project's cost savings benefits for ratepayers.[119] Consequently, natural gas prices could have a significantly large impact on the Project's net customer cost savings benefits and ultimate costs to ratepayers. This important and necessary guarantee would use SWEPCO's own projections of natural gas prices in its Base Case to ensure that ratepayers realize a net customer cost savings benefit from the Project.[120] At a minimum, SWEPCO should hold ratepayers harmless by setting this guarantee at the Company's natural gas prices in its Break Even Forecast. Put another way, if SWEPCO is not willing to guarantee the Project will break even, then the Commission should not approve the Company's CCN application.

V. Regulatory Approvals in Other Jurisdictions (P.O. Issue Nos. 7, 8, 9, 10)

SWEPCO has filed separate applications for certification of the wind generation facilities with the Arkansas Public Service Commission and the Louisiana Public Service Commission. PSO has filed for approval of rate recovery for the wind generation facilities from the Oklahoma Corporation Commission. SWEPCO requests alternative Commission approvals if it does not receive project approvals from these other state regulatory commissions.[121] At this time, OPUC reserves the right to address any issue regarding the status of any pending regulatory approvals in other jurisdictions or the Project's scalability if one or more jurisdictions fail to approve the Project.

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[117] *Id.* at 21:2-3.

[118] *Id.* at 21:3-4.

[119] *Id.* at 21:4-6.

[120] *Id.* 30: 15 – 21.

[121] *Id.* at 6:8-13

VI. Other CCN Issues (P.O. Issue Nos. 1, 2, 3, 4, 11, 12)

The amendment of SWEPCO's CCN application is not necessary under PURA § 37.056. SWEPCO is currently providing adequate service and has no need for additional generation capacity.[122] In fact, SWEPCO is retiring the seasonally active, 600 MW Dolet Hills coal plant two decades before its scheduled retirement.[123] SWEPCO does not contend that additional generation capacity is needed to serve its load and has stated that the generation capacity value provided by the Project will not begin to materialize until 2037, halfway through the thirty-year life of the Project.[124]

VII. Rate Issues (P.O. Issue Nos. 21, 22, 25, 26, 27, 28, 29, 30, 31)

SWEPCO has offered a few guarantees as part of this CCN application process including: (1) a Capital Cost Cap, (2) PTC Eligibility Guarantee, and (3) Minimum Production Guarantee. As discussed in Section IV above, these guarantees are inadequate, and in most cases speculative. As discussed in Section IV above, OPUC has proposed the following conditions that would be necessary for the Commission's approval of the Company's CCN application:

1) Capital Cost Cap Guarantee (SWEPCO has already agreed to this condition in this proceeding and in Arkansas and Oklahoma);
2) Minimum Production Guarantee level of P50 (SWEPCO has only guaranteed a P95 minimum production level in this proceeding);
3) The Minimum Production Guarantee should be in place for the entire 30-year life of the Project (PSO agreed to a life production guarantee in Oklahoma);

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[122] Tr. at 154:13-22 (Brice Cross) (Feb. 24, 2020).

[123] Tr. at 787:23 – 789:18 (Torpey Re-Cross) (Feb. 25, 2020).

[124] Tr. at 476:24 – 25 (Torpey Re-Direct) (Feb. 25, 2020).

4) The Minimum Production Guarantee should have no exception for force majeure (PSO agreed to remove force majeure from this guarantee in Oklahoma);

5) PTC Eligibility Guarantee (SWEPCO has already agreed to this guarantee in this proceeding); and

6) Guaranteed Minimum Energy Savings (A guarantee by SWEPCO that ratepayers will realize benefits at SWEPCO's Base Case natural gas price scenario).

7) Commission Gen-Tie line Approval (SWEPCO must seek Commission approval of the construction of any future gen-tie lines)

At this time, OPUC has not taken a position on the remaining rate issues but reserves the right to take any appropriate position regarding any of the remaining rate issues presented in the Preliminary Order.

VIII. Sale, Transfer, Merger Issues (P.O. Issue Nos. 13, 14, 15, 16, 17, 18)

The Project is currently owned by Invenergy.[125] Following the transfer of ownership, SWEPCO will own a 54.5% stake in the wind generation facilities and PSO will own the remaining 45.5%.[126] Invenergy and SWEPCO/PSO have agreed to the transfer of the Project on a turn-key basis via the PSA.[127] Invenergy will design, develop, construct, and commission the facilities, which are still under construction, prior to any transfer to PSO and SWEPCO.[128] At this time OPUC does not dispute any of the facts regarding sale, transfer, and merger issues, but if the Commission finds that PURA § 14.101 applies, OPUC would request that the Commission find the Application not in the public interest based on the commentary above.

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[125] SWEPCO Ex. 3 (Godfrey Direct) at 25:4 – 31:9.

[126] SWEPCO Ex. 2 (Brice Revised Direct) at 3:9 – 13.

[127] *Id.* at 7:8 – 14.

[128] *Id.*

IX. Conclusion

For the reasons stated herein and discussed in the Direct Testimony of OPUC witness Mr. Nalepa, OPUC respectfully requests that the SOAH ALJs adopt and incorporate OPUC's recommendations into the PFD in this proceeding. OPUC further asks to be granted any other relief to which it may be entitled.

Respectfully submitted,

Lori Cobos
Chief Executive & Public Counsel
State Bar No. 24042276

Chris Ekoh
Senior Managing Public Counsel
State Bar No. 06507015
Zachary Stephenson
Assistant Public Counsel
State Bar No. 24073402

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500 (Telephone)
512/936-7525 (Facsimile)
chris.ekoh@opuc.texas.gov
zachary.stephenson@opuc.texas.gov
opuc_eservice@opuc.texas.gov (Service)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 9th day of March 2020, by facsimile, electronic mail, and/or first class, U.S. Mail.

Chris Ekoh