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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 PUBLIC UTILITY COMMISSION OF TEXAS**

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

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REPLY TO 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 replies to exceptions to the proposal for decision ("PFD") issued by the State Office of Administrative Hearings ("SOAH") in this proceeding on May 26, 2020.

OPUC's reply exceptions are limited to certain exceptions filed by Southwestern Electric Power Company ("SWEPCO" or the "Company").[1] OPUC specifically addresses the following issues raised by the Company: 1) Certificate of Convenience and Necessity ("CCN") Standard of Review, 2) Natural Gas Prices, 3) Carbon Emission Burden, 4) Capacity Factor, 5) Congestion and Losses and Gen-tie, 6) Minimum Production Guarantee, and 7) Net Benefits Guarantee.

V. CERTIFICATE OF CONVENIENCE AND NECESSITY STANDARD OF REVIEW[2]

SWEPCO does not dispute the Administrative Law Judges' ("ALJs") finding that Section 37.056 of the Public Utility Regulatory Act ("PURA") is the controlling statutory provision in this case and that the determinative issue is whether its acquisition of the project would result in the

[1] SWEPCO's Exceptions to the PFD (Jun. 11, 2020) ("SWEPCO's Exceptions").

[2] All outline headings correspond with those used in the PFD.

probable lowering of costs for the Company's Texas customers.[3] SWEPCO, instead, claims that the ALJs evaluated the Company's acquisition of the project under a much more stringent standard of review that is based on a series of unlikely future circumstances, and therefore, the ALJs used an incorrect standard of review that focuses more on certainty, rather than probability, in this case.[4] To support its claim, SWEPCO points out that nearly all of the 45 natural gas price forecasts contained in the evidentiary record were higher than SWEPCO's breakeven natural gas price curve for the project, with the notable exception of the Energy Information Administration Annual Energy Outlook ("EIA AEO") low forecast that the ALJs felt constrained to use, which resulted in a finding that SWEPCO's forecasts were too high.[5]

SWEPCO fails to adequately address the ALJs' finding that the EIA AEO low forecast has proven to be the most accurate forecast in recent years.[6] SWEPCO's only attempt to counter this finding is a claim that natural gas prices have reached an unsustainable low.[7] SWEPCO's claim does not counter the ALJs' finding that the EIA AEO low forecast has been the most accurate forecast of natural gas prices. SWEPCO argues that nearly all of the 45 natural gas price estimates contained in the record from SWEPCO, Staff, and the intervenors are higher than SWEPCO's breakeven forecast.[8] The fact that most of the 45 other natural gas price estimates are higher does not mean the ALJs improperly ignored the natural gas price estimates. It means SWEPCO misinterpreted the standard of probability to their benefit, rather than for the benefit of its Texas consumers. Accuracy is a necessary component of determining probability. A single accurate projection has a much greater mathematical chance of being correct than multiple inaccurate projections.[9]

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[3] PFD at 11. *See also* SWEPCO's Exceptions at 5 and 7-8.

[4] SWEPCO's Exceptions at 7.

[5] SWEPCO's Exceptions at 8.

[6] PFD at 34.

[7] SWEPCO's Exceptions at 12.

[8] SWEPCO Exceptions at 8.

[9] For Example: Two projections with 10% historical accuracy each project Price A. One projection with 80% historical accuracy projects Price B. While 2/3 of the projections project Price A, Price B has an 80% chance of being correct and is therefore more accurate than the two other projections.

Applying this same logic in the current proceeding, what SWEPCO determines to be a much more stringent standard of review based on certainty, rather than probability, is in fact the correct application of the standard of review by the ALJs.[10] Accordingly, OPUC recommends that the Commission reject SWEPCO's interpretation of how the standard of review was applied in this proceeding and affirm the ALJs' application of the standard of review in the PFD.

VI. ANALYSIS OF ECONOMICS OF SELECTED WIND FACILITIES

C. Economic Modeling

2. Projected Production Cost Savings

a. Natural Gas Prices

SWEPCO excepts to the ALJs' finding that SWEPCO's natural gas price projections in the current proceeding are "strikingly similar" to those used in the *Windcatcher*[11] case.[12] In an attempt to counter the ALJs' finding, SWEPCO claims that their natural gas price projections are 34% lower in this case than those presented in the *Windcatcher* case, and therefore, the natural gas price forecasts are different in this case.[13] OPUC does not dispute that SWEPCO's natural gas price projections are lower in this case than those in the *Windcatcher* case. However, as admitted by SWEPCO witness Mr. Karl Bletzacker, the methodologies used in the AEP Fundamentals Forecast have not changed since the *Windcatcher* case or during the last decade.[14] Consequently, SWEPCO is merely inputting updated numbers into a formula that the Commission has already determined is flawed in the *Windcatcher* case. Accordingly, OPUC recommends that the Commission uphold the ALJs' finding that SWEPCO's future natural gas price projections have the same fundamental flaws that were identified in the *Windcatcher* case.

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[10] SWEPCO's Exceptions at 7.

[11] *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) ("*Wind Catcher* case").

[12] SWEPCO's Exceptions at 12 (citing PFD at 5 and 23).

[13] *Id.* (citing Staff Ex. 7). *See also* PFD at 34 ("The evidence shows that, as in Wind Catcher, SWEPCO's modeling continues to predict higher future natural gas prices than shown by the historically more accurate (although still high) EIA modeling.").

[14] Tr. 261:5-8 (Bletzacker Cross) (Feb. 24, 2020).

b. Other Assumptions Affecting Locational Marginal Prices

i. Carbon Emission Burden

SWEPCO excepts to the ALJs' finding that it is unreasonable to assume a carbon emission burden in the evaluation of the Company's project.[15] SWEPCO then requests that the Commission acknowledge the possibility of a future carbon emission burden and find that it is a possibility that should be considered in the evaluation of the Company's project.[16]

However, SWEPCO's characterization of the ALJs' position is incorrect. The ALJs did in fact acknowledge a potential future carbon emission burden by stating that:

> The ALJs agree that the likelihood that a carbon burden will be implemented over the next 30 years is not zero. However, the evidence shows that forecasting that likelihood is far too speculative to form the basis for evaluating the probable benefits of a billion dollar generating facility. Accordingly, for purposes of assessing the probable lowering of costs, and consistent with Commission precedent, the ALJs find that it is unreasonable to assume a carbon tax, and recommend that the Project be evaluated without one.[17]

The ALJs did not discount the possibility of a future carbon emission burden. Rather, the ALJs determined that the potential for a carbon emission burden was far too speculative to form the basis for evaluating the probable customer benefits of a billion-dollar project.[18] Notably, the removal of this speculative assumption lowers the net present value of the project's benefits by approximately $171 million.[19]

SWEPCO attempts to support its position by highlighting an acknowledgement from OPUC witness Mr. Karl Nalepa that a carbon emission burden should be considered in this case.[20] SWEPCO did not provide the full context of Mr. Nalepa's statements at the hearing on the merits in this case. Mr. Nalepa testified that:

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[15] SWEPCO's Exceptions at 13-14.

[16] *Id.*

[17] PFD at 39.

[18] *Id.*

[19] PFD at 36.

[20] SWEPCO's Exceptions at 14 (citing Tr. at 682:15 – 684:15 (Nalepa Cross) (Feb. 26, 2020)).

> As the Company presented its case, a carbon fee is included as the Company's base case. My conclusion here is that shouldn't -- that's not appropriate. You may certainly want to test the impact of a carbon tax, but I don't think that would be the -- that should be the base case.[21]

Mr. Nalepa does not, as SWEPCO would like to have the Commission believe, assent to the inclusion of a carbon emission burden assumption in the calculation of the project's net benefits. Mr. Nalepa acknowledged that the effect of a carbon emission burden may be considered by SWEPCO, but it is inappropriate for the Company to include such an assumption in its base case forecast of the project's benefits, which the Company presented to the Commission as the primary basis for determining the project's projected benefits.[22]

Accordingly, OPUC recommends that the Commission affirm the ALJs' finding that it is unreasonable to assume a carbon emission burden in the evaluation of the Company's project. A carbon emission burden has never been imposed in the United States and SWEPCO failed to provide any credible evidence that a carbon emission burden would be imposed in the future. Therefore, the Commission should evaluate the net benefits of the Company's project without the assumption of a future carbon emission burden.[23]

c. Capacity Factor

Throughout this proceeding and in its exceptions, SWEPCO argues that net customer cost savings benefits should be calculated using an output probability of 50% ("P50"), rather than their guaranteed output probability of 95% ("P95").[24] For reference, the P50 level of output is equal to a 44.01% capacity factor, while the P95 level of output is equal to a 38.13% capacity factor.[25] The ALJs properly found that the P50 output level, when considering force majeure and curtailment, which were not considered by SWEPCO, is actually less than 50% probable, and the P95 output level, which SWEPCO is actually willing to guarantee, is the more appropriate output level at which to calculate net customer cost savings benefits.[26] Notably, when considering the reduction

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[21] Tr. at 682: 9-15 (Nalepa Cross) (Feb. 26, 2020).

[22] *Id.*

[23] Office of Public Utility Counsel's Reply Brief at 13 (Mar. 17, 2020) ("OPUC's Reply Brief").

[24] SWEPCO's Exceptions at 23-26.

[25] Office of Public Utility Counsel's Initial Brief at 16 (Mar. 9, 2020) ("OPUC's Initial Brief").

[26] PFD at 52-53.

in output from P50 to P95, the calculated net customer cost savings benefits are reduced by $237 million, net present value.[27]

In its exceptions, SWEPCO attempts to conflate the standard of review that focuses on whether the project will result in a probable lowering of costs for the Company's customers with output probability ratings by arguing that the Commission should calculate net customer cost savings benefits at the P50 level of facility output.[28] SWEPCO's logic fails to withstand scrutiny. When discussing the standard of review applicable to this CCN case, SWEPCO correctly describes the term "probable" as meaning *more likely than not*.[29] However, SWEPCO's understanding is then quickly abandoned as it describes the P50 output level as "probable".[30] As stated by SWEPCO, a P50 level of output, by definition, is 50% likely.[31] A dead even 50% split is not more likely than not, and therefore, 50% cannot be considered probable. SWEPCO, therefore, fails to meet the probability standard even by their own metrics. Moreover, when one considers force majeure and curtailment as discussed by the ALJs, the P50 level of output cited by SWEPCO is less than 50% likely.[32]

Accordingly, OPUC recommends that the Commission adopt the ALJs' finding that the project should be evaluated at the P95 level of output when determining the project's net customer cost savings benefits.[33] The Commission should calculate the net customer cost savings benefits of the Company's project at the more appropriate P95 level of output guaranteed by the Company and thereby reduce the Company's projected net customer cost savings benefits accordingly.

d. Congestion and Losses and Gen-tie

SWEPCO excepts to the ALJs' finding that the Company should expect to build a gen-tie and include the gen-tie costs in its benefits analysis in this case.[34] In its base case scenario that the

[27] PFD at 52 (citing Direct Testimony of Karl Nalepa, OPUC Ex. 1 at 18-19).

[28] SWEPCO's Exceptions at 23.

[29] *Id.* at 7.

[30] *Id.* at 23.

[31] *Id.*

[32] PFD at 52.

[33] *Id.*

[34] SWEPCO's Exceptions at 34.

Company relied upon to determine the project's net customer cost savings benefits, SWEPCO did not include the costs of a gen-tie.[35] SWEPCO argues that it did consider the costs of a gen-tie, but it instead relied upon potential future transmission upgrades from the Southwest Power Pool ("SPP") to accommodate the project if the cost of congestion increases.[36] However, as noted by the ALJs, SWEPCO did not present evidence demonstrating that SPP would move forward with the future transmission upgrades.[37]

Accordingly, OPUC recommends that the Commission affirm the ALJs' finding that SWEPCO should include the costs of a gen-tie in its economic analysis of the project.[38] As noted by the ALJs, the Commission should find that a $480 million cost for the gen-tie is the low end of the cost estimate given the significant uncertainty associated with the gen-tie costs.[39] Furthermore, in order to help ensure that the Company's ratepayers are protected from these potential significant future costs, OPUC agrees with the ALJs' finding that the Commission require the Company to seek Commission approval of the construction of any future gen-ties if the Commission approves the Company's CCN application in this proceeding. [40]

VII. PROPOSED CONDITIONS

B. Conditions Contained in Settlements Filed in Other Jurisdictions

SWEPCO does not except to the ALJs' finding that it failed to modify its suite of cost-savings guarantees proposed in this case to be consistent with the guarantees contained in the settlement agreements approved in other states.[41] SWEPCO states that it is willing to agree to the

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[35] OPUC Ex. 1 at 12:13 – 13:7.

[36] SWEPCO's Exceptions at 34.

[37] PFD at 69.

[38] PFD at 70 ("Therefore, the ALJs find that the cost of the gen-tie should be considered in the economic analysis of the SWFs. However, given the considerable uncertainty associated with the cost of the gen-tie, the ALJs find that the $480 million cost should be considered a low end, subject to significant variation. If the Commission approves the SWFs, the ALJs recommend SWEPCO be required to seek approval prior to constructing any gen-tie.").

[39] *Id.*

[40] *Id. See also* OPUC's Initial Brief at 19.

[41] SWEPCO's Exceptions at 42.

settlement terms reached in Arkansas, Louisiana and Oklahoma in this proceeding.[42] SWEPCO also notes that the guarantees are not meant to guarantee cost savings.[43] OPUC believes that SWEPCO's minimum production guarantee and net benefits guarantee are insufficient.

1. Minimum Production Guarantee

OPUC previously characterized SWEPCO's ten-year minimum production guarantee based on an output probability level of P95 as *de minimis*.[44] The only difference between this guarantee and the guarantee offered by SWEPCO in the other states, is a thirty-year guarantee versus a ten-year guarantee.[45] The ALJs, in agreeing with OPUC's characterization of the P95 output level guarantee, noted that SWEPCO does not anticipate a deviation from expected output levels long enough to trigger this guarantee.[46] Additionally, the ALJs pointed out the unequal nature of setting the guaranteed output level at a 95% probability, while calculating the net customer cost savings benefits at only a 50% probability.[47]

Accordingly, if the Commission approves SWEPCO's CCN application, OPUC recommends that the Commission find that the Company's enhanced minimum production guarantee is still lacking in substance and is *de minimis* in nature. SWEPCO's minimum production guarantee should be set at the P50 output level for the life of the project to match the Company's projected net customer cost savings benefits.

5. Net Benefits Guarantee

SWEPCO offered no net benefits guarantee in this proceeding. Since the initiation of this proceeding, SWEPCO has offered a net benefits guarantee as part of a settlement agreement in the

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[42] *Id.*

[43] SWEPCO's Exceptions at 39-40 ("The ALJs misunderstand the purpose of the guarantees. The guarantees offered by SWEPCO were never intended to guarantee a set amount of customer savings.").

[44] OPUC's Initial Brief at 24.

[45] SWEPCO's Exceptions at 42.

[46] PFD at 88 ("Additionally, the ALJs find that it is an unequal comparison to project potential customer benefits based on the SWFs' expected P50 production level but to limit the availability of cost saving guarantees at the lower P95 level. The evidence shows that SWEPCO does not anticipate that production will deviate from its expected P50 level for an amount of time that would trigger this guarantee; thus, the ALJs agree with OPUC that it is a *de minimis* guarantee that would amount to little if any benefit to the customers.").

[47] *Id.*

State of Louisiana.[48] OPUC, however, notes that SWEPCO's net benefits guarantee in the Louisiana settlement agreement is hollow in its execution.

As noted in Attachment 3 of the Louisiana settlement agreement, SWEPCO's calculation of net customer cost savings benefits compares the cost of output from the project with the cost of output from SWEPCO's existing stack of generation.[49] This is not a proper accounting of the net customer cost savings benefits from the project. OPUC believes that a proper calculation of net customer cost savings benefits would compare the cost of output from the project with the avoided cost measured by Locational Marginal Prices ("LMPs") in the SPP market, rather than by the redispatch of the Company's existing and less efficient stack of generation that is not currently in use by the Company.

Accordingly, OPUC recommends that the Commission find that the net benefits guarantee included in the Louisiana settlement agreement is insufficient. SWEPCO should be required to guarantee net customer cost savings benefits based on LMPs in the SPP market, not on its existing stack of less efficient generation that is no longer in use by the Company, if the Commission approves the Company's CCN application.

CONCLUSION

For the reasons stated herein and in the post-hearing briefing and testimonies of its witnesses, OPUC respectfully requests that the Commission adopt OPUC's recommendations on the issues presented in this case, including the issues addressed in OPUC's exceptions and reply exceptions to the SOAH ALJs' PFD and incorporate them into the Commission's final order. OPUC further asks to be granted any other relief to which it may be entitled.

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[48] SWEPCO's Exceptions at 43.

[49] Letter from Kerry McGrath, on behalf of SWEPCO, to ALJs Steven H. Neinast and Christiaan Siano, SOAH, Attachment 3 (Apr. 14, 2020) (filed in the docket).

June 18, 2020

Respectfully submitted,

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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 18th day of June 2020 by facsimile, electronic mail, and/or first class, U.S. Mail.

Zachary Stephenson