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

COMMISSION STAFF'S REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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339

TABLE OF CONTENTS

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I. INTRODUCTION

The conclusions reached by the Administrative Law Judges (ALJs) in the Proposal for Decision (PFD) are correct and should be maintained over Southwestern Electric Power Company's (SWEPCO) objections. Staff remains grateful for the reasoned consideration of the ALJs, and Staff supports their conclusions in the PFD.

As a general matter, Staff responds to SWEPCO's contention in its exceptions that the ALJs failed to analyze the application considering what is in the best interest of Texas ratepayers. It argued that the ALJs did not analyze the application under a "probable lowering of costs" standard, but rather under what it characterizes as a near certainty standard.[1] The ALJs accurately analyzed the project under a "probable lowering of costs" standard, ultimately recommending that SWEPCO's projected net benefits were based on a set of unreliable assumptions and that customers would likely see only minimal net benefits, and are at a real risk of experiencing net costs associated with the Selected Wind Facilities (SWFs). When analyzing the statutory standard of whether the project results in a "probable lowering of costs to customers" will be met, the threshold must be set high, especially if the project is proposed for economic reasons, and not for reliability reasons.

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[1] Southwestern Electric Power Company's Exceptions to the Proposal for Decision at 4-5 (June 11, 2020) (SWEPCO Exceptions).

Staff responds to SWEPCO's various exceptions in turn, detailed below.

II. CERTIFICATE OF CONVENIENCE AND NECESSITY STANDARD OF REVIEW (P.O. ISSUE NO. 2)

Staff supports the PFD's recommendation to evaluate SWEPCO's application at the P95 level, rather than SWEPCO's recommended P50 level. However, SWEPCO cannot guarantee production at that level, so it was reasonable to perform the analysis at the P95 level in order to determine whether granting the application would result in a "probable lowering of cost to customers."

SWEPCO agrees that that is the correct standard,[2] claims that the PFD "evaluate[s]....the Selected Wind Facilities under a much more stringent standard based on a series of unlikely future circumstances."[3] SWEPCO bases its argument on the fact that the PFD evaluates the project at the P95 level and not the P50 level.

However, SWEPCO only guarantees P95 in its application.[4] Staff agrees with the ALJs' recommendation to only evaluate the application at a P95 level in the PFD.[5] Since the ALJs must analyze the application based upon a probable lowering of cost to customers per PURA § 37.056,[6] it is reasonable to only analyze the project based upon something SWEPCO can actually guarantee, which is at P95 level. To analyze the lowering of cost based upon a P50 production level, when SWEPCO cannot and will not guarantee they can meet that production level, would be harmful to the ratepayers of Texas and would be an unrealistic production level at which to analyze the project.

Staff recommends that the Commission to reject SWEPCO's proposal for a relaxed analysis of the SWFs and to adopt the standard and analysis provided in the PFD.

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[2] *Id.* at 7.

[3] *Id.*

[4] *Id.*

[5] Proposal for Decision at 52 (May 26, 2020) (PFD).

[6] PFD at 11.

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

C. Economic Modeling

Additionally, SWEPCO provides a wholly new analysis for calculating net costs to customers per megawatt hour (MWh) and kilowatt hour (kWh) in their exceptions to the PFD.[7] SWEPCO now states that the net cost to customers will be "$14.09/MWh or 1.41 cents per kWh" in 2022 and will lock in for customers at "$24.23/MWh or 2.42 cents per kWh energy at the facilities'... for 30 years."[8] It did not raise calculations in initial or reply briefs or at the hearing, nor did it perform these calculations in its application. Instead, it provides that the numbers used to make these calculations come from SWEPCO Ex. 8 Errata to John Torpey Direct JFT-3 at 1-5.[9]

To Staff's knowledge, this is the first time these calculations have been performed to provide these numbers. Further, the calculation used for calculating the $24.23/MWh maximum cost to customers is flawed and leaves out both the cost of the deferred tax asset (DTA) and congestion and loss costs which also appear as costs in the chart JFT-3. When adding these additional costs into the calculation the number increases to over $36/MWh. This is well above the $24.23/MWh maximum sited by SWEPCO in their flawed calculations.

Staff urges the ALJs to reject these calculations offered by SWEPCO, as they were produced for the first time during post-hearing briefing, they are not in evidence, and Staff and the other parties were deprived of the ability to cross-examine witnesses on these calculations and perform discovery.

2. Projected Production Cost Savings

a. Natural Gas Prices

Staff supports the PFD's recommendation to use the 2020 EIA High Oil and Gas Supply Case (EIA's lowest case). SWEPCO's natural gas price projections used in its base and low gas cases are overstated, resulting in an overestimation of potential benefits to ratepayers.

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7 SWEPCO Exceptions at 4.

8 *Id.*

9 *Id.*

In its exceptions, SWEPCO argues that the ALJs failed to consider a probable range of future conditions, and instead only evaluates the SWFs under the "worst case scenario" presented by using the EIA 2020 High Oil and Gas Supply Case.[10] SWEPCO continues and states that "EIA's AEO 2020 Reference Case and the remaining other seven side cases are above the natural gas break-even price for the Selected Wind Facilities."[11] SWEPCO then refers a subset of Figure 11 provided in its rebuttal testimony demonstrating SWEPCO's natural gas break-even price and the other 2020 EIA AEO cases.[12]

First, the evidence in this case demonstrates that, on a levelized basis, the 2020 EIA Reference Case is $1.16/MMBtu below SWEPCO's base case, and $0.25/MMBtu below SWEPCO's low/no carbon case.[13] Texas Industrial Energy Consumer's (TIEC) witness Jeffry Pollock provided a table of natural gas prices in his testimony, showing that the 2020 EIA High Oil Gas Supply Case and 2020 EIA Reference Case are below the breakeven price calculated by SWEPCO.[14] Furthermore, since 2013, each of EIA's Reference Cases has projected much higher natural gas prices than actually occurred.[15] As a result, in 2018, the Commission held that the lowest EIA case has been the most accurate in recent years.[16] Therefore, while SWEPCO characterizes the PFD's as focusing on the "worst case scenario" when concluding "EIA's Low Case provides the most recent forecast in recent years,"[17] in reality, the EIA's Low Case is not the worst-case scenario, but, rather, the most probable or likely scenario.

As the ALJs recognized in reaching their conclusion, "that the Commission place little if any weight on the Fundamentals Forecast[,]..."[18] SWEPCO inflated its estimate of natural gas

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[10] *Id.* at 8-13.

[11] *Id.* at 10.

[12] *Id.* at 10-11.

[13] Direct Testimony and Exhibits of Jeffry C. Pollock, TIEC Exhibit 1 at Exhibit JP-2; TIEC Exhibit 1 at 21.

[14] TIEC Ex. 1 at 21; Tr. at 594:19 – 596:21 (Pollock Dir.) (Feb. 26, 2020).

[15] TIEC Ex. 1, at Exhibit JP-2.

[16] *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for Wind Catcher Energy Connection Project* (Docket No. 47461) Order at 18 (Aug. 13, 2018).

[17] SWEPCO Exceptions at 8-13; PFD at 34.

[18] PFD at 34.

prices, including its low-gas case, lead to an overestimate of net benefits to ratepayers. In fact, SWEPCO has overstated natural gas prices over the past decade, which SWEPCO has acknowledged.[19]

In its exceptions, SWEPCO attempts to justify its current inflated natural gas price projections by stating that that the energy prices in this proceeding are less than those used in *Wind Catcher*.[20] However, SWEPCO's estimated net benefits from *Wind Catcher*[21] were greater than the estimated net benefits from the SWFs and as shown in the chart in Staff's reply brief, SWEPCO's natural gas prices are still inflated.[22] Furthermore, even if SWEPCO's Fundamentals Forecast predicted energy prices in this proceeding are less than those in *Wind Catcher*, SWEPCO admits that it did not make any changes to its forecasting methodology in calculating natural gas prices since the 2016 Fundamentals Forecast used to evaluate the *Wind Catcher* project.[23]

Overall, as the ALJs recognized, SWEPCO's prediction of natural gas prices in its base and low gas case are overstated, and, therefore, the purported benefits to ratepayers are overstated.

b. Other Assumptions Affecting Locational Marginal Prices

Carbon Burden

Staff supports the PFD's recommendation that the SWFs should be evaluated without assuming a carbon emissions burden.

SWEPCO excepted to the PFD conclusion that it is unreasonable to assume a carbon tax and recommending that the SWFs be evaluated without considering the imposition of a carbon

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[19] Tr. at 225: 9 – 13 (Bletzacker Direct) (Feb. 24, 2020).

[20] SWEPCO Exceptions at 12.

[21] In Docket No. 47461, SWEPCO filed a CCN application for approval of the *Wind Catcher* wind generation facilities, also located in Oklahoma. SWEPCO's *Wind Catcher* application was not based on need and SWEPCO projected significant customer savings over the life of the proposed wind project based on forecasts and analyses similar to those presented in this case. *See* PFD at 4-5.

[22] SWEPCO's Response to CARD's 1st RFI (1-22), Staff Exhibit 7 at 28-30; Staff Reply Brief at 6.

[23] SWEPCO Response to TIEC 1-4, TIEC Ex. 31 at 5.

tax over the life of the SWFs.[24] Instead, SWEPCO claims that the Commission does not need to determine whether a carbon emissions burden will be imposed over the life of the SWFs.[25]

However, taking into consideration whether there would be a carbon tax while analyzing the economics of the project figures heavily in the determination of whether net benefits exceed the costs borne by the ratepayers. As discussed in Staff's initial brief, if the SWFs are evaluated without assuming a carbon emissions burden, the estimate of net benefits by SWEPCO for its base and low gas case are reduced anywhere from $140 million to $171 million.[26]

In the 2018 Final Order in the *Wind Catcher* proceeding, the Commission found that it is unlikely that a carbon tax would be imposed during the useful life of the SWFs.[27]

Therefore, the ALJs correctly recommended that the SWFs should be evaluated without assuming a carbon emissions burden.

c. Capacity Factor

Staff recommends that the Commission adopt the PFD's conclusion that the benefits of the SWFs should be evaluated at the P95 level of production rather than the P50 level.[28] When analyzing whether the statutory standard of whether the project results in a "probable lowering of costs to customers" will be met, the threshold must be set high, especially if the project is proposed for economic reasons, and not for reliability reasons.

The difference between the projected benefits in SWEPCO's base gas case without carbon or a gen-tie line at a the P95 level, valued at $181 million net present value, and the P50 level, valued at $396 million net present value, is $215 million net present value.[29] With such a significant variation in savings, dependent on the net capacity factor, the risk to customers in overstating the output of the SWFs is clear. In addition, SWEPCO admits that "...utilities cannot possibly guarantee a facility's expected performance...."[30]

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[24] SWEPCO Exceptions at 13.

[25] *Id.* at 14.

[26] Commission Staff's Initial Brief at 10 (Mar. 9, 2020) (Staff's Initial Brief).

[27] Docket No. 47461 Order, TIEC Ex. 5 at FoF No. 96.

[28] PFD at 52-53.

[29] Direct Testimony of John F. Torpey, SWEPCO Ex. 8, Attachment JFT-3 at 2, 7.

[30] SWEPCO's Exceptions at 25.

Accordingly, the PFD correctly recommended evaluating the benefits of the SWFs using the P95 level of production, because this level represents a probable lowering of costs that does not require customers to shoulder an intolerably large amount of the risk associated with a lower-than-expected output.

d. Useful Life of Wind Facilities

Staff supports the PFD's recommendation to use a 25-year useful life for the SWFs, rather than SWEPCO's recommended 30-year useful life, in determining the potential net benefits to ratepayers.

SWEPCO contends that the ALJs incorrectly concluded that the SWFs should be evaluated using a 25-year useful life rather than a 30-year useful life on the basis of high operating and maintenance expenses in later years.[31] According to SWEPCO, while the PFD correctly concluded that a 30 year useful life depends heavily on ongoing capital costs and operating and maintenance expenses, SWEPCO still presented evidence supporting the feasibility of a 30-year useful life.[32] Furthermore, SWEPCO claims that a 30-year useful life should be used in evaluating the SWFs since no party showed any evidence that SWEPCO could not provide the necessary funds to support the ongoing capital and maintenance expenses.[33]

The PFD's analysis in concluding that a 25-year useful life should be used in evaluating the SWFs was correct. First, as the ALJs discuss, a third of the net benefits achieved from the SWFs derive from adding an additional five years to the useful life of the SWFs.[34] And, while SWEPCO admits that a 30-year useful life depends heavily on ongoing capital and operating and maintenance (O&M) costs, SWEPCO forecasted ongoing capital and O&M expenses as flat in real terms for years 11 through 30, assuming an inflation rate of two percent.[35]

Additionally, SWEPCO based the economic analysis of *Wind Catcher* on a useful life of 25 years, while the SWFs in the instant case share the same turbine manufacturer, build, and

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[31] *Id.* at 26-31.

[32] *Id.* at 27.

[33] *Id.*

[34] PFD at 56.

[35] SWEPCO Exceptions at 27.

generation specifics.[36] Presumably, economic analysis of the proposed SWFs in SWEPCO's current application should also be performed under the same time frame. While SWEPCO cites to a Lawrence Berkley National Laboratory (LBNL) study, this study is merely a survey of wind developers, sponsors, and owners, and the study cites to *assumed* useful lives, but does not reflect *actual* achieved service lives.[37] SWEPCO's own witness, Mr. DeRuntz testified that he is not aware of any wind farms achieving a 30-year useful life.[38]

Staff recommends that the PFD correctly recommended that the that the SWFs should be evaluated using a 25-year useful life.

e. Congestion and Losses (including Gen-Tie)

Staff supports the PFD's conclusion that SWEPCO failed to "appropriately consider the cost of congestion and losses in assessing customer benefits of the Selected Wind Facilities."[39]

SWEPCO excepts to this recommendation, referring to three conclusions regarding congestion and losses in the PFD that it finds faulty: "(1) SWEPCO should have adjusted for the understatement of congestion inherent in PROMOD; (2) SWEPCO's assumption that the SPP ITP process will advance transmission solutions that reduce congestion is unreasonable; and SWEPCO's testimony that it does not expect to build a gen-tie[40] is unpersuasive and inconsistent with its economic evaluation and RFP process."[41] Staff will discuss all three issues in turn below, and why SWEPCO understates the issues with transmission costs and solutions.

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[36] Tr. at 725: 6 -14; Tr. at 727: 3-19 (DeRuntz Rebuttal) (Feb. 26, 2020).

[37] Rebuttal Testimony of Joseph G. DeRuntz, SWEPCO Ex. 16 at 2; Tr. at 726: 1-11 (DeRuntz Cross) (Feb. 26, 2020).

[38] Tr. at 726: 12-18 (DeRuntz Rebuttal) (Feb. 26, 2020).

[39] SWEPCO Exceptions at 31.

[40] In Staff's Initial Brief, Staff details that SWEPCO offered two alternatives for transmission from the project facilities. One of the alternatives involves SPP upgrading existing infrastructure. However, if this is not done and congestion costs are too high, SWEPCO will construct a gen-tie line that will provide transmission from the project facilities directly to the AEP West Load Zone in Tulsa. *See* Staff's Initial Brief at 12.

[41] *Id.*

First, SWEPCO argues that the PROMOD model does not understate congestion costs and that the ITP process would promote transmission solutions that would keep congestion costs flat after 2029.[42] As discussed at length in the PFD[43]; TIEC's initial brief[44]; TIEC's reply brief[45]; and Staff's reply brief,[46] the PROMOD model understates congestion costs. This is in large part because the PROMOD model assumes that the ITP process for SPP will propose and implement all of the transmission solutions required to keep costs constant.[47] SWEPCO witness Akarsh Sheilendranath argued that SPP will implement transmission solutions at a level that will keep congestion costs flat from 2029 to 2051[48], this is simply not supported by any evidence in this case.

Staff reiterates that SWEPCO has provided no evidence to support the claim that SPP will implement some or any of the transmission solutions offered in the ITP process, which is a key assumption of the PROMOD model. The ALJs rejected SWEPCO's claims regarding PROMOD because they do not provide evidence that congestion costs will remain constant from 2029-2051. Moreover, TIEC witness Charles Griffey argued that SWEPCO's congestion cost assumptions are "based on nothing but unsupported assumptions."[49]

Second, SWEPCO argues that the PFD incorrectly assumes that SPP will not advance transmission solutions to address congestion through the ITP process. Consistent with Staff's discussion of the PROMOD model above, Staff urges the rejection of SWEPCO's argument here as well. As discussed in the PFD[50]; TIEC's initial brief [51]; TIEC's reply brief [52]; Staff's initial

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42 *Id.* at 32.

43 PFD at 68.

44 Texas Industrial Energy Consumers' Initial Brief at 52-59 (Mar. 9, 2020) (TIEC Initial Brief).

45 Texas Industrial Energy Consumers' Reply Brief at 39-44 (Mar. 17, 2020) (TIEC Reply Brief).

46 Commission Staff's Reply Brief at 10-11 (Mar. 17, 2020) (Staff Reply Brief).

47 Staff Reply Brief at 10.

48 Tr. at 312: 14-25 to 313:1-6 (Sheilendranath Direct) (February 25, 2020).

49 Direct Testimony and Exhibits of Charles S. Griffey, TIEC Exhibit 2 at 40-41.

50 PFD at 68.

51 TIEC Initial Brief at 52-59.

52 TIEC Reply Brief at 39-44.

brief[53] and Staff's reply brief, [54] SWEPCO does not provide actual evidence that SPP will advance any of the transmission solutions proposed through the ITP process, but instead that they might implement all, some, or no transmission solutions outlined in the ITP process. SWEPCO provided no evidence that there are enough transmission solutions will be implemented by SPP to keep congestion costs flat from 2029-2051

In addition to not providing evidence to support its claim, SWEPCO relies upon calculations only newly provided in its exceptions, which are not in the record, and, thus, not in evidence. The ALJ correctly pointed out in the PFD that new transmission solutions or a dedicated gen-tie line would be required for the SWFs if congestions costs exceeded $9-10 per MWh.[55] This is supported by SWEPCO's witness Mr. Sheilendranath, who said that if the costs exceed this threshold of $9-10 per MWh, SWEPCO would then initiate the build out of a dedicated gen-tie line, because the cost, according to SWEPCO, would be lower at that point to build a dedicated gen-tie line.[56]

However, in SWEPCO's exceptions to the PFD, it says that that number is $20 per MWh, and not $9-10 per MWh.[57] SWEPCO has provided no evidence of where this number came from, how it was calculated, or provides an explanation as to why these new calculations contradict SWEPCO witness Sheilendranath testimony at the hearing.[58]

Lastly, SWEPCO excepts to the PFD's analysis of a dedicated gen-tie line.[59] SWEPCO argues that a gen-tie was evaluated and that the estimates of its costs were not on the low end, as stated in the PFD.[60] Staff disagrees on both fronts, and highlights that Staff outlined four separate areas in which gen-tie costs are uncertain.[61] These four areas of concern are: (1) the uncertainty

53 Staff Initial Brief at 12-15.

54 Staff Reply Brief at 10-11.

55 PFD at 69.

56 Tr. at 321:8-22 (Sheilendranath Direct) (February 25, 2020).

57 SWEPCO Exceptions at 34.

58 Tr. at 321:8-22 (Sheilendranath Direct) (February 25, 2020).

59 SWEPCO Exceptions at 34-36.

60 *Id.* at 35-36.

61 Staff Initial Brief at 15-18.

of routing options from the facilities to the AEP West Load Zone in Tulsa; (2) the uncertainty of when the gen-tie would actually be built; (3) the uncertainty in the cost of building the gen-tie line; and (4) the role that the Commission will play in the application of for approval of a gen-tie line, if SWEPCO determines that it is necessary for it to be built.[62] These all highlight why SWEPCO's analysis of a dedicated gen-tie line cost is uncertain and likely understated.

Staff urges the ALJs to reject SWEPCO's exception regarding PROMOD modeling and hold, as they did in the PFD, that the PROMOD model understates congestion costs. Additionally, Staff urges the ALJs to reject SWEPCO's exception to the PFD regarding transmission solutions and the SPP ITP process and to reject their new assertions regarding congestion costs at $20 per MWh. Finally, Staff agrees with the PFD's analysis and urges the ALJs to reject SWEPCO's arguments regarding the economic cost of a dedicated gen-tie line.

3. Capacity Value

The PFD correctly concluded that no capacity value should be included in determining the expected net benefits of the SWFs.[63] SWEPCO is not acquiring the SWFs to meet a current capacity need, and SWEPCO's modeling estimates that the SWFs will not generate capacity savings until 2037[64]—about halfway into the claimed 30-year life of the facilities. Even if the Commission finds that projecting net capacity benefits 18 years into the future is not *entirely* speculative,[65] the possibility of these savings is remote enough to exclude them from the serious consideration of it actually having the effect of the probable lowering of costs to customers. As stated earlier, when considering the probable lowering of costs attributable to a generation project built solely for economic reasons, the probability threshold must be set high to protect ratepayers. Thus, any savings that will not materialize until at least 18 years into the future are not sufficiently concrete to include in a calculation designed to determine whether the SWFs will result in a probable lowering of costs to customers.

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[62] *Id.*

[63] PFD at 72.

[64] Rebuttal Testimony of John O. Aaron, SWEPCO Exhibit 23 at 368.

[65] PFD at 72 (emphasis added).

4. Production Tax Credits

Staff supports the PFD's recommendation to assess the value of the production tax credits (PTC) earned by the SWFs at the P95 production level, rather than the P50 level.[66] SWEPCO once again argues against this finding on the grounds that the PFD is applying what it characterizes as a near certainty standard, rather than evaluating whether it results in the probable lowering of costs for customers.[67] The PTCs account for the second largest amount of the projected net benefits the SWFs would potentially provide to customers. The amount of PTCs earned depends on the energy output of the SWFs.[68] SWEPCO admits that the output level is unknown,[69] but it is only willing to guarantee production at the P95 level. Consequently, it is reasonable to evaluate the probable lowering of costs in light of SWPECO's minimum production guarantee at the P95 level, because this analysis preserves a standard of review that does not place an undue amount of risk on ratepayers. While the record contains evidence supporting the conclusion that the P50 level of production is probable, this is not enough to overcome the fact that the ratepayers still bear all of the risk of a lower-than-expected level of output.

Thus, Staff supports the PFD's recommendation that the lower amount of savings generated at the P95 level should be used to evaluate the benefits of the SWFs.

IV. PROPOSED CONDITIONS (P.O. ISSUE NO. 10, 19, 20, 24)

A. SWEPCO Proposed Conditions

Staff supports the PFD's conclusion that "that SWEPCO failed to show its proposed guarantees were sufficient to 'result in a probable lowering of customer costs.'"[70]

SWEPCO excepts to this conclusion, stating that the ALJs misunderstand the purpose of the guarantees which were meant to ensure that even in unexpected circumstances, the SWFs will benefit customers.[71]

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66 PFD at 73.

67 SWEPCO's Exceptions at 39.

68 SWEPCO's Initial Brief at 37 (Mar. 9, 2020).

69 Rebuttal Testimony of Thomas P. Brice, SWEPCO Exhibit 14 at 7.

70 SWEPCO Exceptions at 39; PFD at 81.

71 SWEPCO Exceptions at 39-40.

First, the ALJs' finding in the PFD actually states that "the ALJs find that SWEPCO failed to show that its proposed cost-saving guarantees provide sufficient economic safeguards that would result in a probable lowering of customer costs."[72] This statement correctly characterizes the guarantees in relation to this Project. SWEPCO's proposed guarantees should protect consumers from the risks ratepayers face from not receiving any net benefits, or experiencing costs related to this project. However, SWEPCO's proposed guarantees fail to do so.

1. Capital Cost Cap

As Staff detailed in its initial brief, SWEPCO considers the possible need of a gen-tie line to mitigate congestion, and its RFP process calculated the cost of transmission congestion by assigning a 50% weight to the cost of a potential gen-tie line.[73] However, the capital cost guarantee proposed by SWEPCO fails to include the estimated $480 million cost of a gen-tie line.[74] Additionally, SWEPCO failed to include a guarantee on the amount of future capital expenditures and O&M expenses for the SWFs. This is significant, given the fact that SWEPCO assumes a 30-year design life, where high O&M costs are expected in the later years, but holds ongoing capital and O&M costs constant in real terms for years 11 through 30.[75]

3. Minimum Production Guarantee

As the ALJs clearly noted, the minimum production guarantee proposed by SWEPCO is a *de minimis* guarantee that would amount to little, if any, benefit to customers.[76] While SWEPCO only guarantees production at the P95 level or 38.1% capacity factor, SWEPCO expects the SWFs to produce at a P50 or 44.1% capacity factor.[77] Even SWEPCO witness Malcom Smoak does not expect the minimum production guarantee to be invoked during the 30-year life of the project.[78]

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[72] PFD at 81.

[73] Staff Initial Brief at 22; Tr. at 20: 22-25 to 22: 1-17 (Smoak Direct) (Feb. 24, 2020).

[74] Staff Initial Brief at 22; Tr. at 25: 1-7 (Smoak Direct) (Feb. 24, 2020).

[75] Staff Initial Brief at 22; Tr. at 725: 6-14, 727: 3-19 (DeRuntz Rebuttal) (Feb. 26, 2020).

[76] PFD at 88.

[77] SWEPCO Ex. 14 at 16.

[78] Tr. at 45: 16-23 (Smoak Direct) (Feb. 24, 2020).

Furthermore, SWEPCO only guarantees a minimum production level at the P95 production level in the aggregate for the SWFs over a span of five-year periods, for 10 years, across all facilities. SWEPCO would not calculate whether the ratepayers were due credit on an annual basis; rather ratepayers would have to wait until the end of the five-year period to determine if any credit was associated with the minimum production guarantee.[79] Therefore, if the average capacity factor of the SWFs was greater than 38.1% over a five-year period, the ratepayers would not receive any credit. The minimum production guarantee also has exceptions for *force majure* and SPP curtailments, including economic and environmental curtailments.[80]

B. Conditions Contained in Settlements Filed in Other Jurisdictions

While SWEPCO includes a section in its exceptions addressing conditions contained in settlements filed in other jurisdictions, the SOAH ALJs "did not consider the guarantees contained in the settlements when deciding whether SWEPCO had proposed adequate cost-saving guarantees for its customers."[81] The ALJs specifically did not consider the guarantees because SWEPCO testified it would entertain an expansion of the guarantees proposed in the original application and it its reply brief, but the record shows it declined to expand its proposed guarantees and only stated that it would *entertain* an expansion.[82] Since SWEPCO only clarifies that it will accept guarantees from settlements filed in other jurisdictions in its exceptions, [83] SWEPCO's guarantees contained in settlements filed in other jurisdictions should not be considered in the Commission's decision in this case.

While Staff still maintains that it is inappropriate to consider conditions contained settlements filed in other jurisdictions, Staff responds that the conditions contained in settlements filed in other jurisdictions are not sufficient to protect ratepayers from the risks posed by this Project. Staff addressed the conditions contained in the Oklahoma settlements in its initial brief.[84] Regarding the Net Benefits Guarantee contained in the Louisiana settlement, Staff

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[79] Direct Testimony of Thomas P. Brice, SWEPCO Ex. 2 at 83; Tr. at 43: 16-25 to 44: 1-17 (Smoak Direct) (Feb. 24, 2020); Tr. at 44: 18-25 to 45: 1-3 (Smoak Direct) (Feb. 24, 2020).

[80] SWEPCO Ex. 2 at 83.

[81] PFD at 91; SWEPCO Exceptions at 41-43.

[82] PFD at 90-91.

[83] SWEPCO Exceptions at 42.

[84] Staff Initial Brief at 24-26.

responds that this guarantee was not included at all in the PFD issued by the ALJs.[85] Furthermore, the Net Benefits Guarantee contained in the Louisiana settlement is very similar to the SWEPCO's "look back proposal" guarantee in *Wind Catcher* which the Commission stated was likely to overstate customer benefits.[86] The only difference is that the Net Benefits Guarantee in the Louisiana settlement does not include the Project Capacity Value in its calculation. Overall, the conditions contained in SWEPCO's settlements in other jurisdictions should not be considered as SWEPCO waited until a Proposal for Decision was issued to take a position on expanding its guarantees to those contained in the settlement agreements. Even if considered, the conditions contained in SWEPCO's settlements filed in other jurisdictions add little additional value to its proposed conditions and are not sufficient to protect ratepayers from the risks posed by the SWFs.

IX. CONCLUSION

As stated in its exceptions and in this pleading, Staff the PFD's recommendations, including the ultimate recommendation to deny SWEPCO's application. Staff respectfully requests adoption of Staff's positions.

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[85] PFD at 88-91.

[86] SWEPCO Exceptions at 43; *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for Wind Catcher Energy Connection Project* (Docket No. 47461) Order at 22 (Aug. 13, 2018).

SOAH DOCKET NO. 473-19-6862
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CERTIFICATE OF SERVICE

I hereby certify that, unless otherwise ordered by the presiding officer, a true and correct copy of the foregoing document was transmitted by electronic mail to the parties of record on June 18, 2020 in accordance with the Order Suspending Rules issued in Docket No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher