

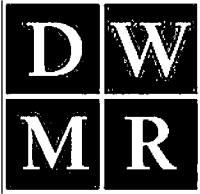


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August 16, 2021

The Honorable Steven H. Neinast
The Honorable Robert H. Pemberton
The Honorable Cassandra Quinn
The Honorable Andrew Lutostanski
Administrative Law Judges
State Office of Administrative Hearings
300 W. 15th Street
Austin, Texas 78701

RE: PUCT Docket No. 51415; SOAH Docket No. 473-21-0538; *Application of Southwestern Electric Power Company for Authority to Change Rates*

Dear Judges Neinast, Pemberton, Quinn, and Lutostanski:

Southwestern Electric Power Company (SWEPCO) files this response to Sierra Club’s letter dated August 9, 2021. In its letter, Sierra Club purports to “notify the Commission of an order issued by the Kentucky Public Service Commission (KPSC) that is pertinent to the Commission’s consideration of [SWEPCO’s] request to change rates in this case.”¹ In reality, Sierra Club is again asking the Administrative Law Judges (ALJs) and the Commission to address the prudence of SWEPCO’s decision to retrofit its Flint Creek plant to meet Effluent Limitations Guidelines (ELG) and Coal Combustion Residuals (CCR) compliance requirements—despite the critical fact that no such capital investment or related costs are being reviewed in this base rate proceeding.

In its letter, Sierra Club renews its opposition to the ALJs’ previous determinations that the prudence-related contentions and arguments concerning SWEPCO’s decision to retrofit the Flint Creek plant are beyond the scope of this proceeding and not relevant to the issues being decided in this base rate case.² Sierra Club explicitly confirms as much stating: “The ALJs and the Commission *should reverse that ruling and hold that SWEPCO’s decision to retrofit Flint Creek to incur the ELG costs was imprudent and unreasonable*, just as the Kentucky Commission found for AEP affiliate Kentucky Power Company’s Mitchell plant.”³

As SWEPCO has repeatedly explained, with respect to the prudence arguments raised by Sierra Club in Sierra Club witness Devi Glick’s testimony: the investments

¹ Sierra Club Letter at 1.

² See SOAH Order No. 7 Granting Leave to File Surreply; Granting Objection and Motion to Strike a Section of Sierra Club’s Direct Testimony (Apr. 27, 2021); SOAH Order No. 12 Denying Motion for Reconsideration of SOAH Order No. 7; Denying Motion to Compel (May 17, 2021).

³ Sierra Club Letter at 2 (emphasis added).

Sierra Club seeks to litigate will be placed in service well after the end of the test year in this case; none of the costs related to Sierra Club's prudence challenge are being reviewed in this case; and the costs incurred to date are construction work in progress and not includable in SWEPCO's cost of service upon which its request in this case is based.⁴ Accordingly, the ALJs struck the section of Devi Glick's testimony addressing this prudence challenge as beyond the scope of this proceeding and determined Sierra Club may appropriately raise the issue after such investment is placed into service and is being reviewed for approval in a future case.⁵ Despite Sierra Club's repeated requests to address the issue, it remains unripe for consideration at this time.⁶

Separately, Sierra Club appears to suggest that the KPSC order is additional legal authority capable of application to the decision-making in this case. There is no basis for such a contention. The decision at issue in the KPSC order is not authoritative in Texas but is based on a Kentucky certificate of public convenience and necessity (CPCN) statute and standard to be applied there, not Texas. Nothing in the order suggests possible relevance or applicability of that CPCN standard to the issues before the Commission in this case, nor does the KPSC order provide any guidance related to the setting of fair and reasonable rates in this case. Sierra Club nonetheless insinuates that there are similar factual circumstances addressed by the KPSC at issue between the Kentucky Power plants and SWEPCO's Flint Creek power plant. But this is also wrong. SWEPCO is a different utility with its own load characteristics and capacity needs. Additionally, Kentucky Power and SWEPCO each operate in different markets under market prices and circumstances particular to the PJM Interconnection and the Southwest Power Pool, respectively. Finally, the Flint Creek power plant has its own environmental compliance characteristics. None of these factors are evaluated or addressed by the KPSC order. Notably, Sierra Club does not alert the ALJs or the Commission to the order issued by the West Virginia Public Service Commission *approving* a certificate for convenience and necessity and recovery of ELG costs associated with the Mitchell power plant.⁷

⁴ See, e.g., Southwestern Electric Power Company's Objection and Motion to Strike the Testimony of Devi Glick on Behalf of Sierra Club (Apr. 9, 2021); Reply to Sierra Club's Response to Motion to Strike Testimony (Apr. 23, 2021); Southwestern Electric Power Company's Response to Sierra Club's Motion for Reconsideration, or in the Alternative, Appeal of SOAH Order No. 7 (May 14, 2021).

⁵ SOAH Order No. 7 at 4-6; SOAH Order No. 12 at 1-3.

⁶ See, e.g., SOAH Order No. 7 at 5-6; see also SOAH Order No. 12 (denying motion for reconsideration). In addition to seeking reconsideration of SOAH Order No. 5, Sierra Club continued to seek discovery relating to the stricken testimony. See Southwestern Electric Power Company's Objection to Sierra Club's Sixth Set of RFIs (May 6, 2021); Southwestern Electric Power Company's Objection to Sierra Club's Sixth Set of RFIs (May 12, 2021). Sierra Club also reurged the issue in its Initial Brief. See Sierra Club's Initial Brief at 27-29 (June 17, 2021); see also Southwestern Electric Power Company's Reply Brief at 23-24.

⁷ *Apalachian Power Company and Wheeling Power Company Application for a certificate of public convenience and necessity for the internal modifications at coal fired generating plants necessary to comply with federal environmental regulations and surcharge*, Public Service Commission of West Virginia Docket No. 20-1040-E-CN, Commission Order (Aug. 4, 2021).



Sierra Club also reasserts its allegation that SWEPCO has decided to retrofit the Welsh units to run on natural gas. Again, as SWEPCO has stated, that decision has not been made at this time but any decision by SWEPCO will be based on all the relevant circumstances once those circumstances are better known.

Accordingly, SWEPCO respectfully requests the ALJs decline to consider the purported supplemental authority submitted by Sierra Club in its August 9 letter.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Stephanie Green'.

Stephanie Green
**ATTORNEY FOR SOUTHWESTERN
ELECTRIC POWER COMPANY**

cc: All Parties of Record