



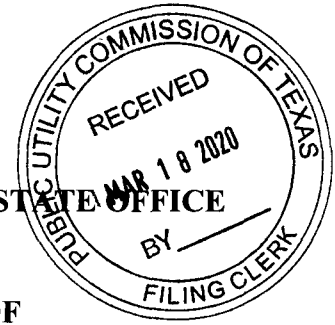
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SOAH DOCKET NO. 473-19-6862
PUC DOCKET NO. 49737



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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S REPLY BRIEF

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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COMMISSION STAFF’S REPLY BRIEF

I. INTRODUCTION

In its initial brief, SWEPCO contends that, under a range of possible future conditions, the Selected Wind Facilities (SWFs) will result in a probable lowering of costs to customers. However, SWEPCO’s projected net benefits are based on a set of unreliable assumptions made by SWEPCO. Therefore, customers would likely only see minimal net benefits, if any, from the SWFs and are at a real risk of experiencing net costs. Because SWEPCO does not currently have a need for additional generation capacity, it is essential that, if approved, SWEPCO’s application only be approved with additional conditions or guarantees, including, at the minimum, a net benefits guarantee.

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

SWEPCO states that the pertinent provisions of Public Utility Regulatory Act, Texas Utilities Code (PURA) § 37.056, that apply to this application are “the adequacy of existing service, the need for additional service, and the probable improvement of service or lowering of cost to consumers if the CCN is granted.”¹ However, SWEPCO’s application only addresses the last factor, as it is wholly based upon a mere potential lowering of cost to customers. SWEPCO witness Thomas P. Brice in his direct testimony admits that “the Selected Wind Facilities would serve the public convenience and necessity by enhancing the Company’s ability to provide low-cost energy to its consumers.”² Brice further states that the SWFs would defer the need for future

¹ Southwestern Electric Power Company Initial Brief at 7 (Mar. 9, 2020) (SWEPCO Initial Brief).

² Direct Testimony of Thomas P. Brice, SWEPCO Exhibit 2 at 91-92.

capacity additions.³ The deferment of future capacity does not affect the adequacy of existing service, nor does it create the need for additional service.⁴ In fact, SWEPCO does not have any need for additional capacity at this time that the SWFs would deliver.⁵ Thus, the only factor that should be considered in evaluating this CCN application is whether or not there is a lowering of cost to consumers if the CCN is granted. SWEPCO bears the burden of proof to show that this application does in fact lower cost to customers.

Further, SWEPCO cites the Final Order in Docket No. 46936 as Commission precedent for approving a CCN application based primarily on a probable lowering of costs to customers.⁶ While Staff does not disagree that the Commission approved that CCN based primarily on a lowering of cost to customers, Southwestern Public Service Company (SPS) offered much more robust guarantees in that case.⁷ Those guarantees included: (1) a guarantee of a minimum output capacity factor of 48% for both wind facilities; (2) a guarantee that Texas retail customers would realize savings for at least the first 10 years of the project; and (3) that customer savings would be calculated on an annual basis to guarantee yearly savings to customers.⁸ SWEPCO has not offered any of these guarantees including guaranteeing customer savings for any portion of the SWFs project life. Thus, while the Commission has approved a settlement of a CCN application based primarily upon a lowering of costs to customers, SWEPCO's application falls far below the standard for lowering of costs to customers established in that settlement.

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

B. Project Description and Cost

Staff does not have any reply to SWEPCO's Project Description and Costs section outlined in their initial brief. The project description and costs outlined in SWEPCO's initial

³ *Id.* at 91.

⁴ Tr. at 154:13-22 (Brice Direct) (Feb. 24, 2020).

⁵ Direct Testimony of Charles S. Griffey, TIEC Exhibit 2 at 13.

⁶ SWEPCO Initial Brief at 8.

⁷ *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, Final Order at 11-18 (May 25, 2018).

⁸ *Id.*

brief are a reiteration of SWEPCO's project description and costs outlined in their original CCN application in this docket.

Staff reiterates its position that, SWEPCO has offered multiple alternatives as to costs and guarantees based upon a set of assumptions.⁹ These factors include gas prices, carbon tax costs, and whether SWEPCO will build a dedicated generation tie (gen-tie) line or not.¹⁰ All of these assumptions affect the overall price of the project and the purported overall savings to customers, and could potentially increase the project price by hundreds of millions of dollars.¹¹

C. Economic Modeling

Economic evaluation compares the project costs to the net benefits of the SWFs. While the minimum project costs are relatively certain, SWEPCO's estimate of net benefits rely on a variety of assumptions.

2. Projected Production Cost Savings

The projected production cost savings of the SWFs are based on unrealistic assumptions made by SWEPCO. As a result of these unrealistic assumptions, SWEPCO's projected production costs savings are overstated.

a. Natural Gas Prices

The assumptions made by SWEPCO regarding natural gas prices are unrealistic and fail to show a probable lowering of costs to ratepayers. In its initial brief, SWEPCO argues that its Fundamentals Forecast is a reasonable predictor of future natural gas prices because it accounts for the more than 40 long-term natural gas prices provided by SWEPCO in this proceeding and "the proposed Selected Wind Facilities' break-even natural gas price curve is close to the bottom of all forecasts."¹² However, as the Office of Public Utility Counsel's (OPUC's) witness Karl Nalepa explains, natural gas forecast models are dependent on model inputs and generate a set of gas prices based on those inputs.¹³ Therefore, it is important to look at models that accurately approximate natural gas prices rather than models that are unrealistic. As the Commission held in

⁹ Errata to Direct Testimony of John F. Torpey, SWEPCO Exhibit 8 at JFT-3.

¹⁰ *Id.*

¹¹ *Id.*

¹² SWEPCO Initial Brief at 27-28.

¹³ Direct Testimony and Workpapers of Karl Nalepa, OPUC Exhibit 1 at 21:14-22:4.

2018, “[t]he lowest Energy Information Administration (EIA) case has been the most accurate in recent years.”¹⁴ The Commission also held that “NYMEX futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations.”¹⁵ Texas Industrial Energy Consumers (TIEC), in their initial brief, shows the accuracy of the lowest EIA case along with a comparison to New York Mercantile Exchange (NYMEX) futures prices for 2020.¹⁶ Thus, SWEPCO’s forecast of natural gas prices should be compared against the lowest EIA case, also called the EIA High Oil and Gas Supply Case, and NYMEX futures prices.

SWEPCO’s projected natural gas prices are overstated as shown through a comparison to the lowest EIA case and NYMEX.¹⁷

| Year | SWEPCO Base (\$/MMBtu) | SWEPCO Low-No CO2 (\$/MMBtu) | HIS NYMEX Gas Scenario 1/14/2020 | EIA AEO 2020 High Oil & Gas Supply (\$/MMBtu) |
|-------------|-------------------------------|-------------------------------------|---|--|
| 2021 | 3.54 | 3.01 | 2.43 | 2.50 |
| 2026 | 4.40 | 3.74 | 2.57 | 3.08 |
| 2031 | 5.30 | 4.37 | 2.87 | 3.50 |
| 2036 | 6.14 | 5.07 | 3.09 | 4.00 |
| 2041 | 7.32 | 6.05 | 3.35 | 4.52 |
| 2046 | 8.81 | 7.30 | 3.60 | 4.93 |
| 2050 | 9.80 | 8.14 | 3.79 | 5.34 |

While SWEPCO attempts to compare its natural gas price projections to EIA’s Reference Case, this case has consistently overstated natural gas prices and the 2020 EIA Reference Case is

¹⁴ *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, Finding of Fact No. 89 (Aug. 13, 2018).

¹⁵ *Id.* at Finding of Fact No. 84.

¹⁶ Redacted Texas Industrial Energy Consumers’ Initial Brief at 19 (Mar. 9, 2020) (TIEC Initial Brief).

¹⁷ HSPM Bletzacker Workpapers HS Excerpt, TIEC Exhibit 24; *see also*, Direct Testimony of Jeffrey Pollock, TIEC Exhibit 1 at 21.

\$1.16/MMBtu below SWEPCO's base case and \$0.25/MMBtu below SWEPCO's low/no CO₂ case.¹⁸

SWEPCO claims that its natural gas price projections are more reliable because the Fundamentals Forecast is weather-normalized over a 30 year period.¹⁹ However, the Commission has previously held that “[t]he use of a 30-year period for normalizing weather is not a reasonable means of capturing such [weather] trends.”²⁰

SWEPCO also criticizes the use of NYMEX futures prices for natural gas price projections in its initial brief stating that NYMEX futures “show no or virtually no actual transactions between buyers and sellers beyond 36 months[.]” or that NYMEX futures are not liquid beyond 36 months.²¹ At the hearing, Jeffry Pollock for TIEC addressed this argument directly stating:

I mean, just because there's a lot of trades, I mean, it doesn't mean that the resulting price is any more or less accurate than even on contracts that aren't traded frequently because when those -- those prices are based upon -- if they're not based on actual transactions, they are based on bid-ask spreads or they're based on other analysis or the results of other markets.²²

Pollock continues his explanation:

So the fact is -- the fact that there might not be and are not many trades contracts on NYMEX doesn't mean that there aren't trades in other markets or other ways that -- where NYMEX or ICE or other platforms of that nature come up with prices that -- where buyers and sellers can still transact and have a reasonable certainty of getting the price that they are looking at. And that's been my experience.²³

In addition, NYMEX develops settlement prices for each contract using actual trades, bids and offers, and data from outside the exchange for all months including low or no volume months.²⁴

¹⁸ TIEC Exhibit 1 at Exhibit JP-2; TIEC Exhibit 1 at 21.

¹⁹ SWEPCO Initial Brief at 27-30.

²⁰ *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Finding of Fact No. 260 (Mar. 6, 2014).

²¹ SWEPCO Initial Brief at 29.

²² Tr. at 629: 15-22 (Pollock Clarifying) (Feb. 26, 2020).

²³ Tr. at 630: 10-18 (Pollock Clarifying) (Feb. 26, 2020).

²⁴ TIEC Response to SWEPCO 1-7, TIEC Exhibit 61.

These “settlement point prices are widely relied upon and are used to mark-to-market outstanding contracts.”²⁵

Overall, as shown by the 2020 EIA High Oil and Gas Supply Case, as well as NYMEX futures prices, SWEPCO’s natural gas projections, even for its low gas/no CO₂ case, are overstated. Therefore, purported net benefits to ratepayers are overstated. According to Charles Griffey for TIEC, assuming recent NYMEX futures prices results in a \$396 million NPV reduction in net benefits from SWEPCO’s low/no CO₂ case.²⁶

b. Other Assumptions Affecting Locational Marginal Prices

SWEPCO’s assumption of a carbon emissions burden beginning in 2028 is unlikely and overstates net benefits to ratepayers. SWEPCO’s base case employed the presumption of a carbon tax beginning in 2028 at \$15 per ton and escalating by 3.5% a year.²⁷ In its initial brief, SWEPCO acknowledges that in 2018 the Commission found that the imposition of a carbon emissions burden was unlikely.²⁸ However, SWEPCO explains that it is still possible for a carbon tax to be enacted since the study period employed by SWEPCO covers a 30-year period.²⁹ Even so, SWEPCO does not explain why 2028 was chosen to employ a carbon tax in its base case models or why the carbon tax escalates by 3.5% a year. As Staff showed in its initial brief, the reduction in projected net benefits for eliminating a carbon emission burden is between \$140 - \$171 million NPV.³⁰

c. Capacity Factor

SWEPCO’s direct case fails to reconcile its unyielding assertion that a 44.1% net capacity factor (NCF) (P50 production level) is a realistic energy output for the SWFs with its reluctance to guarantee production at a NCF that exceeds 38.1% (P95 production level). The NCF used to model economic benefits to customers is critical because it contributes significantly to the production cost savings of the SWFs and drives the amount of PTCs earned. Yet,

²⁵ *Id.*

²⁶ TIEC Exhibit 2 at 33.

²⁷ Direct Testimony of Karl R. Bletzacker, SWEPCO Exhibit 5 at 419.

²⁸ SWEPCO Initial Brief at 31.

²⁹ SWEPCO Initial Brief at 32.

³⁰ Commission Staff’s Initial Brief at 00000010 (Mar. 9, 2020) (Staff Initial Brief); Errata to Direct Testimony of John F. Torpey, SWEPCO Exhibit 8 at Exhibit JFT-3.

SWEPCO is unwilling to protect customers against anything more than the “improbable” P95 production level.³¹ In fact, SWEPCO witness Malcom Smoak admitted that he doesn’t expect the P95 production guarantee to come into play at all because SWEPCO expects production levels in excess of P95 over the life of the project.³²

The difference between the projected benefits in SWEPCO’s base gas case, without carbon or a gen-tie line at a the P95 level (\$181 million NPV) and the P50 level (\$396 million NPV), is \$215 million NPV.³³ With such a large variation in savings dependent on the NCF, the risk to customers in overstating the output of the SWFs is clear—a fact that further highlights the dissonance in SWEPCO’s position regarding the risks it is willing to impose on customers if its assumptions are wrong and what it is willing to guarantee to mitigate those risks. Accordingly, SWEPCO’s criticisms of any party’s analysis on the grounds that it relied on cost estimates based on the P95 production level should be disregarded.

d. Useful Life of Wind Facilities

A useful life of 25 years rather than 30 years should be assumed for the SWFs. As Staff noted in its initial brief, by adding five more years of useful life to the SWFs, SWEPCO improves the economic calculation of net benefits because the production cost savings are highest in the last five years.³⁴ In SWEPCO’s low gas/no CO₂ case the projected benefits during the last five years represents \$77 million NPV out of the total net benefits projected for SWEPCO’s low gas/no CO₂ case of \$236 million NPV.³⁵

e. Congestion and Losses (including Gen-Tie)

As SWEPCO’s briefing on congestion and losses was limited almost exclusively to testimony in its initial application, Staff reiterates its position regarding congestion costs and a dedicated gen-tie. Staff further wishes to discuss points raised by (1) East Texas Electric Cooperative Inc. and Northeast Texas Electric Cooperative, Inc. (ETEC/NTEC) and (2) TIEC regarding congestion costs and a gen-tie line.

³¹ SWEPCO Initial Brief at 32.

³² Tr. at 45:13-23 (Smoak Direct) (Feb. 24, 2020).

³³ Direct Testimony of John F. Torpey, SWEPCO Exhibit 8, Attachment JFT-3 at 2, 7.

³⁴ Staff Initial Brief at 00000011.

³⁵ TIEC Exhibit 2 at 45.

First, Staff agrees with NTEC/ETEC and TIEC regarding the issues asserted in their initial brief discussing the PROMOD models leveling of congestion costs from 2029 to 2051.³⁶ The assumption made by SWEPCO witness Sheilendranath that losses will hold constant from 2029 through 2051 because of transmission solutions implemented by the Southwest Power Pool (SPP) is not supported by actual evidence.³⁷ This is highlighted by TIEC’s witness Charles Griffey, where his³⁸ testimony demonstrates that SWEPCO underestimates congestion and losses in two ways: “(1) SWEPCO holds congestion constant in nominal terms after 2029, despite the fact that its projections of energy cost are growing (and doing so at a rate in excess of inflation)[;]” and (2) “[SWEPCO] bases its congestion estimates on PROMOD, which is known to understate the cost of congestion.”³⁹ Griffey goes further to say that SWEPCO’s assumption of congestion being held constant is inconsistent with its assertion that “cost-effective new technology will mitigate the cost of congestion, but somehow the same cost-effective new technology will not limit the energy price increases that SWEPCO projects.”⁴⁰ Griffey finally states that these projections are “based on nothing but unsupported assumptions.”⁴¹ Staff agrees with both TIEC and NTEC/ETEC that the assumptions made by SWEPCO regarding congestion from 2029 to 2051 understate congestion costs and are likely inaccurate as to actual congestion costs on the SPP system.

Second, Staff agrees with TIEC’s position that SWEPCO incorrectly excluded additional congestion costs that would occur even if a gen-tie was built.⁴² SWEPCO in the Wind Catcher case intended to build a dedicated gen-tie for transmission to the AEP West Load Zone.⁴³ In that case, SWEPCO anticipated that there would be congestion costs even with the build out of a

³⁶ Initial Brief of East Texas Electric Cooperative, Inc. and Northeast Texas Electric Cooperative, Inc. at 11-13 (Mar. 9, 2020).

³⁷ Tr. at 312:14-25 to 313:1-6 (Sheilendranath Direct) (Feb. 25, 2020).

³⁸ TIEC Exhibit 2 at 6, 40-41.

³⁹ *Id.* at 41.

⁴⁰ *Id.* at 41.

⁴¹ *Id.* at 41-42.

⁴² TIEC Initial Brief at 57.

⁴³ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project*, Docket No. 47461, Application at 5 (Jul. 31, 2017).

dedicated gen-tie line from the wind facilities to the AEP West Load Zone.⁴⁴ SWEPCO anticipated that even with a dedicated gen-tie line, congestion costs would average \$2.63 per MWh in 2021 to \$5.68 per MWh in 2045.⁴⁵ Yet in the current application, SWEPCO anticipates that if a dedicated gen-tie is built, congestion costs would be zero.⁴⁶ These two evaluations of congestions costs with a gen-tie line are incongruous, and SWEPCO has not offered adequate explanation on how to reconcile these differences. Overall, it is clear that SWEPCO has understated congestion costs.

3. Capacity Value

Staff supports the arguments set forth in the initial briefs of OPUC⁴⁷ and TIEC,⁴⁸ which highlight the fact that the preferred plan included in SWPECO's 2018 IRP shows that SWEPCO does not need the accredited capacity value of 123 MW that it anticipates will be assigned to the SWFs⁴⁹ to remain above the reserve margin SWEPCO is required to maintain by SPP for the next 18 years.⁵⁰

4. Production Tax Credits

SWEPCO admits that the amount of PTCs earned is dependent on the energy output of the SWFs⁵¹ and touts its wind energy resource assessment as the reason "the Commission can be confident" in the output at the P50 level.⁵² Yet, SWEPCO continues to provide no explanation as to why it is not confident enough to guarantee an output level greater than P95. Instead, SWEPCO implies that requiring a more robust guarantee would somehow penalize it if production does not occur as expected.⁵³ Given the range of the risks that SWEPCO is willing to

⁴⁴ TIEC Exhibit 57 at 4.

⁴⁵ *Id.*

⁴⁶ TIEC Exhibit 58 at 10.

⁴⁷ Office of Public Utility Counsel's Post-Hearing Initial Brief at 19-20 (Mar. 9, 2020).

⁴⁸ TIEC Initial Brief at 59.

⁴⁹ Tr. at 429:15-18 (Torpey Direct) (Feb. 25, 2020).

⁵⁰ Direct Testimony of John F. Torpey, SWEPCO Exhibit 8 at 144 (Table 2); Tr. at 430:7-13 (Torpey Direct) (Feb. 25, 2020).

⁵¹ SWEPCO Initial Brief at 37.

⁵² *Id.*

⁵³ Rebuttal Testimony of Thomas P. Brice, SWEPCO Exhibit 14 at 17.

place on customers—change in law, force majeure, SPP curtailments, lower-than-projected natural gas prices, etc.—it is reasonable to require a more robust guarantee in regard to the energy output of the SWFs, which SWEPCO characterizes as “expected” and “undisputed.”⁵⁴

6. Wind Facility Revenue Requirement

Staff supports the arguments presented by Cities Advocating for Reasonable Deregulation (CARD) regarding the amount and certainty of the return of and on investment SWEPCO will earn on the SWFs.⁵⁵

D. Economic Evaluation and Summary

Overall, it is likely that ratepayers would see very little, if any, net benefit and are at an actual risk of experiencing economic costs due to the SWFs. In its initial brief, SWEPCO claims it has presented evidence of customers benefits under a range of plausible future circumstances.⁵⁶ However, the range of net benefits presented by SWEPCO is not plausible. As explained above, even SWEPCO’s low gas case is likely overstated, and the imposition of a carbon emission burden is unlikely. As Staff demonstrated in its initial brief, SWEPCO’s projected net benefits for models assuming low gas and no carbon tax are \$236 million NPV at a P50 capacity factor and \$43 million NPV at a P95 capacity factor.⁵⁷ With reduced natural gas prices by 10% for SWEPCO’s low gas/no CO₂ case, the projected net benefits at a P50 capacity factor reduce to \$109 million NPV.⁵⁸ However, these values do not take into account that SWEPCO’s congestion costs are overstated, assumption of capacity value should not be included, and that the SWFs should be modeled using a 25-year useful life.⁵⁹

⁵⁴ *Id.* at 8.

⁵⁵ Cities Advocating Reasonable Deregulation’s Initial Post-Hearing Closing Brief at 9-11 (Mar. 9, 2020).

⁵⁶ SWEPCO Initial Brief at 43-44.

⁵⁷ Staff Initial Brief at 00000020; Errata to Direct Testimony of John F. Torpey, SWEPCO Exhibit 8 at Exhibit JFT-3; SWEPCO Exhibit 14 at Exhibit TBP-1R.

⁵⁸ SWEPCO’s Response to TIEC’s 3-6, Staff Exhibit 10.

⁵⁹ Staff Initial Brief at 00000020; Errata to Direct Testimony of John F. Torpey, SWEPCO Exhibit 8 at Exhibit JFT-3; SWEPCO Exhibit 14 at Exhibit TBP-1R.

IV. PROPOSED CONDITIONS (P.O. ISSUE NO. 10, 19, 20, 24)

A. SWEPCO Proposed Conditions

Staff addressed the three guarantees provided by SWEPCO in its initial brief and how SWEPCO assumes little to no risk in providing these three guarantees to customers.⁶⁰ Furthermore, a comparison between the projected net benefits for Wind Catcher and the SWFs shows that the projected net benefits for Wind Catcher were greater than the SWFs even taking into account the smaller capital investment for the SWFs. Specifically, “Wind Catcher would have delivered \$2.07 in nominal benefits per \$1 invested and North Central [SWFs] \$1.92 per \$1 invested, based on the Company’s fundamental forecast at applicable times.”⁶¹ Notably, in Wind Catcher the Commission found that “the guarantees offered by SWEPCO are not sufficient to protect consumers from the risk of the project.”⁶²

C. Staff/Intervenor Proposed Conditions

As Staff demonstrated in its initial brief, CARD, OPUC, and Staff recommends that, if the Commission approves SWEPCO’s application, that it is approved only with additional conditions including a net benefits guarantee, an off-system sales and renewable energy credits (RECs) guarantee, and improved minimum production guarantees and PTC guarantees.⁶³ In its initial brief, SWEPCO argues that OPUC witness Nalepa’s recommendation that the Commission condition approval of the application for SWFs on SWEPCO guaranteeing a P50 production level is unreasonable. SWEPCO also criticizes OPUC witness Nalepa’s recommendation of a net benefits guarantee based on SWEPCO’s Fundamentals Base Case forecast as a condition to approval. According to SWEPCO, such a guarantee would operate as a penalty to SWEPCO. However, the final order approving SPS’s wind generation project in Docket No. 46936 contained the guarantees or conditions proposed by Staff and Intervenors as well as other improved guarantees.⁶⁴

⁶⁰ Staff Initial Brief at 00000024.

⁶¹ SWEPCO’s Response to CARD’s 1st RFI (1-22), Staff Exhibit 7 at 28-30.

⁶² *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, Finding of Fact No. 139A (Aug. 13, 2018).

⁶³ Staff Initial Brief at 00000026 - 00000027.

⁶⁴ *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*

SPS's Minimum Production Guarantee

SPS guaranteed minimum production of its wind facilities at 48% NCF. Specifically, for years one through four if the production of SPS's wind facilities was below a 48% NCF, SPS would credit to fuel expense the grossed-up PTCs not generated due to the underproduction as well as the additional energy costs incurred due to the underproduction. During years one through four, if the average annual production for the life of the projects at the end of year four exceeds a 53.7% NCF, SPS is allowed to use the production above an average annual production of 53.7% during calendar years one through four to recapture any credit given for production below a 48% NCF.

Beginning with the fifth year, if the average annual production during the preceding three calendar years is below a 48% NCF, SPS would credit to fuel expense the grossed-up PTCs not generated due to the underproduction as well as the additional energy costs incurred due to the underproduction. To the extent that the average annual calendar year production for the life of SPS's wind projects to date exceeds a 53.7% NCF, SPS is allowed to use the production above an average annual production of 53.7% during calendar years to recapture any credit given for production below a 48% NCF.⁶⁵

SPS's Net Benefits Guarantee

In Docket No. 46936, SPS included a net benefits guarantee for the first 10 years of the wind projects. The net benefits guarantee was based on an annual comparison between the costs and savings of each project. The calculation of costs included the amount collected from Texas retail customers including a return on and of the capital investment, AFUDC, all costs for generation interconnections assigned by SPP, congestion costs including any necessary new transmission and distribution equipment and any necessary upgrades to existing transmission and distribution equipment. The savings calculation included the grossed-up value of PTCs credited to Texas retail customers, the dollar amount of REC credits to Texas retail customers attributable to the sale of RECs generated by each project, and a calculation of the Texas portion of estimated fuel savings achieved by each project.⁶⁶

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).

⁶⁵ *Id.* at Order FOFs 72-78.

⁶⁶ *Id.* at Order FOFs 79-88 (May 25, 2018).

Considering the risks associated with the SWFs without the conditions proposed by Staff and Intervenor, the guarantees proposed by SWEPCO are not sufficient to demonstrate a probable lowering of costs to ratepayers.

VII. RATE ISSUES (P.O. ISSUE NOS. 21, 22, 25, 26, 27, 28, 29, 30, 31)

C. Deferred Tax Asset Carrying Costs

SWEPCO has not met its burden to show that it is appropriate to determine the ratemaking treatment to be applied to the DTA *in this proceeding*. SWEPCO argues that it is reasonable to include the DTA related to unrealized PTCs in rate base because SWEPCO customers will receive the benefits of the PTCs as they are earned.⁶⁷ However, the record in this case supports only the conclusion that SWEPCO *intends* to flow the benefits of the PTCs to customers as they are earned.⁶⁸ While there is no reason to doubt SWEPCO's intention, there are too many unknowns surrounding how that intention will actually manifest through the ratemaking process to justify a finding that now is the time to approve SWEPCO's requested method of recovery.⁶⁹ Add that to the list of uncertainties surrounding the DTA explained in Staff's initial brief,⁷⁰ and it is clear that if the application is approved, the evidence supports delaying a decision about whether SWEPCO can recover the DTA in rate base until its next base rate proceeding.

VIII. SALE, TRANSFER, MERGER ISSUES (P.O. ISSUE NOS. 13, 14, 15, 16, 17, 18)

SWEPCO argues in its initial brief that PURA § 14.101 does not apply to this proceeding because the "Selected Wind Facilities are wholly located in Oklahoma and do not constitute 'an operating system in this state.'"⁷¹ The SWFs are in fact an operating system in the state and should be covered under the rule. Though the SWFs themselves are physically located in Oklahoma, the wind facilities are only one part of the overall transmission system that will

⁶⁷ SWEPCO Initial Brief at 50.

⁶⁸ SWEPCO Exhibit 32, SWEPCO's Response to Commission Staff's Third Request for Information at Staff 3-7; Tr. at 558:7 – 559:4 (Aaron Direct) (Feb. 25, 2020).

⁶⁹ See SWEPCO Initial Brief at 50 ("If the generation cost recovery 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 PTCs to customers...Again, the Company did not request any relief in this proceeding...").

⁷⁰ Staff Initial Brief at 30-33.

⁷¹ SWEPCO Initial Brief at 55.

provide electricity to customers. There are transmission lines, distribution lines and substations, many of which will be located in Texas, that will be a part of the system that provides electricity to Texas customers generated at the SWFs. All of this constitutes a part of the transmission system. For this, reason Staff argues that PURA § 14.101 does apply to this application.

If the Commission finds that PURA § 14.101 does apply, Staff argues that the application is not in the public interest under PURA § 14.101(b)(4). Under PURA § 14.101(b)(4) the Commission must determine whether a “transaction is consistent with the public interest.” Without additional guarantees, this application is not in the public interest under PURA § 14.101(b)(4).

IX. CONCLUSION

Overall, rather than a probable lowering of costs for customers, Texas ratepayers are at a actual risk of experiencing net costs due to the SWFs. Without additional guarantees, including, at minimum, a net benefits guarantee to protect Texas ratepayers, Staff recommends denial of the application.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on March 17, 2020, in accordance with 16 TAC § 22.74.

Rashmin J. Asher