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

**TEXAS COTTON GINNERS' ASSOCIATION'S
INITIAL POST-HEARING BRIEF**

Dated: June 17, 2021

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GLOSSARY OF TERMS

4CP	Four Coincident Peak
A&E	Average and Excess Demand
ALJ	Administrative Law Judge
BMG	Behind the Meter Generating
CARD	Cities Advocating for Reasonable Deregulation
COSS	Cost of Service Study
DCRF	Distribution Cost Recovery Factor
ERCOT	Electric Reliability Council of Texas
ETSWD	East Texas Salt Water Disposal Company
kW	Kilowatt
kWh	Kilowatt Hour
MDD	Maximum Diversified Demand
O&M	Operations and Maintenance
OPUC	Office of Public Utility Counsel
PFD	Proposal For Decision
PUC	Public Utility Commission of Texas
PURA	Public Utility Regulatory Act
ROE	Return on Equity
ROR	Rate of Return
SAIDI	System Average Interruption Duration Index
SAIFI	System Average Interruption Frequency Index
SWEPCO	Southwestern Electric Power Company
TAC	Texas Administrative Code
TCRF	Transmission Cost Recovery Factor
TCGA	Texas Cotton Ginners' Association
TIEC	Texas Industrial Energy Consumers

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INITIAL POST-HEARING BRIEF**

Texas Cotton Ginnners' Association respectfully submits its Initial Post-Hearing Brief in the above referenced docket. Pursuant to SOAH Order No. 13 and in an effort to make efficient use of the Administrative Law Judges' and counsels' time, TCGA has briefed only those issues where it is believed TCGA's perspective may be unique.¹

TCGA usually participates only in cost allocation and rate design issues, and other than a few issues related to expenses in the revenue requirement phase of this matter, such is the case in this docket as well. Specifically, TCGA disagrees with the allocation of costs to the cotton gin class based on unreliable data and the inclusion of the vegetation management program expenses for purposes of calculating the cotton gin rate.

Regarding cost allocation and rate design, TCGA disagrees with Staff's rate design. TCGA believes that reasonable and gradual movement of the base rate levels for all classes toward equalized rates of returns is more just and reasonable and that the ALJs should hold to the PUC's gradualism directive from the final order in Docket No. 46449², SWEPCO's previous rate case.

The ALJs face the unenviable task of preparing recommendations on an extensive list of revenue requirement and cost allocation issues. For many of these issues, the PUC has previously addressed the arguments presented by various parties to this case and approved a clear policy.

¹ Headings not briefed are omitted, but the briefing outline numbering is retained.

² *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing (Mar. 19, 2018).

When the PUC has spoken clearly and recently on a legitimately contested issue, as is the case for many issues in this case, a party seeking to overturn that precedent bears the burden of demonstrating why the Commission should reverse its course. TCGA submits that on most of these issues, the PUC's precedent charts a reasonable course for resolution in this case.

TCGA anticipates that for many of the areas not briefed extensively below, its position may coincide with that of other Intervenors. In general, TCGA is aligned with CARD's and TIEC's position on Invested Capital – Rate Base (Section II), Rate of Return (Section III), and Expenses (Section IV, excluding the arguments outlined below). However, TCGA takes no position on the BMG issue.

TCGA expressly reserves the right to adopt additional alignment for other issues or specific positions in its Reply Brief.

SUMMARY OF DISPUTED ISSUES AND REQUESTED RELIEF

There is evidence in the record on the following disputed issues, and TCGA respectfully requests the following resolution of these issues:

IV. EXPENSES

SWEPCO's Vegetation Management Expenses and Program Expansion includes unreasonably high expenditures largely occurring in the East Texas service area and not the Texas Panhandle/North Texas service area.³ For purposes of determining the appropriate base rates for cotton gins, these costs are simply too unreliable and unreasonable to apply to cotton gin consumers, and TCGA disagrees with the inclusion and allocations of these expenses in determining the rate requirement.

VI. FUNCTIONALIZATION AND COST ALLOCATION

Typically, the class COSS provides the foundation for the development of proposed rates and rate design. However, the Cotton Gin class is being allocated costs that it should not be allocated due to its loads located in the Texas Panhandle and other unique attributes.⁴ It is entirely unreasonable to allocate a system-average for the exorbitant vegetation management costs to the Cotton Gin class. Additionally, the Cotton Gin class is also allocated costs for SWEPCO's distribution facilities, even though the peak demands for the Cotton Gin class occurs outside of the peak summer months and have a reduced impact on peak loads on SWEPCO's distribution system.⁵ TCGA disagrees with the cost allocation analysis of SWEPCO and Staff to the extent it inequitably and unreasonably allocates costs to the Cotton Gin class.

³ See e.g. TCGA Ex. 4 at TCGA 0031-33; TCGA Ex. 7 at TCGA 0040; TCGA Ex. 9 at TCGA 0042-43.

⁴ See generally TCGA Ex. 1— Evans Cross Rebuttal at TCGA 0014:5-0018:22.

⁵ *Id.* at TCGA 0015:9-17 & 0018:12-22.

VII. REVENUE DISTRIBUTION AND RATE DESIGN

TCGA requests the ALJs to reject any proposed revenue distribution methodologies based on inequitable cost allocations. Specifically, SWEPCO's rebuttal rate design and Staff's rate design result in an unreasonable, substantial rate increase for the Cotton Gin rate class, without considering the unique features of the Cotton Gin rate class, like its small customer size, variable annual loads, and differing peak months. As such, gradualism and rate moderation should be applied to alleviate the rate increases and to mitigate rate shock to TCGA members. TCGA respectfully requests the ALJs to recommend a rate design in the PFD resulting in a rate increase for the Cotton Gin class that is no more than the lower of either the system average base rate increase or, alternatively, a rate increase of no more than 37.44%⁶.

ARGUMENTS AND AUTHORITIES

TCGA has a long history of representing the cotton ginning industry and cooperating with other organizations throughout Texas and the United States to maintain the economic vitality and security of agriculture.⁷ The Texas Cotton Ginners' Association is one of the oldest cotton organizations in the United States and represents gin membership that processes a majority of the state's cotton crop each year.⁸ TCGA was chartered in 1929 as a non-profit, non-partisan association, and its primary, stated purpose was to serve the interests of cotton farmers, cotton ginners, and the allied cotton industries of Texas, and TCGA represents approximately 98% of all

⁶ This number is derived from James W. Daniel's calculations and rate proposal based on his evaluation of SWEPCO's original revenue distribution. *See generally* Nucor Ex. 1—Daniel Direct at 19:19-21; *see also* Nucor Ex. 2—Daniel Cross Rebuttal at 10:1-2.

⁷ *About TCGA*, TEXAS COTTON GINNERS' ASSOCIATION, <https://www.tcga.org/abouttcga/> (last visited June 7, 2021).

⁸ *Id*

cotton ginned in Texas.⁹ The outcome of this case will impact the rates paid by and terms of services provided to these TCGA members.

IV. EXPENSES¹⁰

As will be demonstrated below, SWEPCO's proposed expenses for vegetation management are unreliable as they relate to cotton gins and cannot be deemed reasonable or prudent expenditures for purposes of setting just and reasonable retail rates in this docket.

"The regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States."¹¹ PURA¹² mandates the PUC to set just and reasonable retail rates,¹³ but a rate "cannot be deemed just and reasonable unless the utility was prudent in incurring the operating expenses it seeks to pass through to consumers." It is axiomatic that SWEPCO enjoys no presumption of prudence by "simply opening its books to inspection."¹⁴ Rather, the utility bears the burden of demonstrating the prudence and reasonableness of "each dollar" of its expenditure before a rate increase can be approved.¹⁵ The PUC has the authority and the obligation to determine whether SWEPCO's expenditures are reasonable and prudent.

When making this evaluation, "[t]he underlying data should be independently evaluated in determining if the opinion itself is reliable...If the expert's testimony is not reliable, it is not

⁹ *Id.*

¹⁰ TCGA will brief certain subsections of Section IV at length. For those not addressed, TCGA reserves the right to adopt positions forwarded by other parties.

¹¹ *Gulf States Utilities Co. v. Pub Util Comm'n of Tex.*, 841 S.W.2d 459, 465-66 (Tex. App.—Austin 1992, writ denied).

¹² Public Utility Regulatory Act, TEX. UTIL. CODE §§ 11.001-66.016 (2021).

¹³ PURA § 36.003.

¹⁴ *Entergy Gulf States, Inc. v. Pub Utility Comm'n of Tex.*, 112 S.W.3d 208, 214 (Tex. App.—Austin, 2003, pet. denied).

¹⁵ *Id.* at 210.

evidence.”¹⁶ Other courts have likewise recognized that it is not simply so because “an expert says it is so.”¹⁷ The *Havner* reliability test as to an “independent evaluation of the underlying data” has been applied by the Supreme Court of Texas to a variety of disciplines of expert testimony, including economic analysis.¹⁸ Here, due to the unreliability of the expense data pertaining to vegetation management as applied to cotton gins and the improper distribution of vegetation management expenses and exorbitant program expansion costs, SWEPCO’s expenses in these categories are neither reasonable nor prudent.

IV. A. 5. DISTRIBUTION OF VEGETATION MANAGEMENT EXPENSE AND PROGRAM EXPANSION

TCGA disagrees with SWEPCO’s unreasonable proposal to increase vegetation management expenses. The proposed increase in base level O&M to perform vegetation management is unreliable and excessive. Additionally, the vegetation management expense and program expansion cannot be deemed reasonable or prudent expenditures in so far as these costs relate to cotton gins for purposes of setting just and reasonable retail rates in this docket.

SWEPCO’s existing vegetation management program in Texas includes pruning and clearing vegetation using mechanized clearing, mechanized and manual trimming, manual clearing, and herbicide applications along distribution circuits to protect its lines.¹⁹ SWEPCO currently uses a reactive performance-based approach for vegetation management in Texas, which means that SWEPCO uses an integrated vegetation management and asset improvement approach

¹⁶ *Merrell Dow Pharmaceuticals, Inc. v. Havner*, 953 S.W.2d 706, 713 (Tex. 1997).

¹⁷ *Viterbo v. Dow Chem. Co.*, 826 F.2d 420, 421 (5th Cir. 1987).

¹⁸ See e.g. *Guadalupe-Blanco River Authority v. Kraft*, 77 S.W.3d 805, 808 (Tex. 2002) (applying *Havner* test to real estate appraisal methodology in condemnation case); see also *City of Harlingen v. Sharboneau*, 48 S.W.3d 177, 186 (Tex. 2001).

¹⁹ SWEPCO Ex. 10—Seidel Direct at 8:5-8.

to address the worst performing circuits.²⁰ From 2017 through 2019, SWEPCO claims that increased vegetation largely contributed to sources of outages for SWEPCO customers, and by increasing the amount of distribution vegetation management O&M expenses, SWEPCO hopes to improve the reliability of its circuits even more.²¹ SWEPCO is proposing a total annual vegetation management spend of \$14.57 million, representing an increase of \$5.0 million over the \$9.57 million in vegetation management expenses incurred in the Test Year.²²

TCGA disagrees with the recommended increase in base level O&M to perform vegetation management on SWEPCO's Texas distribution system. SWEPCO's total company expenditures for vegetation management for the test year are \$27,072,445; in comparison, \$9,568,282 was allocated to vegetation management in SWEPCO's Texas service area alone.²³ SWEPCO claims the \$14.57 million it is now requesting for its rate base is only 38% of the amount needed to implement a four-year vegetation management cycle which would cover all of SWEPCO's Texas distribution system within four years.²⁴ However, since the PUC first authorized an increase of \$2.0 million in SWEPCO's last rate case, the SAIDI and SAIFI numbers have not appeared to show meaningful improvement in reliability.²⁵

Additionally, TCGA does not believe these expenses are reasonable or prudent expenditures specifically in regard to the Cotton Gin class. TCGA has five member gins located in SWEPCO's service area, namely Tri-County Cooperative Enterprise, Inc. of Dodson, Texas,

²⁰ *Id.* at 8:8-11.

²¹ *See generally id.* at 11:11-13 & 17:3-18:7, Figure 5.

²² SWEPCO Ex. 40—Seidel Rebuttal at 2:4-6.

²³ TCGA Ex. 11.

²⁴ SWEPCO Ex. 10—Seidel Direct at 9:1-4.

²⁵ *See* Staff Ex. 29; *see also* SWEPCO Ex. 10—Seidel Direct at 10:10-12; *see generally* OPUC Ex. 1—Cannady Direct at 48:13-51:6 (discussing the SAIDI and SAIFI calculations and comparisons at length); *see also* CARD Ex. 2—Mark Garrett Direct at 00040:6-7.

Donley County Gin, Estelline Co-op Gin, Lakeview Farmers Co-op Gin, and Memphis Farmers Gin Co., Inc, which will be affected by the PUC's decision in this case.²⁶ These TCGA member gins are located in five rural counties in the southeast corner of the Texas Panhandle, specifically Wheeler, Collingsworth, Donley, Hall, and Childress Counties.²⁷ This small section of SWEPCO's Texas service territory is over 300 miles from the rest of SWEPCO's Texas service territory, so it comes as no surprise that the climate and geographical characteristics are vastly different.²⁸ The Texas Panhandle region is characterized by mostly flat, treeless, grassy plains.²⁹ It averages 22.24 inches of precipitation every year in the form of rain or snow.³⁰ This is in stark contrast to the operating challenges described for the majority of SWEPCO's Texas overhead distribution lines "in rural areas with heavy vegetation, high precipitation, and low customer density."³¹

The East Texas portion of the service area dominates SWEPCO's vegetation management expenditure.³² This important point is on full display in SWEPCO's vegetation management expenses data.³³ For the test year, SWEPCO expensed \$9,568,282 on vegetation management in its Texas jurisdiction.³⁴ Virtually all of these costs are in the East Texas portion of the SWEPCO service area.³⁵ In fact, of the individual line items regarding all mechanical/manual clearing

²⁶ See Motion in Intervention of Texas Cotton Ginners' Association, Interchange No. 31, Page 4, Ex. A (November 5, 2020).

²⁷ TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0015:9-10; *see also* Tr. at 185:3-18 (Seidel Cross) (May 19, 2021).

²⁸ *Id.* at TCGA 0015:10-11.

²⁹ *Panhandle Plains*, TEXAS PARKS AND WILDLIFE, https://tpwd.texas.gov/kids/about_texas/regions/panhandle/big_kids/ (last visited June 9, 2021).

³⁰ *Climate Panhandle – Texas*, U.S. CLIMATE DATA, <https://www.usclimatedata.com/climate/panhandle/texas/united-states/ustx1019> (last visited June 9, 2021).

³¹ SWEPCO Ex. 10—Seidel Direct at 1 (Executive Summary); *see also id.* at 4:9-21.

³² Tr. at 189:19-190:7 (Seidel Cross) (May 19, 2021).

³³ *See generally* TCGA Exs. 6-7, 9, 14-16 & 19.

³⁴ TCGA Ex. 19; *see also* TCGA Ex. 11 at TCGA 0048.

³⁵ Tr. at 202:11-18 (Seidel Cross) (May 19, 2021).

distribution vegetation management spending for the test year, less than 1% of this expense, approximately \$40,000, was actually utilized in the Texas Panhandle/North Texas service area.³⁶ Similarly, in evaluating a list of all herbicide application jobs performed during the test year, there were zero instances of a Texas Panhandle/North Texas job.³⁷

With little to no references to Texas Panhandle/North Texas vegetation management expenses, this data does not support SWEPCO's proposed increase in base level O&M to perform vegetation management in the Texas Panhandle/North Texas service area. SWEPCO has the burden of demonstrating the prudence and reasonableness of "each dollar" of its expenditure before a rate increase can be approved, and as presented, this vegetation management data is unreliable, unreasonable, and imprudent. Any and all rate design approaches based on these expenses should not be utilized by the ALJs.

It is fair to ask why SWEPCO's vegetation management expenses should not result in an adjustment to the cotton gin rate. The answer is simple: the cotton gin class is SWEPCO's only Texas retail customer class that is solely located in the Panhandle portion of the SWEPCO Texas service area. When a particular category of expense is so far out of the norm, and when over 99% of that expense is incurred more than 300 miles away from a given class of customers, it is inequitable to allocate those expenses to that customer class, regardless of the underlying prudence of the expense.

For the remaining items contained in this Section IV, TCGA anticipates that its position will be analogous to other Intervenors.

³⁶ See TCGA Ex. 11 at TCGA 0047-48; *see also* TCGA Ex. 101 (Confidential) at TCGA 1000-1008; *see also* Tr. at 202:11-207:2 (Seidel Cross) (May 19, 2021).

³⁷ See TCGA Ex. 102 (Confidential) at TCGA 1009-1010; *see also* Tr. at 207:3-208:9 (Seidel Cross) (May 19, 2021).

VI. FUNCTIONALIZATION AND COST ALLOCATION³⁸

The allocation of costs is an essential part of any rate case. Typically, the COSS provides the foundation for the development of SWEPCO's proposed rates and rate design.³⁹ However, in this docket, the cost allocations made to the Cotton Gin class are not equitable or reasonable considering the unique attributes of the Cotton Gin class.

A COSS determines a utility's cost of providing service and allocates or assigns cost responsibility to jurisdictions and classes based on cost causation.⁴⁰ Relying on SWEPCO's historical test year accounting records, SWEPCO followed a three-step process to assign costs to customer classes: functionalization, classification, and allocation.⁴¹ Once costs have been functionalized, the next step is to identify the primary causative factor (or factors) and classify these costs as demand-related, energy-related, or customer-related.⁴² Demand (or capacity) related costs vary with peak demand, which determines the amount of capacity needed for reliable service, and demand-related costs include production, transmission, and some distribution investment and related fixed O&M expenses.⁴³ Energy-related costs vary with the production of energy and includes fuel and variable O&M expense.⁴⁴ Customer-related costs vary directly with the number of customers and include expenses such as meters, service drops, billing, and customer service.⁴⁵

³⁸ TCGA will brief certain elements of Section VI at length. For those not addressed, TCGA reserves the right to adopt positions forwarded by other parties.

³⁹ See e.g. SWEPCO Ex. 31—Aaron Direct at 3:8-9.

⁴⁰ *Id.* at 8:1-2.

⁴¹ *Id.* at 9:1-2 & 11-12; see also TIEC Ex. 1—Pollock Direct at 031:19-22.

⁴² TIEC Ex. 1—Pollock Direct at 032:5-7.

⁴³ *Id.* at 032:7-10.

⁴⁴ *Id.* at 032:11-13.

⁴⁵ *Id.* at 032:13-15.

During the classification process, demand-related costs are associated with the kW demand imposed by the customer on the electric system at a *point in time*.⁴⁶

After functionalization and classification, the costs must then be allocated to the various customer classes via allocation factors determined through an allocation methodology.⁴⁷ After Mr. Pollock recommended a correction to the system load factor used by SWEPCO, SWEPCO revised its A&E/4CP methodology for allocating production costs to the various customer classes, reflecting the jurisdictions' use of SWEPCO's production facilities during the summer months of June through September.⁴⁸ There are many factors that cause the per-unit costs to differ among customer classes, so this process warrants an individual inquiry in order to avoid any inequitable or unreasonable class COSS usage in the resulting rate design.

VI. B. COST ALLOCATION

The appropriateness of an allocation methodology "should recognize individual customer class characteristics such as energy usage, peak demand on the relevant portion of the system, service diversity characteristics, or the number of customers."⁴⁹ The method should also produce reliable results that are "relatively stable from year to year."⁵⁰ With this standard in mind, SWEPCO's witness, Mr. John Aaron, defined cost causation for these purposes perfectly, "My definition of cost causation is the customers that causes the cost should also bear the responsibility

⁴⁶ SWEPCO Ex. 31—Aaron Direct at 10:6-8 (*emphasis added*).

⁴⁷ TIEC Ex. 1—Pollock Direct at 032:16-17.

⁴⁸ SWEPCO Ex. 54—Aaron Rebuttal at 3:2-10; *see also* TIEC Ex. 1—Pollock Direct at 037:1-7; *see also* SWEPCO Ex. 31—Aaron Direct at 14:10-14.

⁴⁹ SWEPCO Ex. 31—Aaron Direct at 12:20-22.

⁵⁰ *Id.* at 13:5-6.

of that cost in the allocation and in rates.”⁵¹ However, in this cost allocation, Cotton Gin customers are bearing costs that they have not caused.

The COSS results provide useful information, but the study is not and should not be viewed as an untouchable or unalterable result. Other considerations are appropriate in mitigating pure COSS results, and there is no “pure” class cost of service study that assigns costs to customer classes perfectly. COSS studies are at best imprecise instruments. The COSS results may be quite sensitive to alternative classification or allocation decisions which are within the range of reasonable choices. As a result, it may be more appropriate to characterize the COSS in the form of a range of acceptable class rates of return instead of a single point estimate. Also, COSS studies are simple snapshots of a fixed point in time of the dynamic relationship between supply and demand, and both costs and class usage characteristics will change over various time periods.⁵² Additionally, there is the added concern with low population customer classes, like the Cotton Gin class, that changes in the characteristics of only one or two customers may have a significant impact on the revenues and costs allocated to them.⁵³ Additionally, errors in the underlying data, or year to year billing determinant changes can drastically change ROR calculations in small population customer classes. Thus, some degree of judgment is necessary in applying the COSS study to class-level revenue increases.

Here, the cost allocations made to the Cotton Gin class are not equitable or reasonable considering the unique attributes of the Cotton Gin class for several reasons. First, SWEPCO and Staff have proposed a high base rate increase on SWEPCO’s Cotton Gin class over multiple years. This proposed high base rate increase is based on a test-year that reflected a low ginning season

⁵¹ Tr. at 1221:6-9 (Aaron Cross) (May 25, 2021).

⁵² See generally SWEPCO Ex. 31—Aaron Direct at 10:6-8.

⁵³ TIEC Ex. 1—Pollock Direct at 032:16-17; see also TCGA Ex. 33.

that will cause the revenues and the resulting ROR from the Cotton Gin class to increase dramatically in years with average or above average ginning.

SWEPCO has recognized that having few customers in a class can result in unusual circumstance in load from year to year.⁵⁴ Unusual outcomes generally refers to the result of abnormal operating levels or different load and service characteristics that can occur from year to year in rate classes with few customers, making the class more susceptible to swings in the cost allocation results.⁵⁵ If unusual operating levels are reflected in the test year, considering the rate class with few customers on a stand-alone basis can skew the results from rate case to rate case causing unstable fluctuations in rates based on abnormalities.⁵⁶

As a result of the variations in the quantity of cotton ginned, which is measured in bales, the energy consumption of Cotton Gins between years can vary significantly.⁵⁷ The consumption levels and patterns of Cotton Gin customers are driven by the quantity of cotton harvested by cotton growers in their respective areas, and this is in turn driven by weather in that area and the prevailing market price for cotton.⁵⁸ With these highly variable factors in play, the quantity of cotton grown, harvested, and ginned in specific areas can also vary significantly between years.⁵⁹

Due to the fact that SWEPCO's current Cotton Gin rate only includes a customer charge and a seasonally differentiated kWh charge, significant variations in energy consumption between years will cause the amount of base rate revenues from the Cotton Gin class to also vary

⁵⁴ TCGA Ex. 33.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ TCGA Ex. 1— Evans Cross Rebuttal at TCGA 0014:12-13.

⁵⁸ *Id.* at TCGA 0014:7-11.

⁵⁹ *Id.*

significantly.⁶⁰ Thus, imposing a high base rate increase in multiple years on SWEPCO's Cotton Gin class based on a low ginning season, will cause Cotton Gin class revenues and the ROR for the class to increase dramatically in years with average or above average ginning.⁶¹

Similarly, there are issues with allocation of distribution investment and expenses to the Cotton Gin class.⁶² The ginning season for these SWEPCO customers occurs during the autumn and winter months and generally runs from mid-October to early February each year.⁶³ Consequently, during the spring and summer months, their consumption is very low.⁶⁴ During those months, their average consumption per cotton gin is less than 300 kWh per month.⁶⁵ Therefore, the peak consumption and demands for the Cotton Gin Service class occurs outside of the four peak summer months for SWEPCO's generation and transmission facilities.⁶⁶ Because the ginning season occurs outside the four peak summer months and the 4CP demands at generation is a major factor in the allocation of non-fuel production and transmission costs, the increased ginning and the associated increased consumption and revenues from Cotton Gin customers would not be expected to result in an increase in base rate costs allocated to the Cotton Gin Service class.⁶⁷ Therefore, again, the ROR earned from the Cotton Gin Service class will be significantly higher during average and above average ginning years.

⁶⁰ *Id.* at TCGA 0014:13-17.

⁶¹ *Id.* at TCGA 0014:17-20.

⁶² *See generally* TCGA Ex. 2-4 (showing the majority of power plant, distribution plant, transmission plant, and other distribution capital addition projects do not occur in the Texas Panhandle/North Texas SWEPCO service area).

⁶³ *Id.* at TCGA 0015:11-13

⁶⁴ *Id.* at TCGA 0015:13-14.

⁶⁵ *Id.* at TCGA 0015:14-15.

⁶⁶ *Id.* at TCGA 0015:15-17.

⁶⁷ *Id.* at TCGA 0017:6-17.

Additionally, even though SWEPCO's A&E/4CP reflects the fact that Cotton Gin customers have very low summer loads, most of the base rate cost of service for the Cotton Gin Service class is for Distribution Primary and Distribution Secondary related costs. The size of SWEPCO's distribution system and the size and capacity of the various feeders is driven by the load put on those various feeders during the peak months.⁶⁸ Typically, SWEPCO's decision-making for planning distribution substations or distribution lines are driven by the load in peak months.⁶⁹ Said another way, Distribution Primary and Distribution Secondary costs are allocated among customer classes based on annual class peak demands, and electric utilities design and construct their distribution systems and facilities to serve the forecasted annual peak loads for those systems and facilities.⁷⁰

This is in stark contrast with the annual peak months for the Cotton Gin class. While a majority of the base rate cost of service at equalized for the Cotton Gin Service class is for Distribution Primary and Distribution Secondary related costs, the annual class peak demand, or MDD, for the Cotton Gin class for the test-year occurred in December and typically occurs in the months of November through December.⁷¹ For investor-owned utilities in Texas, it is very rare for distribution substations, primary lines, and secondary lines to peak in the winter months, and due to the lower ambient temperatures and higher typical wind speeds, distribution substations, conductors, and line transformers can typically carry more load during winter months without

⁶⁸ Tr. at 183:18-22 (Seidel Cross) (May 19, 2021).

⁶⁹ *Id.* at 188:8-12 (Seidel Cross) (May 19, 2021); *see also* TCGA Ex. 2-4 (showing the majority of power plant, distribution plant, transmission plant, and other distribution capital addition projects do not occur in the Texas Panhandle/North Texas SWEPCO service area).

⁷⁰ TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0018:1-3.

⁷¹ *Id.* at 0017:20-23.

approaching their peak operating temperature ratings than they can during the summer months.⁷² This is particularly true for the Texas Panhandle where the difference between the average daily temperatures and the average wind speeds for winter months compared to the summer months can be quite substantial.⁷³

Additionally, the Cotton Gin class has been allocated a substantial amount of investment and costs associated with distribution secondary poles, lines, and underground conduit and conductor within the COSS; however, because the Cotton Gin class is served at secondary voltages typically direct from the line transformer and not secondary lines, these costs are not reasonably allocated to this class.⁷⁴ Similarly, it is unusual for rural loads, like those from remote cotton gins in the Panhandle, to be served through any underground secondary conduit and conductor.⁷⁵ Despite these unique attributes and specific considerations, distribution-related costs that are not “caused” by cotton gins comprise the largest portion of the costs allocated to Cotton Gin class.

Lastly, SWEPCO’s unreasonable proposal to increase vegetation management expenses results in a class costs allocation of these expenses when, virtually no vegetation management expenses are incurred in the Texas Panhandle/North Texas service area of SWEPCO, where all of the cotton gin customers are located. As previously discussed in Section IV, the East Texas portion of the service area dominates SWEPCO’s vegetation management expenditures.⁷⁶ This distinction is on full display in SWEPCO’s vegetation management expenses data.⁷⁷ The majority of the

⁷² *Id.* at 0018:3-8.

⁷³ *Id.* at 0018:8-11

⁷⁴ *Id.* at 0018:12-16.

⁷⁵ *Id.* at 0018:16-18.

⁷⁶ Tr. at 189:19-190:7 (Seidel Cross) (May 19, 2021).

⁷⁷ *See generally* TCGA Exs. 6-7, 9, 14-16 & 19.

vegetation management costs are in the East Texas portion of the SWEPCO service area.⁷⁸ Upon closer inspection of the individual line items regarding all mechanical/manual clearing distribution vegetation management spending for the test year, less than 1% of this expense, approximately \$40,000, was actually utilized in the Texas Panhandle/North Texas service area.⁷⁹ Similarly, in evaluating a list of all herbicide application jobs performed during the test year, there were zero instances of a Texas Panhandle/North Texas job.⁸⁰ Despite vegetation management expenses being an example of costs directly related to a particular service area, all of this cost—almost \$10 million—is proportionally allocated to the Cotton Gin class. Cotton Gin customers are bearing costs that they have not caused. It is entirely unreasonable to allocate a system-average for the exorbitant vegetation management costs to the Cotton Gin class.

TCGA disagrees with the cost allocation analysis of SWEPCO and Staff to the extent it inequitably and unreasonably allocates costs to the Cotton Gin class that the class did not cause. For the remaining items contained in this Section VI, TCGA anticipates that its position will be analogous to other Intervenor.

VII. REVENUE DISTRIBUTION AND RATE DESIGN⁸¹

The processes of revenue distribution and rate design are governed by two main goals: (1) to design rates that achieve the overall proposed revenue change based on the filed class COSS and (2) to develop rates that move all major classes of customers closer to an equalized return, meaning the proposed rates for each customer class are designed to recover the class responsibility

⁷⁸ Tr. at 202:11-18 (Seidel Cross) (May 19, 2021).

⁷⁹ See TCGA Ex. 11 at TCGA 0047-48; *see also* TCGA Ex. 101 (Confidential) at TCGA 1000-1008; *see also* Tr. at 202:11-207:2 (Seidel Cross) (May 19, 2021).

⁸⁰ See TCGA Ex. 102 (Confidential) at TCGA 1009-1010; *see also* Tr. at 207:3-208:9 (Seidel Cross) (May 19, 2021).

⁸¹ TCGA will brief certain elements of Section VII at length. For those not addressed, TCGA reserves the right to adopt positions forwarded by other parties.

of the cost to serve each respective major rate class.⁸² The customer class revenue distribution is the determination of how a utility's total revenue increase is to be distributed to the customer classes, and the COSS forms the basis for the revenue distribution.⁸³ The proposed rate design for all classes is then based on the target level of base rate change as shown in the revenue distribution.⁸⁴

In this docket, based on the inequitable cost allocation discussed in the previous section, TCGA disagrees with any proposed revenue distribution methodologies recommended or utilized that rely on inequitable and unreasonable cost allocation. Specifically, Staff's proposed rate design result in an unreasonable, substantial rate increase for the Cotton Gin class and should be rejected by the ALJs. As such, gradualism and rate moderation should be applied to alleviate the rate increases and to mitigate rate shock to TCGA members. TCGA requests the ALJs to reject any proposed revenue distribution methodologies based on inequitable cost allocations. TCGA also request the ALJs to recommend a rate design in its PFD resulting in a rate increase for the Cotton Gin class that is no more than the lower of either the system average base rate increase or receive a rate increase no more than 37.44%⁸⁵.

VII. A. RATE MODERATION / GRADUALISM

While the TAC requires that rates be based on cost, the PUC has determined that rate moderation, or gradualism, was an appropriate exception to this requirement for certain vertically integrated utilities not operating within the competitive ERCOT market where movement to cost

⁸² SWEPCO Ex. 32—Jackson Direct at 8:1-7; *see also* Tr. at 1269:10-15 (Jackson Cross) (May 25, 2021).

⁸³ SWEPCO Ex. 32—Jackson Direct at 9:17-19; *see also* Tr. at 1269:16-1270:12 (Jackson Cross) (May 25, 2021) (referencing the corrected COSS as the basis for the revenue distribution).

⁸⁴ SWEPCO Ex. 32—Jackson Direct at 12:11-13:8.

⁸⁵ *See supra* Note 6.

would result in an increase that is “out of proportion or harsh to a particular class...”⁸⁶ Gradualism adjustments are entirely reasonable in this docket, helping to moderate rate increases and mitigating rate shock to the Cotton Gin class. The PUC’s longstanding application of gradualism caps serves several purposes that apply directly to this docket.

First, gradualism is designed to prevent a particularly harsh impact or “rate shock” on any particular customer class, and a regulatory authority may legitimately determine that costs should be spread out in rates in the future in order to avoid sharp increases in rates or “rate shock.”⁸⁷ In this case, there seems to be some consensus regarding rate increase moderation for rate classes where the class costs of service indicates the need for increases significantly greater than the system average increase.⁸⁸ As a consumer in one such class, TCGA agrees that rate moderation is absolutely necessary because the costs allocated to the rate classes resulting from SWEPCO’s and Staff’s class COSS create large rate increases for a number of rate classes, including the Cotton Gin class, and would force a number of rate classes to experience rate shock. SWEPCO idyllically designs its rates in such a way that all rate class revenues should recover their cost of service, but SWEPCO also recognizes that other considerations like rate moderation and customer migration must be considered.⁸⁹ Historically, smaller rate classes have had revenue levels below their cost of service.⁹⁰ If the classes’ revenues were suddenly moved to reflect their actual cost of service, the classes would experience rate base increases over 75%!⁹¹ Additionally, even a slight change of

⁸⁶ *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatments*, Docket No. 39896, Proposal for Decision at 284 (Jul. 6, 2021).

⁸⁷ *City of Corpus Christi v. Pub. Util. Comm’n of Tex.*, 51 S.W.3d 231, 250 (Tex. 2001)

⁸⁸ *See generally* SWEPCO Ex. 5—Jackson Rebuttal at 8:1-12.

⁸⁹ SWEPCO Ex. 32—Jackson Direct at 10:10-13.

⁹⁰ Nucor Ex. 1—Daniel Direct at 19:13-15.

⁹¹ *Id.* at 19:15-19

one or two customers in low population customer classes can have a significant impact on the revenues and costs allocated to the class.⁹² In order to limit these large rate increases, gradualism should be applied.

Also, gradualism constraints are the recognition of the fact that, while witnesses and parties tend to assert that their COSS represent the one true definition of cost, in fact there are several judgment calls to be made in the cost allocation process and, often, there is more than one reasonable approach to allocating a cost. As previously argued, the COSS results provide useful information, but it is not and should not be viewed as an untouchable or unalterable result. Other considerations are appropriate in mitigating pure COSS results, and there is no “pure” class COSS that assigns costs to customer classes perfectly. Thus, some degree of judgment may be appropriate in applying the COSS study to class revenue increases in a way that holds to the standards articulated in the regulations.

In this docket, the cost allocations made to the Cotton Gin class are not equitable or reasonable in light of the unique attributes of the Cotton Gin class for several reasons. SWEPCO has proposed a high base rate increase in multiple years on SWEPCO’s Cotton Gin class based on a test-year that reflected a low ginning season, and this will cause Cotton Gin class revenues and ROR to increase dramatically in years with average or above average ginning. Also, because the ginning season occurs outside the four peak summer months and the 4CP demands at generation is a major factor in the allocation of non-fuel production and transmission costs, the increased ginning and the associated increased consumption and revenues from Cotton Gin customers would not be expected to result in an increase in base rate costs allocated to the Cotton Gin Service class.⁹³

⁹² TIEC Ex. 1—Pollock Direct at 32:16-17 & 050:1-4; *see also* TCGA Ex. 33.

⁹³ *Id.* at TCGA 0017:6-17.

Therefore, again, the ROR earned from the Cotton Gin Service class will be significantly higher during average and above average ginning years. There are also issues with the allocation of distribution investment and expenses, as these distribution-related costs comprise the largest portion of the costs allocated to the Cotton Gin class. However, the Cotton Gin class does not proportionally “cause” these costs. Similarly, SWEPCO’s unreasonable proposal to increase vegetation management expenses results in a class costs allocation of these expenses when, in actuality, very little vegetation management expenses are incurred in the Texas Panhandle/North Texas service area of SWEPCO, where all cotton gin customers are located. Cotton Gin customers are bearing costs that they have not caused. It is entirely reasonable to apply gradualism or rate moderation to the Cotton Gin class.

VII. B. RATE DESIGN AND TARIFF CHANGES

Ultimately, the selected rate design for this docket should hold to legal standards articulated by the governing statutes and regulations. PURA establishes the statutory definition for just and reasonable rates:

(b) A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer.⁹⁴

Similarly, the PUC’s electric substantive rule 16 TAC § 25.234(a):

(a) Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, and shall be based on cost.⁹⁵

⁹⁴ PURA § 36.203(b).

⁹⁵ See 16 TAC § 25.234(a).

However, as proposed, SWEPCO's rebuttal revenue distribution and rate design⁹⁶ and Staff's revenue distribution and rate design⁹⁷ would have a severe impact on the Cotton Gin class that is unreasonably prejudicial and inequitable.

SWEPCO's Revenue Distribution and Rate Design

On behalf of SWEPCO, Ms. Jackson discussed and recommended SWEPCO's rate design. Originally, SWEPCO did not propose to set the revenue requirement for each class in its class COSS at cost, but rather SWEPCO proposed a gradualism adjustment to moderate the impact of SWEPCO's proposed rate change on some classes.⁹⁸ SWEPCO's proposal grouped the rate classes into four different bundles which SWEPCO refers to as "Major Rate Classes."⁹⁹ The four major classes were Residential, Commercial and Industrial, Municipal, and Lighting.¹⁰⁰ This approach is consistent in principle with previous PUC decisions, which has supported the use of major rate classes in SWEPCO's most recent rate cases.¹⁰¹ Under this proposal, SWEPCO requested a return on rate base of 7.22%, and the proposed system average base rate increase was 30.31%.¹⁰² SWEPCO did not propose any changes to the rate structure of the Cotton Gin class, and the Cotton Gin rate class would experience a 32.98% base percent increase for the class over test year adjusted base revenues¹⁰³

⁹⁶ See generally SWEPCO Ex. 55—Jackson Rebuttal at 7:3-8:12.

⁹⁷ See generally Staff Ex. 4—Narvaez Direct at 000023:8-000025:15.

⁹⁸ See generally SWEPCO Ex. 32—Jackson Direct at 9:15-12:10.

⁹⁹ SWEPCO Ex. 32—Jackson Direct at 11:3-9.; See also TIEC Ex. 1—Pollock Direct at 43, Table 5 & 44:1-12.

¹⁰⁰ SWEPCO Ex. 32—Jackson Direct at 6:1-3 & Exhibit JLJ-1; see also TCGA Ex. 26 at 0100.

¹⁰¹ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at Findings of Fact 311 through 314A (Mar. 19, 2018).

¹⁰² SWEPCO Ex. 32—Jackson Direct at 10:10 & 16.

¹⁰³ *Id.* at 22:1-8.

However, in its rebuttal, SWEPCO abandoned its previous grouping position and rate classes for purposes of revenue distribution and rate design.¹⁰⁴ SWEPCO then proposed to combine the Commercial and Industrial rate classes into one major class, claiming that this grouping would mitigate any “unusual outcomes that may impact the rate design in a particular test year” for small customer classes and move all classes closer to costs.¹⁰⁵ However, SWEPCO’s rebuttal rate design then assigns the maximum base rate increase to the Cotton Gin class, 1.5 times the system average increase of approximately 43%, all but ignoring the potential severe impact on the Cotton Gin class.¹⁰⁶

Revenue distribution should generally follow cost allocation with reasonable gradualism applied, and rates should be designed based on typical or normalized billing determinants to avoid unnecessary over-recovering or under-recovering the revenue targets set for each class. It appears that SWEPCO proposed its rebuttal revenue distribution and rate design without even considering the unique features of the Cotton Gin rate class, including its small customer size, variable annual loads, and differing peak months.

The fact that the cotton gins operate during winter months and have a reduced impact on the peak loads of SWEPCO’s distribution system and facilities should have been considered in SWEPCO’s revenue distribution and rate design rebuttal proposal. As previously discussed, the Cotton Gin class’s unique attributes were not considered in the cost allocation phase. Because SWEPCO’s decision-making for planning distribution substations or distribution lines are driven by the load in peak months, costs are allocated among customer classes based on annual class peak

¹⁰⁴ Tr. at 1266:6-24 (Jackson Cross) (May 25, 2021).

¹⁰⁵ SWEPCO Ex. 55—Jackson Rebuttal at 4:13-5:7; 7:3-10.

¹⁰⁶ See generally *id.* at 8:1-12.

demands.¹⁰⁷ The size of SWEPCO's distribution system and the size and capacity of the various feeders is driven by the load put on those various feeders during these peak months.¹⁰⁸ However, the peak months for the Cotton Gin class occur in the winter, and thus, they have a reduced impact on SWEPCO's distribution system and facilities. Under SWEPCO's Revenue Distribution and Rate Design, the Cotton Gin class is receiving a reduced allocation of generation and transmission base rate costs, but it is also receiving an unreasonably high allocation of distribution costs. In fact, the distribution-related costs account for a majority of the Cotton Gin class allocated base rate revenue requirement.¹⁰⁹ Several other unique factors of the Cotton Gin class do not appear to be considered in SWEPCO's proposed its rebuttal revenue distribution and rate design. Customers with larger loads that are served at secondary voltages, such as the Cotton Gin Service class, are typically served directly from the line transformer and not served through secondary lines.¹¹⁰ Also, it is unusual for rural loads, such as cotton gins, to be served through underground secondary conduit and conductor.¹¹¹

Similarly, SWEPCO's revenue distribution and rate design rebuttal proposal should have considered the Cotton Gin class's small customer size. SWEPCO has recognized that having few customers in a class can result in unusual circumstance in load from year to year, unusual outcomes generally refers to the result of abnormal operating levels or different load and service characteristics that can occur from year to year in rate classes that only have few customers,

¹⁰⁷ *Id.* at 188:8-12 (Seidel Cross) (May 19, 2021); *see also* TCGA Ex. 2-4 (showing the majority of power plant, distribution plant, transmission plant, and other distribution capital addition projects do not occur in the Texas Panhandle/North Texas SWEPCO service area); TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0018:1-3.

¹⁰⁸ Tr. at 183:18-22 (Seidel Cross) (May 19, 2021).

¹⁰⁹ *Id.* at 0017:18-0018:11.

¹¹⁰ *Id.* at 0018:12-18.

¹¹¹ *Id.* at 0018:15-18.

making the class more susceptible to swings in the cost allocation results.¹¹² If unusual operating levels are reflected in the test year, considering the rate class with few customers on a stand-alone basis can skew the results from rate case to rate case causing unstable fluctuations in rates based on abnormalities.¹¹³ As a result of the variations in the quantity of cotton ginned, which is measured in bales, the energy consumption of Cotton Gins between years can vary significantly.¹¹⁴ With these highly variable factors in play, the quantity of cotton grown, harvested, and ginned in specific areas can also vary significantly between years.¹¹⁵ The entire Cotton Gin class is located in a very small geographic area that is remote from the rest of SWEPCO's system and is significantly impacted by climate conditions that are quite different from the rest of SWEPCO's system.¹¹⁶ Due to the fact that SWEPCO's current Cotton Gin rate only includes a customer charge and a seasonally differentiated kWh charge, significant variations in energy consumption between years will cause the amount of base rate revenues from the Cotton Gin class to also vary significantly.¹¹⁷ Thus, imposing a high base rate increase in multiple years on SWEPCO's Cotton Gin class based on a low ginning season, will cause Cotton Gin class revenues and the ROR for the class to increase dramatically in years with average or above average ginning.¹¹⁸ Ms. Jackson acknowledged under cross-examination of her rebuttal that based upon the significant variability in the usage of the Cotton Gin class, the class could produce an ROE above the authorized level:

¹¹² TCGA Ex. 33.

¹¹³ *Id.*

¹¹⁴ TCGA Ex. 1— Evans Cross Rebuttal at TCGA 0014:12-13.

¹¹⁵ *Id.*

¹¹⁶ *E.g., compare Climate Panhandle – Texas*, U.S. CLIMATE DATA, <https://www.usclimatedata.com/climate/panhandle/texas/united-states/ustx1019> (last visited June 9, 2021), *with Climate Panhandle – Texas*, U.S. CLIMATE DATA, <https://www.usclimatedata.com/climate/tyler/texas/united-states/ustx1383> (last visited June 16, 2021).

¹¹⁷ *Id.* at TCGA 0014:13-17.

¹¹⁸ *Id.* at TCGA 0014:17-20.

Q: If you take a class with a relatively small number of customers -- frankly any clients -- and the test year billing determinates -- kWh are lower than average -- okay? Can we agree that that's the basis of the hypothetical I'm about to ask you?

A: Okay.

Q: And then in the years where the rate applies, those billing determinates are average or above average, the utility is going to over recover in that class, Correct?

A: Right. That is the case occasionally, yes.

Q: Okay.

A: And in more than one rate class.

Q: Right. And for the cotton ginnery class, that billing determinate, kWh total usage, is determined entirely by the size of the cotton crop in that cotton ginned area, isn't it?

A: I mean, I'm not in the cotton gin business, but I have been working on their rate design for a long time. And in recognition of that, we apply, you know -- consistently apply moderation to that class. And so in that sense, I agree with you.¹¹⁹

Even though SWEPCO recognizes that having few customers in a class can result in unusual outcomes, SWEPCO's revenue distribution and rate design rebuttal proposal did not consider this for Cotton Gin class small customer size.

¹¹⁹ Tr. at 1272:3-24 (Jackson Cross) (May 25, 2021).

Based on the evidence, SWEPCO's rebuttal revenue distribution and rate design¹²⁰ would have a severe impact on the Cotton Gin class that is unreasonably prejudicial and inequitable and does not hold to the legal standards articulated by the governing statutes and regulations applicable to this docket. It appears that SWEPCO proposed its rebuttal revenue distribution and rate design without even considering the unique features of the Cotton Gin rate class.

Staff's Proposed Revenue Distribution and Rate Design

Mr. Adrian Narvaez, on behalf of Staff, has discussed and recommends a multi-phase approach to achieve equalized rates of return and cost-based rates for each class in SWEPCO's class COSS within three or four years.¹²¹ Under Staff's proposed rate design, all major class COSS classes are moved to cost-based revenue levels and rates, and for the three smaller class COSS, individual classes class revenue increases, net of changes in TCRF and DCRF revenues, would be capped at 43%.¹²² The amount of revenue that is not recovered due to the 43% cap would be reallocated proportionally among the other classes within their assigned group of rate classes.¹²³ Then, as a novel and unconvincing approach at gradualism, Mr. Narvaez then recommends this process continue each year for up to three more years during which the base rates for classes are increased up to 43% per year until all classes produce the average ROR approved in this rate case.¹²⁴ When compared to the Staff's recommended total base rate revenue requirement for

¹²⁰ See generally SWEPCO Ex. 55—Jackson Rebuttal at 4:13-5:7; 7:3-10.

¹²¹ See generally Staff Ex. 4—Narvaez Direct at 000026:1-8; see also TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0009:4-10.

¹²² See Staff Ex. 4—Narvaez Direct at 000020:12-15; see also TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0009:4-10; see also Nucor Ex. 2—Daniel Cross Rebuttal at 9:18-23; see also Tr. at 1384:19-1385-14 (Narvaez Cross) (May 26, 2021).

¹²³ See Staff Ex. 4—Narvaez Direct at 000020:4-6; see also TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0009:4-10.

¹²⁴ See Staff Ex. 4—Narvaez Direct at 000023:12-000025:15; see also TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0009:11-14.

SWEPCO, the total amount of dollars associated with the rate classes that will experience these multi-year increases is relatively small; however, this harsh approach would require the Cotton Gin Service and some other classes to endure up to a 43% increase in their base rates each year for up to four years.¹²⁵

This recommendation appears to be based on Staff's interpretation of 16 TAC § 25.234(a) that they believe requires that rates be set *at cost* rather than "*based on cost*" as the rule states.¹²⁶ This rule was adopted over twenty years ago, and the PUC has issued final orders in numerous cases, both fully litigated and settled, in which do not agree with Staff's reading of the rule in this docket. In most instances, final orders have been approved that did not move all rate classes to equalized rates of return, but instead have supporting more reasonable and gradual movement of base rate levels for all classes toward equalized rates of return.¹²⁷

Mr. Narvaez does not provide any rationale supporting the use of the 43% net percentage increase cap other than the PUC's approval from the last SWEPCO rate case nor has any evidence been presented to support the continuous use of this net percentage increase for the multiple phases. In fact, Mr. Narvaez admitted that he essentially did his own COSS relying on SWEPCO's data.¹²⁸ He also admits that he, "...did not perform a separate analysis of load research" or demand schedules.¹²⁹ More importantly, he did not perform an analysis for the Cotton Gin class standing alone, and he did not research or assess the variations in the Cotton Gin class' historical annual

¹²⁵ TCGA Ex. 1— Evans Cross Rebuttal at TCGA 0009:17-22.

¹²⁶ See Staff Ex. 4—Narvaez Direct at 000012:7-12; see also Tr. at 1379:23-1381:1 (Narvaez Cross) (May 26, 2021); see also Tr. at 1387:13-17 (Narvaez Cross) (May 26, 2021).

¹²⁷ TCGA Ex. 1— Evans Cross Rebuttal at TCGA 0010:6-20; see also Tr. at 1316:12-23 (Evans Cross) (May 25, 2021).

¹²⁸ See generally Tr. at 1381:5-1384:7 (Narvaez Cross) (May 26, 2021).

¹²⁹ Tr. at 1383:2-9-1384:7 (Narvaez Cross) (May 26, 2021).

usage levels in developing his recommendation.¹³⁰ Despite the claims that the regulations require rates to be set at cost, Mr. Narvaez's testimony appears to provide little evidentiary support for his cost analysis and methodology.

Additionally, Mr. Narvaez provides little precedential or evidentiary support for Staff's multi-year phase-in "mechanism".¹³¹ This proposal appears to circumvent the considerations underlying the PUC's approval of gradualism in Docket No. 46449¹³² and other rate cases where classes were not moved to equalized rates of return, rather reflected reasonable and gradual movement of the base rate levels for all classes.¹³³ In fact, by Mr. Narvaez's own admission in his direct testimony, the PUC has never approved a phase-in gradualism approach to electric utility rates.

Q. Has the Commission approved a phase-in gradualism approach before?

A. While the Commission has not approved a phase-in gradualism approach for an electric utility recently, the Commission has previously approved a phase-in gradualism approach for water Utilities in Docket Nos. 47736 and 50200.

Q. Has a phase-in gradualism approach ever been proposed for an electric utility?

A. No. Not to my knowledge.¹³⁴

¹³⁰ *Id.* at 1383:25-1384:7.

¹³¹ *See generally* Staff Ex. 4—Narvaez Direct at 000023:16-25:21.

¹³² *See supra* Note 2.

¹³³ TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0010:6-12.

¹³⁴ *See generally* Staff Ex. 4—Narvaez Direct at 000025:16-21.

In his cross examination, he reiterates:

Q: Now, Mr. Narvaez, in fairness, such an approach for a multiyear rate increase has never been adopted by the Commission in an electric rate case.

Has it?

A: It (breaking up) hasn't been adopted in an electric rate case. Correct.

...

Q: Okay. So, the answer to my question is, no, it has not been approved in an electric rate case. Correct?

A: Correct.¹³⁵

Mr. Narvaez could not offer a single instance of a similar multi-year, phase-in approach to gradualism being utilized in an electric rate case and approved by the PUC.¹³⁶ Mr. Narvaez goes on to say, “As I stated, the – that it’s been used in water cases but not electric, I don’t think that’s really a concern.”¹³⁷ Yet he still claimed his “...recommendation, it’s consistent with Commission rules, as well as Commission precedent.”¹³⁸ Despite Mr. Narvaez suggesting that it is not really a concern, Staff’s phase-in approach would be a vast departure from PUC precedent, and without evidentiary support and rationale, such a departure is not warranted in this docket.

Mr. Narvaez has also claimed that his proposed cost-based rates are equitable and essential in advancing economic efficiency and rate stability.¹³⁹ However, this could not be further from the truth for the Cotton Gin class. During the Staff’s proposed multi-phase revenue distribution period,

¹³⁵ Tr. at 1385:23-1386:13 (Narvaez Cross) (May 26, 2021); *see also id.* at 1414:22-25.

¹³⁶ *Supra* Notes 128 & 129

¹³⁷ Tr. at 1433:11-1434:2 (Narvaez Cross) (May 26, 2021).

¹³⁸ *Id.* at 1430:11-12.

¹³⁹ *Id.* at 000022:6-22.

the classes experiencing multi-year increases will experience drastic changes in their rates for multiple years and all classes within their respective rate bundle will experience varying levels of instability during those years.¹⁴⁰ Because usage levels vary significantly between years and there is no normalizing adjustments, for the Cotton Gin rate class, significantly increasing rates based upon the consumption patterns and levels for a single test-year can result in a need for base rate decreases in future rate cases.¹⁴¹ The resulting oscillating rates will not promote rate stability nor economic efficiency for the Cotton Gin class or other similarly situated classes.

Similarly, Staff's proposed phase-in base rate distribution does little to alleviate rate shock concerns for the Cotton Gin class, which is anything but equitable. When asked, Mr. Narvaez defined "rate shock" as, "...when an increase in rates would be – would cause – or would be too harmful...to customers in any specific class."¹⁴² In other words, "too extreme" to customers in any specific class.¹⁴³ First, Staff's proposal also does not address that the Cotton Gin class has very few customers; thus, any cost transition would significantly increase rates for these rate classes and would create a larger burden for these few customers.¹⁴⁴ Also, Staff's proposal allows for only a one-year rate moderation adjustment for the Commercial and Industrial customers, after which all of the Commercial and Industrial rate classes would transition to paying unity costs starting with the second year.¹⁴⁵ This shortened period for rate migration would not help to reduce the economic pressure the customers in these rate classes would face on a long-term basis. In looking

¹⁴⁰ TCGA Ex. 1—Evans Cross Rebuttal at TCGA 0012:10-18.

¹⁴¹ *Id*

¹⁴² Tr. at 1384:8-15 (Narvaez Cross) (May 26, 2021).

¹⁴³ *Id* at 1384:15-18.

¹⁴⁴ *Id.* at 10:14-20.

¹⁴⁵ ETSWD Ex. 2—Pevoto Cross Rebuttal at 10:9-12.

at Mr. Narvaez's self-created Attachment AN-6,¹⁴⁶ in Phase I, the Cotton Gin class would experience a 52.78% gross percent change in rates.¹⁴⁷ However, in Phases II-IV, with no moderation adjustment, the Cotton Gin class would experience a 77.18% gross percent change in rates.¹⁴⁸ Counsel for TCGA asked Mr. Narvaez directly about this percentage:

Q: ...And, Mr. Narvaez, I take it then that the 77.18 percent increase from present rates in two years, in your book, that's not rate shock, Correct?

A: Correct.

Based on the evidence, Staff's revenue distribution and rate design¹⁴⁹ would have a severe impact on the Cotton Gin class that is unreasonably prejudicial and inequitable and does not hold to the legal standards articulated by the governing statutes and regulations applicable to this docket. Staff's proposal is unprecedented and would result in less stability in the rates. Additionally, Staff's proposal would require the Cotton Gin Service class and other classes to incur large rate increases each year for multiple years based upon costs and usage characteristics from a single, historical test-year. TCGA strongly disagrees with the selection of Staff's rate design.

¹⁴⁶ Staff Ex. 4—Narvaez Direct at 000040-43.

¹⁴⁷ *Id.* at 000040.

¹⁴⁸ *Id.* at 000041-43.

¹⁴⁹ *See generally* Staff Ex. 4—Narvaez Direct at 000023:8-000025:15.

CONCLUSION

While there are several proposals to consider, the Parties to this docket seem to agree that a rate increase is appropriate, and TCGA agrees with this position.

However, TCGA strongly disagrees with the inclusion and allocations of SWEPCO's Vegetation Management Expenses and Program Expansion costs to the Cotton Gin class. These costs largely occur in the East Texas service area and not the Texas Panhandle/North Texas service area in determining the rate requirement.

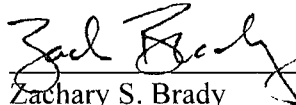
Also, because the Cotton Gin class is being allocated costs that should not be allocated to the class due to its Texas Panhandle location and other unique attributes, TCGA disagrees with any cost allocation analysis to the extent it inequitably and unreasonably allocates costs to the Cotton Gin class.

Lastly, TCGA requests the ALJs to reject any proposed revenue distribution methodologies based on these inequitable cost allocations. Gradualism and rate moderation should be applied in order to alleviate the rate increases and to mitigate rate shock to the Cotton Gin class.

TCGA respectfully requests the ALJs to recommend a rate design in its PFD resulting in a rate increase for the Cotton Gin class that is no more than the lower of either the system average base rate increase or receive a rate increase no more than of 37.44%.

Respectfully submitted,

BRADY & HAMILTON, LLP

A handwritten signature in black ink, appearing to read "Zach Brady", is written over a horizontal line.

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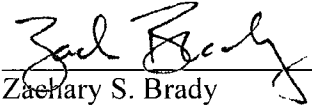
Facsimile: (806) 771-3750

ATTORNEYS FOR INTERVENOR

TEXAS COTTON GINNERS' ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by email on all parties known of record who have provided an email address, on this the 17th day of June, 2021, in accordance with the Commission's Second Order Suspending Rules issued on July 16, 2020, in Project No. 50664.


Zachary S. Brady