

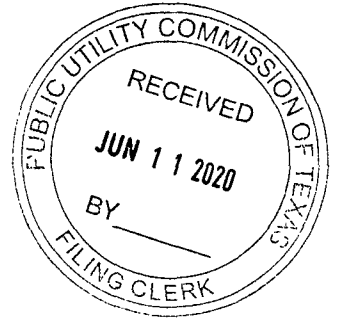
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PUC DOCKET NO. 49737
SOAH DOCKET NO. 473-19-6862



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

PUBLIC UTILITY COMMISSION
OF TEXAS

**TEXAS INDUSTRIAL ENERGY CONSUMERS' EXCEPTIONS
TO PROPOSAL FOR DECISION**

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Rex D. VanMiddlesworth
State Bar No. 20449400
Benjamin B. Hallmark
State Bar No. 24069865
James Z. Zhu
State Bar No. 24102683
THOMPSON & KNIGHT
98 San Jacinto Blvd., Suite 1900
Austin, Texas 78701
(512) 469.6100
(512) 469.6180 (fax)

**ATTORNEYS FOR TEXAS INDUSTRIAL
ENERGY CONSUMERS**

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TABLE OF CONTENTS

I.	INTRODUCTION	4
VI.	ANALYSIS OF ECONOMICS OF SELECTED WIND FACILITIES (P.O. ISSUE NOS. 2, 3, 5, 6, 19, 23).....	5
	C. Economic Modeling.....	5
	2. Projected Production Cost Savings.....	5
	a. Natural Gas Prices	5
	NYMEX Natural Gas Futures.....	5
VII.	PROPOSED CONDITIONS (P.O. ISSUE NOS. 10, 19, 20, 24).....	12
	A. SWEPCO’s Proposed Conditions.....	12
	1. Capital Cost Cap	12
	C. Staff’s and Intervenors’ Proposed Conditions	12
	2. CARD	12
XII.	CONCLUSION.....	14

GLOSSARY OF ACRONYMS

CCN	Certificate of Convenience and Necessity
LPSC	Louisiana Public Service Commission
MMBtu	Million British Thermal Units
NYMEX	New York Mercantile Exchange
O&M	Operations and Maintenance
PFD	Proposal for Decision
SCDA	South Carolina Department of Administration
SPP	Southwest Power Pool
SPS	Southwestern Public Service Company
SWEPCO	Southwestern Electric Power Company
TIEC	Texas Industrial Energy Consumers

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**TEXAS INDUSTRIAL ENERGY CONSUMERS' EXCEPTIONS
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I. INTRODUCTION

Texas Industrial Energy Consumers (TIEC) supports the unanimous recommendation of the three Administrative Law Judges (ALJs) to deny Southwestern Electric Power Company's (SWEPCO's) request for a Certificate of Convenience and Necessity (CCN) for the acquisition of three wind farms (Wind Facilities) at a cost of \$1.1 billion. That acquisition would require an annual increase in SWEPCO's base rates of over \$130 million in 2022, even without considering the likely need for further transmission investment.¹ There is little uncertainty about the cost to ratepayers should the Commission approve the CCN. SWEPCO's case for offsetting benefits, however, was shown to be based on speculative and unrealistic assumptions, including a flawed and outdated natural gas price forecast that projected natural gas prices of \$3.44/MMBtu this year that would steadily rise to \$5.00/MMBtu by 2029 and to \$10.00/MMBtu by the end of the useful life of these facilities.² As the ALJs found, SWEPCO's inflated natural gas price projections were only one of a series of unrealistic assumptions that artificially inflated SWEPCO's claimed benefits of the Wind Facilities.

TIEC and the other ratepayer representatives in this proceeding have every reason to support projects that would actually lower their costs. The same parties that oppose SWEPCO's proposal have supported other wind projects—even in the absence of a capacity need—when there

¹ SWEPCO Ex. 8, Direct Testimony and Exhibits of John F. Torpey at Ex. JFT-3 at 1.

² TIEC Ex. 43.

was a strong likelihood of ratepayer savings.³ While SWEPCO would earn a return on the cost of the Wind Facilities whether or not they provide any benefits to ratepayers, the concern of the ratepayer groups is straightforward—will these projects actually reduce rates for Texas ratepayers? The answer to that question for these projects is a resounding no.

This case involved 8 parties, 23 witnesses, 159 exhibits, and almost 900 pages of hearing transcript on a broad range of issues. The ALJs did a thorough and commendable job of distilling the evidence and explaining the flaws in SWEPCO's assumptions. As set forth below, TIEC proposes only one modification to the Findings of Fact and Conclusions of Law. In addition, these exceptions address two points in the text of the PFD that TIEC submits should be modified or corrected, either by the ALJs through the correction process set out in the procedural rules⁴—or by the Commission.

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

C. Economic Modeling

2. Projected Production Cost Savings

a. Natural Gas Prices

NYMEX Natural Gas Futures

TIEC agrees with the ALJs' ultimate findings on natural gas prices,⁵ but files these exceptions to request that the Commission add a sentence on NYMEX natural gas futures prices to Finding of Fact 50. As TIEC witnesses Jeffrey Pollock and Charles Griffey testified, NYMEX futures prices are an important source of price discovery because they are based on an actual

³ *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy, LLC and Invenergy Wind Development North America, LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Final Order (May 25, 2018).

⁴ 16 T.A.C. § 22.261(a)

⁵ See PFD at 115 (finding that: “57. The record in this proceeding fails to show that the assumptions made by SWEPCO regarding gas prices will result in a probable lowering of cost to consumers.”; “58. The natural gas forecasts and futures prices in the record in this proceeding show that the SWFs are unlikely to result in a probable lower of cost to consumers.”).

market.⁶ Futures prices are thus an important tool for making future production and consumption decisions.⁷ Accordingly, Mr. Pollock provided a levelized calculation of NYMEX futures prices over the life of the proposed Wind Facilities, which was \$3.10/MMBtu.⁸ Mr. Pollock's calculation used the thirty-day average closing price (as of January 7, 2020) for 2021-2031 NYMEX futures, which he then trended through 2051.⁹ TIEC (joined by Commission Staff) proposed a finding of fact stating that NYMEX futures prices are based on actual transactions and providing Mr. Pollock's levelized price.¹⁰ Notably, the Commission included *exactly* this type of finding in the *Wind Catcher* order:

84. The NYMEX futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations. The NYMEX futures prices, when trended to 2045, are \$3.58 per MMBtu.¹¹

In this case, the ALJs agreed that NYMEX prices represent actual transactions and that they are reliable predictors of future prices in the near term.¹² However, they expressed concerns with using NYMEX beyond three years into future, and thus declined to make a finding like the one in the second sentence of the finding of fact quoted above.¹³ TIEC respectfully submits that the PFD's concerns on this point—which were also raised by SWEPCO in *Wind Catcher*¹⁴—are misplaced. Indeed, nothing has changed about the nature of NYMEX futures prices since that case that would warrant a different finding in this one. In fact, the evidence supporting such a finding

⁶ TIEC Ex. 1, Direct Testimony of Jeffrey Pollock at 20 (Pollock Dir.); TIEC Ex. 2, Direct Testimony of Charles Griffey at 32, n.47 (Griffey Dir.).

⁷ TIEC Ex. 1, Pollock Dir. at 20.

⁸ *Id.* at 21.

⁹ *Id.* at 19-20. Specifically, Mr. Pollock derived prices for 2032 to 2051 by using the 2027-2031 average escalation rate. *Id.*

¹⁰ Docket No. 49737, Joint Proposed Findings of Fact and Conclusions of Law of Commission Staff and Texas Industrial Energy Consumers at 3 (Mar. 25, 2020) (proposing a finding of fact that: "The NYMEX futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations. The NYMEX futures prices, when trended to 2051, are \$3.10 per MMBtu.").

¹¹ TIEC Ex. 5 at FoF 84.

¹² PFD at 33.

¹³ *Id.*

¹⁴ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461, PFD at 22-27 (May 18, 2018).

is actually stronger here, as it includes a specific example demonstrating that NYMEX futures prices reflect the market's expectation of future prices beyond three years. As discussed further below, SWEPCO recently made a large purchase of natural gas for almost six years into the future, and it was able to do so at prices nearly identical to the NYMEX price for Henry Hub delivery for that time period.¹⁵

- **NYMEX futures prices are an important source of price discovery beyond three years into the future.**

In declining to include a finding on NYMEX prices, the ALJs stated: “to reach out to 30 years in a NYMEX forecast, the first roughly three years must be adjusted and extrapolated, and the parties supporting the NYMEX forecast were unable to show why the post-three-year adjustments are any more reliable than other third-party forecasts.”¹⁶ As an initial matter, there are numerous transactions on the NYMEX exchange that cover months beyond three years out. This is evident from SWEPCO witness Karl Bletzacker's workpaper associated with the following chart (reproduced on page 22 of the PFD), although the chart itself appears to have been created in an attempt to downplay the amount of open interest¹⁷ beyond the near term.¹⁸

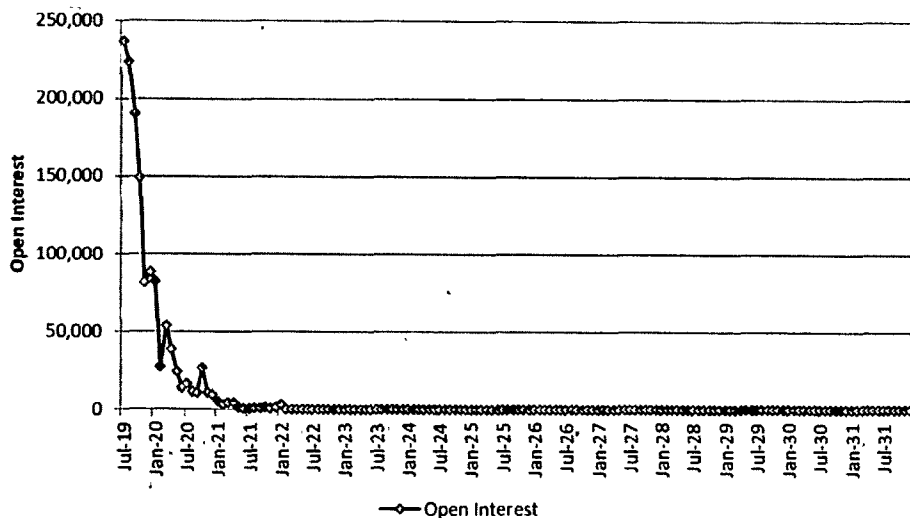
¹⁵ TIEC Ex. 2, Griffey Dir. at 18-19; TIEC Ex. 27.

¹⁶ PFD at 33.

¹⁷ By “open interest,” SWEPCO is referring to the total number of futures contracts that are held by market participants at a given time. SWEPCO Ex. 5, Direct Testimony and Exhibits of Karl R. Bletzacker at 7 (Bletzacker Dir.).

¹⁸ SWEPCO Ex. 5, Bletzacker Dir. at 8.

**NYMEX Henry Hub Natural Gas Futures Contract
Open Interest (June 12, 2019)**



As can be seen, the large intervals Mr. Bletzacker used on the y-axis make it appear that there is no open interest on contracts beginning as early as mid-2021. However, his workpaper reveals that open interest for contracts with 2021 delivery was in the thousands (ranging from a high of 5,418 for January to a low of 860 for September).¹⁹ The total open interest shown for 2022 is also in the thousands, and the total for the years 2023 and 2024 is in the hundreds.²⁰ Indeed, the first month for which there was no open interest is five and a half years after the trading day used for his chart.²¹ And there are months with open interest shown as late as eight years after that day (mid-2027).²² All Mr. Bletzacker’s chart shows is that in the months just prior to the delivery month, trades spike dramatically. But the fact that there are hundreds of thousands of trades for the next month does not diminish the fact that there is still substantial trading in later periods, including trades after three years.

Further, NYMEX futures prices provide valuable, market-based information even for future periods with limited or no transactions. The CME Group (which owns NYMEX), has a

¹⁹ SWEPCO Ex. 5A, Bletzacker Dir. Workpapers at WP “NYMEX NG Open Interest 6-12-2019.”

²⁰ *Id.*

²¹ *Id.*

²² *Id.* June and July 2027 each show open interest of 11 contracts.

committee that uses a proprietary approach to develop settlement prices.²³ For future months in which there are no relevant trades, the committee relies on information such as bids and asks and pricing data from months in which a settlement price had been determined.²⁴ Bids and asks provide relevant information because they can be transacted on in a market, and the spread between them provides a range in which contracts are likely to settle. As Mr. Pollock testified at the hearing:

There's always a bid-and-ask spread. There may not be a transaction that day, but, you know, there will be people in the market that are going to bid to buy the gas, others are going to try to sell at a certain price. So there is that price information. And what NYMEX does is it takes that information and then uses that to develop what the price is, even if there are no transactions in a -- [Q Okay. A]--given contract.²⁵

Mr. Pollock and Mr. Griffey both stated their understanding that the CME Group also accesses data from outside the NYMEX exchange in its settlement process for months of low or no volume of transactions.²⁶ (However, SWEPCO elected not to cross examine Mr. Griffey on this or any other subject.) In any event, the evidence shows that the CME Group uses market-based data to derive its settlement prices for months with no open interest. And based on his experience, Mr. Pollock testified that buyers and sellers have reasonable certainty that they can transact at these prices (on the NYMEX market or elsewhere), even if it's a price that's "five or ten years out."²⁷

- **The evidence confirms that NYMEX futures prices provide valuable price discovery in out years.**

SWEPCO's own recent experience confirms Mr. Pollock's testimony. In 2017, SWEPCO was required by the Louisiana Public Service Commission to buy a five-year forward strip of natural gas, beginning nine months into the future.²⁸ The contract that SWEPCO entered into for

²³ Tr. at 633:24-634:20 (Pollock Redir.) (Feb. 26, 2020); TIEC Ex. 61.

²⁴ TIEC Ex. 61.

²⁵ Tr. at 631:20-632:4 (Pollock Clarifying Exam.) (Feb. 26, 2020).

²⁶ Mr. Pollock testified to this at the hearing, while Mr. Griffey provided his understanding in a discovery response that was entered into the record. Tr. at 634:9-20 (Pollock Redir.) (Feb. 26, 2020); Tr. at 645:20-646:1 (Pollock Cross) (Feb. 26, 2020); TIEC Ex. 61.

²⁷ Tr. at 629:8-630:18 (Pollock Clarifying Exam.) (Feb. 26, 2020).

²⁸ TIEC Ex. 2, Griffey Dir. at 18.

delivery to its plant corresponds to a Henry Hub price of \$2.83.²⁹ And NYMEX Henry Hub futures closed at \$2.81/MMBtu for the same five-year period at the time SWEPCO entered this contract.³⁰ Thus, SWEPCO was able to purchase a substantial amount of gas (it valued the contract at approximately \$50 million³¹) for physical delivery up to nearly six years into the future *at almost exactly the NYMEX futures price for that term*. This real-world example belies SWEPCO's contentions that NYMEX futures prices do not provide meaningful price discovery beyond the near term.

Notably, other utilities recognize the important information that NYMEX prices provide about future natural gas prices. For example, Southwestern Public Service Company (SPS) employs a blended forecast method that uses NYMEX futures exclusively for the first three years, 75% for year 4, 50% for year 5, and 25% for years six through the end of the forecast period.³² Similarly, Mr. Pollock testified that the South Carolina Department of Administration (SCDA) recently evaluated future options for the management of utility Santee Cooper using analyses that were based on NYMEX futures gas prices.³³ The SCDA used actual NYMEX prices for the first ten years, which are then trended for the next 10 years.³⁴

In sum, SWEPCO's contention that NYMEX futures do not provide valuable information unless there is a massive amount of open interest is incorrect. Indeed, SWEPCO's position on this issue is illogical. On the one hand, it argues that NYMEX futures prices should be rejected because they are not based on enough actual transactions. But on the other, it argues that its own gas forecast should be accepted despite the fact that it is entirely theoretical and *not based on any actual transactions at all*.

²⁹ The delivery price under the contract is \$2.63/MMBtu, and SWEPCO projected that natural gas prices were \$0.1986 higher at Henry Hub. TIEC Ex. 27 at Bates 24; TIEC Ex. 2, Griffey Dir. at 18-19.

³⁰ TIEC Ex. 2, Griffey Dir. at 19.

³¹ TIEC Ex. 2 at Bates 24 (showing total contract value of \$48 million).

³² TIEC Ex. 80; *see also* SWEPCO Ex. 17, Rebuttal Testimony of Karl R. Bletzacker at 18-19 (Bletzacker Reb.).

³³ Tr. at 634:21-636:7 (Pollock Redir.) (Feb. 26, 2020).

³⁴ *Id.*

- **The *Wind Catcher* precedent supports adding TIEC’s proposed finding on NYMEX futures prices.**

SWEPCO made the same arguments against consideration of NYMEX prices in the *Wind Catcher* case as it raises here. This includes the contentions that NYMEX futures prices should not be considered because (1) there is a lack of open interest beyond the “near term”³⁵ on the NYMEX exchange;³⁶ (2) they only trade for 12 years;³⁷ (3) they reflect hedging activities;³⁸ and (4) they do not reflect the market’s long-term expectations.³⁹ The *Wind Catcher* PFD accepted SWEPCO’s position on this issue.⁴⁰

The Commission, however, rejected the PFD’s proposed finding, replacing it with finding of fact 84 as quoted above.⁴¹ TIEC requests a consistent finding in this case. TIEC’s position is not that NYMEX prices are the only relevant factor to consider in evaluating future natural gas prices. Rather, TIEC’s position is that these prices are one market-based data point to use in evaluating a resource decision and as a point of comparison to theoretically derived forecasts.

For the foregoing reasons, TIEC respectfully requests that the Commission modify the PFD’s proposed finding of fact 50 by adding the following underlined language:

50. The New York Mercantile Exchange (NYMEX) futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations. The NYMEX futures prices, when trended to 2051, are \$3.10 per MMBtu.⁴²

³⁵ SWEPCO Ex. 5, Direct Testimony of Karl R. Bletzacker at 7 (Bletzacker Dir.).

³⁶ Docket No. 47461, PFD at 27 (“SWEPCO also points out that there were no settled NYMEX futures transactions for the years 2020 onward.”).

³⁷ *Id.*

³⁸ *Id.* at 22-23.

³⁹ *Id.* at 27.

⁴⁰ *Id.* at 30 & 87, FoF 84.

⁴¹ TIEC Ex. 5 at FoF 84.

⁴² Docket No. 49737, Joint Proposed Findings of Fact and Conclusions of Law of Commission Staff and Texas Industrial Energy Consumers at 3 (Mar. 25, 2020); TIEC Ex. 1, Pollock Dir. at 21.

VII. PROPOSED CONDITIONS (P.O. ISSUE NOS. 10, 19, 20, 24)

A. SWEPCO's Proposed Conditions

1. Capital Cost Cap

On pages 82-83, the PFD states: “Any benefit that could have resulted from this guarantee is diminished because the cap *includes* uncertain and possibly underestimated O&M expenses and does not account for \$480 million in gen-tie construction costs (which the ALJs previously recommended should be included in the Project’s economic evaluation).”⁴³ This sentence appears to contain a scrivener’s error and should instead state that “the cap *excludes* uncertain and possibly underestimated O&M expenses” As the PFD correctly states earlier on the same page, SWEPCO’s proposed cost cap only covers the initial capital investment of the Wind Facilities, and does not include O&M or the cost of a gen-tie.⁴⁴

C. Staff's and Intervenors' Proposed Conditions

2. CARD

The PFD properly found that SWEPCO failed to show that the Wind Facilities would result in the probable lowering of costs to consumers, with or without the various “guarantees” proposed by various parties.⁴⁵ However, in discussing the 10-year look-back proposal that the Commission specifically rejected in *Wind Catcher*, the PFD in dicta erroneously suggested that this proposal would “provide additional customer protection” if the Commission rejected the PFD and approved a CCN.⁴⁶ TIEC recommends that this dicta be removed as inconsistent with the Commission’s prior findings and not supported by the evidence.

⁴³ PFD at 82-83 (emphasis added).

⁴⁴ *Id.* at 82 (“Both TIEC and Staff indicate that the benefit of the cap is limited because it applies only to SWEPCO’s initial capital investment of \$1.09 billion and does not include interim capital additions, accurate ongoing O&M expenses”).

⁴⁵ *Id.* at 98.

⁴⁶ *Id.* at 94.

The 10-year look-back proposal calls for the application of a “net benefits test” that would be applied in 2032.⁴⁷ SWEPCO proposed, and the Commission unequivocally rejected, the same look-back proposal in the *Wind Catcher* proceeding.⁴⁸ SWEPCO did not propose the 10-year look-back proposal in this case, but it was included as an attachment to the testimony of a CARD witness who referenced the proposal from *Wind Catcher*.⁴⁹ Since SWEPCO did not even put the discredited look-back proposal forward in this case, it received little attention in testimony. Among the reasons noted in the *Wind Catcher* PFD and Order for rejecting the 10-year look-back was that SWEPCO proposed to calculate savings based not on the actual avoided cost in the SPP market, but on the assumption that the avoided cost was the cost of the hypothetical dispatch of SWEPCO’s least efficient units.⁵⁰ TIEC excepts to the PFD’s inclusion of the look-back guarantee among possible conditions if the Commission rejects the PFD’s recommendation to deny the CCN.⁵¹

The “10-year look-back” referenced in the PFD is the exact proposal that was offered by SWEPCO in the Texas *Wind Catcher* proceeding,⁵² and that was rejected by both the ALJs and the Commission in *Wind Catcher* because it “would not properly protect consumers.”⁵³ The Commission specifically found as follows:

135. SWEPCO’s look-back proposal is unlikely to yield a calculation of savings given that the methodology does not look at the actual price on the SPP market, and instead looks at SWEPCO’s bid stack to determine what SWEPCO’s generation cost would have been had the resources been placed into the market.
136. SWEPCO’s look-back proposal likely overstates customer benefits.⁵⁴

⁴⁷ *Id.* at 93; *see also* CARD Ex. 1, Direct Testimony of Scott Norwood at 22-23 & Ex. SN-8 at 10 (Norwood Dir.).

⁴⁸ Docket No. 47461, PFD at 51, 62; *id.*, Final Order at 8.

⁴⁹ CARD Ex. 1, Norwood Dir. at Ex. SN-8 at 10.

⁵⁰ Docket No. 47461, PFD at 52.

⁵¹ PFD at 95.

⁵² *Compare* PFD at 95 *with* Docket No. 47461, PFD at 51.

⁵³ Docket No. 47461, Final Order at 8 (citing Docket No. 47461, PFD at 60-61, 62 & FoFs 133-37).

⁵⁴ *Id.* at FoFs 135-36.

There is nothing new about the 10-year look-back proposal when applied to the Wind Facilities that would require a departure from the Commission's previous finding. Accordingly, the dicta that indicates that the 10-year look-back proposal would provide benefits in this case should be removed from the PFD.

XII. CONCLUSION

The ALJs properly recommend denial of SWEPCO's application based on the evidence, which shows that the expensive Wind Facilities would likely result in net costs, rather than net benefits, to ratepayers. TIEC requests that the Commission adopt the PFD with the three modifications discussed above. TIEC also requests all other relief to which it is entitled.

Respectfully submitted,

THOMPSON & KNIGHT LLP

/s/ Rex D. VanMiddlesworth
Rex D. VanMiddlesworth
State Bar No. 20449400
Benjamin B. Hallmark
State Bar No. 24069865
James Z. Zhu
State Bar No. 24102683
98 San Jacinto Blvd., Suite 1900
Austin, Texas 78701
(512) 469.6100
(512) 469.6180 (fax)

**ATTORNEYS FOR TEXAS INDUSTRIAL
ENERGY CONSUMERS**

CERTIFICATE OF SERVICE

I, Benjamin B. Hallmark, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 11th day of June, 2020 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

/s/ Benjamin B. Hallmark
Benjamin B. Hallmark