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

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

COMMISSION STAFF'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.
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 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 _____.

Certificate of Convenience and Necessity Standard of Review

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 if it results in a probable lowering of costs to customers.
18. SWEPCO's acquisition of the Selected Wind Facilities is not expected to result in the probable lowering of costs to customers. The Commission finds that SWEPCO's acquisition of the Selected Wind Facilities is not necessary for the service, accommodation, or convenience of customers.

19. The Commission finds that SWEPCO's acquisition of the Selected Wind Facilities does not meet the factors of Public Utility Regulatory Act, Texas Utilities Code (PURA) § 37.056 and thus the CNN shall not be approved.

Analysis of Economics of Selected Wind Facilities

20. SWEPCO contends that consumers will experience \$567 million NPV in net benefits using its base case (which it believes is the correct case to use).

RFP Selection Process

21. SWEPCO uses an integrated resource plan or IRP to identify resources to serve customers, over a 20-year planning period.
22. In preparing the RFP, SWEPCO followed the steps required by the Louisiana Public Service Commission (LPSC) Market Based Mechanism (MBM) Order.
23. 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.
24. 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.
25. 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 Production Tax Credit (PTC) value.
26. SWEPCO publicized the RFP--on its website, to a list of known wind project developers, and in industry trade publications and organizations.
27. SWEPCO followed the process established in the RFP from the time it was issued on through to the identification of the Selected Wind Facilities.
28. 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.

29. No bids were submitted by the Company or an AEP affiliate, as such a submission was specifically prohibited by the RFP.
30. 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.
31. The top three ranked bids (Traverse, Maverick and Sundance) became the Selected Wind Facilities.
32. The Companies selected 1,485 MW of wind resources. This decision was based on bid economics, geographic locations, and deliverability relative to the Companies' load.
33. 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.
34. 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).
35. The Companies hired Simon Wind Inc., (Simon Wind) 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.
36. SWEPCO selected the Selected Wind Facilities through its RFP Process.

Project Description

37. 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

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

39. The winning bidders from the RFP process build the projects, which the Companies will then purchase on a turnkey basis.
40. 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).
41. This cost includes (1) each wind project's purchase price under the respective PSAs, (2) PSA price adjustments, and (3) owner's costs.
42. The purchase price includes all costs associated with interconnecting the facilities to the SPP transmission system and any assigned network upgrade costs.
43. 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 and Assumptions

44. SWEPCO forecasted the customer savings of the Selected Wind Facilities, using 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 result in construction of a generation tie line.
45. Using the assumptions made by the Company, customers would benefit from SWEPCO's acquisition of the Selected Wind Facilities under all of the cases presented.
46. SWEPCO's assumptions do not reflect a realistic range of possible future conditions.
47. SWEPCO's economic analysis does not reflect that it will have other options to obtain energy savings in the future if it does not acquire the Wind Facilities.
48. SWEPCO's economic analysis does not reflect that the projected production cost savings that would be generated by the Wind Facilities are less certain than the projected costs of those facilities.

Natural Gas Prices

49. Future natural gas prices are an essential element of the project benefits calculations. The higher the expected future natural gas prices, the greater the expected benefits from the project.

50. SWEPCO used the AEP Long-Term North American Energy Market Forecast (Fundamentals Forecast) to forecast the expected project benefits.
51. The current version of the Fundamentals Forecast was created in April 2019.
52. The Fundamentals Forecast is a long-term, weather-normalized energy market forecast that 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.
53. 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 \$5.40 per MMBtu.
54. Natural gas prices are important because fuel prices are a key component in determining the supply stack, or merit order, for the dispatch generating units.
55. Each of AEP's past forecasts, dating back to 2007, has been on the high side of natural gas prices.
56. Although the 2019 Fundamentals Forecast was weather-normalized, the evidence did not quantify the impact of abnormal weather on prior forecasts.
57. SWEPCO's forecasts start out higher than current prices and have been higher than actual prices for several years.
58. 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 2051, are \$3.10 per MMBtu.
59. The lowest Energy Information Administration (EIA) case has been the most accurate in recent years.
60. The levelized natural gas price for the 2020 version of EIA's lowest case for the years 2021 to 2051 is approximately \$3.46 per MMBtu.
61. A decrease of \$1 per MMBtu in gas prices would reduce the estimated savings for the project by \$246 million net present value from the no-carbon P50 case.
62. SWEPCO calculated a breakeven natural gas price for the Wind Facilities (based on SWEPCO's low/no carbon modeling assumptions) that is \$3.67 per MMBtu levelized.
63. Both NYMEX futures trended to 2051 and the 2020 version of EIA's lowest case show natural gas prices that are below SWEPCO's own calculation of a breakeven point for the Wind Facilities.

64. The record in this proceeding fails to show that the assumptions made by SWEPCO regarding gas prices will result in a probable lowering of cost to consumers.
65. The natural gas forecasts and futures prices in the record in this proceeding show that the Wind Facilities are unlikely to result in a probable lower of cost to consumers.

Cost of Carbon

66. SWEPCO evaluated the expected customer benefits of acquisition of the Selected Wind Facilities both with and without a future enforced carbon emission burden (carbon tax).
67. The cases with a carbon tax used a CO2 dispatch burden on all existing fossil fuel-fired generating units of that escalates 3.5% per annum from \$15 per ton commencing in 2028.
68. SWEPCO assumed that a carbon tax would increase would increase the customer benefits of the project by \$171 million NPV for SWEPCO's base case
69. The United States Congress has never adopted a carbon tax, but it has extended tax credits for renewable generation sources, such as the PTCs, on numerous occasions.
70. 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.
71. SWEPCO's modeling of the locational marginal prices should not have included a carbon emission burden, and the calculation of the estimated benefits of the project should be reduced accordingly.

Net Capacity Factor

72. A crucial measure of generation output is the Selected Wind Facilities' net capacity factor, which is the ratio of the actual output of a generating unit over a period of time to its potential output at full nameplate capacity.
73. Based on the results of a study by Simon Wind, SWEPCO estimated a net capacity factor of 44.1% at a P50 production level, which means it is equally likely that energy production from the Selected Wind Facilities will be above or below that level.
74. SWEPCO's existing wind farms in Central Oklahoma have experienced significant levels of curtailment in the recent past.
75. A 1% reduction in the NCF for SWEPCO's low/no carbon case results in a \$33 million NPV reduction in net benefits.

76. SWEPCO only guarantees production at the P95 level of energy production; therefore, evaluating the economic benefits of the Selected Wind Facilities at a P95 level of energy production is reasonable.

Useful Life of Selected Wind Facilities

77. A 30-year design life was required by the RFP.
78. The warranty provided by the turbine manufacturer does not support a 30-year useful life.
79. SWEPCO's O&M and capital forecast is unreasonable because it does not recognize the higher level of capital and O&M expense that will be required to extend useful lives of the Wind Facilities to 30 years.
80. A significant amount of SWEPCO's projected net benefits are expected to occur during years 26-30.
81. SWEPCO has not shown that the Selected Wind Facilities will have a useful life of 30 years.
82. The Selected Wind Facilities should be evaluated using a 25-year design or useful life.

Congestions Costs and Gen-Tie Line

83. SWEPCO did not reasonably modeled congestion and loss-related costs associated with the delivery of power to the AEP West load zone from the Selected Wind Facilities.
84. There is no evidence that SPP would promote the level of transmission solutions SWEPCO modeled in its application. This is because SWEPCO modeled congestion costs based upon SPP implementing every transmission solution needed to address congestion outlined in SPP's 2019 ITP Study.
85. There are limitations to the PROMOD model that cause it to understate projected congestion costs.
86. SWEPCO has not 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. This is because, SWEPCO has provided no actual routes or costs for a potential generation tie line in their application.
87. Congestion costs on SPP are uncertain and this uncertainty could likely harm customers through additional costs from the Selected Wind Facilities.

88. A dedicated generation tie line also has uncertain costs and this uncertainty could likely harm customers through additional costs from the Selected Wind Facilities.

Capacity Value

89. SWEPCO calculated capacity value for the Selected Wind Facilities based on capacity addition deferrals starting 2037.
90. SWEPCO did not demonstrate that the Selected Wind Facilities will provide value by deferring the Company's future capacity needs.

Production Tax Credits and Deferred Tax Asset

91. The Company's economic analysis of the Selected Wind Facilities considered 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.
92. 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. Section 45 of the Internal Revenue Code of 1986 (Code) governs the calculation and use of PTCs and provides for a graduated phase-out of PTCs.
93. 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.
94. The Selected Wind Facilities will be eligible for the PTCs for the first ten years of operation.
95. 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. Using output at the P50 level, SWEPCO estimated that the PTCs will generate \$507 million NPV grossed up and net of the deferred tax asset.
96. Under Section 38(c) of the Internal Revenue Code, the use of General Business Credits (including PTCs) is limited to 75% of regular tax liability prior to the application of the credits. General Business Credits that cannot be realized to offset regular tax can be carried forward for 20 years to reduce future tax liability.

97. SWEPCO is included in the AEP consolidated tax group, and the limitations on the use of General Business Credits applies on a consolidated group basis.
98. Based on future projections of AEP consolidated tax liability, and 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, SWEPCO estimated peak cash tax deferral amounts of approximately \$300 million and \$232 million for the P50 and P95 production levels, respectively.
99. SWEPCO's estimate is subject to variables including unexpected taxable losses by a member of the AEP consolidated group that would preclude utilization of the PTCs at the rate anticipated by SWEPCO, changes in federal tax law, and the output of the Selected Wind Facilities.
100. The primary reason AEP cannot use the PTCs is because of the accelerated depreciation associated with the Selected Wind Facilities. AEP has told investors that it is planning on building 6GW of regulated project renewables over the next decade. Pursuing these projects will drive down AEP's tax appetite due to accelerated depreciation.
101. SWEPCO proposes to reflect any unused PTCs that are carried forward to future tax years as a deferred tax asset included in rate base, which means SWEPCO would earn a return on that balance from ratepayers at the rate of its WACC. The deferred tax asset offsets the savings generated by the PTCs.

Proposed Conditions

102. SWEPCO has not shown that the acquisition of the Selected Wind Facilities will result in the probable lowering of costs to customers with or without the guarantees offered by SWEPCO.
103. SWEPCO is offering guarantees related to the Selected Wind Facilities' energy production levels, qualification for the PTC, and capital cost.
104. These guarantees provide do not provide adequate protection from the risks associated with the Selected Wind Facilities.
105. 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.
106. Even including the additional guarantees in the comprehensive settlements filed in Arkansas and Oklahoma, the guarantees provided by SWEPCO do not provide meaningful protection from the risks associated with the Selected Wind Facilities.

Other CCN Issues

107. The Selected Wind Facilities are an incremental resource proposed to reduce customers' cost of energy.
108. The Selected Wind Facilities will not diminish the reliability provided by SWEPCO's existing resources or transmission system.
109. SWEPCO is not in the process of implementing customer choice in its service territory.
110. 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.
111. Utilities are obligated to provide reliable service to customers at the lowest reasonable cost.
112. The proposal of economic resources for certification is one means of meeting that obligation.

Rate Issues

113. SWEPCO's future intent to request implementation of a generation cost recovery rider pursuant to § 36.213 of the Public Utility Regulatory Act (PURA) should not be considered in this proceeding.
114. There are several options by which to credit the PTCs to SWEPCO's ratepayers, and SWEPCO has not proposed, or requested approval of, the specific method to be used to credit the benefits of the PTCs back to customers.
115. The decision regarding the ratemaking treatment to be applied to the deferred tax asset should not be made before the specific method to be used to credit the PTCs back to ratepayers is approved by the Commission.
116. It is not general Commission practice to approve the ratemaking treatment to be applied to a deferred tax asset in a CCN proceeding.
117. Delaying approval of the ratemaking treatment to be applied to the deferred tax asset will allow the Commission to consider any changes to the federal income tax code, PURA, or any other relevant laws that are enacted between now and SWEPCO's next base rate proceeding.
118. Projecting taxable income is difficult; if SWEPCO cannot utilize the PTCs in the amount and manner described in finding of fact 97, the deferred tax asset could remain in in rate base at a much higher balance and for a much longer period of time than currently estimated.

SWEPCO has not proposed any guarantees that would limit or otherwise mitigate the impact of the deferred tax asset on rates.

Sale, Transfer, Merger Issues

119. 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.”
120. The Selected Wind Facilities are physically located in Oklahoma.
121. Under PURA § 14.101(a), a system or unit must operate in the state.
122. A system or unit can include the generation facilities themselves, but also transmission lines, distribution lines, and sub stations. All of these things are a part of the larger generation system.
123. The Commission’s should find that PURA § 14.101 does apply to the Selected Wind Facilities.

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

124. The Selected Wind Facilities do not meet the public interest as set forth in § 14.101.
125. SWEPCO’s acquisition of the Selected Wind Facilities is not in the public interest because a lowering of costs to customers is unlikely.

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 if there is a probable lowering of costs to customers, only if Commission finds that the CCN is necessary for the service, accommodation, convenience, or safety of the public.

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 apply to this case because the Selected Wind Facilities are a system or unit located, in part, in the state of Texas.
7. The grant or denial of a CCN is governed by PURA § 37.056.
8. PURA § 37.056(4)(E) requires a probable lowering of cost to customers. This means that the applicant must show that the lowering of cost is actually probable.
9. Under PURA § 37.056 the Commission will weigh all factors, but is not required to give equal weight to any one factor in deciding whether to approve a CCN application.
10. SWEPCO has not shown that the project will result in the probable lowering of cost to consumers in accordance with PURA § 37.056.
11. SWEPCO has not met its burden of proof to show that the project is necessary for the service, accommodation, convenience, or safety of the public under PURA § 37.056.
12. SWEPCO is not entitled to approval of the application.

C. Ordering Paragraphs

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

1. The Commission denies the application, as outlined in this Order.
2. All other motions and any requests for general or specific relief, if not expressly granted herein, are denied.

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Rachelle Robles
Division Director

/s/ Rashmin J. Asher
Rashmin J. Asher
State Bar No. 24092058
Eleanor D'Ambrosio
State Bar No. 20497559
Robert Dakota Parish
State Bar No. 24116875
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7216
(512) 936-7268 (facsimile)
Rashmin.Asher@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on March 19, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rashmin J. Asher