



Control Number: 51415



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**SOAH DOCKET NO. 473-21-0538  
PUC DOCKET NO. 51415**

**APPLICATION OF SOUTHWESTERN § BEFORE THE  
ELECTRIC POWER COMPANY FOR § STATE OFFICE OF  
AUTHORITY TO CHANGE RATES § ADMINISTRATIVE HEARINGS**

**SOUTHWESTERN ELECTRIC POWER COMPANY’S FIFTH PETITION  
FOR REVIEW OF MUNICIPAL DECISIONS AND MOTION TO CONSOLIDATE**

On October 14, 2020, Southwestern Electric Power Company (SWEPCO) filed a Petition and Statement of Intent to Change Rates (Petition) within the areas over which the Commission has original jurisdiction. That Petition was assigned PUC Docket No. 51415. SWEPCO concurrently filed a Petition with each incorporated city having original jurisdiction over its retail rates.

**I. Appeal Of Municipal Decisions**

SWEPCO appeals the rate decisions of those cities that have retained original jurisdiction over its rates, operations, and services and that have either timely denied or failed to timely act on SWEPCO’s rate request. In its rate request filed with these cities, SWEPCO indicated that the effective date of its rate request was 35 days after the filing of the Petition and requested such date be extended by the cities to the maximum extent allowed by § 36.108(a)(1) of the Public Utility Regulatory Act<sup>1</sup> (PURA) — 90 days from the date the requested rate would otherwise become effective. A number of cities granted this requested suspension. After doing so, however, certain of those cities failed to act on SWEPCO’s rate request prior to the expiration of the suspension period. Through that inaction, these cities effectively approved the requested rate relief.<sup>2</sup> This appeal of these cities’ failure to act is necessary to preserve coordinated system-wide rates

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<sup>1</sup> PURA is codified at Tex. Util. Code Ann. §§ 11.001–66.016.

<sup>2</sup> PURA § 36.108(c).

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throughout SWEPCO's retail service territory. The Commission and Texas courts have recognized the value of providing and maintaining system-wide rates.<sup>3</sup>

This appeal is filed pursuant to PURA § 33.051, which allows a party to a municipal proceeding, such as SWEPCO, to appeal to the Commission a "decision" of the municipal governing body. A decision to not act on a rate request may be appealed to the Commission. Otherwise, the Commission is robbed of its exclusive appellate jurisdiction granted by PURA § 32.001(b). Further, appeal upon a city's failure or refusal to act on an application within a specified period is necessary to preserve parties' appellate rights.<sup>4</sup>

The municipalities that have failed to act after timely suspending SWEPCO's rates include: Bloomburg, Daingerfield, Gilmer, Longview, and New London.<sup>5</sup>

On February 8, 2021, the City of Mount Vernon adopted a resolution that denied SWEPCO's application and kept the existing rates in effect.<sup>6</sup> This appeal is filed within thirty (30)

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<sup>3</sup> *City of Allen v. Public Util. Comm'n*, 161 S.W.3d 195, 207 (Tex. App.—Austin 2005, no pet.) (noting, "the contemporary reality that the assets of an integrated utility simultaneously serve all its customers rendering the allocation of cost on a territorial basis an inappropriate method of rate-setting in the context of present-day technology") (quoting *City of Corpus Christi v. Public Util. Comm'n*, 572 S.W.2d 290, 296 (Tex. 1978)); see also *Rulemaking Related to Periodic Rate Adjustments*, Project No. 39465, Order at 53 (September 27, 2011) ("The commission agrees with Electric Utilities and REP Coalition that the rule should make an electric utility's appeal automatic; doing so avoids the cost of actually appealing the city action or inaction and ensures that the appeal is made. Because an appeal is necessary to ensure a system-wide DCRF, making the appeal automatic helps ensure a system-wide DCRF."); Tex. Util. Code § 33.055(a) (An interim rate order may be issued "to effect uniform system-wide rates."); *Application of Lower Colorado River Auth.*, 12 Tex. P.U.C. Bull. 1856 (Tex. P.U.C. May 13, 1987) (Uniform rates must be applied system-wide and not be based upon the locality of the utility's service area at which a customer is served).

<sup>4</sup> Cf. *City of Sherman v. Railroad Comm'n of Tex.*, 454 S.W.2d 762, 764 (Tex. Civ. App.—Austin 1970, no writ) (An appeal may be taken upon rejection by the municipal government of an application for a rate increase or its failure or refusal to act on the application within a specified period. "The doctrine of primary jurisdiction assures the agency, such as the Railroad Commission in this case, that it will not be bypassed on matters committed to it by law.").

<sup>5</sup> SWEPCO previously included the city of Gilmer in its Third Appeal of Municipal Decisions, which addressed those municipalities that failed to timely deny or suspend the requested rates. The Administrative Law Judges consolidated SWEPCO's Third Appeal with this docket in SOAH Order No. 3. However, after filing that appeal and the issuance of SOAH Order No. 3, SWEPCO received Gilmer's suspension resolution. Therefore, SWEPCO is now appealing Gilmer's suspension decision on the requested rates out of an abundance of caution.

<sup>6</sup> The City of Mount Vernon timely suspended SWEPCO's requested rate relief on November 9, 2020.

days of the date that SWEPCO received notice of the City of Mount Vernon's decision. A copy of the City of Mount Vernon's resolutions is attached as Exhibit 1.

**I. Jurisdiction**

The Commission has jurisdiction over this appeal under PURA §§ 32.001(b) and 33.051.

**II. Motion of Consolidate**

SWEPCO requests that its Fifth Appeal of the City of Mount Vernon's action and the inaction of the cities of Bloomburg, Daingerfield, Gilmer, Longview, and New London be consolidated with PUC Docket No. 51415. This appeal involves issues of law and fact common to those involved in PUC Docket No. 51415, and a separate hearing of this appeal and PUC Docket No. 51415 would result in unwarranted expenses, delay, or substantial injustice.

**III. Conclusion**

SWEPCO respectfully requests the Administrative Law Judges enter an order consolidating this Fifth Appeal with PUC Docket No. 51415. SWEPCO further respectfully requests that upon final hearing, SWEPCO be granted the rate relief as requested in its Petition.

Respectfully submitted,

Melissa Gage  
State Bar No. 24063949  
Email: [magage@aep.com](mailto:magage@aep.com)  
[aepaustintx@aep.com](mailto:aepaustintx@aep.com) (Service)

Leila Melhem  
State Bar No. 24083492  
Email: [lmelhem@aep.com](mailto:lmelhem@aep.com)  
[aepaustintx@aep.com](mailto:aepaustintx@aep.com) (Service)

400 West 15<sup>th</sup> Street, Suite 1520

Austin, Texas 78701

Telephone: (512) 481-3320

Facsimile: (512) 481-4591

**AMERICAN ELECTRIC POWER SERVICE  
CORPORATION**

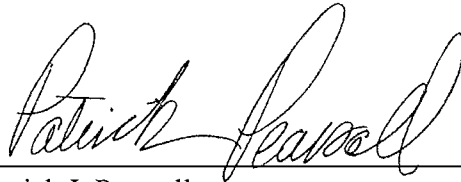
William Coe  
State Bar No. 00790477  
Email: [wcoe@dwmrlaw.com](mailto:wcoe@dwmrlaw.com)  
Kerry McGrath  
State Bar No. 13652200  
Email: [kmcgrath@dwmrlaw.com](mailto:kmcgrath@dwmrlaw.com)  
Patrick Pearsall  
State Bar No. 24047492  
Email: [ppersall@dwmrlaw.com](mailto:ppersall@dwmrlaw.com)  
P.O. Box 1149  
Austin, Texas 78767  
Telephone: (512) 744-9300  
Facsimile: (512) 744-9399  
**DUGGINS WREN MANN & ROMERO, LLP**

By:   
Patrick Pearsall

**ATTORNEYS FOR SOUTHWESTERN  
ELECTRIC POWER COMPANY**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on March 17, 2021, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter. In addition, a copy of the foregoing has been served by first-class U.S. mail upon the following:



Patrick J. Pearsall

Suzanne Bishop  
City Secretary  
City of Bloomburg  
121 E. Main  
Bloomburg, TX 75556

Heide Edmonson  
City Secretary  
City of Daingerfield  
108 Coffee St.  
Daingerfield, TX 75638

Tim Marshall  
Mayor  
City of Gilmer  
110 Buffalo Street  
Gilmer, TX 75644

Keith Bonds  
City Manager  
City of Longview  
300 W. Cotton Street  
Longview, TX 75601

Tina Rose  
City Secretary  
City of Mt. Vernon  
109 N. Kaufman  
Mt. Vernon, TX 75457

Vicki Gerhardt  
City Administrator  
City of New London  
180 E. Phillips  
Overton, TX 75684

RESOLUTION NO. 21-04

RESOLUTION BY THE CITY OF Mount Vernon ("CITY")  
DENYING THE APPLICATION TO INCREASE RATES FILED BY  
SOUTHWESTERN ELECTRIC POWER COMPANY ON ABOUT  
OCTOBER 13, 2020; FINDING THAT THE MEETING COMPLIES  
WITH THE OPEN MEETINGS ACT; MAKING OTHER  
FINDINGS AND PROVISIONS RELATED TO THE SUBJECT

WHEREAS, Southwestern Electric Power Company ("SWEPCO" or "Company") filed a Statement of Intent with the City on about October 13, 2020 to increase its base revenues; and

WHEREAS, the City is a regulatory authority under the Public Utility Regulatory Act ("PURA") and under Chapter 33, §33.001 et seq. of PURA has exclusive original jurisdiction over SWEPCO's rates, operations, and services within the municipality;

WHEREAS, SPS proposed to implement its proposed increase in rates effective on November 17, 2020, which is 35 days after the filing of its rate application; and

WHEREAS, the City has previously suspended implementation of SPS's proposed increase in rates and its proposed effective date by 90 days to February 15, 2021 (the "Suspension Period"); and

WHEREAS, SWEPCO's proposed increase in rates would result in a net increase to its base revenues of approximately \$90.2 million, which equates to a net increase of approximately 26% in base revenue, not including fuel or other revenue; and

WHEREAS, for a Residential customer using 1,000 kWh per month, if SWEPCO's proposed increase is approved, the bill impact to that Residential customer would be an increase of over \$22.00 per month, in base revenues during the On-Peak Period (May through October), which equates to an increase of approximately 28%; and over \$16.00 per month during the Off-Peak Period (November through April), which equates to an increase of about 28%; and

WHEREAS, the Company seeks a Return on Equity (ROE) of 10.35%; and

WHEREAS, SWEPCO seeks to increase its depreciation expense, establish a self-insurance reserve fund, recover certain costs related to Hurricane Laura, and seeks to increase its vegetation-management costs; and

**WHEREAS**, SWEPCO's rate request consists of a voluminous amount of information including SWEPCO's rate-filing package, exhibits, schedules, and workpapers; and

**WHEREAS**, the City coordinated its efforts with a coalition of similarly situated municipalities known as the Cities Advocating Reasonable Deregulation ("CARD"), to review SWEPCO's Rate Filing Package; and

**WHEREAS**, given the volume of data and the complexity of the issues presented in SWEPCO's rate-filing package, exhibits, schedules, and workpapers, it is not practical for the City's Special Counsel and consultants retained on behalf of the City to complete their review of SWEPCO's rate application before the end of the Suspension Period.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF H. VERNON THAT:**

**Section 1.** The findings set out in the preamble are in all things approved and incorporated herein as if fully set forth.

**Section 2.** SWEPCO failed to show that its proposed rates are just and reasonable.

**Section 3.** The City hereby **DENIES** SWEPCO's request to increase rates and retains in place SWEPCO's rates in effect prior to the date upon which SWEPCO filed its statement of intent to change rates and finds that:

- A. The Rate Filing Package fails to provide sufficient information to justify the requested increase in revenue or to justify the changes set forth in the attached tariffs;
- B. The Rate Filing Package fails to provide sufficient information to justify the adoption of the rate base, expenses, investment, return on equity, and other rate issues noted in the Public Utility Regulatory Act.

**Section 4.** The City hereby orders SWEPCO to reimburse the City's rate case expenses as provided in the Public Utility Regulatory Act and that SWEPCO shall do so on a monthly basis and within 30 days after submission of the City's invoices for the City's reasonable costs associated with the City's activities, through its participation in CARD, related to its rate review or to related proceedings involving SWEPCO before the City, the Public Utility Commission of Texas, or any court of law.



**Section 5.** The City Secretary or other appropriate city official shall provide a copy of this Resolution to Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, 4524 Medical Parkway, Austin, Texas 78756 and as a courtesy, provide a copy to SWEPCO's local representative.

**Section 6.** The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

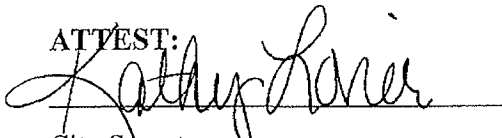
**Section 7.** To the extent any Resolution previously adopted by the City Council is inconsistent with this Resolution, it is hereby superseded.

**Section 8.** This resolution shall become effective from and after its passage.

PASSED AND APPROVED this 8th day of February, 2021.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Secretary