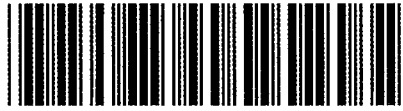




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SOAH DOCKET NO. 473-21-0538
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APPLICATION OF SOUTHWESTERN § BEFORE THE STATE OFFICE
ELECTRIC POWER COMPANY FOR § OF
AUTHORITY TO CHANGE RATES § ADMINISTRATIVE HEARINGS

**SOUTHWESTERN ELECTRIC POWER COMPANY'S OBJECTIONS TO
TEXAS INDUSTRIAL ENERGY CONSUMERS' THIRTEENTH
SET OF REQUESTS FOR INFORMATION**

Southwestern Electric Power Company (SWEPCO) objects to the Thirteenth Set of Requests for Information (RFIs), Question Nos. 13-2, 13-4, and 13-10, from Texas Industrial Energy Consumers (TIEC) because the requests seek information that is not relevant, or is unduly burdensome, and not calculated to lead to the discovery of admissible evidence in this proceeding.

I. NEGOTIATIONS

SWEPCO received TIEC's Thirteenth Set of RFIs on April 30, 2021. Counsel for SWEPCO and TIEC have attempted to negotiate these objections diligently and in good faith. The negotiations were unsuccessful. In accordance with SOAH Order No. 2, these objections are timely filed.

II. RESERVATION OF RIGHTS

Based on diligent inquiry, SWEPCO believes that all necessary objections have been raised in this pleading. SWEPCO does not; however, waive its right, if documents are subsequently found that are responsive to these requests, to claim that such documents are confidential or privileged if such an objection is determined to be appropriate.

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III. OBJECTIONS

Request for Information

13-2 Please provide all responses to the 2017 and 2019 surveys identified on page 22 of Mr. Locke's testimony.

Objection

SWEPSCO objects to this request because it seeks information that is irrelevant and outside the scope of permissible discovery.¹ The Commission's rules define the scope of permissible discovery: "Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding."² Information is relevant to the subject matter of a proceeding if the information "has any tendency to make a fact more or less probable than it would be" without the information and that "fact is of consequence in determining the action."³ Although the scope of discovery in Commission proceedings is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute's resolution.⁴ Therefore, discovery requests must be reasonably tailored to include only relevant matters.

This request concerns Mr. Locke's rebuttal testimony addressing TIEC witness Pollock's testimony recommending a \$5.7 million disallowance of SWEPSCO's test year transmission charges from SPP. Mr. Pollock's recommendation stems from his contention that SWEPSCO's inclusion of retail Behind the Meter Generation (BTMG) in its monthly network load and the

¹ See Tex. R. Civ. Proc. 192.3(a); 16 TAC § 22.141 (noting scope of discovery to the subject matter in the proceeding); *In re Master Flo Valve Inc.*, 485 S.W.3d 207, 213 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("Discovery requests must be limited to the relevant time, place and subject matter.").

² 16 TAC § 22.141(a).

³ Tex. R. Evid. 401.

⁴ *In re Nat'l Lloyd's Ins Co.*, 532 S.W.3d 794, 808 (Tex. 2017) (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding)).

corresponding increase in SWEPCO's load ratio share is not required by the SPP Open Access Transmission Tariff (OATT)—which TIEC further alleges improperly increases SPP's allocation of transmission charges to SWEPCO. To the contrary, Mr. Locke's testimony explains that the SPP OATT, consistent with the Federal Energy Regulatory Commission (FERC) precedent and policy, does indeed require BTMG to be included in the calculation of network load.⁵ What is required under the SPP OATT and whether the FERC-approved tariff is susceptible to the competing interpretation urged by Mr. Pollock is a legal question that is properly raised before FERC.⁶ Significantly though, none of the documents requested in this RFI lead to information that can assist in the legal interpretation of the SPP OATT. Moreover, the proper legal interpretation of this FERC-approved tariff is not actually necessary to resolve the issues before the Commission in this base rate case.

The information sought in TIEC 13-2 is not related to SWEPCO's request for relief in this case. The survey responses TIEC requests and what other network customers may have thought about the load reporting requirements or proposed exception, and what any member may have stated in response to these surveys, do not bear on SWEPCO's understanding of SPP's directives. Nor could these survey responses clarify or dispute the basis for SWEPCO's SPP OATT related transmission charges. At most, these survey responses could only tend to show the considerations and basis for SPP staff's development of a future proposal for stakeholders to enable SPP to seek FERC-approval of exceptions to the general current policy.⁷ As such, these survey responses are not relevant to the issue of SPP OATT transmission charges in this case. To that end, the

⁵ Rebuttal Testimony of Charles J. Locke at 5-8.

⁶ *See Roberts Exp., Inc. v. Expert Transp., Inc.*, 842 S.W.2d 766, 771 (Tex. App.—Dallas 1992, no writ) (“Like statutory interpretations, tariff interpretations involve mainly questions of law.”).

⁷ Rebuttal Testimony of Charles J. Locke at 10-11.

information TIEC seeks through this RFI is not intended to aid the resolution of any matter at issue in this case. Accordingly, the request is not reasonably calculated to lead to the discovery of admissible evidence.⁸

Request for Information

13-4 Please provide all SPP documents relating to or discussing the educational information referenced in the preceding RFI.⁹

Objection

SWEPSCO objects to this request because it seeks information that is irrelevant, outside the scope of permissible discovery, and will not aid in the resolution of matters in this case.¹⁰ SWEPSCO also objects because responding to this request is unduly burdensome—such that the burden and expense undertaken to respond will far exceed the likely benefits associated with the information provided, especially considering the related information already provided.¹¹ SWEPSCO provided TIEC with information responsive to RFI 13-3, which requested the educational information SPP provided its stakeholders. The information requested in 13-4 covers “all SPP documents relating to or discussing” the documents it has already provided in response to 13-3. SWEPSCO understands this request to seek not only drafts of the materials that have been provided and materials and communications related to the development of those materials but any and all communications to any members both before and after these materials were disseminated.

⁸ Tex. R. Civ. Proc. 192.3(a).

⁹ TIEC Request 13-3 states: Referring to page 23, lines 2-5 of Mr. Locke’s testimony, please provide all such “educational information” that SPP provided to its stakeholders.

¹⁰ See *supra* at 2 (providing standard for relevance).

¹¹ See, e.g., *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999) (explaining that courts are explicitly encouraged to limit discovery “the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.”); see also *In re State Farm Lloyds*, 520 S.W.3d 595, 605 (Tex. 2017) (discussing proportionality limitations of Rule 192.4).

Not only are the drafts and materials related to development and preparation of the education materials cumulative and duplicative, that information is not relevant because that information was not provided to SPP members. To a similar extent, documentation of the communications about those materials is irrelevant to SWEPCO's request for relief in this proceeding. The information sought in this request is not intended to aid in the resolution of issues in this case. Accordingly, these requests are not reasonably calculated to lead to the discovery of admissible evidence.¹²

Request for Information

13-10 Identify all other SPP network customers that have load served by retail BTM generation but have not reported it as part of monthly network load in the past 5 years.

Objection

SWEPCO objects to this requests because it seeks information that is irrelevant, outside the scope of permissible discovery, and will not aid in the resolution of matters in this case.¹³ As explained above, the contested issue of whether the SPP OATT requires BTMG to be included in the calculation of network load is ultimately a legal matter to be addressed by FERC. The information sought by this RFI will not lead to information concerning the legal interpretation of the SPP OATT. And notwithstanding the parties' conflicting interpretations of the tariff, resolution of that legal question is not necessary to address the issues central to SWEPCO's request for relief in this base rate case. Whether there are SPP network customers that have load served by retail BTMG that they have not reported has no bearing on whether SWEPCO has followed the directives of SPP consistent with FERC precedent and policy and reported its load in compliance with the SPP OATT. Additionally, whether SPP is aware of whether other SPP network customers have load served by retail BTMG and have not reported it also has no bearing on whether

¹² Tex. R. Civ. Proc. 192.3(a).

¹³ See *supra* at 2 (providing standard for relevance).

SWEPCO has followed the directives of SPP consistent with FERC precedent and policy and reported its load in compliance with the SPP OATT. Indeed, whether other members do or do not correctly report their network load is ultimately irrelevant to both SWEPCO's request in this case *and* to the asserted legal question of what the SPP OATT requires. Therefore, this information is not relevant to the issues in this case. Because the information sought in this request will not aid in the resolution of the matters of this case, this request is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

Additionally, each of the RFIs SWEPCO objects to herein seeks company-specific load information that is the confidential information of non-parties. SPP treats the survey responses—which contain customer-specific load information provided by entities that are not parties to this proceeding—as confidential. SPP is not free to disclose this information to any party who seeks it absent an order from the ALJs. SWEPCO respectfully requests the ALJs not require SPP or SWEPCO to provide the confidential information of SPP's network customers, especially in this instance when the information is not relevant to the determination of the issues in this case.

IV. CONCLUSION

For the foregoing reasons, SWEPCO respectfully requests that its objections to TIEC's Thirteenth Set of RFIs be sustained. SWEPCO further requests any other relief to which it may be justly entitled.

Respectfully submitted,

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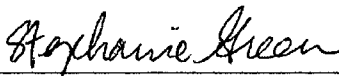
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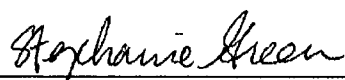
DUGGINS WREN MANN & ROMERO, LLP

By: 
Stephanie Green

**ATTORNEYS FOR SOUTHWESTERN
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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 May 6, 2021, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter.



Stephanie Green