SOAH DOCKET NO. 473-19-6862
PUC DOCKET NO. 49737

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**

SOUTHWESTERN ELECTRIC POWER COMPANY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

Background and Procedural History

1. Southwestern Electric Power Company (SWEPCO) is a wholly owned subsidiary of American Electric Power Company (AEP) and is a fully integrated electric utility serving retail and wholesale customers in Texas, Arkansas, and Louisiana.

2. SWEPCO provides electric generation, transmission, and distribution services in Texas under certificate of convenience and necessity (CCN) number 30151.

3. On July 15, 2019, SWEPCO filed an Application with the Public Utility Commission of Texas (Commission) for a CCN to acquire an interest in three wind generation facilities (Selected Wind Facilities) located in Oklahoma.

4. Through a request for proposal process, SWEPCO and its sister company, Public Service Company of Oklahoma (PSO), contracted to acquire project companies owning the following wind facilities: (1) Traverse at 999 megawatt (MW); (2) Maverick at 287 MW; and (3) Sundance at 199 MW, subject to receipt of regulatory approvals and satisfaction of other conditions. Each of the wind facilities is owned by an affiliate of Invenergy LLC. SWEPCO contracted to acquire 54.5% of each facility, or a total of 810 MW. The total price for the wind facilities, including all interconnection and upgrade costs, is $1.86 billion. Total project costs, including purchase and sale agreement price adjustments and owner's costs, are expected to be $1.996 billion, and SWEPCO's 54.5% share is $1.088 billion.

5. The Commission referred the Application to the State Office of Administrative Hearings (SOAH) on August 22, 2019.

6. SWEPCO provided notice of the Application by publication once a week for two consecutive weeks in newspapers having general circulation in each county in SWEPCO's

303

service territory. SWEPCO's notice by newspaper publication was completed on September 5, 2019.

7. SWEPCO's individual notice to its Texas retail customers by bill insert was completed on September 17, 2019.

8. SWEPCO provided individual notice to Commission Staff (Staff) and the Office of Public Utility Counsel (OPUC) by hand delivering a copy of SWEPCO's filing to each party's counsel. Individual notice was also provided to the legal representative of all parties in Docket No. 46449, SWEPCO's most recent base rate case, and Docket No. 47461, SWEPCO's CCN application for the Wind Catcher project, by providing each party with a copy of SWEPCO's filing either by hand delivery, courier, or U.S. First Class mail. This individual notice was completed on July 15.

9. The following parties intervened and participated in this docket: Texas Industrial Energy Consumers (TIEC); OPUC; Golden Spread Electric Cooperative (GSEC); East Texas Electric Cooperative, Inc. and Northeast Texas Electric Cooperative, Inc. (ETEC-NTEC); International Brotherhood of Electrical Workers Local Union 738 (IBEW); Cities Advocating Reasonable Deregulation (CARD); and Walmart Inc. (Walmart). Staff also participated in this docket.

10. On September 12, 2019, the Commission issued its Preliminary Order identifying the issues to be addressed in this proceeding.

11. The hearing on the merits commenced on February 24, 2020 and concluded on February 26, 2020.

12. The parties submitted initial post-hearing briefs on March 9, 2020 and reply briefs on March 17, 2020.

13. On March 11, 2020, SWEPCO filed proposed findings of fact and conclusions of law.

14. On March 17, 2020, Intervenors and Staff responded to SWEPCO's proposed findings of fact and conclusions of law.

15. The record closed on __________.

<u>Certificate of Convenience and Necessity Standard of Review</u>

16. The Commission may approve an application and grant a certificate if the Commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

17. The Commission has determined that it may grant a CCN for economic purposes.

18. SWEPCO's acquisition of the Selected Wind Facilities is expected to result in the probable lowering of costs to customers.

19. SWEPCO's acquisition of the Selected Wind Facilities is expected to provide significant customer savings under a robust set of scenarios and will add diversity to SWEPCO's generation fleet, positioning SWEPCO to meet customers' low-cost energy needs under a range of circumstances that may prevail in the future.

20. The guarantees offered by the Company further assure a probable lowering of costs to customers.

21. The Commission finds that SWEPCO's acquisition of the Selected Wind Facilities is necessary for the service, accommodation, or convenience of customers.

22. The Commission has considered the effect of granting the certificate on electric utilities serving the proximate area.

23. There is no evidence that any other Texas utility will be unfairly or inappropriately allocated any transmission upgrade costs associated with the Selected Wind Facilities pursuant to the SPP FERC-approved OATT and Golden Spread Electric Cooperative's request for a "hold-harmless" guarantee from SWEPCO should be denied by the Commission.

24. There will be no adverse effect on site-specific factors such as community values, recreational and park areas, historical and aesthetic values, or environmental integrity in Texas because the Selected Wind Facilities are located entirely within the state of Oklahoma.

25. Texas has already met its renewable energy goals so SWEPCO's acquisition of the Selected Wind Facilities will have no effect on reaching those goals.

Analysis of Economics of Selected Wind Facilities

26. Prudent resource planning dictates that the Company make decisions based on the best information available at the time, considering reasonable sensitivities to stress test the benefits forecast.

27. Giving undue credence to an unlikely series of events that mathematically result in a net cost to customers would mean ignoring the more probable and reasonable range of outcomes in which the proposed projects produce significant savings for customers.

RFP Selection Process

28. SWEPCO uses an integrated resource plan or IRP to identify resources to serve customers, over a 20-year planning period.

29. SWEPCO's 2018 and 2019 IRPs identified wind resources as economic and recommended that they should be added beginning in 2022. Customers would benefit by adding up to 1,200 MW of wind generation—600 MW by 2022, and an additional 600 MW by 2023.

30. An important factor in acquiring wind resources was the federal Production Tax Credit (PTC), which helps to reduce the cost of wind energy for customers. Proceeding now helps achieve at least 80% of the value of the PTCs.

31. SWEPCO resolved to acquire additional wind resources through a competitive request for proposals (RFP) process.

32. In preparing the RFP, SWEPCO followed the steps required by the Louisiana Public Service Commission (LPSC) Market Based Mechanism (MBM) Order.

33. The process was transparent and open, allowing potential bidders and stakeholders opportunities to ask questions about the RFP.

34. On January 7, 2019, the Company issued the RFP for up to 1,200 MW of wind generation resources. The Company sought projects on a turnkey basis in which it individually, or together with its AEP affiliate utility operating company PSO, would acquire through a PSA all of the equity interests in the project company whose assets consist solely of the selected project.

35. The Company 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 West load zone in the Tulsa area.

36. In addition, the Company sought projects that are either in service or that would be placed in service by December 15, 2021, and thus qualify for at least 80% of the PTC value.

37. SWEPCO widely publicized the RFP--on its website, to a list of known wind project developers, and in industry trade publications and organizations.

38. SWEPCO followed the process established in the RFP from the time it was issued on through to the identification of the Selected Wind Facilities.

39. On March 1, 2019, SWEPCO and PSO (collectively the Companies) received 35 bids representing 19 unique wind projects totaling 5,896 MW. Fifteen projects were located in Oklahoma and four in Texas.

40. No bids were submitted by the Company or an AEP affiliate, as such a submission was specifically prohibited by the RFP.

41. Eight of the wind projects, constituting 2,631 MW, failed to meet all of the eligibility and threshold requirements and so were removed from further consideration. Eleven of the 19 wind projects, totaling 3,265 MW, passed these requirements.

42. The top three ranked bids (Traverse, Maverick and Sundance) became the Selected Wind Facilities.

43. The Companies selected 1,485 MW of wind resources, not 2,200 MW, the combined amount solicited in their RFPs. This decision was based on bid economics, geographic locations, and deliverability relative to the Companies' load. The Companies concluded that 1,485 MW provide customers the best combination of price, performance, and risk for all bids received in response to the RFPs.

44. Once the Selected Wind Facilities were identified, the Companies: (1) continued with due diligence activities; (2) released their consulting meteorologist to develop the bottom-up wind energy resource assessment; and (3) initiated formal contract negotiations that resulted in the Purchase and Sale Agreements or PSAs.

45. The Companies completed a thorough due diligence review of the Selected Wind Facilities including technology, overall project design, land leases, transmission and interconnection, qualification for PTCs, environmental/wildlife impact assessment, and the expected energy output (MWh).

46. The due diligence will continue through a series of requirements in the PSAs.

47. Because of the importance of the expected energy output, each developer was required to submit an independent assessment of the wind resource and expected energy output. The independent analyses were required to include one-year, five-year, 10-year, 20-year and 30-year production forecast estimates for the various probability of exceedance values (P50, P75, P90, P95, and P99).

48. The Companies hired Simon Wind Inc., (Simon Wind) an experienced consulting firm, to (1) independently review wind resource assessments and the expected energy output included in each of the RFP proposals; and (2) develop a wind energy resource assessment for each of the Selected Wind Facilities.

49. Subject to regulatory approval, SWEPCO and PSO will share the benefit and the cost of the Selected Wind Facilities consistent with their ownership shares of 54.5% and 45.5%, respectively.

50. SWEPCO reasonably identified the benefits to customers of acquiring additional wind resources.

51. SWEPCO reasonably selected the Selected Wind Resources through its RFP process.

52. The three Selected Wind Facilities that SWEPCO and PSO selected through the RFP process will be located in north central Oklahoma and will total 1,485 MW of installed nameplate capacity, as follows:

	Traverse	**Maverick**	**Sundance**
Size (Nameplate)	999 MW	287 MW	199 MW
SWEPCO Share	544.5 MW	156 MW	108.5 MW
Planned Commercial Operation Date	2021	2021	2020

53. The Selected Wind Facilities will be engineered to have a design life of 30 years.

54. SWEPCO seeks approval to acquire 54.5% of the Selected Wind Facilities, with PSO to own the remaining 45.5%.

55. The winning bidders will build the projects, which the Companies will then purchase on a turnkey basis.

56. The estimated total installed capital cost for the Selected Wind Facilities is approximately $1.996 billion (of which SWEPCO's share is approximately $1.088 billion).

57. This cost includes (1) each wind project's purchase price under the respective PSAs, (2) PSA price adjustments, and (3) owner's costs.

58. The purchase price includes all costs associated with interconnecting the facilities to the SPP transmission system and any assigned network upgrade costs.

59. The purchase price excludes associated owners costs, Allowance for Funds Used During Construction (AFUDC) applied to the owner's costs, PSA price adjustments, and contingency, all of which must be added to the PSA purchase price to calculate the estimated installed capital cost.

Economic Modeling

60. SWEPCO reasonably employed standard utility economic modeling methods to forecast the customer savings of the Selected Wind Facilities, consisting of a base case (with and without a carbon emission burden) along with sensitivities based on higher and lower gas and power price forecasts, a lower level of energy production for the Selected Wind Facilities, and cases based on higher than expected congestion costs that resulted in construction of a generation tie line.

61. Under all of the cases presented by the Company, customers would benefit from SWEPCO's acquisition of the Selected Wind Facilities.

62. SWEPCO also reasonably determined a power and gas price at which the Selected Wind Facilities would break even, i.e., have a net present value of customer savings of $0.

63. Under a reasonable range of assumptions, SWEPCO's acquisition of the Selected Wind Facilities will provide benefits to customers.

64. As with other variables that impact the benefits that customers are expected to receive from the acquisition of the Selected Wind Facilities, the focus should not be on any one forecast of future natural gas prices but, instead, on a reasonable range of such forecasts.

65. The AEP Long-Term North American Energy Market Forecast (Fundamentals Forecast) is a long-term, weather-normalized commodity market forecast.

66. The Fundamentals Forecast recognizes that a range of potential price outcomes is possible. To complement the Base Case Fundamentals Forecast, four associated cases were also created: the Lower Band, Upper Band, Base No Carbon, and Lower Band No Carbon cases.

67. The Fundamentals Forecast is made available to AEPSC and all AEP operating companies for purposes such as resource planning, capital improvement analyses, fixed asset impairment accounting, strategic planning and others.

68. As with all the third-party long-term natural gas forecasts contained in the record of this case, the Fundamentals Forecast is a weather-normalized energy market forecast.

69. Because spot natural gas prices encompass periods of substantial variation from normal weather, when comparing historical spot natural gas prices to a weather-normalized forecast, it is important to account for the impact of weather on spot natural gas prices.

70. The record in this proceeding contains more than 40 long-term, weather normalized, publicly available and proprietary third party natural gas forecasts.

71. The vast majority of these long-term forecasts are above or significantly above the natural gas breakeven price of the Selected Wind Facilities.

72. The value in the multitude of these public and proprietary third party forecasts lies not in picking a single forecast on which to base a decision in this case. Instead, the multitude of the public and third party forecasts provides the bounds, on both the low and high sides, of reputable long-term natural gas forecasts.

73. The record in this proceeding establishes that the NYMEX futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations but only in the near term of up to 36 months.

74. NYMEX futures are not weather-normalized and the NYMEX strips presented in this case were taken during the warmest winter in 125 years.

75. SWEPCO reasonably modeled locational marginal prices (LMPs) in the SPP by relying on the 2024 and 2029 PROMOD models developed by SPP and stakeholders in the Integrated Transmission Planning (ITP) process.

76. SWEPCO evaluated the expected customer benefits of acquisition of the Selected Wind Facilities both with and without a future enforced carbon emission burden.

77. As the Commission has previously found, it is possible that an enforced carbon emission burden will be imposed in the future.

78. The United States Environmental Protection Agency (EPA) has determined carbon dioxide to be a pollutant under the Clean Air Act, which makes CO_2 emissions subject to limitation.

79. The possibility that such a carbon burden will be imposed in the future is greater than zero.

80. While the imposition of an enforced carbon emission burden may be unlikely in the near term, SWEPCO was prudent for studying the possibility in evaluating the Selected Wind Facilities, which are expected to have a useful life of 30 years.

81. SWEPCO reasonably relied on the P50 expected production level to model the economic benefits of the Selected Wind Facilities since it is equally likely that energy production from the Selected Wind Facilities will be above or below that level.

82. It is not reasonable to base a determination of the economic benefits of the Selected Wind Facilities on the unlikely P95 level of energy production since there is only a 5% chance that energy production from the Selected Wind Facilities will be that low.

83. The Selected Wind Facilities will have a minimum design or useful life of 30 years.

84. A 30-year design life was required by the RFP.

85. General Electric, the wind turbine supplier for the Selected Wind Facilities, evaluated the wind data and other site-specific information from an engineering perspective and determined that the loads are within the design loads for a 30-year life.

86. The site-specific analysis of General Electric is entitled to great weight.

87. The O&M and capital forecast is based on sustaining a minimum of 30 years of operation.

88. A 30-year design or useful life is reasonable for the Selected Wind Facilities.

89. SWEPCO reasonably modeled congestion and loss-related costs associated with the delivery of power to the AEP West load zone from the Selected Wind Facilities.

90. It is reasonable to conclude that SPP would promote additional transmission solutions if congestion on the SPP transmission system rose to a level that made such solutions beneficial under SPP's Integrated Transmission Planning (ITP) criteria.

91. SWEPCO reasonably demonstrated that the Selected Wind Facilities would benefit customers if the Company builds a generation tie line to mitigate congestion cost increases on the SPP transmission system that are not addressed by the SPP ITP process.

92. Although SWEPCO proposed the Selected Wind Facilities based on the customer savings arising from production cost savings and PTC benefits, the Selected Wind Facilities will also provide value by deferring the Company's future capacity needs.

93. SWEPCO reasonably analyzed the value of deferring future capacity needs in evaluating the customer benefits of the Selected Wind Facilities.

94. It was reasonable for the Company's economic analysis of the Selected Wind Facilities to consider both the amount of Production Tax Credits (PTCs) the facilities were expected to produce, as well as the carrying charges on the unutilized PTCs that would be treated as deferred tax assets for ratemaking purposes.

95. The amount of PTCs the Company may claim in any given tax year is dependent on the Selected Wind Facilities' production. The rate at which the credit is calculated is adjusted annually for inflation and is currently 2.5 cents per kilowatt hour ($25 per megawatt hour) of output from the taxpayer's facilities.

96. Section 45 of the Internal Revenue Code of 1986 (Code), the section that governs the calculation and use of PTCs, provides for a graduated phase-out of PTCs. Facilities whose construction began before 2017 are eligible for 100% of the available credits while facilities whose construction began after 2017 are eligible for decreasing amounts of the credits.

97. Because of the various construction safe harbor provisions afforded ratepayers by Section 45 of the Code, it is expected that the Sundance facility will be eligible for 100% of the available PTCs and that the Traverse and Maverick facilities will be eligible for 80% of the available PTCs. The Selected Wind Facilities' qualification for the PTCs is not contested.

98. Aside from qualification for the PTCs under the Code, the amount of the PTCs is dependent on the output of the Selected Wind Facilities over their useful life.

99. Because of the extensive due diligence the Company performed with regard to the wind energy resource assessment, the Commission can be confident in the energy output expected from the Selected Wind Facilities.

100. Because Section 38 of the Code contains limitations on taxpayers' ability to recognize PTCs as they are generated, it is expected that the Company will be unable to use a number

of the PTCs in the years in which they are generated and will need to carry them forward to future tax years. The Code applies these limitations on a consolidated group basis and allows taxpayers to carry unused PTCs forward to future tax years for a period of 20 years.

101. The Company determined the likely expected use of PTCs (as well as amounts of PTCs that are expected to be carried forward to future years) based on future projections of AEP consolidated tax liability. These results reflect expected annual limitations of the PTCs generated by the Selected Wind Facilities with the deferral of the cash tax benefits of the credits for periods of up to four years and peak cash tax deferral amounts of approximately $300 million and $232 million for the P50 and P95 production levels, respectively.

102. Even though the Company is not expected to be able to use all of the tax credits as they are produced, the Company is proposing to give its customers the benefits of all of the generated tax credits as they are produced – regardless of whether they are reflected on the AEP consolidated tax return in the year in which they are produced.

103. As a result, it is appropriate for the Company to reflect any unused credits that it must carry forward to future tax years as deferred tax assets included in rate base. As long as customers obtain the full benefit of all the tax credits produced – even ones that the Company cannot benefit from until later tax years – it is appropriate to include the unused credits as deferred tax assets in rate base.

104. The Company determined that, given the long-term nature of the investment in the Selected Wind Facilities, a 7.09% weighted average cost of capital was reasonable to apply to the deferred tax asset to determine an estimate of the likely carrying costs on the deferred tax asset over the life of the investment.

105. No party to the proceeding objected to the Company's use of the 7.09% weighted average cost of capital to estimate carrying costs on the deferred tax asset given the long-term nature of the investment and this rate is reasonable.

106. SWEPCO reasonably forecast and modeled the revenue requirement associated with the Selected Wind Facilities.

Proposed Conditions

107. The evidence establishes that acquisition of the Selected Wind Facilities will result in the probable lowering of costs to customers with or without the guarantees offered by SWEPCO.

108. SWEPCO offers guarantees to customers in this proceeding to help ensure that, even under unexpected circumstances, the acquisition of the Selected Wind Facilities will benefit customers.

109. SWEPCO is offering guarantees related to the Selected Wind Facilities' energy production levels, qualification for the PTC, and capital cost. These guarantees are identified in the direct testimony of SWEPCO witness Mr. Brice.

110. These guarantees provide additional value to customers and should be adopted in the certification of the acquisition of the Selected Wind Facilities.

111. SWEPCO and PSO have entered into comprehensive settlements filed in Arkansas and Oklahoma, respectively, that provide for the acquisition of the Selected Wind Facilities with enhanced guarantees.

112. The settlements expand the Minimum Production Guarantee and provide further assurances to customers regarding a deferred tax asset, if any, and off-system sales. Both settlements contain a most favored nations clause.

113. OPUC witness Mr. Nalepa urges the Commission to condition the acquisition of the Selected Wind Facilities on SWEPCO guaranteeing a P50 production level. Mr. Nalepa's recommendation is not reasonable because it penalizes the Company for any deviation below average expected production.

114. OPUC witness Mr. Nalepa urges the Commission to condition acquisition of the Selected Wind Facilities on SWEPCO guaranteeing energy cost savings based on the Company's Fundamentals Base Case Forecast of natural gas prices. Mr. Nalepa's recommendation is not reasonable because it constitutes a penalty for SWEPCO if circumstances deviate from those expected.

Regulatory Approvals in Other Jurisdictions

115. SWEPCO filed for approval of the acquisition of the Selected Wind Facilities in Arkansas before the Arkansas Public Service Commission in Docket No. 19-035-U on July 15, 2019.

116. A unanimous settlement of Docket No. 19-035-U was filed on January 24, 2020, which includes the option for the Company to acquire a larger share of the Selected Wind Facilities for Arkansas customers if another SWEPCO jurisdiction should deny its respective share.

117. SWEPCO expects an Order from the Arkansas Public Service Commission in May 2020.

118. SWEPCO filed for approval of the acquisition of the Selected Wind Facilities in Louisiana before the Louisiana Public Service Commission in Docket No. U-35324 on July 15, 2019.

119. SWEPCO expects an Order from the Louisiana Public Service Commission in May 2020.

120. PSO filed for approvals related to the acquisition of the Selected Wind Facilities in Oklahoma before the Corporation Commission of the State of Oklahoma in Cause No. PUD 201900048 on July 15, 2019.

121. A Joint Stipulation and Settlement Agreement was approved by the Oklahoma Corporation Commission in Cause No. PUD 201900048 on February 20, 2020, authorizing PSO's ownership of 675MW of the Selected Wind Facilities.

122. SWEPCO and PSO filed for approvals related to the acquisition of the Selected Wind Facilities before the Federal Energy Regulatory Commission in FERC Docket No. EC20-17-000 on November 15, 2019.

123. That Application was approved by FERC on February 21, 2020 for the acquisition of the Selected Wind Facilities by SWEPCO and PSO.

Other CCN Issues

124. The Selected Wind Facilities are an incremental resource proposed to reduce customers' cost of energy.

125. The Selected Wind Facilities will not diminish the reliability provided by SWEPCO's existing resources or transmission system.

126. The Company has demonstrated it will ensure reliable ongoing operation and maintenance of the Selected Wind Facilities at a reasonable cost.

127. SWEPCO has continued to evaluate whether the acquisition of the Selected Wind Facilities is in the public interest.

128. SWEPCO is not in the process of implementing customer choice in its service territory.

129. The Selected Wind Facilities will have no effect on the implementation of customer choice in SWEPCO's service territory or the creation of stranded costs.

130. Utilities are obligated to provide reliable service to customers at the lowest reasonable cost.

131. The proposal of economic resources for certification is one means of meeting that obligation.

Rate Issues

132. SWEPCO indicated in its Application that, in a future filing, it would request implementation of a generation cost recovery rider that will take effect on the date the Selected Wind Facilities begin providing service to customers, pursuant to § 36.213 of the Public Utility Regulatory Act (PURA).

133. The Company's Application indicates that it will also seek to flow the PTC benefits to customers through the generation cost recovery rider until the Company's investment in the Selected Wind Facilities is included in base rates. If the generation cost recovery rider

rule does not provide for a flow-through of PTCs, the Company will pursue a good cause exception or other available options to return the PTC benefits to customers concurrently with recovery of SWEPCO's investment in the facilities.

134. In future rate cases, it is appropriate that SWEPCO be allowed to include in rate base the actual balance of unused PTCs, if any, associated with the Selected Wind Facilities. It is also appropriate that any unused PTCs included in rate base earn a return at the weighted average cost of capital set for that rate case.

Sale, Transfer, Merger Issues

135. PURA § 14.101 requires a utility to report certain transactions to the Commission, including a transaction to "sell, acquire, or lease a plant as an operating unit or system in this state for a total consideration of more than $10 million."

136. The Selected Wind Facilities are wholly located in Oklahoma.

137. Under the plain meaning of PURA § 14.101(a), that Section does not apply to this proceeding. "This state" can only be read to refer to Texas.

138. The Commission's implementing rule 16 TAC § 25.74(b), specifically recognizes that § 14.101 applies to an operating unit or system "in the State of Texas."

[Findings of Fact if § 14.101 is determined to apply:]

139. The Selected Wind Facilities meet the public interest as set forth in § 14.101. In the context of this case, the application of the public interest standard overlaps with the controlling CCN standard – the probable lowering of costs to customers.

140. SWEPCO's acquisition of the Selected Wind Facilities is in the public interest because it is expected to lower costs for customers.

141. SWEPCO's acquisition of the Selected Wind Facilities is in the public interest because it will provide renewable energy credits that customers may acquire to meet their sustainability and renewable energy goals.

142. SWEPCO's acquisition of the Selected Wind Facilities will produce significant and immediate cost savings for SWEPCO customers, diversify SWEPCO's generation resources, and reduce fuel costs

143. The Selected Wind Facilities will have no effect on the health or safety of customers or employees and will not result in the transfer of jobs from Texas.

144. SWEPCO is paying a reasonable value for the Selected Wind Facilities and has diligently negotiated purchase agreements that assure reasonable pricing, performance, and risk mitigation to protect SWEPCO customers.

B. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act, Tex. Util. Code §§ 14.001, 37.051, 37.053, 37.056, and 37.057 (PURA).

2. SOAH has jurisdiction over this proceeding, including the preparation of this proposal for decision with findings of fact and conclusions of law, pursuant to PURA § 14.053 and Tex. Gov't. Code § 2003.049.

3. Notice of the Application was provided in compliance with PURA § 37.054 and 16 Tex. Admin. Code § 22.55 (TAC) because the Selected Wind Facilities are out-of-state facilities.

4. Utilities may obtain a CCN for general economic purposes, not only when there is an increase in demand necessitating additional generation. *See Application of Southwestern Public 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.

5. In compliance with PURA §§ 39.501(b) and 39.502(b) and 16 TAC § 25.422(e), SWEPCO is not currently in the process of implementing customer choice in its Texas service territory.

6. PURA § 14.101 does not apply to this case because the Selected Wind Facilities are not located in the state of Texas.

7. The grant or denial of a CCN is governed by PURA § 37.056.

8. The Commission should grant a CCN any time it is in the public interest as determined by an assessment the factors in PURA § 37.056.

9. The Commission may grant a CCN for a generation facility if it determines that acquisition of the facility will result in a probable lowering of costs to customers.

10. The site-specific factors set out in PURA § 37.056(4)(A)-(D) do not apply in this case because the Selected Wind Facilities are located in Oklahoma.

11. PURA § 37.056(4)(E) does not require that a utility provide a guarantee of lower costs or eliminate all risk associated with a project.

12. Under PURA § 37.056(4), projects proposed for economic reasons are subject to the same standards as any other project.

C. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The proposal for decision is adopted to the extent consistent with this Order.

2. SWEPCO's CCN number 30150 is amended to include acquisition of the Selected Wind Facilities as set out in SWEPCO's application, including the authorization to acquire a larger share of the Selected Wind Facilities if one of SWEPCO's other jurisdictions does not approve acquisition of the Facilities.

3. Consistent with its production guarantee, SWEPCO shall make an informational filing with the Commission on May 15 of the sixth and eleventh years of operation of each facility to report on the production level of the projects. If the production levels demonstrate a refund is owed to SWEPCO customers, SWEPCO shall include a request that a refund be provided as a rate rider.

4. Consistent with its capital cost guarantee, SWEPCO shall not include gross plant-in-service amounts in rate base for the Selected Wind Facilities greater than $1.088 billion, including owner's costs and PSA price adjustments.

5. If SWEPCO fails to meet the 38.1% net-capacity factor consistent with its production guarantee, then SWEPCO shall credit to Texas retail customers the Texas retail portion of the production tax credit, including a gross-up for income tax, not generated because of underproduction of the Selected Wind Facilities and the additional energy costs incurred due to that underproduction.

6. In future rate proceedings, SWEPCO may include in rate base as a deferred tax asset the actual balance of unused production tax credits associated with the Selected Wind Facilities, which may earn a return at SWEPCO's weighted cost of capital set in the rate proceeding.

7. SWEPCO shall credit to Texas retail customers the production tax credits at the 100% level related to the actual output of the Sundance facility and the production tax credits at the 80% level related to the actual output of the Traverse and Maverick facilities.

8. SWEPCO's application is granted to the extent consistent with this Order.

9. All other motions, requests for specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

Respectfully submitted,

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ATTORNEYS FOR SOUTHWESTERN ELECTRIC POWER COMPANY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this motion was served on all parties of record this 11th day of March, 2020.

Kerry McGrath
Kerry McGrath