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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 REPLY BRIEF

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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 reply post-hearing brief and shows the following:[1]

I. Introduction

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

[1] OPUC's reply brief follows the same outline agreed to by the parties for the initial post-hearing brief, but omits those sections to which OPUC is not responding. The fact that OPUC does not address an issue, whether here in its reply brief, or in its initial brief, should not be interpreted as agreement with any particular position on the issue.

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

seeks the Project to diversify its generation mix and provide cost savings benefits to its ratepayers from low-cost wind energy.[3]

SWEPCO's CCN application is based on its contention that the Project will result in a probable lowering of cost to consumers under Section 37.056(c)(4)(E) of the Public Utility Regulatory Act ("PURA"). Throughout the pendency of this proceeding, as demonstrated by the evidentiary record, SWEPCO has failed to show that the Project will result in a probable lowering of cost for its ratepayers. In fact, the majority of the Company's assumptions that were made in its analysis to justify the Project do not reflect current market realities and would actually significantly reduce or entirely eliminate the Project's estimated cost savings benefits for its ratepayers. In particular, the Company ignores the very real risk posed by today's current lower natural gas prices to the economics of the Project, the inaccurate inflationary impact that a hypothetical carbon tax would have on the Project's customer cost savings benefits, the significant gen-tie line costs that its ratepayers would face if the Southwest Power Pool ("SPP") does not implement necessary transmission upgrades to address congestion, and the inaccurate inflationary impact that an overly optimistic P50 output level of production would have on the customer cost savings benefits of the Project.

Consequently, without SWEPCO's provision of additional important and meaningful guarantees to protect its ratepayers from the significant cost impacts that could result from these important factors that the Company has not fully taken into account in its analysis to justify the Project, the Public Utility Commission of Texas ("Commission") should find that the Project will not result in a probable lowering of cost to the Company's ratepayers, and therefore, should deny

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

the Company's CCN application because the Project is not necessary for the service, accommodation, convenience, or safety of the public under PURA 37.056.

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

In order for the Commission to grant a CCN to an electric utility, the Commission must consider several factors under PURA § 37.056.[4] In weighing these required factors, the Commission will weigh the competing factors differently on a case-by-case basis.[5] However, the less prominent factors should not be entirely ignored.[6] The fact that the Project is not necessary to address the adequacy of existing service, is not needed to provide additional service, and is not necessary to meet a renewable energy requirement should be considered in totality in this proceeding.[7]

In its initial brief, SWEPCO acknowledges that the Commission's approval of its CCN application hinges on whether the Project will result in the probable lowering of cost to ratepayers under PURA § 37.056 (c)(4)(E).[8] In order to grant the CCN under this statutory standard, the Commission, in its review of the entire evidentiary record, must find that the Project will result in the probable lowering of cost to the Company's ratepayers.[9] SWEPCO does not argue that service will be improved by the Project, but instead states that the Project will diversify its generation mix and provide low-cost wind energy to its ratepayers.

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[4] Public Utility Regulatory Act § 37.056 (PURA). For further discussion *See*: OPUC Initial Brief at 2 – 5.

[5] *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] *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, OPUC Reply Brief (Aug. 13, 2018).

[7] OPUC Initial Brief at 3 – 4.

[8] SWEPCO Initial Brief at 4.

[9] *Hammack v. Public Utility Com'n of Texas*, 131 S.W.3d 713, 726 (Tex. App. — Austin 2004).

The *Texland* case provides the following example of how competing factors may have to be weighed by the Commission:

> For example, a "need" for additional service implies a relative requirement, ranging from an imperative need to one that is minimal; and, if a "need" be sufficiently grave, it may have to prevail notwithstanding an adverse effect upon another interest, such as the environment. Conversely, "environmental integrity" may in some circumstances have to prevail over a need for the additional service.[10]

SWEPCO's sole justification for the Project is based on the Project's purported future economic benefits. The Commission should weigh the fact that there is no existing need for the Project against the potential purported future economic benefits of the Project that are touted by SWEPCO, along with the very real likelihood that the purported future economic benefits of the Project will not materialize and the Company's ratepayers would have to pay a significant amount of higher costs for a Project that was not necessary to meet a reliability, capacity or other important need. As Commission Staff points out in its initial brief "... where the generation facility is not necessary for reliability purposes, as is the case with the [Select Wind Facilities], whether or not the proposed CCN would lower costs to ratepayers is of the utmost concern."[11] In other words, because the Project is based on economics not necessity, whether or not the Project will actually result in a probable lowering of cost to consumers is of paramount importance. Therefore,

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[10] *Pub. Util. Comm 'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 - 267 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

[11] Staff Initial Brief at 5.

SWEPCO's CCN application should be denied by the Commission unless SWEPCO is able to demonstrate that the Project will result in a probable lowering of cost to its ratepayers.

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

Throughout its initial brief, SWEPCO argues that the intervenors, in particular OPUC and the Texas Industrial Energy Consumers ("TIEC"), take an extreme position, focusing on the negatives of the Project and ignoring the positive aspects of the Project.[12] In accordance with the agency's statutory mission in Chapter 13 of PURA, OPUC is representing the residential and small commercial consumers in SWEPCO's service area in Texas in this proceeding, and in doing so, OPUC must shine a critical light on the Project to ensure that the Project will in fact result in a probable lowering of cost for the Company's ratepayers.

SWEPCO claims that OPUC and TIEC are "giving undue credence to an unlikely series of events that mathematically result in a net cost to customers ..."[13] Unfortunately, the scenarios and assumptions presented by the intervenors in this proceeding are much closer to reality than those presented by the Company. In particular, the Company's Base Case scenario and key assumptions: (1) include inflated natural gas prices that are untethered to current market conditions; (2) incorporate the imposition of a hypothetical carbon tax, even though a carbon tax has never been implemented in the U.S. and has already been rejected by the Commission in the Company's prior *Wind Catcher* case in Docket No. 47461; (3) do not incorporate the potential need for costly gen-tie lines that would be needed if SPP does not implement the necessary transmission upgrades to address congestion; and (4) use of a 44.01% capacity factor at a P50 output level that overstates the likely customer cost savings benefits of the Project.

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[12] SWEPCO Initial Brief at 8.

[13] *Id.*

A. Request for Proposals and Selection Process

See OPUC's initial brief for OPUC's position on this issue.

B. Project Description and Cost

As discussed in OPUC's initial brief, according to SWEPCO, the total Project cost is $1.996 billion. SWEPCO is seeking to purchase a 54.5% ownership interest in the Project, so SWEPCO's share of the total cost is approximately $1.09 billion and the estimated cost for the Texas retail jurisdiction is $415 million.

As discussed further below, the Company's total projected cost for the Project does not include the cost of any future gen-tie lines that would be necessary if SPP does not implement the necessary transmission upgrades to address congestion. The estimated cost of the potential gen-tie lines is approximately $443,754,726.[14] SWEPCO's CCN application does not consider the need for future gen-tie lines, so the Company is not offering any protection to ratepayers for this potential significant future cost, aside from offering to seek Commission approval for the gen-tie lines if they are needed in the future.[15] In considering whether to approve SWEPCO's CCN application, the Commission should take this potential significant future cost into consideration in determining whether the Project will result in a probable lowering of cost to the Company's ratepayers. Furthermore, the Commission should require SWEPCO to seek Commission approval of any future gen-tie lines, if the Commission approves the Company's CCN application in this proceeding.

C. Economic Modeling

1. Modeling Methodology

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[14] OPUC Ex. 1 (Nalepa Direct) at 19:15-16.

[15] OPUC Initial Brief at 17 – 19.

For background purposes, SWEPCO evaluated the economics of the Project by creating a Base Case scenario and Project Case scenario.[16] The Base Case scenario models future prices with the Project included, while the Project Case scenario acts as a control comparison with the same assumptions as the Base Case scenario, but excluding the impacts of the Project.[17] SWEPCO then compared the difference between the Base Case scenario and the Project Case scenario to arrive at the net customer cost savings benefits of the Project.[18]

As discussed in OPUC's initial brief, OPUC has significant concerns with the majority of the assumptions that were used in SWEPCO's economic modeling methodology to derive its Base Case scenario. In particular, as discussed above, OPUC is concerned with the Company's: (1) use of inflated natural gas prices that are much higher than current market prices; (2) use of a hypothetical carbon tax, even though a carbon tax has never been implemented in the U.S. and has already been rejected by the Commission in the Company's prior *Wind Catcher* case in Docket No. 47461;[19] (3) failure to incorporate the potential significant cost of future gen-tie lines if SPP does not implement the necessary transmission upgrades to address congestion; and (4) use of a 44.01% capacity factor at a P50 output level to calculate net cost savings benefits for its ratepayers.[20] SWEPCO claims that OPUC and TIEC have used "extreme, unreasonable assumptions" in analyzing the Project.[21] As stated above, the scenarios and assumptions presented by the intervenors in this proceeding are much closer to reality than those presented by the

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[16] OPUC Ex. 1 (Nalepa Direct) at 12:13 – 13:7.

[17] *Id.*

[18] *Id.*

[19] *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 (Aug. 13, 2018).

[20] OPUC Initial Brief at 8.

[21] SWEPCO Initial Brief at 18.

Company. OPUC witness Mr. Karl Nalepa analyzed the Project using assumptions that reflect current real-world market conditions, including the use of NYMEX natural gas futures to more realistically project natural gas prices, the inclusion of potentially necessary high cost gen-tie lines, and a more realistic energy output level at P95.[22]

2. Projected Production Cost Savings

a. Natural Gas Prices

SWEPCO states in its initial brief that because the Project will produce energy while incurring no fuel costs, "the future price of natural gas does not directly impact the benefits that customers are expected to receive from acquisition of the Selected Wind Facilities."[23] SWEPCO then goes on to acknowledge that "the future price of natural gas does play a *significant role in the calculation of the price of energy over the life of the Selected Wind Facilities.*"[24] This contradiction illustrates how the Company continues to downplay the value and importance of using current market-based natural gas price metrics to calculate customer cost savings benefits. As OPUC witness Mr. Nalepa testifies:

> "Natural gas price forecasts are relevant because gas prices set the marginal price for electricity in the market. The price for natural gas essentially caps the price for wind generation resources. The higher the gas price, the higher wind prices can go, and this price impact improves the project's customer benefit. Conversely, if gas prices remain low, this results in lower wind energy prices, and thus, reduces the project's customer benefit."[25]

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[22] *See* OPUC Initial Brief.

[23] SWEPCO Initial Brief at 22 (emphasis added).

[24] *Id.*

[25] Karl Nalepa, Direct Testimony, 21:1-6.

The Project's customer cost savings benefits are strongly correlated with natural gas prices, and as natural gas prices decline, so do the Project's customer cost savings benefits.[26] The Company's high natural gas price forecast increases the Base Case scenario's net present value ("NPV") by $151 million, while its low natural gas price forecast lowers the Base Case scenario's NPV by $171 million.[27] These vast swings in the Company's own calculations demonstrate the profound effect natural gas prices can have on the projected net customer cost savings benefits of the Project.

As discussed in OPUC's initial brief, SWEPCO did not model the impact on customer cost savings benefits using NYMEX natural gas prices.[28] OPUC discussed the comparison between NYMEX natural gas prices, used by the intervenors, and the AEP Fundamentals Forecast, used by SWEPCO, at length in its initial brief.[29] In short, the NYMEX natural gas prices, as recognized by the Commission, represent actual market transactions for natural gas between willing buyers and sellers who put real money at risk in their day-to-day operations.[30] The AEP Fundamentals Forecast, by contrast, does not in any way factor in actual market pricing beyond the knowledge of today's natural gas prices as a starting point prior to the analysis.[31]

The Commission and the Administrative Law Judges ("ALJs") did not buy SWEPCO's use of the AEP Fundamentals Forecast in the *Wind Catcher* case in Docket No. 47461 and they

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[26] Id. at 23:6-9.

[27] Id.

[28] Id. 24:1-2.

[29] OPUC Initial Brief at 9 – 15.

[30] *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).

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

should reject it again in the instant case.[32] The following Findings of Fact in the Commission's Order in the *Wind Catcher* case are instructive in the present case:

> 75. *Future natural gas prices are an essential element of the project benefits calculation. The higher the expected future natural gas prices, the greater the expected benefits from the project.*
>
> 76. SWEPCO used AEP's Long-Term North American Energy Market Forecast (fundamentals forecast) to forecast the expected project benefits.
>
> 77A. The fundamentals forecast contained natural-gas-price projections for a base case, a high case, and a low case. The base case was used by SWEPCO to analyze the economics of the project. The base case used a levelized natural gas price of $7.35 per MMBtu.
>
> 78. *Natural gas prices are important because fuel prices are a key component in determining the supply stack, or merit order, for the dispatch of generating units.*
>
> 79. The 2016 fundamentals forecast employed a *carbon dioxide dispatch burden on all existing fossil-fuel-fired generating units that escalated from $2.92 per ton*

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[32] *Application of Southwestern Electric company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma, Final Order, Docket No. 47461 (Aug. 13, 2018).*

in 2024 to $26.31 per ton in 2032 to achieve national mass-based emission targets similar to those proposed in the national Clean Power Plan.

80. *Each of AEP's past forecasts, dating back to 2007, has been on the high side of actual natural gas prices.*

81. Although the 2016 fundamentals forecast was weather-normalized, *the evidence did not quantify the impact of abnormal weather on prior forecasts.*

82. SWEPCO's forecasts start out higher than current prices and have been higher than actual prices for several years.

83. *The gas prices of the SPS and ETI forecasts used in recent Commission proceedings were significantly lower than SWEPCO's fundamentals forecast.* The SPS low case forecast projected a levelized price of natural gas at $3.55 per MMBtu. The ETI low case forecast projected a levelized price of natural gas at $3.68 per MMBtu.

84. *The NYMEX futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations.* The NYMEX futures prices, when trended to 2045, are $3.58 per MMBtu.[33]

[33] *Application of Southwestern Electric company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma, Final Order, Docket No. 47461 (Aug. 13, 2018) (Emphasis added).*

SWEPCO concedes that testing the sensitivity of an investment opportunity with changes in assumptions should be done,[34] but the Company steadfastly refuses to acknowledge that this testing should apply to its own natural gas price forecasts. Throughout the Company's initial brief, OPUC's concerns regarding natural gas prices were described as "implausible", "highly-improbable", "extreme", "unlikely", and "unreasonable,"[35] However, SWEPCO witness Mr. Karl Bletzacker confirmed that while SWEPCO's Base Case natural gas price projection for 2020 was $3.40, the Henry Hub spot price for natural gas in the third week of February was actually between $1.90 and $2.00.[36] Therefore, contrary to the Company's assertions, OPUC's concern with SWEPCO's use of higher inflated and outdated natural gas prices in its Base Case is hardly extreme or unreasonable. OPUC's concerns are grounded on the current practical reality of the natural gas market and the fact that the Project has a genuine chance of never providing net customer cost savings benefits to the Company's ratepayers on the sole basis of current natural gas prices, much less when other factors, like the gen-tie line costs and P50 output level, are considered by the Commission.[37]

b. Other Assumptions Affecting Locational Marginal Prices

As discussed in OPUC's initial brief, OPUC believes that the Company's use of a hypothetical carbon tax to calculate the Project's customer cost savings benefits in its Base Case is inappropriate.[38] In its initial brief, SWEPCO claims that OPUC witness Mr. Nalepa dismissed

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[34] SWEPCO Initial Brief at 8.

[35] *See* SWEPCO Initial Brief at 2, 8, and 18.

[36] Tr. at 224:7 – 12 (Bletzacker Cross) (Feb. 24, 2020).

[37] OPUC Initial Brief at 13 – 14.

[38] OPUC Initial Brief at 15 – 16.

the carbon tax and refused to consider it at all.[39] OPUC points out that Mr. Nalepa's position is that it is inappropriate to use the imposition of a hypothetical carbon tax to inflate the Project's projected customer cost savings benefits.[40] A carbon tax has never been imposed in the U.S. and there is no credible evidence to show that a carbon tax will be imposed in the future[A1].[41] In fact, as noted, the Commission already rejected SWEPCO's inclusion of a carbon tax in its economic model in the Company's prior *Wind Catcher* case in Docket No. 47461. The Commission provided the following Findings of Fact in its Order in that proceeding:

> 96. Although it is possible that a carbon tax will be imposed in the future, such a tax has not been imposed in the past, there is not one in place now, and there was no credible evidence to show that the imposition of such a tax is likely in the future.
>
> 97. *SWEPCO's modeling of the locational marginal prices should not have included the carbon-burden component, and the calculation of the estimated benefits of the project should be reduced accordingly.*[42]

c. Capacity Factor

As discussed in OPUC's initial brief, in analyzing the economics of the Project, SWEPCO based its analysis on a Capacity Factor of 44.01% or an output level of P50, meaning that

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[39] SWEPCO Initial Brief at 29.

[40] Tr. 681:19 – 687:1 (Nalepa Cross) (Feb. 26, 2020).

[41] OPUC Ex. 1 (Nalepa Direct) at 16:8 – 13.

[42] *Application of Southwestern Electric company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma, Final Order, Docket No. 47461 (Aug. 13, 2018) (Emphasis added)..*

SWEPCO expects to operate the Project at least at 44.01% capacity 50% of the time throughout the Project's life.[43] The Project's P95 capacity factor is 38.13%, meaning that SWEPCO would operate at least at 38.13% capacity 95% of the time throughout the Project's life.[44] In its initial brief, in criticizing OPUC's and TIEC's use of the P95 output level of production to estimate the Project's customer cost savings benefits, SWEPCO mischaracterizes the probability of occurrence of the P50 and P95 output levels and asserts that the Project is more likely to hit a P50 output level than to hit a P95 output level.[45] Simple logic proves this argument false. In actuality, the Company is virtually guaranteed to hit and exceed the P95 output level of production throughout the Project's life with a 95% certainty. The P50 output level of production is far less likely, with only a 50% probability of occurring over the life of the Project. OPUC believes that a more certain level of production, such as the P95 output level, should be the basis for the economic analysis of the Project.

The Company stated in its initial brief that "TIEC and OPUC's one-sided approach to the Selected Wind Facilities' production level is characteristic of their extreme positions on other issues in this case, but it is no way to impartially evaluate the benefits of the Facilities."[46] Rather than deflecting the issue and criticizing OPUC and TIEC, the Company should address the legitimate concerns raised by OPUC witness Mr. Nalepa in his Direct Testimony. Mr. Nalepa expressed the following concern:

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

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

[45] SWEPCO Initial Brief at 31.

[46] *Id.* at 31-32.

SWEPCO's Base Case assumes the combined wind generation facilities' output at a P50 level, or 5,724 GWh per year. But, SWEPCO also ran sensitivity cases assuming a P95 output level, or 4,959 GWh per year. From Table 2, if the combined wind generation facilities produced power at the P95 level, SWEPCO's Base Case would result in $237 million lower NPV benefits than does its Base Case at the P50 level. This is a 42% reduction from SWEPCO's Base Case at the P50 level. Furthermore, the cumulative impact on the Base Case assuming no CO2 fee and P95 output level reduces the asserted benefits by $386 million, or more than two-thirds. It is clear that if the wind generation facilities generate at a level less than P50, then SWEPCO's asserted customer benefits are overstated.[47]

Like the significant impact that natural gas prices can have on the Project's net customer cost savings benefits, the Project's actual power output can also have a significant impact on the Project's net customer cost savings benefits. For this reason, OPUC believes that a more conservative power output projection with a higher probability of occurrence, like the P95 output level, is a more appropriate approach for evaluating the Project's net customer cost savings benefits.

d. Useful Life of Wind Generation Facilities

Please see OPUC's initial brief for OPUC's position on this issue.

e. Congestion and Losses

SWEPCO states in its initial brief that "[A]lthough the Company does not expect to need a gen-tie, the high congestion gen-tie cases show that over the 30-year life of the Selected Wind Facilities, assuming congestion costs were high enough to warrant building a gen-tie by 2026 and

[47] OPUC Ex. 1 (Nalepa Direct) at 18:14-20 and 19:1-3.

SPP did not promote new transmission to relieve those costs, the Selected Wind Facilities would still result in customer savings even when the cost of a gen-tie is included."[48] However, the Company failed to acknowledge that the customer cost savings benefits that it touted in its CCN application would be significantly reduced if the cost of the future gen-tie lines were factored into its economic model. SWEPCO's Base Case does not include the potential significant cost of the gen-tie lines that would be needed if SPP did not implement the necessary transmission upgrades to address congestion.[49] According to the Company, 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 between the proposed wind generation facilities and the Company's Tulsa load center."[50]

According to OPUC witness Mr. Nalepa, the estimated cost of the gen-tie lines is approximately $443,754,526.[51] As Mr. Nalepa points out in his Direct Testimony, "although SWEPCO is not proposing to install the gen-ties right away, its gen-tie cases assume the gen-ties would be needed and installed in 2026. If the gen-ties are installed, the additional cost further reduces any customer benefit of the wind generation facilities. … *the gen-tie costs added to SWEPCO's Base Case would lower the NPV benefits by $26 million compared to its Base Case*."[52] Further, as Mr. Nalepa testifies:

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48 SWEPCO Initial Brief at 28.

49 OPUC Ex. 1 (Nalepa Direct) at 19:6.

50 Id. at 19:6-10; *See* Direct Testimony of Johannes P. Pfeifenberger at 35.

51 Id. at 19:15-16.

52 OPUC Ex. 1 (Nalepa Direct) at 20:1-5.

> SWEPCO's selection of the Traverse, Maverick and Sundance wind projects was in part based on an *assumed equal weighting of system congestion costs and the cost of a gen-tie*, as SWEPCO does not know what congestion costs would be in the future. But as disclosed by SWEPCO, assumptions regarding congestion costs would impact the ranking of the developers' wind proposals. *Specifically, comparing only the cost of energy and excluding congestion or gen-tie costs, drops the Traverse and Maverick wind projects from the top of the project rankings. Furthermore, including congestion costs but excluding gen-tie costs, dropped all three wind projects in the project rankings. Only when additional gen-tie costs were considered in the project rankings did the three wind projects rise to the top of the project rankings.* These findings underscore the sensitivity of SWEPCO's assumptions regarding congestion mitigation.[53]

Consequently, it is not extreme or unreasonable, as SWEPCO claims, to question why the Company failed to factor in the gen-tie line costs into its economic analysis of the Project. The obvious and simple answer is that when the gen-tie line costs are factored into the economic analysis of the Project, it significantly reduces the amount of the customer cost savings benefits of the Project.

3. Capacity Value

Please see OPUC's initial brief for OPUC's position on this issue.

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[53] Id. at 20:7-17 (emphasis added).

4. Production Tax Credits

Please see OPUC's initial brief for OPUC's position on this issue.

5. Deferred Tax Asset

Please see OPUC's initial brief for OPUC's position on this issue.

6. Wind Facility Revenue Requirement

Please see OPUC's initial brief for OPUC's position on this issue.

D. Economic Evaluation and Summary

In its initial brief, in summarizing its economic analysis of the Project, SWEPCO maintains that "[O]nly SWEPCO has presented evidence of customer benefits under a range of plausible future circumstances. Other parties have not, instead electing to evaluate the acquisition of the Selected Wind Facilities under only a small set of 'worst case scenarios'."[54] SWEPCO, and only SWEPCO, has the burden in this case to demonstrate that the addition of the Selected Wind Facilities will result in "the lowering of cost to consumers in the area if the certificate is granted."

It is necessary and important for the intervenors in this proceeding to thoroughly and holistically evaluate whether the Company's purported customer cost savings benefits from the Project will actually materialize for its ratepayers. The total estimated cost of the Project for the Company's Texas ratepayers is $415 million, excluding other potential significant costs that were not factored into the Company's cost estimate, like potential future gen-tie lines that could cost

[54] SWEPCO Initial Brief at 40-41.

approximately $443,754,526.[55] Therefore, given the significant cost that the Company's ratepayers will pay for the Project, OPUC does not believe it is inappropriate or unreasonable to evaluate whether including the gen-tie line costs will reduce the Project's customer cost savings benefits, whether using a carbon tax in the Company's economic model will overstate the Project's customer cost savings benefits, and whether the Company's use of seemingly outdated and inflated natural gas prices, instead of NYMEX market-based natural gas prices that are more tethered to current market prices, will overstate the Project's customer cost savings benefits. If the Company's Texas ratepayers are going to have to pay hundreds of millions of dollars for this Project, OPUC believes it is necessary and important to evaluate *all* scenarios, including "worst case" scenarios, where the Company's ratepayers would potentially have to pay even higher project costs with significantly reduced or no customer cost savings benefits from the Project. OPUC agrees that SWEPCO, and only SWEPCO, has the burden to prove that the Project will result in a probable lowering of cost to consumers. Similarly, it is OPUC's statutory responsibility to represent the residential and small commercial consumers in the Company's service area in Texas that will have to pay for the Project, and therefore, OPUC must thoroughly and holistically evaluate whether the Project will actually produce the customer cost savings benefits that are purported by the Company.

Importantly, OPUC witness Mr. Nalepa's holistic and thorough analysis of the Project has found the following:

[55] OPUC Ex. 1 (Nalepa Direct) 19:15 -16.

- SWEPCO's Base Case without a CO2 fee results in $171 million lower NPV benefits than does its Base Case with a CO2 fee. This is a 30% reduction from SWEPCO's Base Case with a CO2 fee.[56]

- If the combined wind generation facilities produced power at the P95 level, SWEPCO's Base Case would result in $237 million lower NPV benefits than does its Base Case at the P50 level. This is a 42% reduction from SWEPCO's Base Case at the P50 level.[57]

- The cumulative impact on the Base Case assuming no CO2 fee and P95 output level reduces the asserted benefits by $386 million, or more than two-thirds.[58]

- If the wind generation facilities generate at a level less than P50, then SWEPCO's asserted customer benefits would be overstated.[59]

- If the gen-tie line costs are added to SWEPCO's Base Case, it would lower the NPV benefits to consumers by $26 million compared to its Base Case."[60]

Consequently, unless SWEPCO provides additional important and meaningful guarantees to protect its ratepayers from the significant cost impacts that could result from these key findings,

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[56] OPUC Ex. 1 (Nalepa Direct) at 16:5-7.

[57] *Id.* at 18:18 – 19.

[58] *Id.* at 18:19 – 19:3.

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

[60] OPUC Ex. 1 (Nalepa Direct) at 20:1-5.

the Commission should find that the Project will not result in a probable lowering of cost to the Company's ratepayers, and therefore, should deny the Company's CCN application.

IV. Proposed Conditions

A. SWEPCO Proposed Conditions

1. Capital Cost Cap

Please see OPUC's initial brief for OPUC's position on this issue.

2. Production Tax Credit Eligibility Guarantee

Please see OPUC's initial brief for OPUC's position on this issue.

3. Minimum Production Guarantee

SWEPCO's Minimum Production Guarantee provides a minimum output guarantee at P95 over five-year increments during the first ten years of the life of the Project.[61] SWEPCO has offered in its other settlements in Arkansas and Oklahoma to extend this guarantee to six five-year increments over the life of the Project.[62] OPUC recommends that the Commission also require six five-year increments over the life of the Project in this proceeding.

Additionally, as stated in OPUC's initial brief, OPUC recommends that the Commission change the production output level guarantee for minimum production.[63] As stated in OPUC's initial brief, OPUC believes that a P95 output level guarantee is *de minimis* and fails to protect the Company's ratepayers if the Project fails to produce the amount of power to yield net customer cost savings benefits to ratepayers.[64] Even the Company itself recognizes that the Project's output

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

[62] SWEPCO Initial Brief at 43 – 44.

[63] OPUC Initial Brief 23 – 24.

[64] OPUC Ex. 1 (Nalepa Direct) at 29:21 – 30:6.

at the P95 level as "implausibly low." The Company states that "...several intervenor witnesses present a biased and unrealistic view of the [Project] based on the implausibly low P95 production level."[65] Put simply, by touting the Project's customer cost savings benefits at a P50 output level, but only guaranteeing a P95 output level, SWEPCO is trying to sell a bag of goods, but is not willing to guarantee its contents.

B. Conditions Contained in Settlements Filed in Other Jurisdictions

Please see OPUC's initial brief for OPUC's position on this issue.

C. Staff/Intervenor Proposed Conditions

As discussed above and in OPUC's initial brief, if the Commission approves SWEPCO's CCN application, OPUC recommends that the Commission require the following guarantees and conditions:

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);
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

[65] SWEPCO Initial Brief at 30.

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).
7) Required Commission approval of any future gen-tie line. [66]

As stated in OPUC's initial brief, 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. OPUC, however, continues to reiterate the importance of using the P50 output level for SWEPCO's Minimum Production Guarantee and the need for a Minimum Energy Savings Guarantee.

SWEPCO offered to provide a guaranteed minimum production level at the average P95 output level.[67] 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.[68] As stated in OPUC's initial brief, 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.[69] If SWEPCO touts the customer cost savings benefits of the Project at the P50 output level, SWEPCO should also be willing to guarantee the customer cost savings benefits of the Project at the P50 output level.

[66] OPUC Initial Brief at 25 – 28.

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

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

[69] *Id.* at 14:1 – 3.

SWEPCO's Base Case scenario results in net customer cost savings benefits of $567 million for its ratepayers using the following assumptions: (1) wind generation output at the P50 output level; (2) SWEPCO's natural gas price Fundamentals Forecast; (3) a hypothetical carbon fee; and (4) no gen-tie line costs.[70] 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 output level, SWEPCO's Base Case would result in $237 million lower NPV customer cost savings benefits than does its Base Case at the P50 output level. The effect would be a 42% reduction from SWEPCO's Base Case at the P50 output level. Furthermore, the cumulative impact on the Company's Base Case assuming no carbon fee and a 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.[71] The Commission should strengthen SWEPCO's Minimum Production Guarantee by benchmarking it at the P50 output level to ensure that SWEPCO's purported customer cost savings benefits match their guarantee to its ratepayers.

As discussed in OPUC's initial brief, OPUC continues to reiterate the importance of a Minimum Energy Savings Guarantee. Natural gas prices, which set the marginal price in the wholesale electricity market, can have a significant impact on the economic viability of the Project.[72] SWEPCO claims that this guarantee, which is based on the Company's own natural gas price forecasts, would be unreasonable. OPUC believes that this necessary and important

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

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

[72] *Id.* at 27 – 28.

safeguard should be based on the Company's own natural gas price forecasts that were used to justify the Project in order to help ensure customer cost savings benefits for the Company's ratepayers, regardless of actual market prices for natural gas. Additionally, and notably, the imposition of a Minimum Energy Savings Guarantee is not without precedent, contrary to SWEPCO's assertion that it would be "unreasonable" to require such a guarantee.[73] In Docket No. 46936, Southwestern Public Service Company ("SPS") sought to amend its CCN in order to add two new wind generation projects to its power generation fleet.[74] In SPS's CCN proceeding, the Commission's Order included Findings of Fact Nos. 79 through 88, which set forth SPS's agreement to guarantee savings to its Texas ratepayers.[75] In particular, in that CCN proceeding, the Commission determined that, "SPS's agreement to return to Texas retail customers any estimated net costs as set forth in Findings of Fact 79 through 84 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers and to ensure that savings accrue to Texas retail customers."[76] As in the SPS CCN proceeding, the Commission should find that this important guarantee is reasonable and necessary to ensure that the Project will result in a probable lowering of cost for the Company's ratepayers.

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[73] *Id.* at 46.

[74] *See 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 (May 25, 2018).

[75] *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 15 – 18 (May 25, 2018).

[76] *Id.* at 18.

Consequently, if the Commission approves the Company's CCN application, OPUC recommends that the Commission require a Minimum Production Guarantee based on a P50 output level and the inclusion of a Minimum Energy Savings Guarantee that is based on the Company's Base Case natural gas price forecast to protect ratepayers against the very real likelihood that the Project will not produce net customer cost savings benefits for ratepayers, or, at bare minimum, a hold harmless provision based on the Company's break-even natural gas forecast to ensure ratepayers are not harmed by an unnecessary economic venture. Simply stated, 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)

Please see OPUC's initial brief for OPUC's position on this issue.

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

Please see OPUC's initial brief for OPUC's position on this issue.

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

Please see OPUC's initial brief for OPUC's position on this issue.

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

As stated in OPUC's initial brief, at this time, OPUC is not taking a position on the sale, transfer and merger issue, but if the Commission finds that PURA §14.101 applies in this proceeding, OPUC recommends that the Commission find that the Company's CCN application, as presented without the additional guarantees and conditions discussed above, is not in the public interest.

IX. Conclusion

For the reasons stated herein, discussed in the Direct Testimony of OPUC witness Mr. Nalepa, and stated in OPUC's initial brief, 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,

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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 17th day of March 2020, by facsimile, electronic mail, and/or first class, U.S. Mail.

Zachary Stephenson