

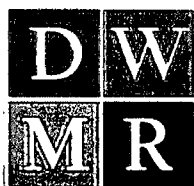


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May 11, 2020



The Honorable Steven H. Neinast  
The Honorable Christiaan Siano  
Administrative Law Judges  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701

**RE:** PUC Docket No. 49737; SOAH Docket No. 473-19-6862; *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Acquisition of Wind Generation Facilities*

Dear Judges Neinast and Siano:

Please find attached the order issued by the Arkansas Public Service Commission on May 5, 2020 in Docket No. 19-035-U, approving SWEPCO's acquisition of the wind facilities pursuant to the settlement agreement between the parties, as well as the parties' filing accepting the approval order.

In the Preliminary Order adopted in this case, the Commission directed the following issues be addressed:

7. From what other regulatory authorities must SWEPCO or a SWEPCO-affiliated company seek approval for the transaction? When were any such applications filed? Which regulatory authorities have approved the transaction? When are any approvals anticipated?

10. Has SWEPCO made any commitments related to the proposed transaction to any other regulatory authority? If so, what are those commitments, and would it be appropriate to condition any approvals in this docket on similar commitments?



May 11, 2020

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Accordingly, SWEPCO is providing the attached information to apprise the ALJs of the status of developments regarding SWEPCO's application for certification and acquisition of the Selected Wind Facilities in other jurisdictions.<sup>1</sup>

Very truly yours,

/s/ Kerry McGrath

Kerry McGrath

Attachment

cc: PUC Central Records  
Parties of Record

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<sup>1</sup> SWEPCO filed similar updates in the Wind Catcher case, which the ALJs admitted into evidence as relevant to the issues referred by the Commission. *See, e.g., 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 No. 12 (Apr. 30, 2018); Order No. 13 (May 2, 2018); and Order No. 14 (May 14, 2018).

## ARKANSAS PUBLIC SERVICE COMMISSION

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| IN THE MATTER OF THE APPLICATION OF | ) |                     |
| SOUTHWESTERN ELECTRIC POWER         | ) |                     |
| COMPANY FOR APPROVAL TO ACQUIRE     | ) | DOCKET NO. 19-035-U |
| WIND GENERATING FACILITIES PURSUANT | ) | ORDER NO. 7         |
| TO THE ARKANSAS CLEAN ENERGY        | ) |                     |
| DEVELOPMENT ACT                     | ) |                     |

### **ORDER**

In this Order, the Arkansas Public Service Commission (Commission) approves the Settlement filed by the Settling Parties as Exhibit 1 to the Joint Motion on January 24, 2020, except it determines that (1) it is not in the public interest to approve the Wind Facility Asset (WFA) Rider while Southwestern Electric Power Company (SWEPCO) is regulated under the Formula Rate Review Act (Ark. Code Ann. §§ 23-4-1201, *et. seq.*) (FRRA), and (2) it is premature to rule on whether the WFA Rider is appropriate if SWEPCO is not regulated under the FRRA.

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### **I. Procedural History**

On July 15, 2019, SWEPCO filed an Application requesting an order approving SWEPCO's acquisition of certain wind generating facilities pursuant to the Arkansas Clean Energy Development Act (Ark. Code Ann. §§ 23-18-701, *et. seq.*) (ACEDA). In support of its Application, SWEPCO filed the Direct Testimony of Akarsh

Sheilendranath, Jay F. Godfrey, Joseph G. DeRuntz, Joel J. Multer, Johannes P. Pfeifenberger, John O. Aaron, John F. Torpey, Kamran Ali, Karl R. Bletzacker, Malcolm Smoak, Noah K. Hollis, and Thomas P. Brice.<sup>1</sup>

On July 18, 2019, the Office of Attorney General Leslie Rutledge (AG) filed a letter of intent to participate in Docket. On August 30, 2019, Walmart, Inc. (Walmart) filed a Petition to Intervene, which was granted by Order No. 2 on September 19, 2019.

On October 25, 2019, SWEPCO filed an amended Purchase and Sale Agreement.

On December 13, 2019, the AG filed the Direct Testimony of Kevin Woodruff and Christina Baker; Walmart filed the Direct Testimony of Lisa Perry; and the General Staff (Staff) of the Commission filed the Direct Testimony of Gerrilynn Wolfe, Judy Kay Lindholm, John Athas, and Jeffrey Bower.

On January 16, 2020, the Parties filed a *Joint Motion to Suspend Schedule*, which was granted the same day by Order No. 4. On January 24, 2020, the Parties filed a *Joint Motion to Approve Unanimous Settlement Agreement* (Settlement) and the Settlement Testimony of Mr. Brice and Mr. Aaron for SWEPCO, Ms. Perry for Walmart, Ms. Baker for the AG, and Regina Butler for Staff. In the *Joint Motion to Approve Unanimous Settlement Agreement*, the Parties requested, *inter alia*, that the Commission set a briefing schedule on certain legal issues raised in the Docket, namely, whether it is legally permissible for SWEPCO to utilize a temporary surcharge under ACEDA, such as the WFA Rider, when SWEPCO elected to have its rates regulated under the FRRA. On January 29, 2020, Order No. 5 set a briefing schedule. Initial Briefs were filed on

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<sup>1</sup> On July 16, 2019, SWEPCO filed Confidential Exhibits of Mr. Hollis and Mr. Torpey, and on July 17, 2019, SWEPCO filed Confidential Exhibits of Mr. Godfrey. On August 23, 2019, SWEPCO filed a corrected page to the Application and Corrected Direct Testimony of witnesses Smoak, Brice, Torpey, Pfeifenberger, Bletzacker, and Aaron.

February 18, 2020, by SWEPCO, the AG, and Staff. Reply Briefs were filed on February 25, 2020, by SWEPCO, the AG, and Staff. Hearing was held on March 10, 2020.

One public comment was received in this Docket from Mayor Lioneld Jordan from Fayetteville, Arkansas, who supported SWEPCO's Application.

## **II. Positions of the Parties before Settlement**

### **SWEPCO**

SWEPCO seeks authority to acquire in conjunction with its sister company, Public Service Company of Oklahoma (PSO), three separate wind generation facilities located in North Central Oklahoma (Sundance, Traverse, and Maverick, collectively referred to as the Selected Wind Facilities). SWEPCO realizes that it is possible that not all four regulatory jurisdictions in which SWEPCO and PSO operate<sup>2</sup> will grant approval; therefore, SWEPCO and PSO have designed the proposed acquisition to be scalable to allow for all or a subset to move forward depending on regulatory outcomes. If either SWEPCO or PSO does not receive approval in all jurisdictions, SWEPCO seeks authority to acquire for its Arkansas customers a proportion of the megawatts otherwise allocated to a declining jurisdiction. Application at 2-7.

Additionally, SWEPCO requests a temporary rider until the implementation of new rate schedules in connection with the Company's next general rate case or an approved Formula Rate Plan (FRP). Brice Corrected and Substituted Direct at 6.

SWEPCO and PSO both issued Requests for Proposals (RFP) for wind generation resources on January 7, 2019. Following a thorough review of all bids, SWEPCO and PSO selected three wind facilities that total 1485 Megawatts (MW) in nameplate

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<sup>2</sup> Arkansas, Oklahoma, Louisiana, and Texas.

capacity. SWEPCO's pro-rata portion is 810 MW (or 54.5 percent), of which 155 MW is expected to be allocated to Arkansas. Application at 3-4.

The total purchase price for the selected facilities is \$1.86 billion (\$1,253/kilowatt (kW)), which includes all interconnection and upgrade costs. SWEPCO and PSO will share both the costs and benefits consistent with their respective 54.5 percent/45.5 percent expected ownership shares. Accordingly, SWEPCO's share of the total purchase price is \$1.01 billion. *Id.* at 5. The Arkansas Jurisdiction's Revenue Requirement totals \$643 million for the years 2021 through 2051 (which averages to \$20.7 million per year). See Corrected and Substituted Exhibit JOA-1.

#### **SWEPCO Witness Smoak – Direct**

Mr. Smoak discusses the need to acquire certain new wind facilities for the benefit of customers.<sup>3</sup> He sets out the time sensitive nature of the opportunity to capture the remaining benefits of the federal Production Tax Credits (PTCs) for SWEPCO's customers and notes that the Selected Wind Facilities secure at least 80 percent of the value of the PTCs, and in the case of Sundance, 100 percent of the value of the PTCs. Mr. Smoak describes the opportunity to provide lower energy costs and savings to all SWEPCO customers of \$2.03 billion on a nominal basis (\$567 million on Net Present Value basis) in the Base Fundamental Forecast included over the life of the Selected Wind Facilities, and says that SWEPCO's analysis shows robust savings and substantial customer benefits under a wide range of scenarios. He explains SWEPCO's guarantees for the benefit of customers and addresses the continued demand by both customers and investors for renewable energy. Smoak Direct at 5-13.

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<sup>3</sup> SWEPCO's most recent Integrated Resource Plan was filed December 14, 2018, in Docket No. 07-011-U, Document No. 32.

**SWEPCO Witness Brice – Direct**

Mr. Brice's Direct Testimony supports SWEPCO's request to acquire a 54.5 percent share of three wind facilities and request for cost recovery through a temporary rider until SWEPCO's next general rate case or inclusion in any approved FRP. Brice Corrected and Substituted Direct at 5-6.

Mr. Brice explains that the acquisition is structured as a build-transfer arrangement, in which the developers of the wind facilities will design, develop, construct, and commission the facilities on a turn-key basis. According to Mr. Brice, no progress payments will be made by SWEPCO during that process. *Id.* at 9. He states that the purchase price for the three facilities is \$1.86 billion, or approximately \$1,253/kW, which includes all costs associated with interconnecting the facilities to the Southwest Power Pool (SPP) transmission system and any assigned network upgrade costs. In addition to the purchase price, Mr. Brice notes that Purchase Sale Agreement (PSA) price adjustments and the owner's costs raise the expected total cost to \$1.996 billion. *Id.* at 8-9.

Mr. Brice states that the facilities were selected as a result of a competitive RFP and are forecasted to provide SWEPCO's customers a savings of approximately \$567 million (total company) on a net present value basis, or more than \$2.03 billion on a nominal basis over the 30-year expected life of the facilities. Mr. Brice claims that advances in wind turbine manufacturing, in conjunction with the federal production tax credit, have positioned wind resources to be economical. According to Mr. Brice, the facilities provide benefits under a wide range of future conditions and would break even at future power and gas prices below the low range of plausible forecasts. *Id.* at 5-11. He

produces a table that presents a breakdown of the net customer benefits and a table that presents customer benefits under varying sensitivities. *Id.* at 11-12.

Mr. Brice claims that SWEPCO's analysis shows that the break-even gas price is below all gas prices in SWEPCO's forecast and is below the plausible gas price forecasts of third-parties. Moreover, he asserts that if the lowest power price forecast (*i.e.*, low gas, no carbon) was reduced by more than 20 percent, the facilities would still break even. *Id.* at 13-14. He states that the facilities will produce one Renewable Energy Credit (REC) for each MWh of energy, and the RECs would be the property of SWEPCO. According to Mr. Brice, SWEPCO intends to propose the creation of a new tariff through which customers could purchase the RECs to meet their own renewable energy goals, which would produce revenue that further reduces costs for all customers. *Id.* at 16.

Mr. Brice details the benefits to customers and the guarantees that SWEPCO is making to ensure value to customers. He testifies that the acquisition is forecasted to provide SWEPCO's customers a savings of approximately \$567 million (total company) on a net present value basis, or more than \$2.03 billion on a nominal basis over the 30-year expected life of the facilities. He explains that SWEPCO will provide customers opportunity to purchase RECs. Mr. Brice expounds on the benefits of acquisition versus Power Purchase Agreements (PPAs), including (1) the ability for SWEPCO to offer guarantees; (2) the ability to react to changes in the market; and (3) the ability to manage congestion risk. He also details the guarantees offered, including a capital cost cap guarantee, a PTC eligibility guarantee, and a minimum production guarantee. *Id.* at 17-21. He describes the development and results of SWEPCO's and PSO's RFPs, noting that SWEPCO and PSO have designed the proposed acquisition to be scalable to allow

for the jurisdictions that do approve to move forward. *Id.* at 22-25. As a result, Mr. Brice explains that, in this proceeding, SWEPCO is requesting additional approvals concerning scalability. *Id.* at 26-27.

**SWEPCO Witness Godfrey – Direct**

Mr. Godfrey gives an overview of the RFP, including the preparation activities and the RFP process. He explains how the wind facilities were selected and the due diligence review. Godfrey Direct at 7-25.

**SWEPCO Witness DeRuntz – Direct**

Mr. DeRuntz provides an overview of the projects. He describes SWEPCO's and PSO's role in the project management and oversight of the engineering, procurement, and construction of the projects and presents the milestones for construction activities as well as estimated commercial operation dates. DeRuntz Direct at 6-13. He presents the total installed capital cost and explains the Operations and Maintenance (O&M) plans, including cost estimates. *Id.* at 16-20. Finally, he describes the reasonableness of the facilities' 30-year design lives. *Id.* at 21-22.

**SWEPCO Witness Bletzacker – Direct**

Mr. Bletzacker discusses SWEPCO's Long-Term Energy Forecast (Fundamentals Forecast), which includes price projections for natural gas, electric generation energy and capacity, and carbon dioxide (CO<sub>2</sub>) costs. Bletzacker Direct at 5-15. He also calculates the break-even cost of natural gas as compared to the cost of the Wind Facilities. *Id.* at 15-17.

**SWEPCO Witness Sheilendranath – Direct**

Mr. Sheilendranath discusses the congestion and loss-related costs that were estimated with the delivery of power to the AEP West load zone from the wind farms that participated in SWEPCO's RFP. He describes the methodology used to evaluate the customer benefits associated with the three selected wind facilities, which was consistent with the methodology that he used to estimate costs in the bid evaluation analysis. He then produces tables that summarize the congestion and loss-related costs he evaluated for the Selected Wind Facilities for 2021-2051. Sheilendranath Direct at 6-21.

**SWEPCO Witness Ali – Direct**

Mr. Ali describes the threshold deliverability analysis performed and the congestion analysis performed and explains SWEPCO's evaluation of transmission solutions to mitigate future potential congestion. He confirms that SPP system conditions at this time do not indicate the need for a gen-tie solution for the Selected Wind Facilities. Ali Direct at 3-15.

**SWEPCO Witness Torpey – Direct**

Mr. Torpey discusses SWEPCO's latest Integrated Resource Plan (IRP) (2018)<sup>4</sup>, the resulting RFP for wind generation, and the benefits of acquiring the three proposed wind facilities. He explains the process SWEPCO used to evaluate the RFP bids. Torpey Direct at 8-16. Mr. Torpey testifies that SWEPCO utilized High and Low energy price scenarios and performed analyses using various sensitivities, but that under the Base Case assumptions, customers would realize savings of approximately \$588 million on a net present value basis over the 31-year project life. *Id.* at 16-23.

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<sup>4</sup> Docket No. 07-011-U, Document No. 32, filed December 14, 2018.

**SWEPCO Witness Pfeifengerger – Direct**

SWEPCO witness Pfeifengerger discusses the PROMOD® tool and the SPP Reference Case used by SWEPCO in evaluating the RFP. Pfeifengerger Direct at 6-10. He explains market congestion and losses in SPP and how they impact the value of a wind generation facility. *Id.* at 11-15. He explains the reasonableness of SWEPCO's process used to evaluate the RFPs and provides an evaluation of the approach, assumptions and analysis SWEPCO used to determine customer benefits, including specifically the congestion and loss estimates applied in the overall benefits evaluation approach. *Id.* at 15-54. He concludes that (1) SWEPCO has reasonably relied upon the SPP-developed PROMOD® Reference case with the modifications he discussed; (2) uncertain but significant congestion exists in the SPP footprint which affects the cost of delivering generation from wind plants to load; (3) SWEPCO's RFP bid-evaluation process used to choose the Selected Wind Facilities was reasonable; and (4) SWEPCO used a reasonable approach, assumptions, and analyses to determine the customer benefits of the Selected Wind Facilities. *Id.* at 55.

**SWEPCO Witness Multer – Direct**

Mr. Multer discusses the income tax effects of the three proposed wind generation projects. He elaborates on the federal PTC and discusses bonus depreciation and Accumulated Deferred Income Tax (ADIT). Multer Direct at 8-9. He also testifies as to SWEPCO's ability to utilize the PTCs. *Id.* at 9-12

**SWEPCO Witness Hollis – Direct**

Mr. Hollis addresses how SWEPCO intends to finance the acquisition. Hollis Direct at 5-7. He discusses the acquisition's impact to SWEPCO's credit metrics, along

with the discount rate used in SWEPCO's evaluation of the facilities and to calculate the carrying costs associated with Deferred Tax Assets. *Id.* at 7-9.

**SWEPCO Witness Aaron – Direct**

SWEPCO witness Aaron quantifies the acquisition's estimated impact on SWEPCO's costs and rates. He states that customer impact as shown in Exhibit JOA-1 results in a net decrease in customer costs and bills over the life of the project. He testifies that the addition of the Selected Wind Facilities will produce savings for SWEPCO's Arkansas customers because the generation mix is expected to lower SWEPCO's energy costs; the project will also defer future capacity requirements for SWEPCO and result in additional savings to SWEPCO's Arkansas customers beginning in 2030; and the project will be eligible for federal PTCs during the first ten years of commercial operation. Aaron Direct at 5-9. Mr. Aaron states that there are net customer savings in 2021 – which reflect the Sundance facility only – of approximately \$2.98 million; for all three facilities in 2022 this will rise to approximately \$8.5 million in savings for Arkansas customers. He testifies that net benefits over the first four years of operations for SWEPCO Arkansas customers will be approximately \$25.6 million in savings, and over the first ten years of operations will be approximately \$88.6 million in savings. *Id.* at 9-10. Mr. Aaron states the expected savings for Arkansas Residential customers for the first four years of operation are in Exhibit JOA-2, show savings for an average residential customer (1000 kWh) of \$0.79 for 2021, \$2.25 in 2022, \$2.01 in 2023, and \$1.74 in 2024; the Exhibit also shows results of the allocations to the Arkansas retail jurisdiction and major rate classes through 2024. *Id.* at 10.

## Walmart

Ms. Perry testifies that Walmart does not oppose SWEPCO's proposed WFA Rider, subject to the WFA Rider being based on the economic inputs that were approved in Docket No. 19-008-U. She recommends that the Commission require SWEPCO to file a base rate case at the earliest possible date at which the wind facilities can be included in a historical test year. She states that if the Commission approves the WFA Rider, it should allocate the fixed production costs on an average and excess production capacity cost allocator that is based on SWEPCO's four coincident peaks (*i.e.*, Average & Excess

(A&E) 4 Coincident Peak (4 CP)) or on the otherwise approved cost allocation method in Docket No. 19-008-U. Ms. Perry also notes that Walmart does not oppose SWEPCO's proposal concerning RECs, because adding a separate and specific tariff will allow customers like Walmart the opportunity to purchase the RECs in a direct and administratively efficient manner. She also recommends that the Commission incorporate additional guarantees consistent with the Wind Catcher Settlement Agreement in Docket No. 17-038-U. Perry Direct at 9-16.

## **AG**

### **AG Witness Baker – Direct**

Ms. Baker presents the AG's positions and recommendations. Specifically, the AG recommends that the Commission condition any approval with additional ratepayer protections, in light of SWEPCO's formula rates; deny SWEPCO's request for the Wind Rider as the cost recovery mechanism; and seek legal and factual clarification from SWEPCO about the proposed operation of the Wind Rider. Baker Direct at 4-5, 22.

Ms. Baker concludes that the project costs would be contemplated in both the WFA Rider and SWEPCO's first FRRA adjustment application and that allowing SWEPCO to have simultaneous base rate adjustment riders results in Base Rate Rider Stacking in violation of Act 725 of 2015, Ark. Code Ann. §§ 23-4-1201 *et seq.* Moreover, she argues that SWEPCO's FRRA mechanism eliminates the need for an interim surcharge, which is a prerequisite for surcharge approval by the Commission. She argues that the Commission is not required to approve an interim recovery surcharge for renewable resource investments under ACEDA, citing Ark. Code Ann. § 23-18-703(a)(4). She claims that the Commission can deny an interim recovery surcharge

based on substantial evidence that the recovery of the renewable resource is contemplated under other approved cost-recovery mechanisms or tariffs. *Id.* at 14-16. Ms. Baker asserts that Base Rate Rider Stacking is inconsistent with Act 725 and the Commission's policies. She argues that SWEPCO provided no evidence that the wind facilities deserve special ratemaking treatment. She notes that the potential to eliminate a series of multiple trackers and cost recovery mechanisms was one of the selling points associated with the FRP adoption. *Id.* at 17-20.

Ms. Baker believes that the WFA Rider would do nothing to incentivize SWEPCO to control its costs and would weaken the existing regulatory framework designed to foster rate stability. She says that requiring SWEPCO to contain its cost recovery to the statutory four percent cap<sup>5</sup> is not equivalent to a disallowance, especially when one considers that SWEPCO is not prohibited from filing a general rate case. *Id.* at 21-22.

**AG Witness Woodruff – Direct**

AG witness Woodruff discusses SWEPCO's estimates of the wind projects' benefits and addresses issues related to the cost-effectiveness and risks of SWEPCO's proposal. He identifies and discusses concerns that he has regarding certain risks and limitations on customers' receipts of potential benefits of the Selected Wind Facilities and makes recommendations concerning any approval of SWEPCO's proposal. Woodruff Direct at 5-6.

Mr. Woodruff testifies that he believes the Selected Wind Facilities may be cost-effective for customers based on his finding that SWEPCO's modeling and analysis were generally reasonable. He discusses issues involving the importance of PTCs and the

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<sup>5</sup> Ark. Code Ann. §23-4-1207(d)(2) provides that the total amount of a revenue increase or decrease for each rate class shall not exceed four percent of each rate class's revenue for the twelve months preceding the formula rate review test period.

risks associated with congestion and losses. He details several issues which could reduce customer benefits and limit the Selected Wind Facilities' cost-effectiveness. *Id.* at 7-8.

Although Mr. Woodruff does not take a position on whether the Commission should approve SWEPCO's proposal, he makes several recommendations if the Commission does approve it:

- The capital cost cap guarantee SWEPCO proposed be approved;
- The PTC eligibility guarantee SWEPCO proposed be approved;
- Adopt SWEPCO's proposed minimum production guarantee, but modify it to raise the minimum level of guaranteed production and do not excuse the impacts of SPP-directed curtailments or the impacts of future bird-and-bat mortality measures in computing the minimum production of the Selected Wind Facilities' operations;
- Require monthly progress reports during construction;
- Include a "Most Favored Nation" clause that would afford Arkansas ratepayers equal protections as SWEPCO and PSO customers receive in other states;
- To the extent not already required by Arkansas law, require SWEPCO to seek pre-approval or risk potential disallowance of any new transmission it proposes to relieve congestion experienced between the Selected Wind Facilities and SWEPCO's load;
- Do not allow the 10 percent sharing of off-system sales margins with SWEPCO shareholders with regard to the generation from the Selected Wind Facilities;

- Should another Commission not approve the Selected Wind Facilities and Arkansas is faced with accepting more capacity (“flexing up”), provide a pre-approval procedure to determine if the increased share is reasonable. Alternatively, if pre-approval is not practical, require SWEPCO to recognize that any extra “flex up” related to Arkansas ratepayers will be subject to an *ex post* reasonableness review.

*Id.* at 8-10.

Mr. Woodruff reviews SWEPCO’s Base Case with Carbon Analysis and discusses the off-system sales (OSS) margins. He examines SWEPCO’s sensitivity analyses and concludes that: the PTCs are needed to make the Selected Wind Facilities’ cost-effective; management of congestion and losses will be key to maintaining the value of the Selected Wind Facilities; Deferred Tax Assets (DTAs) reduce the value of the PTCs significantly under certain cases; and shareholders bear no evident risk as shown by the consistent return on and return of capital while the benefits to customers varies markedly between scenarios. *Id.* at 11-16.

Witness Woodruff identifies certain opportunity costs of hedging congestion, along with three additional risks which he argues SWEPCO’s assessment did not fully consider. *Id.* at 18-26. He discusses the request for authority to acquire additional megawatts of the Selected Wind Facilities, or “flex-up,” on behalf of Arkansas ratepayers in the event any of the commissions in Oklahoma, Texas, or Louisiana do not approve the Selected Wind Facilities, and expresses concern about how the flexing-up decisions will be made on behalf of Arkansas. *Id.* at 26-28.

Mr. Woodruff testifies that there can be controversy concerning the allocations between states of the benefits and costs of a multi-state utility and recommends more clarity on SWEPCO's plans. Woodruff Direct at 28-29. He concludes that the capital cost guarantee and the Production Tax eligibility guarantee that SWEPCO has offered are reasonable, but recommends changes to SWEPCO's proposed minimum production guarantee. *Id.* at 30-33.

Mr. Woodruff discusses and recommends that the Commission impose three additional conditions on SWEPCO: monthly progress reports; a most favored nation clause; and requiring pre-approval of any new transmission planned to relieve congestion. *Id.* at 33-34. Finally, he testifies that he does not believe it is appropriate policy in this particular case to allow shareholders to receive ten percent of the off-system sales margins, given the SWEPCO rate case settlement recommendation to eliminate such sharing. *Id.* at 34-38.

## **Staff**

### **Staff Witness Athas – Direct**

Mr. Athas discusses the need for the Selected Wind Facilities and concludes that given that SWEPCO has no immediate capacity need, acquisition of these resources should be evaluated as economically opportunistic. Athas Direct at 11-14.

Mr. Athas also discusses the RFP design and evaluation. He disagrees with SWEPCO's justification for limiting the RFP to SWEPCO-owned projects and addresses the reasons SWEPCO gave for excluding Power Purchase Agreements (PPAs). *Id.* at 14-16. Mr. Athas generally agrees with SWEPCO's bid evaluation process, but states that he has concerns with the gen-tie analysis. Having said that, he does not think SWEPCO

should have selected different projects, but believes other projects could have been more beneficial. *Id.* at 23-28.

Mr. Athas testifies on the customer benefits of the proposal and agrees that SWEPCO performed a comprehensive analysis of the forecasted costs and benefits of the Selected Wind Facilities over their 30-year projected lives. He also agrees that SWEPCO conducted the appropriate sensitivity analysis, by evaluating benefits across a range of future conditions. He observes that the Reference Case analysis shows total net customer benefits of \$567 million. *Id.* at 28-30. Mr. Athas also summarizes the three guarantees proposed by SWEPCO and recommends several modifications to them. *Id.* at 34-36.

Mr. Athas makes the following recommendations:

- Find that SWEPCO's portion of the Selected Wind Facilities is in the public interest, subject to additional guarantees:
  - SWEPCO should guarantee output from the Selected Wind Facilities at the P50 level, averaged over a five-year rolling basis,
  - Do not allow SWEPCO to receive a return on the Deferred Tax Asset associated with the delayed use of the PTCs,
  - SWEPCO should guarantee that customers receive credit for PTCs as though SWEPCO had sufficient tax liability to use them as they are generated.
- SWEPCO should clarify its plans regarding acquisition of additional wind capacity pursuant to its 2018 IRP; and

- Require SWEPCO to solicit PPA options in addition to ownership options, for any future procurements of wind capacity.

Athas Direct at 8-9.

**Staff Witness Bower – Direct**

Staff witness Bower reviews in detail the methodologies for screening RFP bids. Bower Direct at 7-19. He describes SWEPCO's RFP bid evaluation and selection and concludes that in the RFP bid selection, SWEPCO ultimately selected more expensive projects because the gen-tie analysis showed that the Selected Wind Facilities would be more beneficial in the long-term if the gen-tie needs to be built and if the gen-tie cost estimates are accurate. He also explains that the gen-tie analysis is a high-level analysis and does not reflect a comprehensive, detailed evaluation of the costs of such a solution. *Id.* at 19-25.

Mr. Bower testifies that the scenarios evaluated by SWEPCO do not include sensitivities on the cost of the project and that an unexpected increase in cost such as O&M expenses above the forecast would represent an additional risk to customer benefits. He concludes that while the analysis shows net benefits in all cases, the level of benefits is highly dependent on the level of output from the Selected Wind Facilities; the inability of SWEPCO to fully utilize the PTCs as they are generated decreases the level of benefits to customers; and there are some potential risk factors that have not been fully evaluated. *Id.* at 29-30.

Mr. Bower concludes that:

- The threshold screening process conducted by SWEPCO as part of the RFP evaluation prematurely eliminated some bids based on the deliverability test.

SWEPCO included this test as a way to screen out bids that may be susceptible to congestion risk. However, the analysis eliminated bids that may actually have the lowest future congestion cost;

- The gen-tie analysis conducted by SWEPCO lacks a thorough estimate of the cost of hypothetical gen-ties, and was not structured to fully account for the costs of interconnecting the bids to the AEP West load zone;
- The choice of the three Selected Wind Facilities was driven by the analysis of the costs of gen-ties. If the cost of a gen-tie is not included in the bid evaluation, other projects may have yielded more benefits to customers; and
- The customer benefits analysis conducted by SWEPCO provides reasonable estimates of benefits across a range of future scenarios. The Selected Wind Facilities are estimated to provide benefits in all scenarios when compared to a base case with no wind acquisition. However, the customer benefits analysis demonstrates that the benefits are highly sensitive to the output of the resources and that there is a significant cost to customers because SWEPCO does not have sufficient tax liability to use the PTCs as they are generated.

*Id.* at 6-7.

**Staff Witness Lindholm – Direct**

Staff witness Lindholm addresses the proposed WFA Rider and SWEPCO's proposed handling of the deferral of cash tax benefits of the PTCs. Lindholm Direct at 3-4. She recommends approval of the WFA Rider that includes modifications to SWEPCO's proposal. Ms. Lindholm states that riders are not always an appropriate mechanism for the recovery of costs especially when a utility elects recovery under the

FRRA. She testifies that each request for a rider must be evaluated on its specific circumstances, noting that Order No. 11 in Docket No. 17-038-U states that approval of riders is within the discretion of the Commission, utilities have no legal entitlement to recovery through automatic riders, and the Commission is not opposed to the use of a rider in appropriate circumstances. Ms. Lindholm points out that it is appropriate in this Docket to recover the revenue requirement for the Selected Wind Facilities in the WFA Rider based on the specific set of facts found in this Docket and is the best option to ensure ratepayer benefits, which are from the nature of the PTCs; she also notes that there are clear ratepayer benefits with the modifications she proposes. *Id.* at 5-6.

Witness Lindholm states that SWEPCO's proposed recovery of credits for the PTCs in the Rider ECR filings is problematic as well as a mismatch of the costs and benefits between the classes. Her proposal to address the cost-benefit mismatch is to require SWEPCO to include the PTCs in the WFA Rider as an offset before the kW and kWh rates are calculated in the WFA Rider's recovery formula. Witness Lindholm states that the other advantages to off-setting the PTCs to a revenue requirement in the WFA Rider are: it matches the revenue requirement costs and the PTC benefits in one cost recovery mechanism; it is more administratively efficient; and it allows for a matching of the costs and benefits in the same recovery mechanism and time period. She states that the WFA Rider is a preferable mechanism for the Selected Wind Facilities to SWEPCO's Formula Rate Review (FRR) Rider because using the FRR Rider for cost recovery delays the credits SWEPCO will pass on to its ratepayers since it is on a historical basis. She observes the first year of the project is expected to have a revenue requirement of \$1,641,914 with offsetting PTCs of (\$2,953,518) that creates a benefit

owed to ratepayers of (\$1,311,604) not including direct savings on fuel costs for year 2021. *Id.* at 6-8.

Ms. Lindholm recommends the following:

- comprehend all costs and benefits of this project in the WFA Rider except for fuel savings;
- cost recovery in the WFA Rider should be limited to SWEPCO's filed capital costs and O&M expenses, and supported before inclusion in the WFA Rider;
- additional capital investment and O&M in excess of the levels projected in SWEPCO's testimony in this Docket should be submitted for review with the WFA Rider's annual true-up with documentation to support prudence of action and prudence of costs at that time;
- any future gen-tie needed will need specific Commission approval and should not be included in the WFA Rider without a separate Order issued by the Commission; and
- any future revenues in the form of Renewable Energy Credits or subscriptions to proposed green tariffs can be reported in the WFA Rider reporting requirements to track additional benefits of the Selected Wind Facilities.

Ms. Lindholm states it is critical that SWEPCO demonstrate that the assumptions made in this filing are holding true in the WFA Rider's yearly filing review. *Id.* at 8-9.

Ms. Lindholm recommends the following additional reporting requirements for the proposed WFA Rider: supporting work papers of the revenue requirement and PTCs; project impacts on OSS; variance reporting of estimated revenue requirement, PTCs and fuel savings proposed in this Docket compare to actuals; reporting of

additional revenues related to RECs attributed to the Selected Wind Facilities; narrative of unforeseen maintenance issues causing O&M or capital variances; a narrative of any congestion restraints or other SPP issues; and a narrative of any issues with project capacity factors or market energy pricing related to the Selected Wind Facilities. *Id.* at 9-10.

Ms. Lindholm is proposing changes to the annual filing dates for the proposed WFA Rider update. She does not recommend recovery of the DTAs proposed by SWEPCO in the WFA Rider's revenue requirement and recommends Staff witness Athas's disallowance of the earned return on the DTAs as outlined in Athas's Direct Testimony. *Id.* at 11-12.

Ms. Lindholm recommends the following regarding SWEPCO's proposal for recovery of the WFA: approve a WFA Rider based upon Direct Exhibit JKL-1; require the WFA Rider revenue requirement to include credits associated with PTCs; approve recovery in the WFA Rider in the classes reflected in the FRR Rider in the Settlement Agreement in Docket No. 19-008-U; and approve her proposal for reporting requirements. *Id.* at 12.

**Staff Witness Wolfe – Direct**

Staff witness Wolfe addresses the depreciation rates requested by SWEPCO for the three Selected Wind Facilities. She recommends that the Commission approve the 3.219 percent depreciation rate SWEPCO proposed for the Selected Wind Facilities. She further recommends that the Commission require SWEPCO to submit a comprehensive depreciation study in support of any future depreciation rate change requests with SWEPCO's next rate case. Wolfe Direct at 4-6.

### **III. Settlement**

#### **Settlement Terms**

The terms of the Settlement are as follows:

1. **Approval of the Application.**

- (a) Except as described below, the Settling Parties request that the Commission approve the relief requested by the Company in its Application. The Company clarifies that its request for a finding that the purchase of the Selected Wind Facilities (SWFs) is in the public interest should not be construed as a request for finding a value for ratemaking purposes.
- (b) Southwestern Electric Power Company (SWEPCO or the Company) is authorized to acquire up to 810 MW from the Selected Wind Facilities, based on the receipt of all regulatory approvals by SWEPCO.
- (c) The Company is further authorized to acquire either 810 MW or a lesser amount of MW from the Selected Wind Facilities (SWF) if the Company does not receive certain regulatory approvals, as set forth in the Corrected and Substituted Direct Testimony of Thomas P. Brice, Page 27, line 12, to Page 28, line 5. The anticipated scenarios for “flex-up,” including those scenarios where the Arkansas jurisdictional share of the Selected Wind Facilities will flex-up in comparison to the Base Case, are set forth in the table in Attachment 1. The Arkansas share of the Selected Wind Facilities, estimated in Attachment 1 based on the jurisdictional allocators used in the Company’s direct testimony, will be determined in accordance with the Corrected and Substituted Direct Testimony of Thomas P. Brice, Page 27, line 12, to Page 28, line 5, and using the jurisdictional allocation methodology set forth below in Section 3(e).
- (d) The Arkansas retail jurisdictional MW associated with the flex-up scenarios (Scenarios E and F) in Attachment 1 are consistent with the Company’s most recent Integrated Resource Plan filed in December 2018 in Docket No. 07-011-U, in which the Company projected a need for 1,400 MW of wind generation by 2024 (of which the Arkansas retail jurisdictional share is 19.2834% or 270 MW). Attachment 2 sets forth Corrected and Substituted Direct Exhibit JOA-1, Summary of Net Customer Benefits, to the Corrected and Substituted Direct Testimony of John O. Aaron updated for Scenarios E and F.

2. Guarantees.

- (a) Cost Cap. SWEPCO commits to a total cost cap of 100% of filed capital costs, including AFUDC and contingency, as set forth in Attachment 1 for the Base Case and each other scenario. The Cost Cap will be reduced by the amount of any purchase price reduction realized by the Company under the terms and conditions of the Purchase and Sale Agreements (PSAs), plus a proportionate share of contingency, including any amount that reflects a reduction in the amount of MW acquired by SWEPCO if the Company does not receive certain regulatory approvals. Costs above the cap are not recoverable. There shall be no exceptions to the cap for force majeure or changes in applicable law.
- (b) PTC Eligibility. SWEPCO will provide a guarantee, for cost recovery purposes, that the SWFs will be eligible for the applicable value of the federal Production Tax Credits (PTCs) (80% for Traverse and Maverick and 100% for Sundance) for the actual output of the SWFs. SWEPCO will be excused from this guarantee to the extent changes in federal law pertaining to PTCs, including changes to the Internal Revenue Code, directly reduce the value of PTCs. Based on the combined effect of the PTC and Net Capacity Factor (NCF) Guarantees, customers will receive PTCs equal to the greater of actual or guaranteed MWh production upon completion of the SWFs.
- (c) Net Capacity Factor (NCF). SWEPCO guarantees a minimum net average capacity factor from the SWFs of P95 over the six five-year periods of the first thirty full years of operations (with the first year of full operations starting January 1, 2022). The NCF guarantee will be measured in MWh and at P95 will equal the applicable Total SWEPCO MWh at P95 (as set forth in Attachment 1) for each five-year period at the applicable Total SWEPCO MW (as set forth in Attachment 1), adjusted ratably for the Company's share of any reduction in the final amount of MW installed by Invenenergy and its subsidiaries pursuant to the PSAs for the SWFs. The MWh guarantee for the sixth five-year period (years 26-30) will be adjusted ratably downward if the Sundance facility is constructed but is no longer in operation after its 30<sup>th</sup> year of operations.

NCF will be measured across all facilities on a combined basis and will be evaluated in a filing to the Commission in this docket to be made no later than May 1 of the year following the 5-year performance period. Any make-whole payments resulting from a NCF production shortfall in any five-year period will flow back to

customers through the Energy Cost Recovery Rider (Rider ECR) over the 12-month period following the performance evaluation covering each five-year performance period. (For example, any make-whole payment pertaining to years 1-5 will flow back to customers during the 12 months following the performance evaluation in year 6.) The calculation for determining amounts due to customers under this guarantee shall be as set out in Attachment 3 hereto. Hours impacted by force majeure will not be excluded from the calculation. Economic curtailments of the Selected Wind Facilities by the Southwest Power Pool (SPP) will also not be excluded from the NCF guarantee calculation. However, reliability curtailments and curtailments for environmental reasons will be excluded from the NCF guarantee calculation.

- (d) Most Favored Nations (MFN). The MFN guarantee will apply to the Cost Cap Guarantee, NCF Guarantee, PTC Eligibility Guarantee and any other term or condition adopted for the Company in Louisiana and Texas or for the Public Service Company of Oklahoma (PSO) in any of the state jurisdictions on behalf of which it or PSO acquires a share of the Selected Wind Facilities, whether through settlement or order issued by any such jurisdiction, to the extent such terms or conditions are more favorable to the Company's Arkansas customers. The respective terms of the Joint Settlement shall be deemed to be modified to incorporate those more favorable terms provided the term or condition is not unique to the SWEPCO jurisdiction or PSO (for example, the MFN will not apply to issues related to customer cost allocation, jurisdictional allocation and rate design). The Company will serve the Settling Parties with the orders and settlements described above promptly after they are issued and identify any provisions to which this MFN Guarantee applies.

3. Other Settlement Terms and Conditions.

- (a) Deferred Tax Asset (DTA). The DTA balance will be used to reduce the accumulated deferred income tax (ADIT) component of the Company's cost of capital in any subsequent rate case or FRR filing. The WFA Rider will incorporate the rate of return from the Company's most recent general rate case proceeding.
- (b) Off-System Sales. Nothing in this Joint Settlement should be interpreted as altering the treatment of off-system sales approved by the Commission pursuant to the settlement filed in Docket No. 19-008-U.

(c) Wind Facility Asset (WFA) Rider.

- (i) The Settling Parties agree to submit for determination by the Commission the threshold legal question of whether it is legally permissible for SWEPCO to utilize a temporary surcharge under the Arkansas Clean Energy Development Act, such as the WFA Rider, when the Company elected in its last general rate case in Docket No. 19-008-U to have its rates regulated under a formula rate review mechanism as authorized by Act 725.
- (ii) If the Commission authorizes SWEPCO to concurrently use the WFA Rider and its approved Formula Rate Rider, then the Company is authorized to implement the WFA Rider as set forth in Attachment 4 until the date all of the facilities are included in base rate schedules (subject to final true-up).
- (iii) If the Commission does not authorize SWEPCO to concurrently use the WFA Rider and its Formula Rate Rider, then the Company is authorized to implement the WFA Rider as set forth in Attachment 4, provided that:
  - (A) the Company takes the steps necessary to withdraw its election to have its rates regulated under the Formula Rate Review Act in Docket No. 19-008-U and terminate its Formula Rate Rider following the date of the Commission's order in this docket; and
  - (B) any formula rate rider proposed by the Company in its next general rate case filing will contain the same terms and conditions as the formula rate rider approved by the Commission pursuant to the settlement filed in Docket No. 19-008-U.
- (d) Gen-Tie. Nothing in this Joint Settlement should be interpreted as recommending or providing approval for (1) any future transmission lines that interconnect the Selected Wind Facilities to the SPP transmission system (i.e., gen-ties) that are not within the scope of the Company's Application, and (2) any future transmission-related upgrades or modifications to relieve any operational issues related to the deliverability of the Selected Wind Facilities that are not within the scope of the Company's Application, and this Joint Settlement shall not constitute nor be cited as precedent nor deemed an admission by any Settling Party in any future proceeding related to such facilities.

- (e) Jurisdictional Allocator. All of the costs of the SWFs to SWEPCO will be allocated among the Company's jurisdictions on behalf of which SWEPCO acquires a share of the SWFs based on energy using the Company's jurisdictional energy allocator in effect at the time of the allocation. In the event of a flex-up scenario including Arkansas and another SWEPCO jurisdiction, Arkansas and the other approving retail jurisdiction will share ratably in the non-approving jurisdiction's share of the costs of the Selected Wind Facilities to SWEPCO.
- (f) Allocation to Customer Classes of Revenue Requirement Net of PTCs. For the purposes of only the WFA Rider, the Arkansas jurisdictional share of the revenue requirement of the SWFs, net of the production tax credits, will be allocated among the Company's Arkansas customer classes 85% on energy and 15% on demand using an average and excess 4 coincident peak allocation factor.
- (g) Renewable Energy Credits (RECs). The proceeds, net of transaction costs, from the sale of RECs associated with the SWFs will be provided to customers through Rider ECR. Within 90 days of the effective date of this Joint Settlement, the Company will file a tariff to provide customers with the option to purchase RECs available to the Company and derived from the Selected Wind Facilities.
- (h) Information Reporting for Arkansas.
  - (i) The Company will comply with the information disclosure requirements set forth in the WFA Rider.
  - (ii) The Company will keep the Commission updated on significant events and the status of SWF approval proceedings in other jurisdictions by filing updates in this Docket as needed.
  - (iii) The Company will promptly file copies of settlements reached in other state jurisdictions related to SWF approval and file amendments to this Joint Settlement to incorporate additional terms under the MFN Guarantee once those terms are agreed to by SWEPCO (or PSO) in other jurisdictions, with supporting testimony.
  - (iv) The Company shall report semi-annually to Staff and the Attorney General on the status of project construction and any anticipated delay in the Selected Wind Facilities commencing commercial operation.

- (v) The Company shall notify the Settling Parties when the Selected Wind Facilities commence commercial operation.
  - (vi) In its next application to acquire a new wind generation asset, the Company will include in its testimony a discussion of the rationale for the selection of the types of wind generation assets included in the request for proposals (RFP), including a discussion of the rationale for excluding any type of wind asset from the RFP.
- (i) Arkansas Procedural Requests
- (i) The Settling Parties agree to jointly file this Joint Settlement with supporting testimony. In that filing, the parties further agree to (1) request that the Commission waive the requirement for a hearing; (2) establish a briefing schedule, solely to address the threshold legal question necessary to implement the WFA Rider concurrent with the Company's formula rate rider, under which the Settling Parties will file simultaneous initial and reply briefs on February 18, 2020 and February 25, 2020, respectively; and (3) request that the Commission issue an order on or before May 8, 2020 on this Joint Settlement (including the threshold legal question briefed by the parties).
  - (iii) [sic] The Settling Parties may each assert their positions in the briefs to be filed in this matter on the threshold legal question necessary to implement the WFA Rider concurrent with the Company's formula rate rider, but otherwise each party will support the terms and conditions of this Joint Settlement.

4. Discovery and Motions.

As between and among the Settling Parties, all pending requests for discovery, and all motions pending before either the Commission or the Administrative Law Judge are hereby withdrawn.

**Settlement Testimony**

**SWEPCO - Brice**

Mr. Brice sets forth the proceedings in the Docket and the terms of the Settlement. He testifies that, with certain exceptions, the Parties request that the

Commission approve the relief requested by SWEPCO in its Application and clarifies that its request for a public interest finding is not a request for finding a value for ratemaking purposes. He notes that SWEPCO would be authorized to acquire up to 810 MW from the Selected Wind Facilities, based on the flex-up option, and observes that the amounts are consistent with SWEPCO's most recent IRP filed in Docket No. 07-011-U in December 2018. Brice Settlement at 4-10.

Mr. Brice outlines the guarantees that SWEPCO will provide on the cost cap, PTC eligibility, NCF, and most-favored nations. He also recites the agreement on the issues of DTA, sharing of OSS, and the future use of a gen-tie transmission line. *Id.* at 11-14. He explains that the costs of the Selected Wind Facilities, along with the PTCs, will be allocated among SWEPCO's jurisdictions based on energy and will be allocated among Arkansas customer classes 85 percent on energy and 15 percent on demand using a 4 CP A & E allocation factor. Mr. Brice testifies that the net proceeds from the sale of RECs will be provided to customers through Rider ECR. He also lists the informational reporting that SWEPCO has agreed to provide. *Id.* at 14-16.

Mr. Brice states that although the Parties were not able to reach an exact agreement on the use of the proposed WFA Rider, they were able to agree that in the event the Commission determines SWEPCO can legally implement a temporary surcharge under ACEDA while SWEPCO is under a FRP, then SWEPCO would be authorized to implement the WFA Rider until the date all of the facilities are included in base rate schedules. He notes that the Parties submitted that legal question for ruling by the Commission. *Id.* at 16-17. Mr. Brice testifies that if the Commission does not authorize the use of the WFA Rider while SWEPCO is under a FRP, then SWEPCO will

take the necessary steps to withdraw its election of the FRR Rider and will proceed to utilize the WFA Rider with traditional ratemaking principles. He clarifies that SWEPCO has committed that any formula rate rider it proposes in its next rate case will contain the same terms and conditions as the plan approved in Docket No. 19-008-U. *Id.* at 18.

Finally, Mr. Brice opines that Commission approval of the Settlement and authorization for SWEPCO to acquire the selected Wind Facilities would be in the public interest, noting that SWEPCO's customers and numerous other interested parties have been emphasizing the need for all utilities to increase their use of clean energy resources for years. He observes that the extension of the federal PTC and the improvements in both the cost and efficiency of wind generating facilities make this a very timely decision. In addition, he states that the acquisition is wholly consistent with SWEPCO's most recent IRP and the desires of its stakeholders. Mr. Brice testifies that the flex-up provisions will allow Arkansas customers to reap the benefits of the acquisition even if one of SWEPCO's other jurisdictions declines the opportunity, and that the thirty-year savings in energy cost to its customers provides a singular opportunity to lock in affordable electric rates for several generations. He concludes that this acquisition is exactly what the Arkansas Legislature had in mind when it passed ACEDA. *Id.* at 19.

#### **SWEPCO - Aaron**

Mr. Aaron discusses the Arkansas retail net benefits, showing in his Table 1 the Arkansas retail net benefits over the life of the project of \$412,649,000 for SWEPCO's base case (with all approvals); \$651,314,000 for base case with Louisiana's non-approval; and \$713,254,000 for base case with Texas's non-approval. In his Table 2, he sets forth how the reallocation percentages of benefits and costs will be determined with

Louisiana's or Texas's non-approval, indicating that Arkansas's share will be increased from 19.17 percent to 30.25 percent with Louisiana's non-approval and 33.13 percent with Texas's non-approval. He states that reallocation through the flex-up provision will allow SWEPCO's Arkansas retail customers to receive the benefits of the transaction even if one of SWEPCO's other retail jurisdictions denies its request. Aaron Settlement at 4-5.

Mr. Aaron testifies that the WFA Rider is designed to adjust monthly billings to recover costs associated with the Selected Wind Facilities as approved by the Commission in this proceeding. He explains that the WFA Rider recovers the return on and of the Selected Wind Facilities and operation and maintenance expenditures after the Selected Wind Facilities commence commercial operation and that federal PTCs earned by SWEPCO reduce the amount to be collected through the WFA Rider. He states that the WFA Rider contains a true-up mechanism and will remain in effect until all Selected Wind Facilities are included in base rate schedules through a general base rate proceeding, at which time the WFA Rider will terminate in its entirety and be removed from available rate schedules, subject to any final true-up. *Id.* at 5.

Mr. Aaron maintains that the initial period of the WFA Rider Factors will be the forecasted initial twelve months of operation after commercial operation date of the Sundance facility, and the subsequent twelve-month period will include annual forecasted costs of operation for the Sundance facility as well as the annual forecasted costs of operation for the Maverick and Traverse facilities along with a true-up adjustment for the Sundance facility. He says the true-up adjustment will reflect the difference between the actual costs for the prior period, including any refund

compensation, and the revenue received pursuant to the WFA Rider. Mr. Aaron affirms that SWEPCO will follow the traditional over/under accounting with any net under-recovery recorded as a regulatory asset or any net over-recovery recorded as a regulatory liability to be included for future recovery or refund through the true-up to actual costs in the subsequent WFA Rider filings. He notes that the rate of return applied to the plant in service net of accumulated depreciation in the WFA Rider Factor calculation will be the 6.05 percent pre-tax rate of return approved by the Commission in Docket No. 19-008-U. *Id.* at 5-6.

Mr. Aaron states that WFA Rider costs will be allocated to SWEPCO's Arkansas jurisdiction using the most current jurisdictional energy allocators in effect at the time the WFA Rider begins, and that the Arkansas jurisdictional share will be allocated to SWEPCO's Arkansas retail classes on the blended 85 percent energy and 15 percent average and excess four coincident peak allocation from SWEPCO's cost allocation study approved in Docket No. 19-008-U. He further notes that the WFA Rider Factors will be applied on a kW basis for Lighting and Power, and Large Industrial classes, and on a per kWh basis for all other classes. *Id.* at 6.

Mr. Aaron testifies that the expected energy savings from the facilities will reduce SWEPCO's eligible fuel expense and flow through SWEPCO's current ECR Rider. He verifies that, pursuant to the WFA Rider, SWEPCO will file with the Commission revised WFA Rider Factors on or before October 1 of each year for application with the first billing cycle of the following January revenue month. The filing will be accompanied by workpapers sufficient to fully document all calculations of the revised factors including any required true-up and the informational reporting outlined in the Rider. *Id.* at 7.

Mr. Aaron concludes that the proposed WFA Rider is in the public interest because it allows SWEPCO the opportunity to recover its Arkansas-jurisdictional revenue requirement (net of federal PTCs) that is offset by the energy savings expected from the selected wind facilities resulting in a net decrease in customer's bills. *Id.*

## Walmart - Perry

Ms. Perry testifies that the Commission should approve the Settlement as a reasonable resolution of the issues in the Docket. She states that the Settlement is the result of arms-length negotiations between the parties and addresses Walmart's issues as presented in her Direct Testimony. Perry Settlement at 2.

**AG - Baker**

Ms. Baker describes the background of SWEPCO's Application and the Settlement and confirms that the Parties have come to a complete agreement on all issues in the Docket. She testifies that the Settlement contains significant ratepayer protections including cost cap guarantees, PTC eligibility guarantee, guarantees regarding the minimum Net Capacity Factor, and a most-favored nations clause. She says that further protections include agreements regarding the protection of customers from economic curtailments of the wind facilities by SPP, the treatment of OSS, allocation of the PTCs to the customer classes, and treatment of proceeds from the sale of RECs, as well as numerous reporting requirements by SWEPCO. She confirms that the public interest finding should not be construed as a request for finding a value for ratemaking purposes. Baker Settlement at 2-4. She affirms that these ratepayer protections address the concerns described in the AG's direct testimonies, so that the Settlement is in the public interest. *Id.* at 4.

Ms. Baker testifies that the Settlement resolves the AG's issue of base rate rider stacking by identifying the legal question to be submitted to the Commission, which will be briefed by the parties. She states that this approach sufficiently resolves the AG's concerns on this issue. She recommends that the Commission approve the Settlement as in the public interest. *Id.* at 5.

**Staff - Butler**

Ms. Butler testifies that the purpose of the Settlement is to address and resolve issues in this Docket related to SWEPCO's proposed acquisition of the Selected Wind Facilities pursuant to the provisions of ACEDA. She states that the Settlement provides a unique opportunity for Arkansas ratepayers to receive significant benefits related to the acquisition of the Selected Wind Facilities and notes that as set forth in the Settlement Attachment 2, the net customer benefits are projected to be approximately \$413 million. She explains that the Settlement includes significant ratepayer protections, including guarantees for a Cost Cap, eligibility for the federal PTC at the specified level in SWEPCO's Application, a Net Capacity Factor guarantee ensuring Base Case level of generation for the Selected Wind Facilities, and a most favored nations provision that ensures that Arkansas customers will receive the value of the Settlement as well any additional benefits that may be agreed upon or ordered in other SWEPCO jurisdictions or in the Oklahoma jurisdiction related to PSO. She remarks that the annual reporting requirements, through the use of the proposed WFA Rider in this Docket, provide information needed to timely review and verify that customers receive the intended benefits from the acquisition of the Selected Wind Facilities. Butler Settlement at 3-5.

Ms. Butler explains that the Settlement would authorize SWEPCO to acquire up to 810 MW from the Selected Wind Facilities, depending on which regulatory approvals are received, as detailed in Attachment 1 to the Settlement. She notes that the Attachment identifies all possible acquisition scenarios and the total MW that would be allocated to Arkansas under each scenario, with the potential of providing up to approximately \$713 million of net benefits to Arkansas customers under the flex-up options. She opines that the flex-up quantities are within the range of renewable energy additions identified in the Preferred Plan of SWEPCO's 2018 IRP filing in Docket No. 07-011-U. *Id.* at 5-6.

Ms. Butler describes the ratepayer guarantees that SWEPCO is providing as part of the Settlement, along with the other terms and conditions. She testifies that treatment of the DTA is consistent with Arkansas ratemaking practice and that the treatment of OSS preserves the ratepayer benefits approved in Docket No. 19-008-U, while the reporting requirement will enable Staff to monitor the benefits to ratepayers related to OSS revenues associated with the Selected Wind Facilities. Ms. Butler describes the terms concerning the gen-tie line. She testifies that WFA Rider costs will be allocated to the Arkansas jurisdiction using the most current Commission-approved energy allocators at the time the WFA Rider begins, while for purposes of the proposed WFA Rider only, the Arkansas retail revenue requirement will be allocated to SWEPCO's retail classes on a blended 85 percent energy and 15 percent average and excess four coincident peak allocation in SWEPCO's cost of service study approved in Docket No. 19-008-U. She observes that the class allocator is a transition allocator for purposes of

this rider and is not binding for any other purpose. She also explains the provisions related to RECs. *Id.* at 6-11.

Concerning the WFA Rider, Ms. Butler says that the Parties were unable to agree that the use of a temporary surcharge is legally allowed under ACEDA when SWEPCO has elected to be regulated under the FRR Review Act, so the parties agreed to submit this question to the Commission. If the Commission authorizes SWEPCO to concurrently use the WFA Rider and its approved FRR Rider, then Ms. Butler points out that the Settlement authorizes SWEPCO to implement the WFA Rider in Settlement Attachment 4 until the date all of the facilities are included in base rate schedules (subject to final true-up). She testifies that if the Commission does not authorize SWEPCO to concurrently use the WFA Rider and its FRR Rider, then SWEPCO will take steps to withdraw its FRR election and terminate its FRR Rider, further agreeing that any formula rate rider proposed in the next rate case will contain the same terms and conditions as that approved in Docket No. 19-008-U. She notes that this last agreement was important to Staff to ensure that the value of the settlement terms in the rate case was preserved. *Id.* at 11-12.

Concerning the operation of the proposed WFA Rider, Ms. Butler explains that it will adjust monthly billings for the return on and of the Selected Wind Facilities as well as the operation and maintenance expenses. She states that the WFA Rider is designed to recover the Arkansas-jurisdictional portion of the revenue requirement, offset by the Arkansas-jurisdictional portion of the PTCs earned by SWEPCO. She testifies that the WFA Rider will utilize a traditional true-up adjustment to calculate the difference between the actual costs for the prior period and the revenue collected under the WFA

Rider, with the rate of return applied to the plant-in-service net of any accumulated depreciation in the WFA Rider Factor calculation as the pre-tax rate of return approved by the Commission in Docket No. 19-008-U, 6.05 percent. Ms. Butler details the annual filing requirements. She opines that the rider is in the public interest because it provides SWEPCO with the ability to recover its Arkansas-jurisdictional revenue requirement net of the PTCs, while delivering substantial fuel cost savings in SWEPCO's Energy Cost Recovery Rider, resulting in a decrease of customers' bills. She states that the rider comprehends the revenue requirement and the PTC offset in one recovery calculation, while simultaneously providing reporting requirements in one recovery mechanism, which will enable the Parties to monitor the significant commitments made by SWEPCO in this Docket. *Id.* at 12-14.

Ms. Butler supports the Settlement as in the public interest due to the unique opportunity for customers to receive significant benefits associated with the acquisition of the Selected Wind Facilities, the significant ratepayer protections included in the Settlement, and the reporting requirements that will allow the Parties to monitor the actual customer benefits associated with the Selected Wind Facilities, and she recommends that the Commission approve the Settlement. *Id.* at 14.

#### **IV. Legal Briefs**

The Settling Parties submitted for determination by the Commission the threshold question of whether it is legally permissible for SWEPCO to utilize a temporary surcharge under the Arkansas Clean Energy Development Act, such as the WFA Rider contained in Attachment 4 to the Unanimous Settlement, when SWEPCO

elected in its last general rate case in Docket No. 19-008 U to have its rates regulated under a formula rate review mechanism as authorized by Act 725.

**SWEPCO**

SWEPCO says that the plain language of ACEDA expressly allows the Commission to afford SWEPCO the ability to implement the temporary surcharge at issue, citing Ark. Code Ann. § 23-18-703(a)(4). SWEPCO also maintains that the FRRA explicitly preserves the Commission's authority to continue to allow public utilities to recover interim surcharges under ACEDA, citing Ark. Code Ann. § 23-4-1209. SWEPCO notes that the FRRA does not prohibit riders of any kind and in fact does not use the terms "base rate rider" or "stacking." SWEPCO further points out that the timing of the enactment of the FRRA (after ACEDA) further evidences the above-established principle that the General Assembly did not intend for the FRRA to negate the Commission's authority to permit the interim surcharge at issue under ACEDA.

SWEPCO acknowledges that approval of riders is within the broad discretion of the Commission and utilities have no entitlement to recovery through automatic riders, but argues that the present case provides unique and appropriate circumstances warranting and justifying the use of a WFA Rider, as authorized by ACEDA, in conjunction with SWEPCO's FRP. SWEPCO maintains that it wants to get savings into the hands of its customers at the earliest opportunity and further points to the discussion of Staff witnesses Lindholm and Butler and SWEPCO witness Aaron as to why the WFA Rider is in the public interest. SWEPCO says ratepayers get immediate relief on their bills and SWEPCO gets timely recovery of and on its significant investment in a clean energy resource. Finally, SWEPCO asserts that its withdrawal of

its FRP could result in customers being held to a traditional ratemaking system that might deny them of the benefits of further rate reductions, depending on SWEPCO's historical year performance.

**AG**

The AG argues that the FRRA, and the ratepayer protections contained in the FRRA, prohibit SWEPCO's WFA Rider or similar temporary surcharge requests. The AG states that the FRRA allows only one annual review of rates, and a surcharge such as the WFA Rider would be an additional base rate adjustment in violation of the FRRA's intent to provide rate stability. The AG also identifies several additional requirements of the FRRA which prohibit a utility from stacking a base rate rider on top of a FRRA rate adjustment, such as the four percent cap in Ark. Code Ann. § 23-4-1207(d)(2), the prohibition against rate pancaking in Ark. Code Ann. § 23-4-1207(e), and the ability to misconstrue the computation of the benchmark rate of return on rate base. The AG points out that the four percent cap is one of the scant ratepayer protections afforded by the FRRA and multiple rate adjustment could result in higher rate increases annually, which is not permitted under the FRRA.

The AG argues that SWEPCO is legally prohibited from utilizing a FRP mechanism to concurrently recover base rate expenses through the WFA Rider or a similar temporary surcharge. The AG notes that the FRRA preserved the Commission's discretion and freedom in regard to ratemaking and non-conflicting riders, but that stacking base rate riders violated the mandates of Ark. Code Ann. § 23-4-1207(d)(2) and would lead to fracturing ratemaking into countless and never-ending quantifications of

single-issue ratemaking proceedings. The AG observes however that certain non-base rate mechanisms such as pass-through costs for fuel can be compliant with the FRRA.

The AG also states that attempting to remove or account for certain WFA Rider base rate revenue dollars differently will have a cascading effect which will undermine the goal of streamlined review under the FRRA and further complicate the Commission's determination of whether any FRRA rate adjustments are needed, since Rider FRR uses a historic test period and the WFA Rider will allow for immediate recovery; in addition, it will be impossible to calculate an accurate earned return rate when certain rate base components are calculated separately. The AG concludes that SWEPCO cannot legally recover the base rate costs of the Selected Wind Facilities under an interim rider when SWEPCO has elected base rate regulation pursuant to the FRRA.

The AG agrees that the WFA Rider is in the public interest if SWEPCO abandons the FRR Rider and also suggests that a surcharge could be legally permissible if the WFA Rider was actually independent of the annual FRP and its base rate calculation.

### **Staff**

Staff argues that the plain meaning of the language used in the FRRA and ACEDA provides ample evidence of legislative intent to preserve the Commission's authority under ACEDA independent of a formula rate review mechanism elected by a utility for determining rates under the FRRA. Citing Ark. Code Ann. § 23-4-1209, Staff opines that the FRRA expressly reserves the authority of the Commission to continue to administer and implement ACEDA, which predated the FRRA. Likewise, Staff states that ACEDA gives the Commission the discretion to authorize recovery of appropriate investments and expenses through appropriate surcharges, citing Ark. Code Ann. § 23-

18-703(a)(4). Staff states that the AG's argument is premised on the faulty assumption that if a FRP is elected, the all rate recovery, without exception, must be channeled through the FRP.

Staff then contends that separate recovery through the WFA Rider is a "win-win" for both ratepayer and the utility because the costs are directly tied to the PTCs in the same mechanism and time period, and relying on the FRP would delay ratepayer benefits. Staff also observes that regardless of which recovery mechanism is approved, this project will lower the formula rate review mechanism boundary constraint for calculating the four percent cap.

#### **V. Testimony at Hearing**

##### **SWEPCO - Aaron**

Mr. Aaron testifies that SWEPCO had proposed using an energy allocation for jurisdictions and an energy allocation for classes within the rider. He observes that the Settlement results in a blended allocation for classes, which is 85 percent energy and 15 percent demand, based on the four coincident peak average and excess that is laid out in the FRRA. He states that the same energy allocation will be used across all jurisdictions, but that class allocation is left up to the jurisdiction. He notes that on the class allocation, Oklahoma did adopt or approve a blend allocation for classes, very much similar to what was in the settlement here in Arkansas. T. 9401.

Mr. Aaron testifies that the risk of over/under recovery using an energy allocation for all jurisdictions should limit any potential over allocation/under allocation of cost to the jurisdictions. He explains that there can be different allocations through classes within each jurisdiction based on their precedent and their desires and the parties. He

states that there has been no recommendation to go to a different type of allocation other than energy in the jurisdictions, so he does not think that there is any potential or risk for over recovering or under recovering the total project cost if you keep those in harmony across jurisdictions. He is satisfied that there is not going to be a fight among the states on jurisdiction allocations at this point. T. 9401-02.

Mr. Aaron states that SWEPCO has not proposed the actual REC tariff yet, but says the other REC tariff that SWEPCO has in Oklahoma is based on the current market price. He explains that it is an annual rider which SWEPCO files with the Oklahoma Corporation Commission, with all the proceeds from that rider, net of the cost to administer that rider, going back to the customers through reconcilable fuel. He remarks that there is not a potential for different allocations when one looks at either demand or energy across the states when allocating RECs because RECs would be treated as a component of fuel, and in all jurisdictions fuel is allocated on an energy basis. T. 9402-03.

#### **SWEPCO - Brice**

Mr. Brice describes changes in the status of the proceedings in any of the other jurisdictions. Besides the Oklahoma settlement, he says SWEPCO has entered a unanimous settlement under the same terms of Arkansas and Oklahoma with one additional provision, but, essentially, under the same terms, with a motion filed March 6 with the Louisiana Public Service Commission indicating that the parties would be working on the corresponding documents, settlement testimony, and joint motion. He also asserts that the hearing was completed in Texas the week before this hearing, and the parties are now in the briefing process and expect a proposal decision out of the

administrative law judges middle of May, around the 17th. He also affirms that SWEPCO's application with the FERC has been approved. T. 9405-07.

Mr. Brice confirms that if Arkansas approves the application, there will be a project because SWEPCO would have sufficient capacity to meet the PSA minimal obligations. He also maintains that if Louisiana also approves in addition to Arkansas and accepts the flex option in that jurisdiction, not only would SWEPCO have the project but would satisfy the full 810 megawatts for which SWEPCO sought approval. Mr. Brice also verifies that SWEPCO knows the location of the project. T. 9407-08.

**AG – Baker**

Ms. Baker testifies that the AG agrees that there is sufficient clarity going forward with respect to the consistent application of demand energy allocator so that everybody will know how it works regardless of what neighbor states do. T. 9708.

**Staff – Butler**

Ms. Butler testifies that in the first year, the revenue requirement net of PTCs is a net credit, but overall the project is beneficial throughout its life with the inclusion of the energy savings. She explains that Staff considered the project in its totality – that it is the combination of the energy savings and the cost of the project as well as the benefits of having the PTCs. She would not call it front loaded, but in total the project provides overall net benefits. T. 9986-87.

**VI. DISCUSSION AND FINDINGS**

The Joint Motion asks the Commission to answer the threshold legal question presented in the Settlement and approve the Settlement. The Commission approves the Settlement filed by the Settling Parties as Exhibit 1 to the Joint Motion on January 24,

2020, except it determines that (1) it is not in the public interest to approve the WFA Rider while SWEPCO is regulated under the FRRA, and (2) it is premature to rule on whether the WFA Rider is appropriate if SWEPCO is not regulated under the FRRA.

### **Threshold Legal Question**

As framed by the Parties, the threshold question is whether it is legally permissible for SWEPCO to utilize a temporary surcharge under the Arkansas Clean Energy Development Act, such as the WFA Rider contained in Attachment 4 to the Unanimous Settlement, when SWEPCO elected in its last general rate case in Docket No. 19-008 U to have its rates regulated under a formula rate review mechanism as authorized by Act 725.

The Commission finds no prohibition against a utility recovering costs through a rider contemporaneously with its election to recover rates pursuant to the FRRA. The FRP tariffs approved by the Commission and supported by the various parties have exempted some riders from inclusion in the FRP tariffs. Likewise, the FRRA's four percent rate class revenue cap of Ark. Code Ann. § 23-4-1207(d)(2) and the anti-pancaking prohibition in Ark. Code Ann. § 23-4-1207(e)<sup>6</sup> apply to rate changes under the FRRA and do not apply to or encompass rate changes outside the FRP in other riders. Although the AG argues that a rider outside the FRP tariff constitutes "base rate rider stacking" in violation of Act 725, the Commission finds no provision of the FRRA which mentions "base rate rider stacking" or which prohibits riders, or rate adjustments under those riders, outside the FRRA. Riders merely remove certain costs from base rates and provide for recovery separately from base rates. The Commission has long

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<sup>6</sup> "Only one (1) rate reviews adjustment shall occur during any period of three hundred sixty-five (365) days."

permitted riders, which recover distinct charges, under certain circumstances and allowed rider rate updates outside the confines of a general rate case proceeding. All four FRP tariffs<sup>7</sup> approved by the Commission currently allow for riders to be exempted from the calculations of the FRP. Under the AG's interpretation, it appears that any adjustment to a rider outside Rider FRP would be prohibited because generally, every rider contains costs that, but for the rider, would be recovered in base rates. For example, transmission charges passed through to utilities by the respective RTO were previously included in base rates before the Commission approved transmission riders to recover those costs.<sup>8</sup> Therefore, the Commission finds nothing that would legally prohibit riders from operating outside the FRP.

### **Settlement**

Under the terms of the Settlement, SWEPCO would be authorized to acquire up to 810 MW from the Selected Wind Facilities, based on the flex-up option. The evidence shows that SWEPCO's acquisition of the Selected Wind Facilities provides a unique opportunity for Arkansas ratepayers to receive significant benefits, consistent with a desire of SWEPCO's customers and numerous other interested parties for all utilities to increase their use of clean energy resources. The extension of the federal PTC and the improvements in both the cost and efficiency of wind generating facilities make this a very timely decision.

The Selected Wind Facilities were selected as a result of a competitive RFP, and the flex-up quantities are within the range of renewable energy additions identified in

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<sup>7</sup> For Entergy Arkansas, LLC; CenterPoint Energy Arkansas Gas; Oklahoma Gas & Electric Company; and SWEPCO.

<sup>8</sup> See, *e.g.*, EAL's MISO Rider, Rate Schedule No. 54; OG&E's TCR Rider; and Empire District's Rider TCR, Rate Schedule No. 15. SWEPCO does not have a separate rider for transmission costs; they are included in base rates.

the Preferred Plan of SWEPCO's 2018 IRP filing in Docket No. 07-011-U and consistent with the desires of its stakeholders.

The evidence further demonstrates that the Settlement contains significant ratepayer protections, including guarantees for a cost cap, eligibility for the federal PTC at the specified level in SWEPCO's Application, a net capacity factor guarantee ensuring base case level of generation for the Selected Wind Facilities, and a most favored nations provision that ensures that Arkansas customers will receive the value of the Settlement as well any additional benefits that may be agreed upon or ordered in other SWEPCO jurisdictions or in the Oklahoma jurisdiction related to PSO. Other protections include agreements regarding the protection of customers from economic curtailments of the wind facilities by SPP, the treatment of off-systems sales, allocation of the PTCs to the customer classes, and treatment of proceeds from the sale of RECs, as well as numerous reporting requirements by SWEPCO.

As set forth in the Settlement Attachment 2, the Arkansas retail net benefits over the life of the project are projected to be \$412,649,000 for SWEPCO's base case (with all approvals); \$651,314,000 for base case with Louisiana's non-approval; and \$713,254,000 for base case with Texas' non-approval. Reallocation through the flex-up provision will allow SWEPCO's Arkansas retail customers to receive the benefits of the transaction even if one of SWEPCO's other retail jurisdictions denies its request. The thirty-year savings in energy cost to SWEPCO's customers provides a singular opportunity to lock in affordable electric rates for several generations. Based on the evidence produced, there should be a net decrease in customer costs and bills over the life of the project resulting from savings because the generation mix is expected to lower

SWEPCO's energy costs; the project will defer future capacity requirements for SWEPCO and result in additional savings to SWEPCO's Arkansas customers beginning in 2030; and the project will be eligible for federal PTCs during the first ten years of commercial operation.

The Commission therefore finds that the acquisition of the Selected Wind Facilities under the conditions detailed in the Settlement is in the public interest and turns to the question whether SWEPCO should be allowed to recover the costs of the Selected Wind Facilities through the WFA Rider.

SWEPCO and Staff argue that based on the specific set of facts found in this Docket, the present case provides unique and appropriate circumstances warranting and justifying the use of the WFA Rider, as authorized by ACEDA, in conjunction with SWEPCO's FRR Rider.

SWEPCO and Staff both maintain that the WFA Rider passes on the savings to customers in a more timely manner, because using the FRR Rider for cost recovery delays the credits SWEPCO will pass on to its ratepayers since it is on a historical basis. They also point out that the WFA Rider allows SWEPCO a timely opportunity to recover its Arkansas jurisdictional revenue requirement (net of federal PTCs) that is offset by the energy savings expected from the Selected Wind Facilities. A further point is that in the WFA Rider, the costs are directly tied to the PTCs in the same mechanism and time period. Staff points out that the WFA Rider comprehends the revenue requirement and the PTC offset in one recovery calculation, while simultaneously providing reporting requirements in one recovery mechanism, which will enable the Parties to monitor the significant commitments made by SWEPCO in this Docket.

Staff also observes that regardless of which recovery mechanism is approved, this project will lower the formula rate review mechanism boundary constraint for calculating the four percent cap.

Finally, SWEPCO asserts that its withdrawal of its FRP (if the WFA Rider is not approved) could result in customers being held to a traditional ratemaking system that might deny them of the benefits of further rate reductions, depending on SWEPCO's historical year performance.

On the other hand, the AG argues that the WFA Rider does not offer the same ratepayer protections contained in the FRRA. The AG points out that the four percent cap is one of the scant ratepayer protections afforded by the FRRA and multiple rate adjustment could result in higher rate increases annually. The AG also maintains that use of the WFA Rider undermines the goal of streamlined review under the FRRA, does nothing to incentivize SWEPCO to control its costs, and would weaken the existing regulatory framework designed to foster rate stability.

Based on the facts of this case, the evidence presented, and the legal arguments made, the Commission finds that it is not in the public interest to permit SWEPCO to recover interim costs or expenses through the WFA Rider while its FRR Rider is in effect. Approval of a rider is discretionary with the Commission and is not mandatory.<sup>9</sup> Every rider must be considered on a case-by-case basis and the burden is on SWEPCO to prove that any requested rider is appropriate and meets the Commission's standards for riders.<sup>10</sup>

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<sup>9</sup> Docket No. 06-101-U, Order No. 10 at 126-128; see also, Docket No. 17-038-U, Order No. 11 at 87.

<sup>10</sup> Docket No. 11-069-U, Order No. 8 at 10.

A surcharge specifically under Ark. Code Ann. § 23-18-703 of the Arkansas Clean Energy Development Act is discretionary. Under ACEDA, the Commission “may” allow a utility to implement temporary surcharge or utilize an existing cost-recovery mechanism to recover the appropriate costs until the implementation of new rates in the next general rate case filing.

SWEPCO currently has the opportunity to recover the revenue requirement of the Selected Wind Facilities in its FRR Rider as an existing recovery mechanism which is updated on an annual basis. The evidence shows that the revenue requirement costs and the PTC benefits can be included in the existing FRR Rider. The WFA Rider would allow SWEPCO to carve-out a special class of investment costs and recover these costs and pass on the revenues differently from other production costs that are currently recovered through the FRP, without the ratepayer benefits of the FRRA.

While the main benefit of the WFA Rider appears to be a more timely pass-through of benefits to customers, it likewise means that customers will pay earlier for SWEPCO’s costs. Any customer benefits will still reach customers through the FRR Rider. Meanwhile, the expected substantial energy savings from the Selected Wind Facilities will reduce SWEPCO’s eligible fuel expense and flow through SWEPCO’s current Energy Cost Recovery Rider with either the FRR Rider or the WFA Rider in effect. The Commission finds that any benefits from the WFA Rider do not outweigh the other factors arguing against adoption of the WFA Rider.

The Commission finds that SWEPCO has failed to show that the WFA Rider meets Commission standards for the implementation of a rider. Order No. 11 in Docket

No. 17-038-U<sup>11</sup> cites to Order No. 10 in Docket No. 06-101-U and notes that the traditional test for supporting a rider is whether the costs are significant, volatile, and out of control of the utility. Order No. 10 in Docket No. 06-101-U<sup>12</sup> discusses the following criteria when evaluating whether to approve a rider: 1) whether the rider shifts risks of costs from the utility onto customers; 2) whether there has been extreme volatility in costs; 3) whether costs are outside the utility's control; 4) what other states have done with respect to recovery of this type of cost; and 5) whether changes in the industry or unique circumstances warrant the rider. The parties have offered no evidence that SWEPCO's proposed WFA Rider meets these standards.

In addition, previous riders have also been justified in part because the length of time between rate cases would delay recovery and because of the significant effort necessary to file a rate case. In the instant case, rate recovery is already afforded SWEPCO under its FRR Rider, where SWEPCO has an annual opportunity to recover its revenue requirement; SWEPCO does not need a separate cost recovery mechanism to recover the cost of the Selected Wind Facilities. Therefore, under these facts, the Commission finds that there is not substantial evidence that implementing the WFA Rider during the operation of SWEPCO's FRR Rider is in the public interest. Recovery of the costs of the Selected Wind Facilities should be sought through the FRR Rider, which is the rate recovery mechanism under which SWEPCO has currently elected to be regulated.

Finally, the Commission finds that a surcharge under ACEDA is likewise not justified because SWEPCO already has an existing cost-recovery mechanism in its FRR

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<sup>11</sup> Order No. 11 at 87, fn. 10.

<sup>12</sup> Order No. 10 at 111-12.

Rider to recover the appropriate costs until the implementation of new rates in the next general rate case filing.

Alternatively, the Settling Parties request that the Commission issue a finding that SWEPCO would be authorized to implement the WFA Rider as set forth in Attachment 4, provided that (1) SWEPCO takes the steps necessary to withdraw its election to have its rates regulated under the FRRA in Docket No. 19-008-U and terminate its FRR Rider following the date of the Commission's Order in this Docket; and (2) any formula rate rider proposed by SWEPCO in its next general rate case filing will contain the same terms and conditions as the formula rate rider approved by the Commission pursuant to the settlement filed in Docket No. 19-008-U. SWEPCO represents that if the Commission does not authorize the use of the WFA Rider while SWEPCO is under a FRP, then SWEPCO will take the necessary steps to withdraw its election of the FRR Rider and will proceed to utilize the WFA Rider with traditional ratemaking principles.

The Settling Parties present a hypothetical factual circumstance - where the FRR Rider is not in effect and SWEPCO desires to recover the costs of the Selected Wind Facilities through the WFA Rider. SWEPCO has currently elected regulation under a FRP. If SWEPCO does not seek to extend the term of its FRR Rider and returns to having its rates set through general rate cases, it may request approval of a rider to recover the costs of the Selected Wind Facilities at the appropriate time, and the Commission will judge the rider based on the circumstances at that time.<sup>13</sup>

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<sup>13</sup> The Commission notes that the estimated commercial in-service date for Sundance is on or before December 15, 2020, and for Traverse and Maverick are on or before December 15, 2021.

Although the Settling Parties purport to support the WFA Rider in this situation, no party has offered any evidence that a rider under these particular circumstances would be in the public interest based on the traditional tests that the Commission has used to judge riders. Since the Commission has no evidence on which to base a public interest determination at this time on this question, and since SWEPCO is currently regulated under a FRP, a decision on the WFA Rider outside a FRP is premature.

The Commission therefore approves the Settlement filed by the Settling Parties as Exhibit 1 to the Joint Motion on January 24, 2020, except it determines that (1) it is not in the public interest to approve the WFA Rider while SWEPCO is regulated under the FRRA, and (2) it is premature to rule on whether the WFA Rider is appropriate if SWEPCO is not regulated under the FRRA.

#### **VII. RULING**

Based on the evidence presented in this Docket, it is therefore ordered that:

1. The Settlement Agreement is approved as modified herein.
2. The Parties shall inform the Commission by a filing no later than noon on May 8, 2020, whether they accept the Commission's modification of the Settlement Agreement or request a full hearing on the issues.
3. Nothing in this Order shall be construed as a finding of value for ratemaking purposes.
4. The Commission retains jurisdiction of this matter for such further proceeding or orders as may be necessary or appropriate.

BY ORDER OF THE COMMISSION.

This 5<sup>th</sup> day of May, 2020.

I hereby certify that this order, issued by the  
Arkansas Public Service Commission,  
has been served on all parties of record on  
this date by the following method:

☐ U.S. mail with postage prepaid using the  
mailing address of each party as  
indicated in the official docket file, or  
☒ electronic mail using the email address  
of each party as indicated in the official  
docket file.



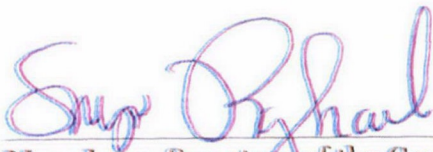
Ted J. Thomas, Chairman



Kimberly A. O'Guinn, Commissioner



Justin Tate, Commissioner



Mary Loos, Secretary of the Commission

**BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION**

|   |          |                            |
|---|----------|----------------------------|
| <b>IN THE MATTER OF THE APPLICATION</b> | <b>)</b> |                            |
| <b>OF SOUTHWESTERN ELECTRIC</b>         | <b>)</b> |                            |
| <b>POWER COMPANY FOR APPROVAL TO</b>    | <b>)</b> | <b>DOCKET NO. 19-035-U</b> |
| <b>ACQUIRE WIND GENERATING</b>          | <b>)</b> |                            |
| <b>FACILITIES PURSUANT TO THE</b>       | <b>)</b> |                            |
| <b>ARKANSAS CLEAN ENERGY</b>            | <b>)</b> |                            |
| <b>DEVELOPMENT ACT</b>                  | <b>)</b> |                            |

**JOINT FILING BY SETTLING PARTIES IN RESPONSE TO ORDER NO. 7**

Come now the General Staff of the Arkansas Public Service Commission (General Staff), Southwestern Electric Power Company (SWEPCO), The Office of Arkansas Attorney General Leslie Rutledge (AG), and Walmart Inc. (hereinafter Settling Parties) and for their Joint Filing in Response to Order No. 7 ("Joint Filing") state as follows:

1. On May 5, 2020, the Commission entered Order No. 7 in this docket, approving the Settlement filed by the Settling Parties as Exhibit 1 to the Joint Motion on January 24, except it modified Paragraph 3 (c) (iii) by determining that (1) it is not in the public interest to approve the WFA Rider while SWEPCO is regulated under the FRRA, and (2) it is premature to rule on whether the WFA Rider is appropriate if SWEPCO is not regulated under the FRRA.

2. The Order directs the Settling Parties to inform the Commission by a filing no later than noon on May 8, 2020, whether they accept the Commission's modification of the Settlement Agreement or request a full hearing on the issues.

3. This filing is to inform the Commission that the Settling Parties accept the Commission's modification of the Agreement and confirm their understanding that the Agreement otherwise is approved in all other respects by virtue of Order No. 7 entered May 5, 2020.

WHEREFORE, the Settling Parties request that the Commission accept this Joint Filing and grant all other appropriate relief.

**RESPECTFULLY SUBMITTED,**

**The Settling Parties**

**GENERAL STAFF OF THE ARKANSAS PUBLIC  
SERVICE COMMISSION**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that an electronic copy of the foregoing Joint Motion to Approve Settlement Agreement has been served upon all parties of record via the Commission's EFS system on this 8<sup>th</sup> day of May 2020.

/s/ David R. Matthews  
David R. Matthews