



Control Number: 51415



Item Number: 434

Addendum StartPage: 0

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

PUBLIC UTILITY COMMISSION
OF TEXAS

**EASTMAN CHEMICAL COMPANY'S MOTION TO STRIKE REBUTTAL
TESTIMONY OF SOUTHWESTERN ELECTRIC POWER COMPANY**

COMES NOW, Eastman Chemical Company ("Eastman") and, pursuant to P.U.C. Procedural Rule 22.77, files this Motion to Strike the Rebuttal Testimonies of Charles J. Locke and C. Richard Ross, in their entirety, and portions of the Rebuttal Testimony of John Aaron and Jennifer Jackson filed on behalf of Southwestern Electric Power Company's ("SWEPCO").¹

I. OBJECTION - OVERVIEW

SWEPCO's direct case in support of certain transmission cost allocation proposals and a proposed new Transmission rate directed at behind-the-meter-generation ("BTMG") consisted of 21 lines of pre-filed testimony divided between two witnesses. When those proposals were entirely predictably challenged by Intervenor expert testimony, SWEPCO reacted by attempting to file in rebuttal the justification it should have and could have filed in its direct case—more than 40 pages of "rebuttal" testimony, 83 pages of exhibits (exclusive of documents to which hyperlinks are now provided) and four witnesses. Two of those witnesses appear for the first time in rebuttal.

Eastman objects to and moves to strike the entirety of the rebuttal testimonies of Charles J. Locke² and C. Richard Ross³ because the rebuttal testimony is undeniably the case SWEPCO should have filed in its direct case and did not. Only these two rebuttal testimonies even purport

¹ In the event that this Motion is denied, Eastman reserves its right to object on any evidentiary or other procedural bases to any of the testimonies that are subject to this Motion to Strike at the time that SWEPCO offers the testimonies. Eastman also includes a request for alternative relief to strike specific portions of the rebuttal testimonies of Charles J. Locke and C. Richard Ross, in the event that the Administrative Law Judges find only portions of the testimonies appropriate to be struck.

² Rebuttal Testimony of Charles J. Locke for Southwestern Electric Power Company (filed April 23, 2021) ("Locke Testimony").

³ Rebuttal Testimony of C. Richard Ross for Southwestern Electric Power Company (filed April 23, 2021) ("Ross Testimony").

to explain any justification for SWEPCO's requested new allocation of certain transmission costs⁴ and a proposed new Transmission Charge, applicable only to Eastman.⁵ SWEPCO failed to provide a *prima facie* case in its direct case to support this transmission cost allocation and new transmission rate associated with retail BTMG. Instead, SWEPCO chose not to offer in direct the testimony and "evidence" belatedly filed in rebuttal.

Everything in SWEPCO's delayed defense of its new treatment of BTMG could have been filed in direct. As a result, Eastman is now precluded from any opportunity to respond to what is essentially SWEPCO's direct case. SWEPCO witnesses Aaron and Jackson refer to the rebuttal testimonies of Mr. Locke and Mr. Ross in support of their conclusions related to transmission cost allocation and the new transmission rate. As explained below, the rebuttal testimonies of Mr. Locke and Mr. Ross should be stricken in their entirety and any reference made to and any reliance upon their testimonies should likewise be stricken in the rebuttal testimonies of Mr. Aaron and Ms. Jackson, and thereby excluded from evidence in this proceeding.

II. OBJECTIONABLE TESTIMONY

Eastman proposes to strike the following testimony for the reasons stated herein:

Page	Lines	Stricken Testimony	Basis for Motion to Strike
Rebuttal Testimony of Charles J. Locke for SWEPCO			
1-24		Strike Testimony in its entirety	Rebuttal Testimony is actually Direct Testimony that should have been presented when Direct Case was filed on October 2021 and, thereby deprives Eastman the ability to respond to SWEPCO's evidence to support its position on the BTMG issue. ⁶

⁴ See Direct Testimony of John O. Aaron at 18 (filed October 13, 2020) ("Aaron Direct").

⁵ See Direct Testimony of Jennifer L. Jackson at 23 (filed October 13, 2020) ("Jackson Direct"). The actual Transmission Rate is found in SWEPCO's Proposed Tariff at Schedule Q-8.8 at 103("SWEPCO Proposed Tariff-Transmission Rate Tariff") (filed October 13, 2020).

⁶ Mr. Locke even refers to his testimony as "Direct Testimony." See Locke Testimony at 4, lines 1-2.

Rebuttal Testimony of C. Richard Ross for SWEPCO			
1-18 And Exhibits		Strike Testimony in its entirety	Rebuttal Testimony is actually Direct Testimony that should have been presented when Direct Case was filed on October 2021 and, thereby deprives Eastman the ability to respond to SWEPCO's evidence to support its position on the BTMG issue.
Rebuttal Testimony of John Aaron for SWEPCO			
4	8-10	Strike "Please see . . . to SWEPCO."	References and reliance on rebuttal testimony of Mr. Ross should be stricken as a result of striking all of Mr. Ross' rebuttal testimony
Rebuttal Testimony of Jennifer L. Jackson			
12	14-18	Strike "SWEPCO's rebuttal witness . . . cos-of-service study."	References and reliance on rebuttal testimonies of Mr. Ross and Mr. Aaron should be stricken as a result of striking these witnesses' respective rebuttal testimonies.

III. OBJECTION AND MOTION TO STRIKE

A. Burden of Proof and Standards

PURA provides that "[i]n a proceeding involving a proposed rate change, the electric utility has the burden of proving that . . . the rate change is just and reasonable."⁷ SWEPCO has the burden of proof, including the burden of persuasion, which never shifts.⁸ This burden applies to proposed changes to allocation of transmission costs as the costs are included in the proposed revenue requirement and a new rate that purportedly recoups such costs from a discrete set of customers. The utility bears the burden of proof that each dollar of cost was reasonably and prudently invested, and enjoys no presumption that the costs reflected in its books were prudently incurred by simply opening its books to inspection.⁹ The utility "may meet its burden without proving the reasonableness and necessity of every individual dollar paid on a granular level, but

⁷ Public Utility Regulatory Act ("PURA"), Tex. Util. Code § 36.006.

⁸ *Entergy Gulf States, Inc. v. Pub. Util. Comm'n*, 112 S.W.3d 208-214-15 (Tex. App.—Austin 2003, pet. denied).

⁹ *Entergy Gulf States*, 112 S.W.3d at 214, citing *Public Util. Comm'n v. Houston Lighting & Power Co.*, 778 S.W.2d 195, 198 (Tex. App.—Austin 1989, no writ). See also *Gulf States Utils. Co v. Pub. Util. Comm'n*, 841 S.W.2d 459, 475 (Tex. App.—Austin 1992, writ denied); PURA §§ 36.051, .057(a); 16 TAC § 25.231(b).

may present evidence that is comprehensive.”¹⁰ If the utility’s direct case makes a *prima facie* showing, the burden of production (also known as the burden of going forward with the evidence) shifts to other parties.¹¹

Importantly, the notion of fairness and due process are also applicable. Section 2001.051 of the Texas Government Code provides, “[i]n a contested case, each party is entitled to an opportunity . . . to respond and to present evidence and argument on each issue involved in the case.”¹² As will be explained herein, SWEPCO’s rebuttal testimony on this issue is essentially its direct case and should have been submitted at the time it filed its rate package. SWEPCO is now, under the guise of “rebuttal,” attempting to file what should have been included as its direct case. If SWEPCO is permitted to succeed at this, it will have been excused from its burden of proof on this new treatment of BTMG, and Eastman will be denied the meaningful opportunity to respond and to present evidence in response to SWEPCO’s actual direct case to support its proposed revision in allocation of transmission costs and a new Transmission rate that is applicable only on Eastman.

B. Objection and Motion to Strike

There are two fundamental problems with SWEPCO’s approach to its proposal to allocate additional transmission costs related to “synchronized behind the meter generation”¹³ and a “synchronized self-generation rate.”¹⁴ First, SWEPCO did not meet its burden to establish a *prima facie* case to support the cost allocation or the new synchronization rate. SWEPCO did not proffer any rationale to support its new allocation of transmission costs or the new synchronized transmission rate other than stating what it had done. There is no justification or explanation of the BTMG issue – its origins, its controversies, why SWEPCO decided to include the transmission allocation in its revenue requirement for the first time in this rate case, why its determination to

¹⁰ *Entergy Tex., Inc. v. Pub. Util. Comm’n*, 490 S.W.3d 224, 240 (Tex. App.—Austin 2014, pet. denied); see also *Entergy Gulf States*, 112 S.W.3d at 214.

¹¹ *Entergy Texas*, 490 S.W.3d at 240; *Entergy Gulf States*, 112 S.W.3d at 214-15. See also *Complaint of McCord Development, Inc. Against CenterPoint Energy Houston Electric LLC*, SOAH Docket No. 473-19-0578, PUC Docket No. 48583, SOAH Order No. 4 (May 3, 2019) (discussing generally burden of proof, burden of persuasion, and burden of production); 1 TAC § 155.427.

¹² TEX. GOV’T CODE § 2001.051(a).

¹³ Direct Testimony of John O. Aaron at 18 (filed October 13, 2020) (“Aaron Direct”).

¹⁴ Direct Testimony of Jennifer L. Jackson at 23 (filed October 13, 2020) (“Jackson Direct”).

include roughly \$6 million in costs into the revenue requirement was just and reasonable, how and why it determined to set a brand-new rate to recoup most of the additional transmission costs from a single customer, and why the proposed new rate is just and reasonable. Second, SWEPCO waited until its rebuttal testimony to explain the issue and its rationale to support its inclusion of allocated transmission costs or why and from whom the new synchronized transmission rate would be applied; thereby denying Eastman and other parties the opportunity to respond or to present evidence to what is essentially SWEPCO's direct case. Both flaws are addressed below and independently form a basis to strike the above-referenced testimonies.

1. SWEPCO did not meet its burden of proof in its Direct Case and should not be allowed to try to meet that burden for the first time under the guise of "Rebuttal Testimony."

SWEPCO has the burden of proof to establish the just and reasonableness of its costs and to support any rate increase or any new rates. SWEPCO failed miserably with respect to its proposal to allocate approximately \$6 million in transmission costs related to behind-the meter generation loads and its proposed new rate, entitled "Transmission Charge" in its tariff, to recover the allocation of the transmission costs. SWEPCO is required to make the *prima facie* case in its direct case that it files to support its proposed costs and rates. When SWEPCO fails to meet that burden, then those costs in the revenue requirement can be disallowed and the proposed new rate rejected.¹⁵ In this instance, then, SWEPCO had the burden to identify what the allocated transmission costs were and how they are reported and identified; why, for the first time in this rate case, SWEPCO included allocated transmission costs of approximately \$6 million into its proposed revenue requirement; and why and how its proposed inclusion of allocated transmission costs and a new rate are just and reasonable – especially when SWEPCO had been aware of this issue since at least 2018, if not before, and the controversy surrounding reporting of loads that only occurred in rare instances and allocation of those costs to one primary customer that self-generated its own BTMG. A review of the testimony that SWEPCO proffered in its direct case related to this issue will show that SWEPCO did not even attempt to meet its burden of proof, and instead

¹⁵ See, e.g., SOAH Docket No. 473-19-3864, PUC Docket No. 49421, *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Proposal for Decision at 19-22 (ALJs found that CenterPoint did not present information demonstrating the prudence of the Major Underground Rehabilitation Program in its direct case or in discovery, but rather attempted to do so in rebuttal; as a result, the ALJs recommended a 35% disallowance). Eastman acknowledges that the CenterPoint case was settled and, therefore, the Commission did not reach this issue. But the precedent that failure to provide a *prima facie* case in direct is relevant in this instance.

proffered only the following 21 lines of testimony in its direct case related to the transmission costs allocated and a new proposed Transmission Rate:

Aaron Direct Testimony at p. 18 (lines 4-13)

Q. HOW ARE TRANSMISSION-RELATED COSTS ALLOCATION IN THE CLASS COST-OF-SERVICE STUDY COMPARED TO THE JURISDICTIONAL COST-OF-SERVICE STUDY?

A. Transmission-related costs are allocated on an A&E 4CP basis whereas the jurisdictional cost-of-service study allocates transmission-related costs on a 12CP basis. The A&E 4CP allocation for transmission-related costs differs from the A&E 4CP allocation used for production-replaced costs because the transmission allocation includes synchronized behind the meter generation that is included in SWEPCO's transmission load responsibility in the SPP. This treatment is consistent with the cost causation concepts applied in SWEPCO's cost-of-service studies. . . .

Jackson Direct Testimony at 22 (Question) and 23 (lines 4-16) (Answer)

Q. PLEASE DESCRIBE THE INTERRUPTIBLE POWER SERVICE, STANDBY SERVICE, STANDBY AS-AVAILABLE POWER SERVICE, THE SUPPLEMENTARY, BACK-UP, MAINTENANCE, AND AS AVAILABLE POWER RIDERS AND THE OFF-PEAK RIDER.¹⁶

A. . . .¹⁷ SWEPCO is also introducing a provision for customers with self-generation synchronized with the SWEPCO transmission system whose load is required to be included in SWEPCO's load ration share allocation by the SPP. The synchronized self-generation rate is determined first by dividing the total Commercial and Industrial class transmission functional revenue requirement by the total class non-coincident peak NCP kW to arrive at a transmission demand unit cost. The unit cost is then multiplied by 50% to account for the additional transmission demand cost not associated with the reservation backup charge that includes approximately 50% of the class functional transmission demand cost. The amount of revenue requirement associated with the synchronized self-generation load is removed from the total class revenue requirement and the remaining revenue requirement change is applied to the kW and kWh charges and other SBMAA charges within the class.¹⁸

¹⁶ Eastman notes that the new "Transmission Rate" is not mentioned in the question.

¹⁷ Eastman notes that introduction of a new "Transmission Rate" starts in the middle of a paragraph under the question.

¹⁸ In SWEPCO's proposed tariff, SWEPCO defined the new "Transmission Charge" of \$2.20 per kW of contract demand "for Backup Maintenance and, As Available Standby Service" and states that a customer with BTMG self-generation would be required to pay the monthly transmission charge based on the customer's contract demand for Back-up, Maintenance, and As-Available Service. *See* SWEPCO Rate Filing Package, Schedule Q8.8 at 103.

This is the sum total of direct evidence that SWEPCO proffered to meet its burden of proof to establish a new allocation transmission costs of approximately \$6 million into its revenue requirement and to create a new Transmission Rate applicable to Eastman. This testimony barely describes the changes sought. SWEPCO did not even attempt in its direct case to establish the inclusion of additional transmission costs in its revenue requirement or its new Transmission Rate were just and reasonable. This failure is especially egregious when it knows the proposal promises an unprecedented attempt to impose such a large new charge upon a single customer in a single case of approximately \$3.6 million annually – even though Eastman is not actually taking this full load amount at any time. Eastman submits that these 21 lines can hardly be considered an attempt to be “comprehensive” or that the evidence constituted a *prima facie* case.¹⁹

With the dearth of SWEPCO explanation or justification of the BTMG issue, Eastman proffered the direct testimony of Ali Al-Jabir.²⁰ Without a direct case to respond to, Mr. Al-Jabir was forced to provide context for opposing the proposal. He was compelled to explain the issue, how and when it developed in 2017-2019, and the fallacies in SWEPCO’s inclusion of transmission costs associated with behind-the-meter generated transmission and the new transmission rate, while only being able to respond to the above-referenced statements by Mr. Aaron and Ms. Jackson.²¹

Faced with the testimony of Mr. Ali and Mr. Pollock for TIEC, recognizing the significant hole in its direct case to support its inclusion of allocated transmission costs and a brand new Transmission Charge related to BTMG synchronized load, in its rebuttal case, SWEPCO submitted for the first time the testimony of two new witnesses – Charles J. Locke and C. Richard Ross – which, as noted, essentially submits SWEPCO’s direct case to support its allocation of transmission costs and the new Transmission Rate.²² Under the disguise of “rebuttal testimony”,

¹⁹ *Entergy Tex., Inc. v. Pub. Util. Comm’n*, 490 S.W.3d 224, 240 (Tex. App.—Austin 2014, pet. denied); see also *Entergy Gulf States*, 112 S.W.3d at 214.

²⁰ In addition to Mr. Al-Jabir’s testimony, the Texas Industrial Energy Consumers (“TIEC”) filed the Direct Testimony of Jeffry Pollock that addressed the issue. See Direct Testimony of Jeffry Pollock at 7-8, 13-25, and 36-40.

²¹ Direct Testimony and Exhibits of Ali Al-Jabir on behalf of Eastman Chemical Company, filed March 31, 2021.

²² Eastman acknowledges that SWEPCO makes these two pieces of testimony appear to be “rebuttal” through questions that ask the witness to “rebut” or “respond” to statements and/or conclusions by Mr. Al-Jabir and Mr. Pollock. But the “rebuttal” essentially lays out the direct case to support SWEPCO’s inclusion of an additional \$6 million in transmission costs and a new Transmission Rate by addressing its position as to what the issue is, why it

Mr. Locke proffered, for the first time, what the issue was (claimed decision by SPP to require Network Customers, such as SWEPCO, to report gross transmission load for retail BTMG customers, such as Eastman), why SWEPCO is including the allocated SPP transmission costs in its revenue requirement, and why SWEPCO's actions are consistent with FERC Orders and other policies. SWEPCO went further and proffered the "rebuttal testimony" of C. Richard Ross that explained how SWEPCO operates under the SPP; SPP determination of charges to SWEPCO; an explanation of the BTMG issue, including retail and wholesale BTMG; and why SWEPCO's inclusion of the approximately \$6 million in transmission costs is reasonable. Then, as if 16 pages of Mr. Ross' testimony were not enough "rebuttal", Mr. Ross also attached Exhibit CRR-1R comprised of 81 pages of a presentation from the SPP related to Network Load Reporting, dated March 28, 2018. In other words, SWEPCO went from 21 lines addressing this issue of testimony in its direct case to support its allocation of \$6 million in costs and establishment of a new rate to 40 pages of "rebuttal" testimony and 83 pages of exhibits (excluding the links to additional material) attached related to the issue – all of which Eastman is seeing for the first time.

Eastman submits that SWEPCO did not meet its initial burden of proof to establish the just and reasonableness of the allocation of BTMG transmission costs or its Transmission Charge. SWEPCO should not be allowed to meet that burden of proof in filing rebuttal testimony, that in essence with these two new witnesses, is its direct case.

2. SWEPCO cannot be allowed to present its direct case in rebuttal that prevents Eastman its right to respond.

SWEPCO knew at the time this case was filed that TIEC and Eastman opposed any attempt by SWEPCO to impose a new interpretation of an existing tariff;²³ it knew that Eastman is the sole customer in this case that is impacted by this issue to the tune of an estimated \$3.96 million increase in annual costs paid to SWEPCO – even though it is not taking any additional electricity from SWEPCO; and it knew that the proposed new Transmission Rate would recoup a significant

included the allocated transmission costs, and who it is seeking to recover those costs from. That is direct testimony regardless of the manner that the questions are posed in the rebuttal testimonies.

²³ SWEPCO Response to TIEC RFI 1-7 ("SWEPCO is aware that ITEC has taken issue with SPP's application of its OATT to retail behind-the-meter load").

portion of those costs solely from Eastman.²⁴ SWEPCO cannot credibly argue that it is surprised the proposed dramatic change in treatment of BTMG and Eastman specifically would be strongly resisted or questioned from the outset. SWEPCO's strategic choice to reserve filing its direct case for its rebuttal testimony, now precludes Eastman from the opportunity "to respond and to present evidence and argument on" the BTMG issue as it is now posed by SWEPCO in the "rebuttal" testimonies of Mr. Locke and Mr. Ross. Other than 21 lines of direct testimony quoted above that, at best, is vague, SWEPCO chose not to justify, explain, or support in its direct case its position regarding inclusion of additional allocated transmission costs or why and how its Transmission Rate of \$2.20 per kW per month on contracted stand-by or maintenance power is just and reasonable.

The "rebuttal" testimonies of Mr. Lock and Mr. Ross appear to be that justification – what is the issue, why it is important, how SWEPCO interprets its obligations with respect to inclusion of allocated retail BTMG gross loads and recoupment of those costs, and how and why the new Transmission Rate is just and reasonable. This tactic is exactly what Section 2001.051 of the Texas Administrative Procedure Act precludes by its protection of fairness and due process. Going from 21 lines of direct testimony (innocuous testimony at best) to 123 pages of testimonies and exhibits that no one – Eastman, TIEC, or any other party – has the opportunity to fully respond to or to fully oppose is simply not adherence to the requirements of Section 2001.051.

SWEPCO cannot be allowed to lay behind the log and barely mention that it included allocation of some SPP allocated transmission costs (not quantified in the testimony) and establishment of a new transmission rate (without identifying the rate or justification) in its direct – particularly when SWEPCO has been involved in discussing and advocating the BTMG issue to SPP and even at FERC long before it filed its direct case in October 2020. SWEPCO was involved with and knew that the retail BTMG reporting was a disputed issue at FERC and SPP starting at least in 2018.²⁵ SWEPCO knew and participated in meetings with SPP and impacted customers,

²⁴ SWEPCO Response to TIEC RFI 6-4(a) and TIEC RFI 11-1(b) ("One customer in the LLP Transmission class was included in determining the \$5.7 million impact for the test year.")

²⁵ See SWEPCO Response to TIEC RFI 6-3(a) (reference to "a report delivered to the SPP Market and Operations Policy Committee in March 2018").

such as Eastman, in proceedings as far back as 2018.²⁶ SWEPCO knew that the other wires companies in SPP do not all treat this issue uniformly. SWEPCO knew that inclusion of the transmission costs and creation of a new rate to recoup those costs would be controversial when it filed its direct testimony – especially since it was attempting to recoup a significant portion of the allocated transmission costs from Eastman by immediately increasing charges to Eastman by millions of dollars annually.

SWEPCO affirmatively and strategically decided to not meaningfully explain or justify the issue in its direct and not provide any rationale as to why inclusion of these additional allocated transmission costs were reasonable or why the new Transmission Rate applicable only to retail BTMG self-generated customers – meaning Eastman – was just and reasonable. To now file its “rebuttal” to Eastman’s and TIEC’s testimonies should not be allowed at this stage in the proceeding. There are statements made throughout these two testimonies with which Eastman does not agree but is now denied the opportunity for full response. SWEPCO should not be allowed to meet its burden of proof on this issue in rebuttal, and for that reason alone, the testimonies of Mr. Locke and Mr. Ross should be stricken in their entirety. In addition, since Ms. Jackson and Mr. Aaron refer to these new witnesses’ testimony, any reference in their testimonies should also be stricken.

Eastman has provided ample rationale for the testimonies of Mr. Locke and Mr. Ross to be stricken in their entirety. However, in the event that the Administrative Law Judges determine that some parts of Mr. Locke’s and Mr. Ross’ testimonies constitute rebuttal, in the alternative, Eastman moves the following portions of their respective testimonies be stricken as being wholly testimony that should have been presented in SWEPCO’s direct case.

Eastman’s alternative request for testimony to be stricken:

Page: Lines	Stricken Testimony	Basis for Motion to Strike
Rebuttal Testimony of Charles J. Locke for SWEPCO		
p. 2:16	“In my rebuttal testimony, . . . in SPP.”	This sentence references the section referenced below that provide SWEPCO’s claimed basis for inclusion of the allocated transmission costs.

²⁶ See SWEPCO Response to TIEC RFI 6-3(c) (admission that “. . . AEP participated in discussions with SPP other SPP Members concerning SPP’s practice regarding behind-the-meter load”)

Page: Lines	Stricken Testimony	Basis for Motion to Strike
p. 3:1 thru p. 11:7	Section III of testimony entitled “III. Network Load Reporting Requirements” through the end of this section ending with “. . . it would be appropriate for Network Customers to adjust their reported Network Loads accordingly at that time.”	This Section explains SWEPCO’s claimed bases to include allocated transmission costs and does not rebut any aspect of direct testimonies of Mr. Al-Jabir or Mr. Pollock. This portion should have been included in direct testimony to support the allocation of costs.
Rebuttal Testimony of C. Richard Ross for SWEPCO		
p. 3:15	“In my rebuttal testimony, I address . . . in SPP.”	This sentence references the section referenced below that provide SWEPCO’s claimed basis for inclusion of the allocated transmission costs.
p. 4:1 thru p. 6:7	Section III of testimony entitled “III. SPP’s Provision of Network Transmission Service” through the end of this section ending with “. . . is not being applied properly can submit a complaint to the FERC.”	This Section explains SWEPCO’s claimed bases to include allocated transmission costs and does not rebut any aspect of direct testimonies of Mr. Al-Jabir or Mr. Pollock. This portion should have been included in direct testimony to support the allocation of costs.
p. 6:17 thru p. 6:21	“As noted above, . . .” through the end of the paragraph ending “. . . Customer’s load is physically located.”	This paragraph references Section III of the testimony and should be stricken for the reasons stated above.
p. 7:7 thru p. 8:10	Beginning with “Q. WHAT IS MEANT BY THE PHRASE BTMG?” through the answer ending “Consequently, BTMG is appropriately included in SWEPCO’s monthly peak load data.”	These two Q and As explain SWEPCO’s view of the basics of the BTMG issue and reasons that SWEPCO includes the load in reports to SPP – the claimed basis for inclusion of the allocated costs. These statements do not rebut any aspect of direct testimonies of Mr. Al-Jabir or Mr. Pollock. This portion should have been included in direct testimony to support the allocation of costs.
p. 8:18 thru p. 9:2	Beginning with “Rather, as noted above, . . .” through the end of the sentence with reference to Mr. Locke “addresses the SPP OATT requirements in more detail in his rebuttal testimony.”	This statement is the claimed basis for inclusion of the allocated transmission costs and cross-references Mr. Locke’s testimony that is the subject of the Motion to Strike above (Section III of Mr. Locke’s testimony).

Page: Lines	Stricken Testimony	Basis for Motion to Strike
p. 9:8 thru p. 9:22 and Exhibit CRR-1R (pages 2-82) ²⁷	Beginning with “Q. HAS TIEC EXPRESSED DISAGREEMENT DIRECTLY TO . . .” through the end of the Answer to that question, ending with “over the application of the SPP OATT is with SPP, not SWEPCO.” Exhibit CRR-1R is an SPP presentation related to SPP’s alleged conclusion.	This Q & A, while in rebuttal format, provide the background that SWEPCO knew about the controversy of this issue and should have been provided in direct because SWEPCO is using this information as a basis for inclusion of the allocation transmission costs. The exhibit, a portion of which existed in March 2018 (pp. 3-36 of exhibit) – Is information which formed SWEPCO’s claimed basis and/or justification for including allocated transmission costs. This information should have been presented in direct to establish that the inclusion of such costs was just and reasonable.
p. 10:5 thru p. 10:10	Beginning with “SWEPCO is following . . .” through the end of that answer, ending with “. . . in a simultaneous loss of load.”	This portion of the Answer is SWEPCO’s position as to why it is including ~\$6 million in allocated transmission costs. That position should have been stated in SWEPCO’s direct to establish why the costs are just and reasonable.
p. 11:6 thru 11:19	Beginning with “Q. MESSRS. POLLOCK AND AL-JABIR . . .” through the end of the Answer, ending with “. . . must be included in loads used for transmission billing by SPP.”	This Q&A, while in rebuttal format, establish SWEPCO’s claimed rationale and justification for inclusion of the allocated transmission loads. This position and information should have been included in direct.
p. 12:1 thru 13:5	Beginning with “Q. MESSRS. POLLOCK AND AL-JABIR . . .” through the end of the Answer, ending with “. . . or the loss of generation would result in the concomitant loss of load.”	Again, while this Q&A is posed as a rebuttal to testimonies of TIEC and Eastman, the content of the testimony is the claimed basis of why the Transmission Rate is not charged to all BTMG customers and why SWEPCO chose to include the Eastman load. This information should have been included in direct to enable Eastman to respond.

²⁷ Eastman specifically reserves its right to lodge evidentiary objections to this exhibit and does not waive those objections through the filing of this Motion.

IV. CONCLUSION

For all of the reasons stated herein, Eastman respectfully requests that the rebuttal testimonies of Charles J. Locke and C. Richard Ross be stricken in their entirety and the above-referenced portions of the rebuttal testimonies of Mr. Aaron and Ms. Jackson be struck because SWEPCO did not meet its initial burden of proof to provide a *prima facie* case to support inclusion of allocated transmission costs related to retail BTMG contractual load or the new related Transmission Rate and it cannot be allowed to present its direct case on this issue in rebuttal. In the alternative, Eastman requests that the specific portions of the testimonies of Mr. Locke and Mr. Ross be stricken because the testimony, including claims and/or bases for SWEPCO's inclusion of allocated transmission costs and the new Transmission Rate, should have been presented in direct testimony. Eastman further requests any such other relief it is shown to be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served by electronic mail, on all parties of record in this proceeding on May 4, 2021, in accordance with the Orders Suspending Rules, issued in Project No. 50664.

A handwritten signature in black ink, appearing to read 'K. Mudge', is written over a horizontal line.

Katherine K. Mudge