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

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

**OFFICE OF PUBLIC UTILITY COUNSEL'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits these exceptions to the proposal for decision (“PFD”) issued by the State Office of Administrative Hearings (“SOAH”) in this proceeding on May 26, 2020.

The PFD recognizes that the flaws identified by the Public Utility Commission of Texas (“Commission”) in Southwestern Electric Power Company’s (“SWEPCO” or the “Company”) last CCN case¹ (“*Wind Catcher* case”) “are generally mirrored in this case, and in some instances are more pronounced.”² Additionally, the PFD notes that “SWEPCO declined to adopt adequate cost-saving guarantees, and has not shown why its cost projections and analyses in this case are more reliable or accurate than those found lacking in *Wind Catcher*.”³ Thus, the SOAH Administrative Law Judges (“ALJs”) recommend that the Commission deny SWEPCO’s CCN application.⁴

¹ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461, Order (Aug. 13, 2018).

² PFD at 5.

³ *Id.*

⁴ *Id.* at 6.

Throughout this proceeding, OPUC has maintained that the Commission should find that SWEPCO's project is not necessary for the service, accommodation, convenience or safety of the public under Public Utility Regulatory Act ("PURA") § 37.056 and deny SWEPCO's CCN application, unless the Commission requires additional important and necessary guarantees to ensure the project will provide net cost savings benefits for the Company's ratepayers.⁵ OPUC, therefore, agrees with the ALJs' recommendation to deny SWEPCO's CCN application, as well as the ALJs' underlying conclusion that "[c]redible evidence shows that the Project could result in cost increases to the Company's customers over the life of the Project."⁶

OPUC is not filing exceptions on every issue in which its position was not adopted in the PFD. OPUC's exceptions are limited to two recommendations made by the SOAH ALJs relating to: (1) the exclusion of a finding that supports the use of the New York Mercantile Exchange ("NYMEX") as a long-term forecast of natural gas prices, and (2) the reasonableness of imposing a minimum energy savings guarantee on SWEPCO if the Commission approves the Company's CCN application. For the reasons discussed below, OPUC requests that the Commission issue an order in this proceeding consistent with OPUC's exceptions.

VI. ANALYSIS OF ECONOMICS OF SELECTED WIND FACILITIES (P.O. ISSUE NOS. 2, 3, 5, 6, 19, 23)⁷

C. Economic Modeling

2. Projected Production Cost Savings

a. Natural Gas Prices

iv. ALJ's Analysis

Although OPUC maintains that the NYMEX long-term natural gas price forecast is the more appropriate forecast method to use in this proceeding, OPUC does not except to the ALJs' adoption of the Energy Information Administration's Annualized Energy Outlook ("EIA AEO") forecast to assess long-term natural gas prices. OPUC believes that the overall important goal of

⁵ OPUC's Initial Brief at 2 (Mar. 9, 2020).

⁶ PFD at 6

⁷ The outline and headings of these exceptions correspond to the PFD.

a long-term natural gas price forecast should be to achieve the most accurate results possible in predicting long-term natural gas prices, and in this case, the long-term natural gas price forecast should be more accurate than the American Electric Power (“AEP”) Fundamentals Forecast used by the Company. OPUC, however, disagrees with the ALJs’ conclusion that the NYMEX long-term natural gas price forecast is no more reliable than other third-party forecasts considered in this proceeding.⁸

As noted by the ALJs, Commission precedent supports the use of the NYMEX futures prices to forecast long-term natural gas prices.⁹ In denying SWEPCO’s CCN application in the *Wind Catcher* case, the Commission specifically relied upon NYMEX futures prices. The Commission found that “[t]he NYMEX futures prices represent actual transactions between buyers and sellers who put real money at risk in their day-to-day operations” and that “the NYMEX futures prices, when trended to 2045, are \$3.58 per MMBtu.”¹⁰ The Commission further found that both the NYMEX and EIA AEO Low Forecast at that time were trending well below SWEPCO’s natural gas price projections.¹¹

As OPUC witness Mr. Karl Nalepa discussed at the hearing on the merits in this proceeding, NYMEX futures prices are a vital piece of the full range of information to consider when assessing the viability of the Company’s project.¹² The fact that the NYMEX futures prices represent actual market pricing that is consistently updated is indicative of its reliability in projecting future natural gas prices. The longer a specific forecast can rely on market prices, the greater its reliability in accurately forecasting long-term natural gas prices, which for NYMEX futures prices, can extend out for twelve years.¹³ The ALJs in this proceeding found the NYMEX long-term natural gas price forecast to be most reliable within an immediate three-year period,

⁸ *Id.* at 33.

⁹ *Id.* at 33 (citing *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461, Order (Aug. 13, 2018)).

¹⁰ Docket No. 47461, Order at 18, Finding of Fact No. 84 (Aug. 13, 2018).

¹¹ *Id.* at 5.

¹² Tr. at 699:22–701:21 (“Nalepa Cross”) (Feb. 26, 2020).

¹³ *Id.* at 698:1-4.

reflecting the bulk of current NYMEX natural gas price transactions.¹⁴ The NYMEX long-term natural gas price forecast begins with at least three years of reliable data, giving a much more accurate starting position on which to form a natural gas price trend for future forecasts.

Accordingly, based on these reasons, OPUC requests that the Commission include a finding that the NYMEX long-term natural gas price forecast represents another potential reliable forecast on which future natural gas prices can be predicted with accuracy, consistent with the Commission's precedent in the *Wind Catcher* case.

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

C. Staff's and Intervenors' Proposed Conditions

1. OPUC

OPUC agrees with the ALJs' finding that SWEPCO's projections of future natural gas prices are inflated.¹⁵ OPUC, however, excepts to the ALJs' finding that OPUC's recommendation to require a minimum energy savings guarantee is unreasonable.¹⁶ If the Commission approves SWEPCO's CCN application, SWEPCO should be required to guarantee minimum energy savings based on the Company's Base Case natural gas price forecast, or at a bare minimum the Company's Break-Even natural gas price forecast, regardless of actual market prices for natural gas, to ensure that the project's projected customer cost savings benefits are actually realized by the Company's ratepayers, or at least ensure that the Company's ratepayers are not harmed by an unnecessary economic venture. This important and necessary safeguard would guarantee cost savings to ratepayers based on SWEPCO's own natural gas price projections that were used to justify the project. As OPUC witness Mr. Nalepa testified "SWEPCO's estimate of benefits is very uncertain, while placing most of the risk on its ratepayers if the claimed benefits do not materialize."¹⁷ The limited guarantees that SWEPCO has offered to help mitigate the ratepayer risk associated with the project are inadequate safeguards and fail to protect the Company's ratepayers. The Company

¹⁴ PFD at 33.

¹⁵ *Id.* at 34.

¹⁶ *Id.* at 92.

¹⁷ Direct Testimony of OPUC witness Mr. Karl Nalepa at 29 ("Nalepa Direct").

should be required to meet a minimum energy savings guarantee to adequately protect its ratepayers from the risk associated with the project.¹⁸

As stated in OPUC's reply brief, the parties in Docket No. 46936¹⁹ entered into a settlement agreement that included a provision that guaranteed minimum energy savings for Southwestern Public Service Company's ("SPS") ratepayers.²⁰ As with the current proceeding, the SPS case involved the acquisition of wind generation facilities.²¹ The ALJs stated that little weight was given to Docket No. 46936, because the guaranteed minimum energy savings was an unopposed settlement provision.²² OPUC, however, offered this example, not for its precedential value, but rather to counter SWEPCO's argument that a minimum energy savings guarantee is unreasonable.²³ The inclusion of a minimum energy savings guarantee in a negotiated settlement agreement demonstrates that parties in another CCN case have determined that such a guarantee is reasonable. The fact that SPS was willing to agree to a minimum energy savings guarantee makes it reasonable to request that SWEPCO agree to the same guarantee in this proceeding.

Moreover, contrary to SWEPCO's contentions²⁴ and the ALJs' conclusion,²⁵ a minimum energy savings guarantee is not unreasonable per se simply because it leaves the Company paying for the risk associated with the project. By its very nature, a minimum energy savings guarantee based on the Company's projected customer cost savings would strengthen the suite of guarantees that are necessary to adequately protect the Company's ratepayers if the Commission approves the

¹⁸ *Id.* at 30; *See also* OPUC's Reply Brief at 26 ("OPUC recommends that the Commission require... the inclusion of a Minimum Energy Savings Guarantee that is based on the Company's Base Case natural gas price forecast to protect ratepayers against the very real likelihood that the Project will not produce net customer cost savings benefits for ratepayers, or at bare minimum, a hold harmless provision based on the Company's break-even natural gas price forecast to ensure ratepayers are not harmed by an unnecessary economic venture. Simply stated, if SWEPCO is not willing to guarantee the Project will break-even, then the Commission should not approve the Company's CCN application.").

¹⁹ *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).

²⁰ OPUC's Reply Brief at 25 (Mar. 17, 2020) (*citing* Docket No. 46936, Final Order (May 25, 2018)).

²¹ *Id.*

²² PFD at 93.

²³ SWEPCO's Initial Brief at 46 (Mar. 9, 2020).

²⁴ *Id.*

²⁵ PFD at 92.

Company's CCN application. As the Commission determined in its Final Order in SPS's CCN case, "SPS's agreement to return to Texas retail customers any estimated net costs as set forth in Findings of Fact 79 through 84 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers and to ensure that savings accrue to Texas retail customers."²⁶ Similarly, in the current proceeding, OPUC believes that a minimum energy savings guarantee would be reasonable and necessary to find that the project results in a probable lowering of costs to consumers if the Commission approves SWEPCO's CCN application.²⁷ This important and necessary tool should be utilized in this proceeding to protect the Company's ratepayers especially because the evidentiary record shows that the Company inflated its natural gas price projections that were used to justify the project.

Accordingly, if the Commission approves SWEPCO's CCN application, OPUC requests that the Commission include a finding that a minimum energy savings guarantee based on the Company's own natural gas price projections is both reasonable and necessary to ensure that the project provides the Company's ratepayers with net cost savings benefits. OPUC believes that this important and necessary guarantee will, at a minimum, hold ratepayers harmless from SWEPCO's natural gas price projections if the Commission approves the Company's CCN application in this proceeding.

CONCLUSION

For the reasons stated herein, OPUC respectfully requests that the Commission modify the PFD to include findings of fact and conclusions of law consistent with these exceptions and that OPUC be granted any other relief to which it may be entitled.

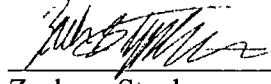
²⁶ Docket No. 46936, Final Order at 18 (May 25, 2018).

²⁷ Nalepa Direct at 30:15-21.

June 11, 2020

Respectfully submitted,

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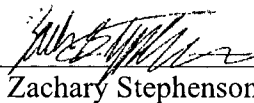


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 11th day of June 2020 by facsimile, electronic mail, and/or first class, U.S. Mail.



Zachary Stephenson