

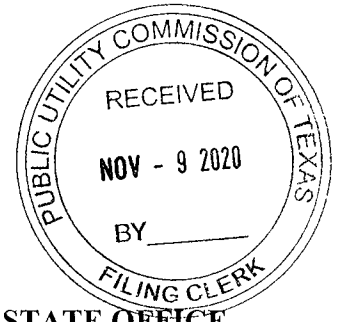


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SOAH DOCKET NO. 473-21-0538
PUC DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN
ELECTRIC POWER COMPANY FOR
AUTHORITY TO CHANGE RATES

§ BEFORE THE STATE OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS

**CITIES ADVOCATING REASONABLE DEREGULATION’S
MOTION TO COMPEL RESPONSE TO CARD RFI NO. 1-13 TO
SOUTHWESTERN ELECTRIC POWER COMPANY**

The Cities Advocating Reasonable Deregulation (“CARD”) hereby files its Motion to Compel Response to its Request for Information (“RFI”) No. 1-13 to Southwestern Electric Power Company (“SWEPCO”). Pursuant to 16 Tex. Admin. Code (“TAC”) § 22.144(e), motions to compel are due within five (5) working days from receipt of a party’s objections to discovery. CARD received SWEPCO’s objection to CARD’s RFI 1-13 on Monday, November 2, 2020; thus, CARD’s Motion to Compel is due no later than November 9, 2020. Therefore, CARD’s Motion to Compel is timely filed.

I. GOOD FAITH NEGOTIATIONS

Counsel for SWEPCO and CARD have engaged in good faith negotiations pursuant to 16 Tex. Admin. Code (“TAC”) § 22.144(d); however, the two parties were unable to reach an agreement.

II. LEGAL STANDARDS

The Administrative Law Judges (“ALJs”) are well aware of the scope of discovery: A party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action,¹ and may obtain discovery of information that is reasonably calculated to lead to the discovery of admissible evidence.²

The scope of discovery is broader than the “relevance” standard under the Texas Rules of Evidence. SWEPCO objected to CARD’s RFI No. 1-13 on the grounds of relevance and that it is

¹ Texas Rules of Civil Procedure (“TEX. R. CIV. P.”), Rule 192.3; and 16 Tex. Admin. Code (“TAC”) § 22.141(a).

² *Id.*

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outside of the scope of permissible discovery. “Relevant evidence” means information having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.³ But for purposes of discovery, a party may discover the existence, description, nature, custody, condition, location, and contents of documents and tangible things that constitute or contain matters relevant to the subject matter of the action.⁴ “It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”⁵

III. REQUEST FOR INFORMATION TO WHICH SWEPCO OBJECTED

SWEPCO objected to the following RFI:

- 1-13:** Identify planned environmental compliance projects for each SWEPCO generating plant, the specific regulations addressed by each project, and cost/benefit analyses supporting the selection of each compliance project.

IV. ARGUMENT

CARD RFI No. 1-13 seeks data within the scope of permissible discovery because it seeks information related to “cost trends,” which includes costs on a going forward basis with regard to SWEPCO’s “planned environmental compliance projects.” Due to the *prospective* nature of setting rates, CARD seeks information relating to SWEPCO’s planned environmental compliance projects for each of its generating stations so CARD may better ascertain whether the environmental compliance expenses incurred during the Test Year are representative of reasonable environmental compliance expenses moving forward.

Included in SWEPCO’s rate-filing package are expenditures associated with environmental compliance. For example, Mr. McMahon’s pre-filed testimony addresses the reasonableness of costs incurred to comply with environmental regulations.⁶ Mr. McMahon’s testimony makes reference to capital expenditures related to “environmental reliability” and notes that SWEPCO “uses multiple methods to ensure that its non-fuel generation O&M costs are reasonable, including

³ TEX. EVID. R. 401.

⁴ TEX. R. CIV. P. 192.3(b)

⁵ TEX. R. CIV. P. 192.3(a).

⁶ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, Application - *McMahon* Direct Testimony at 10-11 (Oct. 14, 2020) (“McMahon Direct at ___”).

budget controls, cost trends, and careful tracking of staffing levels at its power plants.”⁷

While the prudence of future capital projects will be reviewed in a future rate case, and if found prudent, included in rates in a future rate-making proceeding, those planned expenditures nevertheless inform whether the expenditures (capital and/or expenses) SWEPCO incurred in the Test Year are representative of “normal” levels of expenditures, even if those expenditures are not recurring year-to-year.⁸

Therefore, even though CARD RFI No. 1-13 seeks information pertaining to planned environmental compliance projects, the amount that SWEPCO *plans* to spend on environmental compliance projects in the future serves as a necessary barometer of whether SWEPCO’s environmental compliance expenses incurred in the Test Year are reasonable in this rate case proceeding. Consequently, CARD RFI No. 1-13 is relevant and within the scope of permissible discovery.

V. CONCLUSION AND PRAYER

For the above reasons, CARD requests the ALJs overrule SWEPCO’s objections to CARD’s RFI No. 1-13 and grant CARD’s Motion to Compel.

Respectfully submitted,

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⁷ McMahan Direct at 2

⁸ As the Administrative Law Judges (“ALJs”) are aware, a utility’s expenditures in particular test year are “normalized” to minimize the risk of over- or under-recovery of expenditures through rates

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**ATTORNEYS FOR CITIES
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CERTIFICATE OF SERVICE

I certify that I have served a copy of *CARD's Motion to Compel Response to CARD RFI No. 1-13* upon all known parties of record by fax and/or first class mail on this the 9th day of November, 2020.

/s/ Leslie Lindsey

Leslie Lindsey