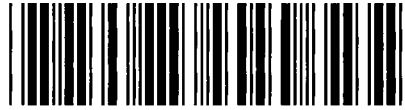




Control Number: 51415



Item Number: 57

Addendum StartPage: 0

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

**SOUTHWESTERN ELECTRIC POWER COMPANY’S RESPONSE TO  
CITIES ADVOCATING REASONABLE DEREGULATION’S MOTION TO COMPEL**

The Administrative Law Judges (ALJs) should deny Cities Advocating Reasonable Deregulation’s (CARD) motion to compel Southwestern Electric Power Company’s (SWEPCO) response to CARD Request for Information (RFI) 1-13. The RFI’s plain language indicates, and CARD’s motion to compel confirms, that the information sought concerns investment associated with planned environmental compliance projects that have not been incurred and are not addressed in this case. Such information will not aid in the resolution of any issue in this case. Accordingly, CARD’s motion to compel should be denied because the request is not reasonably calculated to lead to the discovery of admissible evidence.<sup>1</sup>

**I. CARD MOTION TO COMPEL**

CARD RFI No. 1-13 requests the following information:

- 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.

On November 2, 2020, SWEPCO objected to the request because it seeks information that is irrelevant. CARD filed a motion to compel on November 9, 2020. Consistent with Tex. Admin. Code (TAC) § 22.144(f), this response is timely filed.<sup>2</sup>

<sup>1</sup> Tex. R. Civ. Proc. 192.3(a).

<sup>2</sup> Because the Public Utility Commission of Texas (Commission) was closed on November 11, 2020, in observance of Veteran’s Day, the fifth working day after the receipt of CARD’s motion to compel is November 17, 2020.

## II. RESPONSE

CARD No. 1-13 concerns *future* environmental compliance projects. CARD concedes as much in its motion.<sup>3</sup> To the extent SWEPCO has planned environmental compliance projects, those projects are not addressed in this case, have not been placed in service, and may not be undertaken in the future. Moreover, there are no expenses associated with any planned projects in the Test Year.

CARD admits that “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.”<sup>4</sup> Despite this concession, CARD attempts to manufacture relevance, arguing that the requested information concerns “cost trends” and the planned expenditures “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.”<sup>5</sup> And CARD notes that in a rate case a utility’s expenditures in a particular test year are “normalized” to minimize the risk of over- or under-recovery.<sup>6</sup> But this is not how cost-of-service ratemaking works.

Although it is true that utility rates are set for the future, the purpose of this docket is to evaluate SWEPCO’s proposed cost-of-service and prospective rates based on an historical test year. The two components of cost-of-service are allowable expenses and return on invested

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<sup>3</sup> CARD Motion to Compel at 3.

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 3, n.8. CARD does not provide any support for its suggestion that “expenditures” are routinely normalized. Although test-year billing determinants are routinely normalized to account for weather-related impacts, test-year expenses are not. Moreover, normalizing invested capital—e.g., future environmental compliance projects—is entirely inconsistent with the Commission’s cost-of-service rule.

capital.<sup>7</sup> In determining a utility's allowable expenses under the Commission's cost-of-service rule, "only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered."<sup>8</sup> Invested capital, often referred to as a utility's rate base, includes "as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public."<sup>9</sup>

SWEPCO's proposed cost-of-service in this case does not include any projected expenses or invested capital that may be ultimately associated with future environmental compliance projects. Nor does the existence of a plan for future environmental compliance projects that may or may not be implemented serve as the basis for assessing a trend in historical expenses and investment. CARD cites no precedent or Commission rule suggesting otherwise.

It is true, as CARD notes, that the scope of discovery in Commission proceedings is broad and that to be relevant information need only be "reasonably calculated to lead to the discovery of admissible evidence."<sup>10</sup> But the standard is not without limit.<sup>11</sup> To that end, requests must show a reasonable expectation of obtaining information that will aid in the dispute's resolution.<sup>12</sup> Moreover, to be relevant, information must make the existence of a fact that is of consequence to the determination of the current action more or less probable than it would be without

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<sup>7</sup> 16 TAC § 25.231(a).

<sup>8</sup> 16 TAC § 25.231(b); *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at Finding of Fact No. 174A (Mar. 19, 2018).

<sup>9</sup> 16 TAC § 25.231(c)(2).

<sup>10</sup> Tex. R. Civ. Proc. 192.3(a).

<sup>11</sup> "As parties are not entitled to unlimited discovery, the trial court must impose reasonable discovery limits." *In re Sun Coast Rest., Inc.*, 562 S.W.3d 138, 146 (Tex. App.—Houston [14th Dist.] 2018, no pet.); *see also 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.").

<sup>12</sup> *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)).

the information.<sup>13</sup> Therefore, discovery requests must be reasonably tailored to include only relevant matters. That would necessarily exclude matters to be included in future proceedings, especially those projects not included in the application before the Commission and that may not even be placed in service in the future. As discussed above, CARD's request will not yield any information that bears on SWEPCO's proposed cost-of-service—i.e., “the subject matter of the pending action.” Simply put, CARD RFI 1-13 is irrelevant and completely unrelated to the subject matter of the proceeding and is not reasonably calculated to obtain information that will aid in the resolution of any issue in this case. Accordingly, CARD's motion to compel should be denied.

### III. CONCLUSION

For the foregoing reasons, SWEPCO respectfully requests that CARD's motion to compel be denied, that its objections CARD's First Set of RFIs be sustained, and that it be granted any other relief to which it may be justly entitled.

Respectfully submitted,

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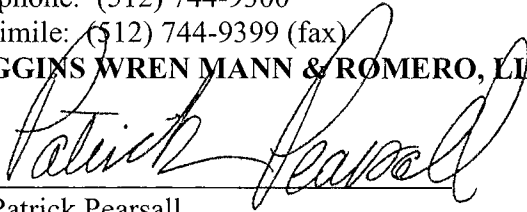
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**AMERICAN ELECTRIC POWER SERVICE  
CORPORATION**

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<sup>13</sup> Tex. R. Evid. 401. “Information is patently irrelevant when reasonable minds would not differ that it has no tendency to prove or disprove any issue involved in the subject matter of the suit . . .” *In re Sun Coast Rest., Inc*, 562 S.W.3d at 146.

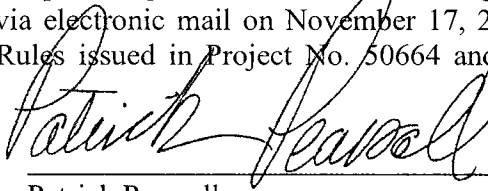
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**CERTIFICATE OF SERVICE**

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 November 17, 2020, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter.

  
Patrick Pearsall