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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 §**

**JOINT MOTION OF COMMISSION STAFF AND TEXAS INDUSTRIAL ENERGY
CONSUMERS FOR LEAVE TO FILE JOINT PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Commission Staff and Texas Industrial Energy Consumers (TIEC) (collectively, the “Joint Parties”) respectfully request that the Administrative Law Judges (ALJs) grant leave for the Joint Parties to file joint proposed findings of fact and conclusions of law, which are attached to this pleading as Attachment A. With one exception discussed below, the joint pleading does not include any new material—it simply lists proposed findings of fact and conclusions of law previously filed by at least one of the Joint Parties.

The Joint Parties were unable to finalize joint proposed findings of fact and conclusions of law prior to March 19, 2020, due primarily to logistical difficulties related to the coronavirus outbreak and the tight briefing deadlines in this case. However, in the interest of aiding the ALJs, the Joint Parties have prepared joint proposed findings of fact and conclusions of law on the issues in the proceeding on which there was agreement between the parties in their individual filings. Permitting the Joint Parties to file the joint proposed findings of fact and conclusions of law will not prejudice any party because all of the proposed findings in the joint filing (except one, as discussed below) are taken verbatim from the individual filings filed on March 19, 2020.

The joint filing is limited to issues on which there was agreement between the Joint Parties in their individual filings. The joint filing is not intended to convey any agreement regarding the issues included in the Joint Parties’ individual filings that were excluded from the joint filing, including findings in the sections of Background and Procedural History, Analysis of Economics of the Selected Wind Facilities, RFP Selection Process, Net Capacity Factor, Congestion Costs

and Tie-Line, Other CCN Issues, and Sale, Transfer, Merger Issues. Each party that proposed findings of fact and conclusions of law individually continues to support those proposals.

Additionally, the Joint Parties request leave to add Finding of Fact No. 10 in the Natural Gas Price section, which is a finding of fact regarding the SPS-method low gas forecast that TIEC presented in redacted format in its initial brief.¹ Concurrently with the filing of that brief, TIEC conferred with SWEPCO as to whether any of the redacted portions could be made public. TIEC did not receive a response by the deadline to file its proposed findings, and therefore did not include a proposed finding of fact on the SPS low method. However, SWEPCO has since informed TIEC that the relevant portion of its brief can be declassified, meaning the information can now be disclosed publicly. Accordingly, the Joint Parties request leave to include this additional finding in the joint filing.

The Joint Parties therefore respectfully request that the ALJs grant this motion for leave to file the attached joint findings of fact and conclusions of law.

¹ TIEC's In. Br. at 32.

Respectfully submitted,

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**ATTORNEYS FOR TEXAS INDUSTRIAL
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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 25, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher

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

APPLICATION OF SOUTHWESTERN	§	
ELECTRIC POWER COMPANY FOR	§	BEFORE THE STATE OFFICE
CERTIFICATE OF CONVENIENCE	§	
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GENERATION FACILITIES	§	

**JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
COMMISSION STAFF AND TEXAS INDUSTRIAL ENERGY CONSUMERS**

A. Findings of Fact

Certificate of Convenience and Necessity Factors

1. 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.
2. The Commission finds that SWEPCO’s acquisition of the Selected Wind Facilities does not meet the factors of the Public Utility Regulatory Act, Texas Utilities Code (PURA) § 37.056 and thus the CCN shall not be approved.

Economic Modeling

1. SWEPCO’s sensitivity analyses do not account for a realistic range of possible future conditions. For example, even SWEPCO’s lowest natural-gas-price case uses higher prices than the 2020 EIA reference case, which is EIA’s equivalent of a base case.¹ SWEPCO also did not include any sensitivities in which subsidies for renewable generation are adopted or extended, even though there is precedent for such action.²
2. 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.³

¹ TIEC Ex. 1, Pollock Dir. at 21; TIEC’s Reply Br. at 23-24.

² E.g., TIEC Ex. 1, Pollock Dir. at 27; TIEC Ex. 2, Griffey Dir. at 38-40.

³ TIEC Ex. 2, Griffey Dir. at 13-14, 53-55; TIEC In. Br. at 63-65; TIEC Reply Br. at 46-48.

3. SWEPCO's economic analysis does not reflect that the projected production cost savings that would be generated by the Wind Facilities (which turn on variables such as future natural gas and energy prices) are less certain than the projected costs of those facilities.⁴
4. SWEPCO has not demonstrated that, under a reasonable range of assumptions, SWEPCO's acquisition of the Selected Wind Facilities will provide benefits to customers.⁵

Natural Gas Prices

1. Future natural gas prices are an essential element of project benefits calculation. The higher the expected future natural gas prices, the greater the expected benefits from the project.⁶
2. 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.⁷
3. SWEPCO used AEP's Long-Term North American Energy Market Forecast (fundamentals forecast) to forecast the expected project benefits.⁸
4. The current version of fundamentals forecast was created in April 2019.⁹
5. The fundamentals forecast contained natural-gas-price projections for a base case, a high case, a low case, and a version of each of those cases that did not include an assumed carbon burden. The base case was the primary case used by SWEPCO to analyze the economics of the project. The base case used a levelized natural gas price of \$5.40 per MMBtu. SWEPCO's lowest price natural gas case (the low, no carbon case) used a levelized price of \$4.50 per MMBtu.¹⁰
6. Each of AEP's past forecasts, dating back to 2007, has been on the high side of actual natural gas prices.¹¹
7. Although the fundamentals forecast was weather-normalized, the evidence did not quantify the impact of abnormal weather on prior forecasts.¹²

⁴ TIEC Ex. 2, Griffey Dir. at 12, 53-54; TIEC In. Br. at 63-65.

⁵ TIEC Reply Br. at 6-8, 11-13.

⁶ See Docket No. 47461, Final Order at FoF 75.

⁷ See Docket No. 47461, Final Order at FoF 78.

⁸ See Docket No. 47461, Final Order at FoF 76.

⁹ Tr. at 201:13-16 (Bletzacker Cross) (Feb. 24, 2020); see Docket No. 47461, Order on Rehearing at FoF 77.

¹⁰ TIEC Ex. 1, Pollock Dir. at 21.

¹¹ See Docket No. 47461, Final Order at FoF 80; TIEC Ex. 1, Pollock Dir. at 17.

¹² See Docket No. 47461, Final Order at FoF 81; TIEC's Reply Br. at 18.

8. SWEPCO's forecasts start out higher than current prices and have been higher than actual prices for several years.¹³
9. 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.¹⁴
10. A gas price forecast created using the methodology used by SPS in recent Commission proceedings was significantly lower than SWEPCO's fundamental forecast. The SPS low-method forecast projected a simple average price of natural gas of \$3.34 per MMBtu.
11. The lowest Energy Information Administration (EIA) case has been the most accurate in recent years.¹⁵
12. 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.¹⁶
13. 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.¹⁷
14. 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.¹⁸
15. 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.
16. 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.¹⁹
17. 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.²⁰

Cost of Carbon

¹³ See Docket No. 47461, Final Order at FoF 82; TIEC's In. Br. at 14-15, 21; TIEC Ex. 2, Griffey Dir. at 21.

¹⁴ TIEC Reply Br. at 27-28; TIEC In. Br. at 28-32.

¹⁵ See Docket No. 47461, Final Order at FoF 89; TIEC In. Br. at 18-19.

¹⁶ TIEC Ex. 1, Pollock Dir. at 21.

¹⁷ Docket No. 47461, Final Order at FoF 91; TIEC Ex. 2, Griffey Dir. at 33.

¹⁸ TIEC Ex. 1, Pollock Dir. at 21.

¹⁹ See Docket No. 47461 Order on Rehearing at FoF 92A; see generally TIEC's In. Br. at 14-33; TIEC's Reply Br. at 17-29.

²⁰ See generally TIEC's In. Br. at 14-33; TIEC's Reply Br. at 17-29.

1. SWEPCO evaluated the expected customer benefits of the acquisition of the Selected Wind Facilities both with and without a future enforced carbon emission burden (carbon tax).
2. In all of SWEPCO's cases that include a carbon burden, the burden is \$15 per ton commencing in 2028 and then escalating by 3.5% per annum.²¹
3. SWEPCO assumed that a carbon tax would increase the customer benefits of the project by \$171 million NPV for SWEPCO's base case.
4. Although it is possible that an enforced carbon emission burden 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.²²
5. While SWEPCO included in its economic analysis cases with a carbon-burden assumption, it did not include any cases with an assumption that new renewable-energy subsidies would be adopted, or existing renewable-energy subsidies (like PTCs for wind plants) would be extended. Including a carbon-burden assumption in the modeling causes the Wind Facilities to appear more economic than they otherwise would. Including an assumption that additional renewable-energy subsidies would be adopted—or existing ones extended—would have the opposite effect.²³
6. It is inconsistent for SWEPCO's economic analysis to include an assumption that a carbon-tax might be adopted in the future on the one hand, but to exclude any possibility that renewable-energy subsidies might be adopted or extended in the future on the other.²⁴
7. 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.²⁵
8. 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 not include that component.²⁶

²¹ Docket No. 47461, Order on Rehearing at FoF 94; SWEPCO Ex. 5, Bletzacker Dir. at 13.

²² Docket No. 47461, Order on Rehearing at FoF 95; *See, e.g.*, TIEC In. Br. at 33-36; TIEC Reply Br. at 29-32.

²³ *E.g.*, TIEC Ex. 1, Pollock Dir. at 27; TIEC Ex. 2, Griffey Dir. at 38-40.

²⁴ *E.g.*, TIEC Ex. 1, Pollock Dir. at 27; TIEC Ex. 2, Griffey Dir. at 38-40.

²⁵ *E.g.*, TIEC Ex. 1, Pollock Dir. at 27; TIEC Ex. 2, Griffey Dir. at 38-40.

²⁶ Docket No. 47461, Order on Rehearing at FoF 97; *see, e.g.*, TIEC In. Br. at 33-36; TIEC Reply Br. at 29-32.

Useful Life of Selected Wind Facilities

1. SWEPCO has not shown that the Wind Facilities will have an extended useful life of 30 years.²⁷
2. The warranty provided by the turbine manufacturer does not support a 30-year useful life.²⁸
3. 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.²⁹
4. A significant amount of SWEPCO's projected net benefits are expected to occur during years 26-30.³⁰
5. The Wind Facilities should be evaluated using a 25-year design or useful life.³¹

Capacity Value

1. SWEPCO calculated capacity value for the Wind Facilities based on capacity addition deferrals starting in 2037.
2. SWEPCO did not demonstrate that the Wind Facilities will also provide value by deferring the Company's future capacity needs.³²

Production Tax Credits and Deferred Tax Asset

1. 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.
2. 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.
3. 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

²⁷ TIEC Ex. 1, Pollock Dir. at 12-16; TIEC Reply Br. at 37-39.

²⁸ TIEC Ex. 1, Pollock Dir. at 12-16.

²⁹ Tr. at 725:10-14, 727:14-22 (DeRuntz Cross) (Feb. 26, 2020); SWEPCO Ex. 16, DeRuntz Reb. at Ex. JGD-2R at 6; TIEC Ex 74; TIEC In. Br. at 51.

³⁰ TIEC Ex. 1, Pollock Dir. at 10; TIEC In. Br. at 51.

³¹ TIEC Ex. 1, Pollock Dir. at 12-16.

³² Tr. at 542:5-543:18 (Aaron Cross); TIEC Ex. 1, Pollock Dir. at 12; TIEC In. Br. at 58-59.

cash tax deferral amounts of approximately \$300 million and \$232 million for the P50 and P95 production levels, respectively.

4. 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.
5. 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 over 5 GW of regulated renewables projects over the next decade. Pursuing these projects will drive down AEP's tax appetite due to accelerated depreciation.³³

Proposed Conditions

1. SWEPCO has not established 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.
2. SWEPCO is offering guarantees related to the Selected Wind Facilities' energy production levels, qualification for the PTC, and capital cost.
3. The guarantees do not provide any meaningful safeguards to customers from the risks and costs associated with the Selected Wind Facilities.³⁴

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. The Commission may approve an application and grant a certificate of convenience and necessity only if the Commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public under PURA § 37.056.

³³ TIEC Ex. 68; Tr. at 529:2-531:25, 537:17-22 (Multer Cross) (Feb. 25, 2020); TIEC In. Br. at 60-61.

³⁴ TIEC In. Br. at 69-70.

5. SWEPCO has not shown that the project will result in the probable lowering of cost to consumers in accordance with PURA § 37.056(c)(4)(E).³⁵
6. 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 § 37.056.³⁶
7. SWEPCO is not entitled to approval of the application.³⁷

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.³⁸
2. All other motions, requests for specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

³⁵ Docket No. 47461, Final Order at CoL 7; TIEC Reply Br. at 8-11.

³⁶ Docket No. 47461, Final Order at CoL 10A; TIEC Reply Br. at 8-11.

³⁷ Docket No. 47461, Final Order at CoL 11; TIEC Reply Br. at 8-11.

³⁸ Docket No. 47461, Final Order at OP 1.

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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 25, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher