



Control Number: 51415



Item Number: 286

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

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APPLICATION OF SOUTHWESTERN §
ELECTRIC POWER COMPANY FOR §
AUTHORITY TO CHANGE RATES §

BEFORE THE PUBLIC UTILITY COMMISSION
STATE OFFICE OF
ADMINISTRATIVE HEARINGS

**SOUTHWESTERN ELECTRIC POWER COMPANY'S
SIXTH PETITION FOR REVIEW OF THE RESOLUTION
OF THE CITIES OF MAUD, GLADEWATER, MARSHALL, HALLSVILLE, AND
MOUNT ENTERPRISE AND MOTION TO CONSOLIDATE**

Southwestern Electric Power Company (SWEPCO) files this petition appealing the rate decisions of the cities of Maud, Gladewater, Marshall, Hallsville, and Mount Enterprise. In support of this appeal and motion, SWEPCO would show the following:

I. SWEPCO's Requested Rate Change

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

II. Appeal of Municipal Actions

SWEPCO appeals the rate decisions of the cities of Maud, Gladewater, and Marshall. These three cities have retained original jurisdiction over SWEPCO's rates, operations, and services and have timely denied SWEPCO's rate request.

On February 22, 2021, the City of Maud adopted a resolution that denied SWEPCO's application and kept the existing rates in effect.¹ A copy of that resolution is attached as Exhibit 1.

¹ SWEPCO agreed to extend the suspension period for the cities of Maud, Gladewater, Marshall, Hallsville, and Mount Enterprise until February 28, 2021. This appeal is timely filed within 30 days of SWEPCO's receipt of notice of these cities' decisions on SWEPCO's rate request.

On February 25, 2021, the city of Gladewater adopted a resolution that denied SWEPCO's application and kept the existing rates in effect. A copy of that resolution is attached as Exhibit 2.

On February 11, 2021, the city of Marshall adopted a resolution that denied SWEPCO's application and kept the existing rates in effect.² A copy of that resolution is attached as Exhibit 3.

Additionally, SWEPCO appeals the rate decisions of Hallsville³ and Mount Enterprise. These two cities retained original jurisdiction over SWEPCO's rates, operations, and services and have 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 Section 36.108(a)(1) of the Public Utility Regulatory Act⁴ (PURA) — 90 days from the date the requested rate would otherwise become effective. Both Hallsville and Mount Enterprise granted this requested suspension. After doing so, however, Hallsville and Mount Enterprise 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.⁵ This appeal of Hallsville's and Mount Enterprise's failure to act is necessary to preserve coordinated system-wide rates throughout

² SWEPCO previously included the city of Marshall in its Third Appeal of Municipal Decisions, which addressed those municipalities that failed to timely deny or suspend the requested rates. Although the city of Marshall's resolution indicates it suspended SWEPCO's rate request, SWEPCO did not receive the suspension resolution. Nevertheless, at the request of Marshall's counsel, SWEPCO agreed to an extension of the suspension period to afford the city time to meet and act on SWEPCO's rate request. The Administrative Law Judges consolidated SWEPCO's Third Appeal with this docket in SOAH Order No. 3. SWEPCO is now appealing Marshall's decision on the requested rates out of an abundance of caution.

³ SWEPCO previously included the city of Hallsville 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 Hallsville's suspension resolution. Therefore, SWEPCO is now appealing Hallsville's post-suspension inaction on the requested rates out of an abundance of caution.

⁴ PURA is codified at Tex. Util. Code Ann. §§ 11.001–66.016.

⁵ PURA § 36.108(c).

SWEPCO's retail service territory. The Commission and Texas courts have recognized the value of providing and maintaining system-wide rates.⁶

III. Jurisdiction

The Commission has jurisdiction over this appeal in accordance with PURA §§ 32.001(b) and 33.051. PURA § 33.051 allows a party to a municipal proceeding, such as SWEPCO, to appeal to the Commission a "decision" of the municipal governing body. It further allows for the appeal to the Commission of a municipality's decision to not act on a rate request. 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.⁷

IV. Motion to Consolidate

SWEPCO requests that its appeal of the resolutions of the cities of Maud, Gladewater, and Marshall, and the inaction of the cities of Hallsville and Mount Enterprise be consolidated with Docket No. 51415. This appeal involves issues of law and fact common to those involved in Docket No. 51415, and a separate hearing of this appeal and Docket No. 51415 would result in unwarranted expenses, delay, or substantial injustice.

⁶ *City of Allen v Pub. 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. Pub. 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).

⁷ *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.").

V. Conclusion

SWEPCO respectfully requests the Administrative Law Judges enter an order consolidating this appeal of the resolutions of the cities of Maud, Gladewater, and Marshall, and the inaction of the cities of Hallsville and Mount Enterprise with Docket No. 51415. SWEPCO further respectfully requests that upon final hearing, SWEPCO be granted the rate relief as requested in its Petition and Statement of Intent.

Respectfully submitted,

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aepaustintx@aep.com (Service)

Leila Melhem
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400 West 15th Street, Suite 1520

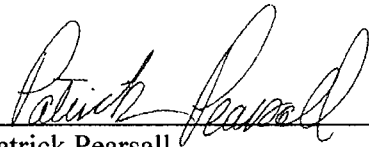
Austin, Texas 78701

Telephone: (512) 481-3320

Facsimile: (512) 481-4591

**AMERICAN ELECTRIC POWER SERVICE
CORPORATION**

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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 30, 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:

Polly Moore
City Secretary
City of Maud
135 Main Street
Maud, TX 75567

Ricky Tow
City Manager
City of Gladewater
519 E. Broadway Avenue
Gladewater, TX 75641

Lisa Agnor
City Manager
City of Marshall
401 S. Alamo
Marshall, TX 75671-0698

Kimberly Smith
City Secretary
City of Hallsville
115 W. Main
Hallsville, TX 75650

Rosena Becker-Ross
City Secretary
City of Mount Enterprise
103 W. Gregg Street
Mount Enterprise, TX 75681



Patrick J. Pearsall

RESOLUTION NO. 21-0216

A RESOLUTION BY THE CITY OF MAUD ("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 MAUD 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.

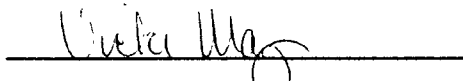
Section 8. This resolution shall become effective from and after its passage.

PASSED AND APPROVED this 22nd day of February, 2021.



Jimmy Clary, Mayor

ATTEST:



Vicki May, City Secretary

RESOLUTION NO. R-21-01

RESOLUTION BY THE CITY OF GLADEWATER (“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 GLADEWATER 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.

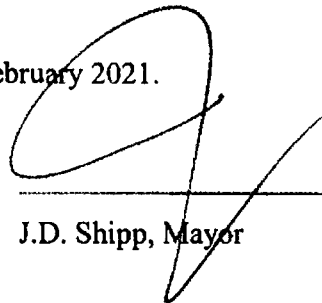
Section 5. The City Secretary or other appropriate city official shall provide a copy of this Resolution to Mr. Alfred R. Herrera, Herrera Law & Associates, PLLC, 4524 Medical Parkway, Austin, Texas 78756 and as a courtesy, provide a copy to SWEPCO's local representative.

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.

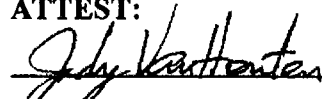
Section 8. This resolution shall become effective from and after its passage.

PASSED AND APPROVED this 25 day of February 2021.



J.D. Shipp, Mayor

ATTEST:



Judy Van Houten, City Clerk

RESOLUTION NO. R-21-05

**RESOLUTION BY THE CITY OF Marshall, Texas ("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 Marshall, Texas 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 11th day of February, 2021.

Joan W. Brown
Mayor

ATTEST:

D. Smart

City Secretary