



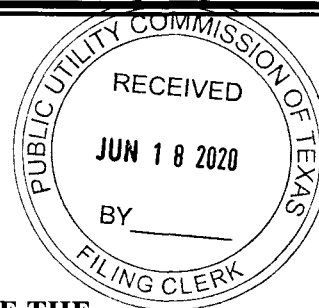
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**PUC DOCKET NO. 49737  
SOAH DOCKET NO. 473-19-6862**



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

**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

**CITIES ADVOCATING REASONABLE DEREGULATION'S  
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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**CITIES ADVOCATING REASONABLE DEREGULATION’S  
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Cities Advocating Reasonable Deregulation (“CARD”) hereby submit their Reply to Exceptions and in support thereof, show as follows:<sup>1</sup>

**I. INTRODUCTION**

Absent protections for ratepayers, including meaningful performance and net-benefits guarantees,<sup>2</sup> CARD urges the Public Utility Commission of Texas (“Commission”) to affirm the Administrative Law Judges’ (“ALJs”) Proposal for Decision (“PFD”) and their recommendation to deny the Southwestern Electric Power Company’s (“SWEPCO”) proposal to acquire what it refers to as the “Selected Wind Facilities” (“Wind Project” or “Project”).

SWEPCO poses the issue before the Commission as a choice between expending in excess of a billion dollars to save on energy costs, and “being left exposed to inevitable swings in energy

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<sup>1</sup> CARD limits its Reply to Exceptions to the conditions SWEPCO appears to propose as a condition of approval of its application. Thus, CARD is not following the outline presented in the ALJs’ Proposal for Decision. To the extent CARD does not provide briefing with regard to a particular heading, CARD’s lack of comment under a particular heading is not and should not be read as agreement with or acquiescence to SWEPCO’s or any other party’s contentions under such heading.

<sup>2</sup> CARD Exh. 1 – Direct Testimony of Scott Norwood (“Norwood Dir.”) at 21-25.

prices that will occur over the next 30 years.”<sup>3</sup> SWEPCO concludes that the ALJs’ recommendation “is missing an analysis of what is in the best interest of Texas customers considering the probable range of conditions that may prevail in the future.”<sup>4</sup> SWEPCO continues to minimize, if not ignore, a key fact: Its shareholder profits irrespective of some, little, or no, benefits to ratepayers.

As was the case in Docket No. 47461, SWEPCO’s “Wind Catcher” case,<sup>5</sup> much of the discussion at the hearing and in briefs centered on the validity, or not, of the parties’ projections of what the future portends. All uncertain are the future cost of natural gas; market-energy prices; future carbon-mitigation costs; and future changes in federal tax laws, which could affect the value of the production tax credits (“PTCs”) and their availability to offset the cost of the Wind Project; the level of production of energy by the wind turbines, which in turn depends on forecasting the weather; the level of future congestion costs in the Southwest Power Pool (“SPP”) energy market; and whether ultimately SWEPCO would need to construct a “Gen-Tie.”

This is not to say the Commission moves forward only where all factors are known. But similar to SWEPCO’s Wind Catcher case, at bottom the risk of the validity of SWEPCO’s or any other party’s projections, is shouldered by the ratepayers. The only close-to-certain factor in SWEPCO’s proposal, is that, if approved, SWEPCO’s Wind Project will be added to its rate base and ratepayers will pay a return on and of that capital cost.<sup>6</sup>

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<sup>3</sup> SWEPCO’s Exceptions at 3.

<sup>4</sup> SWEPCO’s Exceptions at 5.

<sup>5</sup> Docket No. 47461, *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*, Final Order (August 13, 2018) (“Wind Catcher Case”).

<sup>6</sup> Hearing on Merits Transcript (“HOM Tr.”) at 149.

Likewise, irrespective of whether SWEPCO's "Low-Gas/No Carbon," or "Low-Gas/With Carbon," or "Base Case/No Carbon," or "Base Case/With Carbon," or "High-Gas/No Carbon," or "High-Gas/With Carbon," becomes reality, or approximates reality, the one constant is that SWEPCO's shareholder, its parent company, AEP, Inc., will recover its return on and of the \$1.09 billion estimated capital cost of the Wind Project – plus the carrying costs related to the deferred PTCs.<sup>7</sup>

The record established that the extent to which ratepayers will experience *any* benefits from the Wind Project is dependent entirely on SWEPCO's projections of variables such as the future price of natural gas, wind-energy production levels, and transmission-congestion costs, factors whose outcomes are highly uncertain and yet have a material impact on projected economic benefits of the Project.<sup>8</sup> On that front, SWEPCO's own analysis shows a swing in potential savings from a low of \$236 million (net present value ("NPV")) to a high of \$718 million (NPV), with savings of \$576 million (NPV) at the probability factor of "P50."<sup>9</sup>

More revealing is that SWEPCO is not only not willing to provide ratepayers with a guarantee of the economic benefits of acquiring the Wind Project, and even for the "protections" it does offer, it is unwilling to use the same measure it uses to tout the benefits of the Wind Project – production at a P50 level – as the basis for its "guarantees."<sup>10</sup>

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<sup>7</sup> HOM Tr. at 474.

<sup>8</sup> SWEPCO asserts that "[m]uch is known about the benefits" of the Wind Project, but in reality SWEPCO identifies only *two* "knowns," the cost of the facilities and even then only "with reasonable certainty," and that the Wind Project will incur no fuel costs. SWEPCO Initial Brief at 4.

<sup>9</sup> See SWEPCO Initial Brief at 31.

<sup>10</sup> For example, SWEPCO's base-case projected savings assume a net capacity factor of 44%.<sup>10</sup> Its "guarantee," however, is premised on a net capacity factor of 38.1%. *Id.* at 11, 23, 27.

By comparison, irrespective of the level of production from the Wind Project, or the price of natural gas, the degree of congestion costs, or the effect of future carbon-mitigation measures, SWEPCO will stand to earn a near-constant and short of a certainty, return on and of the \$1.09 billion cost of the Wind Project,<sup>11</sup> with a concomitant revenue requirement of about \$3.233 billion in nominal dollars.<sup>12</sup>

Thus, CARD continues to caution the Commission, that if it is inclined to approve SWEPCO's application, that it do so only with the implementation of sound protections for ratepayers.

## **VII. PROPOSED CONDITIONS**

### **A. SWEPCO'S Proposed Conditions**

With regard to customer protections, SWEPCO in its as-filed case, proposed three "protections:" a cap on capital costs; a guarantee that it would be eligible to receive PTCs; and minimum production from the Wind Project based on a probability factor of P95, meaning a production level it has only a 5% probability of missing.<sup>13</sup> But SWEPCO's offer provides major exclusions from its "guarantee:" Undefined force-majeure events and curtailments directed by the Southwest Power Pool ("SPP").<sup>14</sup> But to date, SWEPCO continues to decline to provide meaningful protections to ratepayers and is not willing to provide any protections measured at the same level of production that it forecasts to be its base case.<sup>15</sup>

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<sup>11</sup> CARD Exh. 1 – Norwood Dir. at 25; *see also* CARD Initial Brief at 4, 6, 11, 14.

<sup>12</sup> CARD Exh. 1 – Norwood Dir. at 9. A revenue requirement of \$3.233 billion, equates to about \$1.348 billion in NPV. *See* Hearing on the Merits Transcript ("HOM Tr.") at 148; 466.

<sup>13</sup> *See* SWEPCO Exceptions at 31, 42.

<sup>14</sup> *Id*

<sup>15</sup> CARD Exh. 1 – Norwood Dir. at 24.

## **B. Conditions Contained in Settlements Filed in Other Jurisdictions**

In SWEPCO's Exceptions, SWEPCO now *appears* to offer "protections" it agreed to in Arkansas, Louisiana, or Oklahoma, stating that at the hearing, "SWEPCO Vice President Thomas Brice *indicated* that SWEPCO would entertain an expansion of the guarantees being offered in this proceeding consistent with those contained in the settlements as *part of a reasonable final order approving the acquisition* of the Selected Wind Facilities."<sup>16</sup>

In its Exceptions SWEPCO seems to suggest that it would accept, *if ordered by the Commission*: (1) a return on any deferred tax assets ("DTAs") limited to the cost of its long-term debt; (2) a credit of 100% of its off-system sales to customers; (3) a most-favored-nation ("MFN") provision; and a (4) net-benefits guarantee. But its "offer" is nonetheless lacking.

While a return on DTAs limited to its cost of long-term debt is certainly better than a return based on its full cost of capital, there should be no return component associated with a factor SWEPCO presents as key to its decision to acquire the Wind Project in the first place. It is the PTCs that lower the cost of energy from the Wind Project. To the extent SWEPCO cannot use its PTCs in any given tax year, SWEPCO proposes to create a deferred tax asset associated with the value of those PTCs, which for ratemaking purposes, is a rate-base item in its cost of service; rate-base items typically earn a return as an investment by the utility. Thus, an element that SWEPCO initially presents as a benefit to ratepayers, PTCs, turns into an added cost to ratepayers.

With regard to its MFN provision, given that its other jurisdictions have approved SWEPCO's request to acquire the Wind Project, a MFN is of doubtful value. If anything, if Texas improves on the customer protections, it is the other states that benefit from a MFN clause.

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<sup>16</sup> SWEPCO Exceptions at 4 [emphasis added].



Regarding its net-benefits guarantee, in its as-filed case SWEPCO did not offer a hold-harmless provision to protect customers from economic risks of new wind facilities. In its settlement in Louisiana, it agreed to a Net Benefits Guarantee.<sup>17</sup> However, its Net Benefits Guarantee is premised on the difference between its fuel costs assuming dispatch of its existing fleet of generation plants instead of measured against then-current market energy prices. In this scenario, the Wind Projects will almost always “win” since market energy prices reflect the lowest cost energy resources in each hour in the Southwest Power Pool (SPP) market, not the lowest cost resources on SWEPCO’s system.

The truer measure of whether customers benefit from acquisition of the Wind Project, is to compare the projected revenue requirements for the Wind Project, to the forecast cost of energy customers would experience absent the Wind Project (including potentially lower cost market energy purchases) over the life of the facility. To use a different measurement is to tilt the scale in favor the Wind Project through an unrealistic analysis that ignores the great benefit of the SPP market. If the cost of production and fuel to operate SWEPCO’s fleet of generation plants exceeds the price of energy in the SPP, both in terms of meeting its “native” load needs and in terms of selling its energy in the energy markets, SWEPCO would likely not dispatch its own generation plants. Thus, unless SWEPCO’s Net Benefits Guarantee is measured against locational marginal prices (“LMPs”) in SPP, its guarantee is of limited, if any, value to customers who bear the financial risk of the project.

Moreover, SWEPCO’s Net Benefits Guarantee is also based on its proposed Net Capacity Factor of 38.13%, which is measured at a P95 production level, and its receipt of PTCs. It is

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<sup>17</sup> SWEPCO Exceptions at 43. Note that SWEPCO cites to its filing of May 11, 2020 for the text of its agreement in Louisiana. However, SWEPCO’s filing of May 11, 2020, is the settlement it reached in Arkansas. SWEPCO filed the Louisiana settlement on April 14, 2020.

unlikely SWEPCO will ever miss production at a P95 factor. It sets the bar too low to determine whether customers benefit. So long as the Wind Projects produce at a net capacity factor of 38.13%, SWEPCO passes the test. Yet, the benefits it forecasts are based on a net capacity factor of 44.01%, which equates to a P50 production level.

Regarding PTCs, while SWEPCO guarantees that it will be *eligible* to receive PTCs, it is not guaranteeing it will receive any PTCs. Instead, its guarantee of passing on the benefits of PTCs to ratepayers is only for those PTCs tied to its actual production. In SWEPCO's words, "[i]f PTCs are not received at the 100% level for Sundance and the 80% level for the other two Facilities *because a Selected Wind Facility is determined to be ineligible*, customers will be made whole for the value of the lost PTCs based upon actual production."<sup>18</sup> Eligibility to receive a benefit is not guarantee of receiving the benefit.

## VIII. CONCLUSION

SWEPCO argues that the standard for review by the Commission is whether the evidence shows that acquisition of the Wind Project will lead to the "probable" lowering of costs.<sup>19</sup> Here the ALJs weighed the evidence and found SWEPCO's evidence lacking; and rightly so. Ultimately, the risk of SWEPCO being wrong regarding the projected savings it attributes to the Wind Project is shouldered by its ratepayers.

Accepting *arguendo* that SWEPCO correctly articulated the standard of review, and even if it is "probable" that savings may occur, those savings nonetheless remain uncertain and what remains assured is that, if approved, SWEPCO's Wind Project, at an estimated cost of \$1.09 billion in its Texas retail jurisdiction, will be added to its rate base and ratepayers will pay a return on and

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<sup>18</sup> SWEPCO Exceptions at 40.

<sup>19</sup> SWEPCO Exceptions at 4-6.

of that capital cost.<sup>20</sup> There is no need for a statistical analysis of the “probability” that SWEPCO will indeed recover a return of and on the cost of the Wind Project; it is a fact short of being axiomatic.<sup>21</sup> That effectively guaranteed return is weighed against the meager savings SWEPCO projects: a savings of from \$3.5 million to \$7.2 million per year (net-present value), which equates to only 0.5% to 1.1%, respectively of the Company’s forecasted Texas retail revenue requirements in 2021,<sup>22</sup> a modest savings at best.

CARD is not asking that the Commission to ignore the mountain of statistics presented in the evidence. CARD is, however, asking that the Commission not lose sight of the fact that:

- If SWEPCO is correct that the upside to ratepayers is even more robust than it forecasts, SWEPCO will earn a return on and of the investment in the wind facilities;
- If the benefits are middling, SWEPCO will earn a return on and of the investment in the wind facilities;
- If SWEPCO is wildly incorrect and there are no benefits from the wind facilities, SWEPCO will earn a return on and of the investment in the wind facilities.<sup>23</sup>
- Under any future scenario, SWEPCO’s ratepayers will shoulder the financial risk of the Project without guarantee of offsetting benefits.

Absent meaningful protections to ratepayers the only sure winner would be SWEPCO’s shareholder, who would earn millions of dollars in return regardless of the level of energy savings, if any, that customers may realize. Absent the implementation of protections to ratepayers that safeguard them from the down-side risk of the economics of SWEPCO’s proposal to acquire the

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<sup>20</sup> HOM Tr. at 149.

<sup>21</sup> That SWEPCO’s return on and of the investment in the Wind Project is all but a certainty is borne out by the fact that SWEPCO did not undertake any probability analysis of what the return on equity, the capital structure, or depreciation rates could be over the horizon of the life of the Wind Project. *See* HOM Tr. at 467-68.

<sup>22</sup> CARD Exh. 1 – Norwood Dir. at 25.

<sup>23</sup> HOM Tr. at 148; 466-68; 474.

Wind Project, including a meaningful net-benefits guarantee, CARD urges the Commission to adopt the ALJs' PFD.

Respectfully submitted,

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**ATTORNEYS FOR CITIES ADVOCATING  
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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of *Cities Advocating Reasonable Deregulation's Reply to Exceptions to the Proposal for Decision* upon all known parties of record by, electronic mail, fax and/or first-class mail on this the 18<sup>th</sup> day of June 2020.

/s/Leslie Lindsey

Leslie Lindsey