

the entirety of Eastman's BTMG load, as it avoids the duplication of facilities. According to Eastman, its use of the SWEPCO transmission line is incidental and limited at best, and does not justify allocating \$5.7 million in additional costs to Texas or approving a rate that recoups \$3.96 million of those costs annually from Eastman.

TIEC argues that SWEPCO's differential treatment of Eastman compared to similarly situated customers violates the prohibition against discriminatory rates in PURA § 36.003(b) and would subject Eastman to an unreasonable disadvantage under PURA § 36.003(c).⁹⁶⁵ TIEC notes that SWEPCO has singled out only one of its 187 Texas retail customers with BTMG for assessing costs to its retail BTMG load. Specifically, SWEPCO proposes to implement a new transmission rate that would apply solely to Eastman,⁹⁶⁶ which would increase Eastman's annual cost by \$3.96 million as proposed in SWEPCO's application or \$3.27 million as revised in SWEPCO's rebuttal.⁹⁶⁷ The other 186 customers continue to have only the actual load served by SWEPCO included in the development of their rates. None of them, including dozens of other facilities SWEPCO identifies as cogeneration facilities (one of which is over 80 MW),⁹⁶⁸ would experience the massive increase SWEPCO proposes for Eastman.

In addition, TIEC contends that SWEPCO tries to justify singling out Eastman by asserting that it excluded customers that were not synchronous.⁹⁶⁹ However, Mr. Locke acknowledged that the load of any actual SWEPCO customer must be synchronous.⁹⁷⁰ Generation that is asynchronous simply means it is behind an inverter, like most solar power. According to TIEC, whether generation is synchronous or asynchronous has no significance for SWEPCO's operations when the generation goes down, nor has SWEPCO explained why asynchronous generation

⁹⁶⁵ TIEC Initial Brief at 57.

⁹⁶⁶ Tr. at 1262-63.

⁹⁶⁷ TIEC Ex. 77, Excerpt from Schedule Q-7; TIEC Ex. 78, SWEPCO's response to Staff RFI 19-2, Attachment 1; Tr. at 1504-05.

⁹⁶⁸ TIEC Ex. 2 (Pollock Supp. Dir.), Exh. JP-S1.

⁹⁶⁹ TIEC Reply Brief at 30.

⁹⁷⁰ Tr. at 813-14, 816; *see also* TIEC Ex. 2 (Pollock Supp. Dir.) at 3.

serving synchronous load would be treated differently than Eastman's load. Nothing in Section 34.4 of the OATT would make such a distinction.

In response, SWEPCO states that it initiated the data reporting changes beginning with the loads served by Eastman's BTMG due to the size of the facility, its impact on day-to-day SPP real-time operations, and the fact that Eastman's BTMG requires the use of the SPP transmission system to serve all of the load at the Eastman campus.⁹⁷¹ According to SWEPCO, the relative size of the Eastman facility makes it larger than all other potential BTMG combined in SWEPCO's Texas jurisdiction and, in fact, across its entire service territory.⁹⁷² SWEPCO witness Ross explained that, in some instances, SWEPCO did not include the other retail BTMG loads because the generation and associated load are not synchronized to the SPP system or there is a concomitant loss of load with the loss of generation at the site. He further testified that SWEPCO did not include in its Network Load report to SPP the loads served by smaller-scale rooftop solar behind retail distribution system points of delivery. However, Mr. Ross confirmed that SWEPCO is continuing to review these situations and, as appropriate, will update its data reporting procedures for SPP transmission billing.

vi. Burden of Proof Regarding the Proposed \$5.7 Million Increase in Texas Revenue Requirement

TIEC contends SWEPCO failed to meet its burden of proof regarding the proposed \$5.7 million increase in Texas rates because SWEPCO did not identify the additional SPP costs it has incurred—that amount is not in the record.⁹⁷³ The \$5.7 million is not the additional SPP costs to SWEPCO of including the load served by Eastman's BTMG, but rather, represents a shift of *all* transmission-related costs, not just SPP charges, from Arkansas and Louisiana to Texas.⁹⁷⁴ The

⁹⁷¹ SWEPCO Initial Brief at 78; SWEPCO Ex. 52 (Ross Reb.) at 12. Eastman witness Al-Jabir confirmed that Eastman requires the use of one SWEPCO-owned transmission line to serve the entire load at its campus with its BTMG. Tr. at 630-31.

⁹⁷² SWEPCO Ex. 52 (Ross Reb.) at 12.

⁹⁷³ TIEC Initial Brief at 58-60.

⁹⁷⁴ TIEC Ex. 2 (Pollock Supp. Dir.) at 1-2.

shift results from SWEPCO's jurisdictional allocation methodology, which adds the load served by Eastman's BTMG to the load SWEPCO's resources were serving at the time of the monthly peaks.⁹⁷⁵ For example, SWEPCO's actual coincident demand for Texas for April 2019, the first month of the test year, was 889.9 MW, but for purposes of jurisdictional allocation, SWEPCO added 139 MW of load served by Eastman's BTMG at the time of the monthly peak.⁹⁷⁶

Adding Eastman's BTMG load in Texas in the jurisdictional allocation, but not the retail BTMG loads of SWEPCO's customers in Arkansas and Louisiana, shifts costs to Texas. This shift is shown in TIEC Exhibit 74, which compares SWEPCO's jurisdictional allocation with and without Eastman's BTMG load:

Jurisdiction		TOTAL COMPANY	AT ISSUE TEXAS	ARKANSAS	LOUISIANA	FERC
with Eastman	REVENUE DEFICIENCY / (SURPLUS)	228,419,735	105,026,238	88,619,584	43,013,790	(8,239,877)
without Eastman	REVENUE DEFICIENCY / (SURPLUS)	228,419,735	99,339,170	90,652,000	46,668,442	(8,239,877)
		-	5,687,068	(2,032,415)	(3,654,652)	-

Adding Eastman's BTMG load to the Texas jurisdiction reduces the Arkansas revenue requirement by \$2.0 million and the Louisiana revenue requirement by \$3.7 million, for a total of \$5.7 million added to the Texas revenue requirement. TIEC notes that SWEPCO has not provided evidence of what the Texas revenue requirement would have been if it included the retail BTMG load of all three jurisdictions in its jurisdictional allocation study. Instead, SWEPCO is applying one method to develop the Texas jurisdictional demand, and another method to calculate the Arkansas and Louisiana demands. TIEC claims that adding retail BTMG load for Arkansas and Louisiana would presumably reduce Texas's share of allocated transmission costs.

TIEC also notes that SWEPCO's jurisdictional allocation methodology is not limited to the allocation of SPP-related charges. Rather, it includes all of SWEPCO's transmission revenue

⁹⁷⁵ Tr. at 1201-02.

⁹⁷⁶ Tr. at 1202-04; *compare* TIEC Ex. 73 (SPP-RTO coincident demands by jurisdiction) *with* SWEPCO Ex. 31 (Aaron Dir.), Exh. JOA-3. SWEPCO made this adjustment for each month in the test year, resulting in an average increase of 146 MW over the 12 months.

requirement, roughly 34% of which is unrelated to the SPP load ratio share.⁹⁷⁷ TIEC states that SWEPCO did not explain why the change in how it reports retail BTMG load to SPP would affect the allocation of SWEPCO's non-SPP revenue requirement, including the return on SWEPCO's own transmission invested capital, SWEPCO's investment-related expenses, and its transmission-related O&M expenses.⁹⁷⁸ According to TIEC, these costs are the same SWEPCO costs that the Commission has allocated based on actual load in all previous cases, and SWEPCO did not present a cost-based or other rationale for changing Commission precedent on allocating SWEPCO's non-SPP transmission costs.

Further, because the \$5.7 million increase is due to SWEPCO's increase in the Texas jurisdictional allocator for transmission costs, TIEC contends the retail BTMG issue is not a disallowance issue, but rather, a jurisdictional allocation issue.⁹⁷⁹ As shown in TIEC Exhibit 74 above, under both the "with Eastman" and "without Eastman" scenarios, the total company revenue deficiency is the same—\$228,419,735. Thus, as SWEPCO has presented its case, Eastman's load has no impact on SWEPCO's total company revenue requirement. Rather, it affects only the zero-sum game of allocating the total company revenue requirement between the jurisdictions.⁹⁸⁰

Because the issue is actually SWEPCO's proposed jurisdictional allocation of its total transmission costs, TIEC contends SWEPCO's argument that the Commission lacks jurisdiction to disallow any SPP expense is inapposite.⁹⁸¹ TIEC contends that it is well-established that state commissions have jurisdiction to adopt jurisdictional allocation methodologies in allocating a utility's costs, even if different states adopt different allocation methodologies that result in

⁹⁷⁷ TIEC Ex. 2 (Pollock Supp. Dir.) at 2.

⁹⁷⁸ TIEC Ex. 2 (Pollock Supp. Dir.) at 2.

⁹⁷⁹ TIEC Reply Brief at 27.

⁹⁸⁰ *See* Tr. at 1212-13.

⁹⁸¹ TIEC Reply Brief at 27.

recovery of less than the total company costs. That is a risk that a utility assumes when it chooses to operate in multiple jurisdictions.⁹⁸²

Further, even if SWEPCO was required to include retail BTMG load when reporting its monthly Network Load, TIEC asserts there is no argument that the SPP OATT requires the selective inclusion of a single one of the hundreds of customers who generate a portion of their own load.⁹⁸³ Indeed, Mr. Locke opined that *all* retail load served by BTMG must be included, which would include SWEPCO's retail BTMG customers in Arkansas and Louisiana. Thus, the \$5.7 million does not reflect accepting SPP's interpretation of the OATT. TIEC states that SWEPCO has provided no evidence of what the jurisdictional allocators would have been had SWEPCO actually applied Mr. Locke's interpretation and included retail BTMG load in Arkansas and Louisiana in its jurisdictional allocation of transmission costs.

Accordingly, TIEC advocates that SWEPCO be directed to use its actual load in calculating the Texas jurisdictional allocator for transmission costs, just as it does for Louisiana and Arkansas.⁹⁸⁴

SWEPCO responds that it met its burden of proof as to the NITS charges because the record evidence establishes that including Eastman's BTMG load in SWEPCO's Network Load increased SWEPCO's load ratio share, which in turn increased SPP's NITS charges to SWEPCO, and the test-year NITS charges were billed by SPP pursuant to the OATT and paid by SWEPCO.⁹⁸⁵ As discussed above, SWEPCO contends this evidence is sufficient under the filed rate doctrine to demonstrate reasonableness.

⁹⁸² *Entergy Texas, Inc.*, 889 F.3d at 209-10. In this case, however, TIEC notes there is no trapped cost issue because TIEC seeks the adoption of the same allocation methodology used in SWEPCO's other jurisdictions.

⁹⁸³ TIEC Reply Brief at 28.

⁹⁸⁴ TIEC Reply Brief at 33.

⁹⁸⁵ SWEPCO Reply Brief at 72.

In addition, SWEPCO disagrees that it is required to identify the precise portion of its test-year SPP charges related to the inclusion of Eastman's BTMG Texas load in SWEPCO's Network Load reporting.⁹⁸⁶ Identifying these discrete costs is not required by the rate filing package or Commission precedent. SWEPCO notes that the Commission rejected a similar argument in Docket No. 42448. In that SWEPCO TCRF case, CARD argued that "SWEPCO is required to show that the specific cost components underlying the SPP charges to SWEPCO are reasonable and necessary."⁹⁸⁷ However, the ALJ rejected CARD's argument:

CARD's contention that SWEPCO must prove (and the Commission may examine) the reasonableness of charges made to SWEPCO under the SPP OATT is violative of the filed rate doctrine. As SWEPCO noted, if CARD (or any other party) wished to challenge charges made to SWEPCO under the SPP OATT, that party could have done so at FERC. The Commission is not the proper forum for such a challenge.⁹⁸⁸

The Commission approved the ALJ's decision.⁹⁸⁹

Furthermore, SWEPCO states that it did, in fact, provide the estimated dollar impact on SWEPCO's revenue requirement (\$5.7 million) of including versus excluding the retail BTMG in its monthly Network Load reports to SPP.⁹⁹⁰ According to SWEPCO, the incremental amount of NITS charges is only relevant in the case of a disallowance—*i.e.*, the Commission agrees with Eastman's and TIEC's interpretation of the SPP OATT and orders the removal of the incremental costs. But, as SWEPCO notes above, the Commission has already concluded that it is not proper to look behind and examine the reasonableness of charges made to SWEPCO under the SPP OATT. SWEPCO reiterates that TIEC and Eastman can file a complaint with FERC if they believe SPP's and SWEPCO's practices are resulting in unreasonable transmission charges in violation of the SPP OATT.

⁹⁸⁶ SWEPCO Reply Brief at 72-73.

⁹⁸⁷ Docket No. 42448, PFD at 8 (Oct. 10, 2014).

⁹⁸⁸ Docket No. 42448, PFD at 9.

⁹⁸⁹ Docket No. 42448, Order at 2 & CoL Nos. 12-18.

⁹⁹⁰ SWEPCO Reply Brief at 73.

b. ALJs' Analysis

As SWEPCO points out, there is no dispute that the NITS charges were billed by SPP and paid by SWEPCO in the test year. Therefore, the ALJs first address whether the charges are deemed reasonable as a matter of law due to the filed rate doctrine and FERC's exclusive jurisdiction over the wholesale sale or transmission of electricity in interstate commerce. In this context, the filed rate doctrine and FERC's exclusive jurisdiction are intertwined. The filed rate doctrine requires that "interstate power rates filed with FERC or fixed by FERC must be given binding effect by state utility commissions determining intrastate rates."⁹⁹¹ When the filed rate doctrine applies to state regulators, it does so as a matter of federal preemption through the Supremacy Clause.⁹⁹² "Thus, as applied to state regulators, the filed rate doctrine polices the jurisdictional line and protects FERC's authority."⁹⁹³

Eastman and TIEC both argue that FERC's exclusive jurisdiction does not apply here because SPP's NITS charges under the OATT are impacted by an intermediate step—how SWEPCO reports its monthly Network Load to SPP.⁹⁹⁴ If SWEPCO had not changed how it reports retail BTMG load, its load ratio share of SPP's transmission costs would not have increased, and SPP would not have billed the additional costs SWEPCO now seeks to recover. However, the determination of monthly Network Load is specifically addressed in SPP's FERC-approved OATT,⁹⁹⁵ and therefore, cannot be viewed in isolation. In addition, the resulting rate charged by SPP is a wholesale rate, and its reasonableness is therefore squarely within FERC's exclusive jurisdiction to determine.⁹⁹⁶ Notably, FERC's jurisdiction applies not only to rates but

⁹⁹¹ *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 962 (1986); *see also Mississippi Power & Light Co.*, 487 U.S. at 372 ("States may not bar regulated utilities from passing through to retail consumers FERC-mandated wholesale rates.").

⁹⁹² *Entergy Louisiana, Inc.*, 539 U.S. at 47 (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 581-82 (1981)).

⁹⁹³ *Entergy Texas, Inc.*, 889 F.3d at 212.

⁹⁹⁴ Eastman Initial Brief at 7; TIEC Initial Brief at 34.

⁹⁹⁵ SPP OATT at Part III, Section 34.4.

⁹⁹⁶ *Mississippi Power & Light Co.*, 487 U.S. at 371.

also to power allocations that affect wholesale rates.⁹⁹⁷ Accordingly, the ALJs find that SWEPCO's role in providing the data to SPP on which SPP relied to allocate NITS charges does not remove this issue from FERC's jurisdiction.

In addition, while FERC jurisdiction does not depend on whether FERC has directly spoken on an issue,⁹⁹⁸ the parties on both sides in this case cite FERC orders to support their positions. SWEPCO witness Locke cites FERC Order Nos. 888 and 890 as requiring BTMG that serves Network Load to be included in the Network Customer's load ratio share of costs.⁹⁹⁹ Conversely, TIEC and Eastman cite FERC's decision regarding MISO's Integration Plan for Entergy as determining that reporting a QF's *net* electricity is consistent with MISO's tariff (which defines monthly network load nearly identically to SPP's).¹⁰⁰⁰ However, the ALJs find that neither side has pointed to FERC precedent that is definitive. FERC Order Nos. 888 and 890 addressed treatment of *wholesale* BTMG, which is not at issue here. And, while FERC's decision regarding MISO's Integration Plan for Entergy is not inconsistent with *net* reporting of retail BTMG, the issue was not directly before FERC, and thus, was not decided. Therefore, the parties have not pointed to controlling FERC precedent.

TIEC notes that the filed rate doctrine only applies to charges that are "pursuant to the SPP OATT."¹⁰⁰¹ Yet, in this case, the OATT does not expressly address retail BTMG, much less whether it should be reported on a gross or net basis. Notably, both sides point to extrinsic sources (*e.g.*, SPP revision requests, the practices of other RTOs/ISOs, and FERC orders) to support their opposite interpretations. Therefore, to determine whether the charges are pursuant to the OATT necessarily requires an interpretation of the OATT. The Commission, however, is not the proper forum for resolving the OATT's meaning. The appropriate arbiter of disputes involving the interpretation of a FERC-approved tariff, such as the OATT, is FERC pursuant to its exclusive

⁹⁹⁷ *Mississippi Power & Light Co.*, 487 U.S. at 371.

⁹⁹⁸ *Entergy Louisiana, Inc.*, 539 U.S. at 50.

⁹⁹⁹ SWEPCO Ex. 51 (Locke Reb.) at 6.

¹⁰⁰⁰ Eastman Initial Brief at 17-18; TIEC Initial Brief at 53-54.

¹⁰⁰¹ TIEC Reply Brief at 33.

jurisdiction over wholesale rates.¹⁰⁰² In fact, this case presents a prime example of why such disputes are more appropriately resolved by FERC. The evidence demonstrates that there is a lack of consensus among SPP and its Network Customers regarding how to report retail BTMG load. SPP has Network Customers in multiple states, including Texas, and conflicting interpretations of the OATT would undermine FERC's ability to ensure that a filed rate is uniform across different states.¹⁰⁰³ Accordingly, the ALJs conclude it is not the Commission's role to weigh in on this debate in a retail rate case for one of the many utilities that are subject to the OATT.

The ALJs are also not persuaded that SWEPCO's decision to report retail BTMG load was merely voluntary. While there does not appear to be a separate directive from SPP requiring that Network Customers report retail BTMG load on a gross basis, SWEPCO demonstrated that SPP has provided educational materials explaining that such reporting is required by the OATT. SWEPCO also presented the testimony of Mr. Locke, SPP's Director of Transmission Policy and Rates, who unequivocally stated it is SPP's position that Network Customers should be reporting retail BTMG load on a gross basis.¹⁰⁰⁴ And the ALJs agree with SWEPCO that its reporting practices should not be dependent on whether SPP has enforcement authority to penalize SWEPCO, or on the reporting practices of other Network Customers.

Accordingly, the ALJs conclude that SWEPCO's undisputed evidence that its test-year NITS charges were billed by SPP and paid by SWEPCO is sufficient to demonstrate their reasonableness as a matter of law under the filed rate doctrine.¹⁰⁰⁵ While there remains a dispute about whether those charges are "pursuant to the SPP OATT," that matter is within FERC's exclusive jurisdiction to decide. For the same reason, the ALJs do not address whether SPP's interpretation of the OATT violates PURPA.

¹⁰⁰² *AEP Texas North Co.*, 473 F.3d at 585.

¹⁰⁰³ *See AEP Texas North Co.*, 473 F.3d at 586.

¹⁰⁰⁴ SWEPCO Ex. 51 (Locke Reb.) at 5.

¹⁰⁰⁵ *See Nantahala Power & Light Co.*, 476 U.S. at 962.

Finding that the NITS charges are reasonable, however, does not resolve whether the \$5.7 million increase SWEPCO requests in this case is reasonable, necessary, and non-discriminatory. As TIEC and Eastman point out, the \$5.7 million is not the increase in NITS charges that SWEPCO incurred due to reporting Eastman's BTMG load to SPP. Instead, it results from a change in how SWEPCO proposes to allocate its transmission costs jurisdictionally among Texas, Arkansas, and Louisiana, specifically by increasing Texas's load by 146 MW to add Eastman's BTMG load.¹⁰⁰⁶ The reasonableness of a utility's jurisdictional allocation is a matter within the state's jurisdiction to determine in setting the utility's retail rates, even when it impacts the allocation of costs charged pursuant to a FERC-approved tariff.¹⁰⁰⁷

SWEPCO provided little support for changing its jurisdictional allocation. Notably, even though including retail BTMG load in the jurisdictional allocation of transmission costs is not consistent with how SWEPCO has allocated these costs in the past, its Application provided little indication that it was making this change. SWEPCO also did not explain why adjusting its jurisdictional allocation in this manner was the appropriate way to address the increase in SPP costs related to reporting Eastman's BTMG load to SPP. As TIEC points out, by changing the jurisdictional allocator for *all* transmission costs, Texas would receive a higher share not only of SWEPCO's SPP costs, but also its transmission costs that are not related to SPP. However, SWEPCO also did not explain why the change in how it reports retail BTMG load to SPP would impact the allocation of its non-SPP transmission costs.

Further, the ALJs find that SWEPCO's decision to revise its jurisdictional allocation to add the retail BTMG load of one customer (Eastman) in one jurisdiction (Texas) is unreasonable and results in unreasonably discriminatory rates for Texas customers. SWEPCO has retail customers with BTMG in all three of its jurisdictions. As a result, adding retail BTMG load solely to Texas likely results in the Texas jurisdiction receiving a higher allocation of SWEPCO's transmission costs than if the Company had treated each jurisdiction consistently. This inconsistency is also not

¹⁰⁰⁶ See TIEC Ex. 74, SWEPCO response to TIEC RFI 11-1.

¹⁰⁰⁷ See *Entergy Texas, Inc.*, 889 F.3d at 207, 209-10.

attributable to SPP requiring Network Customers to report retail BTMG load, as Mr. Locke testified that *all* retail BTMG load should be reported.¹⁰⁰⁸

The ALJs are also not persuaded by the distinctions SWEPCO identifies for reporting only Eastman's BTMG load. While Eastman has the largest BTMG load of SWEPCO's retail customers, it is not the only customer with a sizable BTMG load. SWEPCO also did not show that Eastman's size imposes a greater cost on its transmission system, particularly here, where it is undisputed that Eastman rarely takes service from SWEPCO and is unlikely to take service during a system peak. SWEPCO also pointed out that, due to the configuration of Eastman's campus and BTMG, Eastman uses a SWEPCO-owned transmission line to serve all of its load. However, Eastman demonstrated that this configuration existed before it purchased the BTMG system from a predecessor of AEP and that Eastman's use of the line is incidental. Further, the use of the line does not appear to be imposing new costs on SWEPCO's system. Finally, as to whether the load is synchronous versus asynchronous, this distinction does not appear to be significant here, as any load SWEPCO is capable of serving must be synchronous.

For these reasons, the ALJs conclude that SWEPCO failed to demonstrate that its proposed jurisdictional allocation was reasonable, necessary, and non-discriminatory. Accordingly, the ALJs recommend that the 146 MW of Eastman's BTMG load that SWEPCO added to the Texas jurisdiction for allocation purposes be removed.

B. Generation O&M Expense

SWEPCO's test year level of generation non-fuel production O&M expense was \$130.1 million.¹⁰⁰⁹ SWEPCO asserts that its expenses are reasonable and states it has maintained tight control of its budget during the last three years, with an average deviation from control budget to expenditures of approximately 6%.¹⁰¹⁰ From 2017 to the test year, SWEPCO's O&M expense

¹⁰⁰⁸ See Tr. at 817-18.

¹⁰⁰⁹ SWEPCO Ex. 7 (McMahon Dir.) at 20.

¹⁰¹⁰ SWEPCO Ex. 7 (McMahon Dir.) at 23.

decreased by approximately \$6 million.¹⁰¹¹ SWEPCO also notes that it has decreased its staffing levels, and for large projects it outsources labor to avoid employing more people than necessary for normal plant operations.¹⁰¹² SWEPCO stresses that its O&M projects and expenses are scrutinized and approved at multiple levels of management, and expenditures are tracked and managed on a monthly basis.¹⁰¹³

Parties challenge SWEPCO's generation O&M expense in regard to plant retirements—the expected retirement of the Dolet Hills unit in December 2021 and the recent retirements of five gas-fired generating units.

1. Dolet Hills

SWEPCO proposes to include in its rates the O&M expense for Dolet Hills. Parties argue that SWEPCO's expenses should be adjusted for the plant's retirement.

CARD argues that because Dolet Hills will be retired two months after new base rates are expected to be placed into effect, for Dolet Hills, SWEPCO should recover two months of expenses at the test year average monthly O&M expense level of \$1.04 million per month.¹⁰¹⁴ SWEPCO incurred approximately \$12.5 million for its ownership share of Dolet Hills non-fuel O&M during the test year.¹⁰¹⁵ CARD's proposed adjustment would reduce SWEPCO's requested test year O&M expense for Dolet Hills by approximately \$10.4 million on a total company basis.¹⁰¹⁶ CARD argues that this adjustment is appropriate because, by failing to account for the Dolet Hills retirement, SWEPCO's requested revenue requirement is inflated: there will be no significant O&M costs

¹⁰¹¹ SWEPCO Ex. 7 (McMahon Dir.) at 24.

¹⁰¹² SWEPCO Ex. 7 (McMahon Dir.) at 25.

¹⁰¹³ SWEPCO Ex. 7 (McMahon Dir.) at 26.

¹⁰¹⁴ CARD Ex. 3 (Norwood Dir.) at 6. The ALJs have previously discussed that the effective date for the rates in this docket—the relate-back date—is March 18, 2021, not the date of a Commission final order issued in this docket.

¹⁰¹⁵ CARD Ex. 3 (Norwood Dir.) at 5.

¹⁰¹⁶ CARD Ex. 3 (Norwood Dir.) at 6.

after the plant has been retired.¹⁰¹⁷ And the O&M expenditures for the plant are likely to be greatly reduced by the time new base rates are placed in effect because Dolet Hills has been primarily restricted to operating in the summer months.¹⁰¹⁸ Additionally, regardless of the plant's retirement, Dolet Hills' net capacity factor has declined—from an average of 35.4% in 2017, to 26.4% in 2018, to 20.6% in 2019—and this drop in production merits a reduction in O&M expenses because non-fuel O&M expenses for lignite-fired generating units vary with the volume of lignite burned for production.¹⁰¹⁹

Sierra Club also seeks to adjust SWEPCO's O&M expenses because of the Dolet Hills retirement.¹⁰²⁰ Sierra Club explains that use of a test year assumes that operations during the test year are representative of operations while rates will be in effect.¹⁰²¹ But here SWEPCO will retire Dolet Hills shortly after the Company's new base rates will go into effect.¹⁰²² Sierra Club further argues that, at a minimum, SWEPCO's expenses for Dolet Hills should be reduced by \$3.5 million (25% of the proposed test year spending)—a reduction for the three months during which SWEPCO has committed not to operate the plant.¹⁰²³

ETEC-NTEC states that Dolet Hills is a significant annual expense that, absent mitigation, SWEPCO will charge annually until its next base rate case.¹⁰²⁴ ETEC-NTEC argues that because Dolet Hills will be retired shortly after new rates become effective, a mitigation measure is needed to avoid unreasonable and problematic rate consequences.¹⁰²⁵ ETEC-NTEC proposes creating a regulatory liability for the non-fuel operating costs included in the revenue requirement related to

¹⁰¹⁷ CARD Ex. 3 (Norwood Dir.) at 5.

¹⁰¹⁸ CARD Ex. 3 (Norwood Dir.) at 5-6.

¹⁰¹⁹ CARD Initial Brief at 43.

¹⁰²⁰ Sierra Club Initial Brief at 19.

¹⁰²¹ Sierra Club Initial Brief at 20.

¹⁰²² Sierra Club Initial Brief at 20. Again, the rates in this docket will become effective as of March 18, 2021.

¹⁰²³ Tr. at 135-36, 176.

¹⁰²⁴ ETEC-NTEC Initial Brief at 11.

¹⁰²⁵ ETEC-NTEC Initial Brief at 12.

Dolet Hills for the month the unit is retired until the effective date of a new base rate case, so the regulatory liability can be used to offset the regulatory asset created for the remaining book value of Dolet Hills or other costs.¹⁰²⁶ ETEC-NTEC emphasizes that a regulatory liability is needed because Dolet Hills will be retired and SWEPCO has not demonstrated that new costs will arise that will displace the operating costs no longer incurred.¹⁰²⁷

SWEPCO states that the recovery of Dolet Hills expenses is proper because the test year Dolet Hill plant O&M costs are reasonably representative of the costs the plant will incur in 2021.¹⁰²⁸ That is, until its retirement at the end of 2021, Dolet Hills will be offered into the energy market and will incur expenses to keep the unit available to operate, and Dolet Hills will operate seasonally in 2021 like it did in the test year, so its O&M expenses will be similar to the test year's.¹⁰²⁹

SWEPCO disagrees with CARD's proposed adjustment, arguing that it would under-recover Dolet Hills' O&M expense in 2021 after the March 2021 effective date of rates: "it is not reasonable to eliminate O&M expense for a plant that will continue to operate for almost a year after the effective date of rates."¹⁰³⁰ And SWEPCO asserts that CARD's argument about Dolet Hill's dropping capacity factor is meritless because not only did CARD fail to offer evidence that "non-fuel O&M expenses for lignite-fired generating units vary with the volume of the lignite that is burned for energy production,"¹⁰³¹ but O&M expenses extend beyond generation to labor, maintenance, and field support.¹⁰³²

¹⁰²⁶ ETEC-NTEC Initial Brief at 12.

¹⁰²⁷ ETEC-NTEC Initial Brief at 12.

¹⁰²⁸ SWEPCO Initial Brief at 80.

¹⁰²⁹ SWEPCO Ex. 37 (McMahon Reb.) at 2.

¹⁰³⁰ SWEPCO Ex. 37 (McMahon Reb.) at 2, 6.

¹⁰³¹ See CARD Initial Brief at 43.

¹⁰³² SWEPCO Reply Brief at 75; SWEPCO Ex. 7 (McMahon Dir.) at 21.

SWEPCO also disagrees with Sierra Club. Although acknowledging that ratemaking is a forward-looking process using a test year to approximate a utility's anticipated costs of operating during the period when rates will be in effect, SWEPCO responds that the Dolet Hills expenses do in fact approximate the costs "when rates will be in effect" because the rates set in this case are effective from March 2021 when Dolet Hills provided service.¹⁰³³

SWEPCO disagrees with ETEC-NTEC as well. SWEPCO reiterates that generally the cost of operating assets that are used and useful should be included in cost-of-service rates. SWEPCO asserts there is no reason to depart from that policy here. Again, because Dolet Hills was providing service when the rates being set in this case will become effective, SWEPCO's investment in the Dolet Hills plant is properly included in SWEPCO's historical test year rate base on which rates are to be set.

The ALJs agree with the parties requesting an adjustment to account for the Dolet Hills retirement. The central point is that Dolet Hills will soon be retired, so SWEPCO should not continue to recover O&M expenses that will no longer be incurred after December 31, 2021. CARD and Sierra Club each propose calculations to address the matter now. The ALJs recommend adopting CARD's approach of allowing SWEPCO to recover a test year average monthly O&M expense level of \$1.04 million per month. But the ALJs disagree with CARD and Sierra Club about when rates will become effective in this case. The ALJs agree with SWEPCO that rates in this case will be effective from March 2021 forward. The ALJs therefore recommend that SWEPCO recover a test year average monthly O&M expense for Dolet Hills until its retirement in December 2021 but not after. This recognizes SWEPCO's point that the Dolet Hills plant is in service when rates will be in effect but also avoids recoupment for expenses that will no longer be incurred once Dolet Hills retires.

¹⁰³³ SWEPCO Reply Brief at 75. *See generally* PURA § 26.211(b); 16 TAC § 25.5(101).

2. Five Retired Natural Gas Plants

CARD argues that SWEPCO fails to properly account for five retired gas-fired generating units.¹⁰³⁴ CARD notes that one unit was retired in January 2019, and four units were retired in May 2020.¹⁰³⁵ CARD asserts that the retirement of these five units is a known and measurable change that will reduce O&M expenses.¹⁰³⁶ To address this, CARD requests that the test year expense for each plant reflect the level of generating capacity retirements made at each plant.¹⁰³⁷ CARD argues that SWEPCO's already-included (\$616,316) reduction for the five retired units is insufficient because that is only approximately 5% of the total test year expense for the Knox Lee, Lieberman, and Lone Star gas plants, even though five of the eight existing gas units (or 62.5%) were retired during the period.¹⁰³⁸ CARD asserts that its proposed \$1.1 million adjustment (in addition to SWEPCO's already-included reduction of approximately \$600,000) to SWEPCO's \$11.3 million test-year expenses is more appropriate: it is a 15% reduction to test-year expenses for the retired units.¹⁰³⁹

SWEPCO disagrees and asserts CARD's adjustment is overstated. SWEPCO states that it already included an approximately (\$600,000) adjustment for the five retired units.¹⁰⁴⁰ SWEPCO explains that this figure was calculated using benefiting location, which includes the costs at the generating unit level.¹⁰⁴¹ In contrast, SWEPCO asserts, CARD's proposed adjustment is in addition to the amount SWEPCO already removed for the retired units.¹⁰⁴² And for four of the five units, CARD's adjustment greatly exceeds the actual test year expense for the units.¹⁰⁴³ Also,

¹⁰³⁴ CARD Initial Brief at 43; CARD Ex. 3 (Norwood Dir.) at 6-7.

¹⁰³⁵ SWEPCO Ex. 7 (McMahon Dir.) at 9-10.

¹⁰³⁶ CARD Initial Brief at 44.

¹⁰³⁷ CARD Ex. 3 (Norwood Dir.) at 7, Attachment SN-6.

¹⁰³⁸ CARD Reply Brief at 21.

¹⁰³⁹ CARD Reply Brief at 21.

¹⁰⁴⁰ SWEPCO Ex. 37 (McMahon Reb.) at 2.

¹⁰⁴¹ SWEPCO Ex. 37 (McMahon Reb.) at 3.

¹⁰⁴² SWEPCO Ex. 37 (McMahon Reb.) at 4.

¹⁰⁴³ SWEPCO Ex. 37 (McMahon Reb.) at 4.

CARD assumes that plant-level O&M expenses are reduced by an amount equal to the percentage of capacity retired, ignoring that when a generating facility has multiple units, there are often shared assets, and when a unit retires, the expenses associated with those shared assets must be distributed among fewer units.¹⁰⁴⁴ Thus, SWEPCO argues, CARD's adjustment is not based on a known and measurable change and overstates the costs attributable to the retired units.¹⁰⁴⁵

The ALJs agree with SWEPCO. A preponderance of the evidence shows that SWEPCO properly accounted for the reduction in non-fuel O&M expenses that resulted from the retirement of five gas-fired generation units. SWEPCO's O&M expense records using benefitting location identify costs at the generating unit level, and using these costs is preferable to the alternative proposed by CARD.

C. Labor-Related Expenses

1. Payroll Expense

a. SWEPCO's Position

SWEPCO states that its payroll costs were calculated using the actual employees on the payroll at the end of the test year (March 2020) and their base payroll amounts at that time plus a post-test year pay increase.¹⁰⁴⁶ SWEPCO witness Andrew Carlin explained that salary increases were implemented in April 2020, and the increases were collectively bargained for or determined and approved before there was any known impact from COVID-19.¹⁰⁴⁷ SWEPCO witness Baird further explained that the percentage increase in the payroll pro forma was 3.5% for all employees, but the adjustment included only the merit or general wage increases.¹⁰⁴⁸ Merit-eligible employees

¹⁰⁴⁴ SWEPCO Ex. 37 (McMahon Reb.) at 5.

¹⁰⁴⁵ SWEPCO Ex. 37 (McMahon Reb.) at 5.

¹⁰⁴⁶ SWEPCO Ex. 36 (Baird Reb.) at 31.

¹⁰⁴⁷ SWEPCO Ex. 21 (Carlin Dir.) at 18.

¹⁰⁴⁸ SWEPCO Ex. 36 (Baird Reb.) at 31.

were adjusted 3.0%, and hourly physical and craft employees were adjusted 2.5%, all of which was approved by the compensation committee and implemented by October 2020.¹⁰⁴⁹

SWEPKO argues that it has made two known and measurable adjustments to its payroll: (1) annualizing its base payroll to the salary rate in effect at the end of the test year and (2) recognizing the effect of the merit and general increases that were awarded in 2020 after the end of the test year.¹⁰⁵⁰ SWEPKO states these two adjustments are consistent with the Commission's decisions in SWEPKO's two previous rate cases,¹⁰⁵¹ and the Commission approved a 3.5% payroll increase in SWEPKO's last base rate case and should do so again here.¹⁰⁵²

SWEPKO disagrees with Staff's and OPUC's proposal to use more recent payroll information. SWEPKO argues that is contrary to the Commission's Cost of Service Rule, which provides that "only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered."¹⁰⁵³ Although a retirement incentive package was offered after the end of the test year, SWEPKO argues that the impact of the retirement package is not "known and measurable" because an annualized payroll cannot be done until all employees have departed and decisions on filling the positions has been made, and when vacancies occur, associated reductions in payroll may be offset by increased spending in other cost categories (*e.g.*, outside services when work is redirected to contingent labor or outsourced).¹⁰⁵⁴

b. Staff's and OPUC's Position

Staff and OPUC do not challenge a payroll increase. They instead recommend that SWEPKO's payroll expense be adjusted to align with recent payroll information:

¹⁰⁴⁹ SWEPKO Ex. 36 (Baird Reb.) at 31.

¹⁰⁵⁰ SWEPKO Initial Brief at 82.

¹⁰⁵¹ Docket No. 40443, Order on Rehearing at FoF Nos. 210-13 (Mar. 6, 2013); Docket No. 46449, Order on Rehearing at FoF Nos. 191-193 (Mar. 19, 2018).

¹⁰⁵² *See* Docket No. 46449, Order on Rehearing at FoF Nos. 191-193 (Mar. 19, 2018).

¹⁰⁵³ 16 TAC § 25.231(b).

¹⁰⁵⁴ OPUC Ex. 37, SWEPKO response to OPUC RFI 6-2; SWEPKO Ex. 36 (Baird Reb.) at 35.

For SWEPCO's direct payroll expense, SWEPCO requests an increase of approximately \$2.14 million to its test year payroll expense based on the annualization of the last pay period of the test year (March 2020) and a 3.5% salary increase to the base payroll cost.¹⁰⁵⁵ Staff notes that more recently, however, SWEPCO's October 31, 2020 payroll was annualized, resulting in an increased payroll expense.¹⁰⁵⁶ As a result, Staff requests an adjustment of \$544,331 above SWEPCO's requested adjustment.¹⁰⁵⁷

For SWEPCO's AEPSC-allocated payroll expenses, SWEPCO requests an increase of approximately \$3.90 million to its test-year allocated AEPSC payroll expense based on an annualization of the end of test-year headcount and inclusion of a merit increase.¹⁰⁵⁸ Staff again notes, however, that SWEPCO provided an updated calculation based on an annualization of the October 2020 AEPSC payroll allocated to SWEPCO compared to the allocated test-year amount to derive an adjustment to the test-year amount of (\$675,636).¹⁰⁵⁹ This change is due to a proportional difference in employees who accepted a recent retirement incentive package: one SWEPCO employee and 189 AEPSC employees accepted the retirement package.¹⁰⁶⁰ Staff thus proposes an adjustment of (\$4,480,512)—the difference between SWEPCO's requested increase and the updated October 2020 payroll amount.¹⁰⁶¹

OPUC witness Cannady emphasized that because the retirement package was offered after the test year, and because there was a material number of employees who accepted the retirement

¹⁰⁵⁵ Staff Ex. 3 (Stark Dir.) at 6-7.

¹⁰⁵⁶ Staff Ex. 3 (Stark Dir.) at 6-7.

¹⁰⁵⁷ Staff Ex. 3 (Stark Dir.) at 6-7.

¹⁰⁵⁸ Staff Ex. 3 (Stark Dir.) at 7.

¹⁰⁵⁹ Staff Ex. 3 (Stark Dir.) at 7-8.

¹⁰⁶⁰ Staff Ex. 3 (Stark Dir.) at 8.

¹⁰⁶¹ Staff Ex. 3 (Stark Dir.) at 8.

package, the employee headcount at the end of the test year is not an appropriate headcount on which to annualize payroll expenses.¹⁰⁶²

c. CARD's Position

CARD opposes a proposed 3.5% payroll increase.¹⁰⁶³ CARD witness M. Garrett stated that a 3.5% payroll increase will almost never result in a 3.5% increase in payroll expense levels.¹⁰⁶⁴ He testified that the actual increase amount associated with a nominal pay raise is not known and measurable because too many other factors impact the overall change of payroll expense. Those factors include: the turnover of employees, with retiring employees taking higher salary levels off the system and new employees coming on at lower pay levels; workforce reorganizations, where significant reductions in the workforce are achieved on an ongoing basis through increased employee efficiencies; productivity gains, where smaller reductions in workforce levels are achieved on an ongoing basis through increased employee efficiencies; and capitalization ratio changes, where more payroll costs are capitalized (rather than expensed) during a period of capital expansion.¹⁰⁶⁵

CARD recommends that payroll expenses be set in line with test year level expenses:

- SWEPCO expenses. CARD witness M. Garrett stated that SWEPCO's annualized base pay for the post-test year pay periods from October through December 2020 was 0.87% more than the base pay for the test year.¹⁰⁶⁶ He proposed that SWEPCO's payroll expenses be set at this amount to reflect all changes from the test year—not only the post-test year pay increases.¹⁰⁶⁷

¹⁰⁶² OPUC Ex. 1 (Cannady Dir.) at 32.

¹⁰⁶³ CARD Ex. 2 (M. Garrett Dir.) at 33.

¹⁰⁶⁴ CARD Ex. 2 (M. Garrett Dir.) at 33.

¹⁰⁶⁵ CARD Ex. 2 (M. Garrett Dir.) at 33-34.

¹⁰⁶⁶ CARD Ex. 2 (M. Garrett Dir.) at 35.

¹⁰⁶⁷ CARD Ex. 2 (M. Garrett Dir.) at 35.

- AEPSC allocated expenses. SWEPCO increased its AEPSC allocated payroll costs 9.8% above test year levels.¹⁰⁶⁸ CARD witness M. Garrett explained that this increase fails to account for the savings from the early retirement package.¹⁰⁶⁹ He added that AEPSC post-year payroll costs were comparable to the test year, increasing only 0.24%.¹⁰⁷⁰ He recommended that AEPSC payroll expenses be set at the test year level to reflect the reduction in employee levels that offset almost all increases that also may have occurred in the test-year period.¹⁰⁷¹

d. ALJs' Analysis

The ALJs agree with SWEPCO, Staff, and OPUC that an approximately 3.5% payroll increase should be approved. The Commission has approved a similar salary increase before, and the evidence supports approval of that level of increase here.

The ALJs agree with Staff, OPUC, and CARD that the retirement package and revised employee headcount is a known and measurable change that merits an adjustment. Although SWEPCO argues that the impact of the retirement package remains uncertain, its October 2020 payroll provides a sufficiently certain data point. Moreover, SWEPCO did not show it intended to replace the retired employees or that its employee headcount would recover or vary minimally from the test year. Rather, a material number of employees accepted the retirement package, so the employee headcount at the end of the test year is not an appropriate headcount on which to annualize payroll expenses. The ALJs therefore recommend that Staff and OPUC's adjustment be adopted: a \$544,331 increase for SWEPCO's direct payroll increase, and a (\$4,480,512) decrease for AEPSC's allocated expense.

¹⁰⁶⁸ CARD Ex. 2 (M. Garrett Dir.) at 36.

¹⁰⁶⁹ CARD Ex. 2 (M. Garrett Dir.) at 36.

¹⁰⁷⁰ CARD Ex. 2 (M. Garrett Dir.) at 36.

¹⁰⁷¹ CARD Ex. 2 (M. Garrett Dir.) at 36.

2. Incentive Compensation

Staff and SWEPCO are in general agreement on incentive compensation, except that Staff notes two small errors in SWEPCO's proposal.¹⁰⁷² First, SWEPCO found an error in the business unit financial-based goal percentage; a correction results in adjustments of (\$50,709) and (\$6,131) for SWEPCO and AESPC, respectively.¹⁰⁷³ Second, SWEPCO identified an erroneously included \$43,345 of financial-based incentive compensation that was capitalized.¹⁰⁷⁴ Staff proposes an adjustment of (\$42,039) to remove these costs net of amortization of \$1,306 from SWEPCO's requested rate base.¹⁰⁷⁵ SWEPCO agrees with Staff regarding these two adjustments.¹⁰⁷⁶

CARD and OPUC disagree with SWEPCO regarding short-term and long-term incentive compensation.

a. Short-Term Incentive (STI) Compensation

i. SWEPCO's Position

SWEPCO requests inclusion in its cost of service and rate base of the non-financial portion of the target level of STI expense, after excluding 50% of any financially-based funding mechanism for employees who are not union-represented.¹⁰⁷⁷ SWEPCO requests the full target level of STI expense be included in its cost of service for union-represented employees for whom STI compensation was collectively bargained.¹⁰⁷⁸ In both cases SWEPCO is requesting inclusion

¹⁰⁷² Staff Ex. 3 (Stark Dir.) at 8-10.

¹⁰⁷³ Staff Ex. 3 (Stark Dir.) at 9.

¹⁰⁷⁴ Staff Ex. 3 (Stark Dir.) at 10.

¹⁰⁷⁵ Staff Ex. 3 (Stark Dir.) at 10.

¹⁰⁷⁶ SWEPCO Ex. 46 (Carlin Reb.) at 2.

¹⁰⁷⁷ SWEPCO Ex. 21 (Carlin Dir.) at 38-39.

¹⁰⁷⁸ SWEPCO Ex. 21 (Carlin Dir.) at 39.

of only a target level of the test year STI expense, which is the market-competitive level, rather than the larger actual per-books expense.¹⁰⁷⁹

SWEPCO witness Carlin explained the purpose of STI compensation. Mr. Carlin stated that STI compensation benefits customers by enabling SWEPCO to attract and retain skilled employees who provide quality service to customers.¹⁰⁸⁰ Without STI compensation, he asserted, the compensation for many positions would be below the market-competitive range, which would impair SWEPCO's ability to attract and retain employees and would increase costs and result in declining service levels and increased cost to customers.¹⁰⁸¹ Mr. Carlin opined that incentive compensation improves employee and company performance by more effectively communicating goals and objectives, better aligning employee efforts with these goals and objectives, more effectively engaging employees, and motivating employees to achieve better performance.¹⁰⁸²

Mr. Carlin also explained how SWEPCO funds STI. Mr. Carlin stated that SWEPCO's requested cost recovery and rate base reflect the historical 70% weight on AEP's operating earnings for determining STI compensation plan funding.¹⁰⁸³ More specifically, in 2019, SWEPCO used a "balanced scorecard of performance measures" for STI funding: 70% for AEP operating earnings; 10% for safety and compliance; 9% for infrastructure investment; 4% for O&M savings; 4% for customer experience and quality of service; and 3% for workforce of the future and culture.¹⁰⁸⁴ In 2020, the funding was based entirely on AEP's operating earnings per share.¹⁰⁸⁵ According to Mr. Carlin, this was a temporary change made for 2020 due to the financial

¹⁰⁷⁹ SWEPCO Ex. 21 (Carlin Dir.) at 39.

¹⁰⁸⁰ SWEPCO Ex. 21 (Carlin Dir.) at 24.

¹⁰⁸¹ SWEPCO Ex. 21 (Carlin Dir.) at 25.

¹⁰⁸² SWEPCO Ex. 21 (Carlin Dir.) at 25.

¹⁰⁸³ SWEPCO Ex. 21 (Carlin Dir.) at 31-32.

¹⁰⁸⁴ SWEPCO Ex. 21 (Carlin Dir.) at 31.

¹⁰⁸⁵ SWEPCO Ex. 21 (Carlin Dir.) at 31.

volatility and rapidly changing business conditions caused by COVID-19.¹⁰⁸⁶ For 2021, STI funding is expected to revert to the balance scorecard approach.¹⁰⁸⁷

In this case, SWEPCO applied a 50% exclusion to the 70% of the funding mechanism that was based on financial measures (*i.e.*, earnings per share), resulting in a 35% exclusion of STI based on the funding mechanism.¹⁰⁸⁸

SWEPCO disagrees with CARD's argument that AEP financial incentive compensation plans have a 100% financial performance requirement to be funded. Mr. Carlin stated that the financial funding trigger has been in place for many years, and recently the Commission removed 50% of the weight of assigned to the AEP operating-earnings-per-share measure rather than treating the entirety of funding measures as financially-based due to the funding trigger.¹⁰⁸⁹ He added that some company discretion is part of incentive plans, but AEP's short-term incentive compensation plans have met the funding trigger each year for many years. According to Mr. Carlin, it is contrary to AEP's interest to reduce incentive compensation in a manner that reduces the perceived value of STI compensation without an offsetting increase in base pay, because that would impair the Company's ability to attract and retain employees and lead to reduced performance and increased overall costs.¹⁰⁹⁰ He added that this funding mechanism ensures that the AEP companies can afford employee incentive compensation while meeting commitments to other stakeholders and ensuring STI compensation does not impair the companies financially (*e.g.*, in the case of financial stress).¹⁰⁹¹

SWEPCO disagrees with CARD's proposed adjustment because the financial funding mechanism was 100% operating earnings per share for the final quarter of the test year. First,

¹⁰⁸⁶ SWEPCO Ex. 21 (Carlin Dir.) at 31.

¹⁰⁸⁷ SWEPCO Ex. 21 (Carlin Dir.) at 31.

¹⁰⁸⁸ SWEPCO Ex. 21 (Carlin Dir.) at 31.

¹⁰⁸⁹ SWEPCO Ex. 46 (Carlin Reb.) at 8-9.

¹⁰⁹⁰ SWEPCO Ex. 46 (Carlin Reb.) at 9-10.

¹⁰⁹¹ SWEPCO Ex. 21 (Carlin Dir.) at 32.

Mr. Carlin pointed out that the change only affected the last quarter of the test year—not the first three quarters.¹⁰⁹² Second, Mr. Carlin noted the change was limited to 2020 STI compensation: it is not indicative of the practices before 2020, for the majority of the test year, or going forward.¹⁰⁹³ Third, he stated the change was a response to the unprecedented uncertainty posed by COVID-19 and was done to better ensure SWEPCO maintained access to capital at reasonable rates.¹⁰⁹⁴ In all, Mr. Carlin described the funding mechanism as a temporary change made because of the uncertainty and risks of the COVID-19 pandemic.¹⁰⁹⁵

Similarly, SWEPCO disagrees with OPUC’s argument to limit STI compensation to 2019 awards. Mr. Carlin testified that the target level of STI compensation is the amount intended to bring SWEPCO’s target for total compensation in line with reasonable and market-competitive levels, and SWEPCO’s STI compensation awards over the last five and ten years have been above target.¹⁰⁹⁶ SWEPCO argues that the use of the target amount of incentive compensation is consistent with Commission precedent.¹⁰⁹⁷ Mr. Carlin also emphasized that SWEPCO’s history shows it provides awards at or above the target level on average over time.¹⁰⁹⁸ Mr. Carlin further stated that the target level for STI compensation is “known and measurable” and generally lower than the amount of STI compensation actually paid.¹⁰⁹⁹

Finally, SWEPCO disagrees with OPUC’s argument that STI compensation expenses for union employees should be reduced as it is for non-union employees. Mr. Carlin explained that SWEPCO’s request for recovery of the target level of STI compensation for union employees is

¹⁰⁹² SWEPCO Ex. 46 (Carlin Reb.) at 7.

¹⁰⁹³ SWEPCO Ex. 46 (Carlin Reb.) at 7.

¹⁰⁹⁴ SWEPCO Ex. 46 (Carlin Reb.) at 7.

¹⁰⁹⁵ SWEPCO Ex. 46 (Carlin Reb.) at 8.

¹⁰⁹⁶ SWEPCO Ex. 46 (Carlin Reb.) at 4.

¹⁰⁹⁷ Docket No. 46449, PFD at 235, 237 (Sep. 22, 2017) (SWEPCO’s incentive compensation was based on target levels); *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, PFD at 88-89, 93 (Oct. 12, 2015) (SPS request based on target level of incentive compensation).

¹⁰⁹⁸ SWEPCO Ex. 46 (Carlin Reb.) at 4.

¹⁰⁹⁹ SWEPCO Ex. 46 (Carlin Reb.) at 4.

based on the presumption in PURA § 14.006 that employee wages and benefits that are the product of collective bargaining are reasonable. SWEPCO argues that the collective bargaining agreement allows union employees to participate in the STI compensation plan, so the resulting STI compensation for union employees is a result of collective bargaining and presumed to be reasonable. In contrast, SWEPCO asserts, OPUC's proposal is inconsistent with PURA § 14.006, because it disallows costs presumed to be reasonable and interferes with employee wages and benefits that are the product of collective bargaining.¹¹⁰⁰ SWEPCO adds that its inclusion of collectively bargained STI compensation expense is consistent with the Commission's order in its last rate case, although the matter was not contested.¹¹⁰¹

ii. OPUC's Position

OPUC proposes a (\$1,677,713) adjustment to SWEPCO's request for STI compensation, resulting in an impact to Texas retail operations of (\$617,854).¹¹⁰² OPUC focuses on two areas: (1) using only 2019 awards rather than also including 2020 awards; and (2) removing financially-based performance amounts for union employees.¹¹⁰³

OPUC seeks to reduce STI compensation to 2019 awards. OPUC witness Cannady explained that SWEPCO's proposed STI compensation comes in two parts: 75% is for 2019 performance (awarded in March 2020), and 25% is what is expected to be awarded for 2020 performance (to be awarded in March 2021).¹¹⁰⁴ Ms. Cannady stated that SWEPCO's compensation proposal assumes all employees are awarded 100% of the target payouts without knowing what the payouts will be for the 2020 performance year, and in November 2020, SWEPCO's estimated payout was only at the 85% target level.¹¹⁰⁵ She argued that, at the time of

¹¹⁰⁰ SWEPCO Initial Brief at 88-89,

¹¹⁰¹ Docket No. 46449, PFD at 235 (Sep. 22, 2017).

¹¹⁰² OPUC Ex. 1 (Cannady Dir.) at 41.

¹¹⁰³ OPUC Ex. 1 (Cannady Dir.) at 41.

¹¹⁰⁴ OPUC Ex. 1 (Cannady Dir.) at 36-37.

¹¹⁰⁵ OPUC Ex. 1 (Cannady Dir.) at 37.

filing, SWEPCO's STI compensation was not "known and measureable."¹¹⁰⁶ She testified that, although SWEPCO provided additional March 2021 information reflecting the short-term incentive compensation awarded, that award is "approximately a year beyond the test year end and should not be considered."¹¹⁰⁷ Similarly, OPUC proposes an (\$849,837) adjustment to SWEPCO's test-year expense for STI compensation billed to SWEPCO by AEPSC, resulting in a (\$321,212) impact to Texas retain operations.¹¹⁰⁸ As with compensation awards for SWEPCO employees, she states that the compensation for AEPSC employees relied on estimated 2020 compensation amounts that were not "known and measurable."¹¹⁰⁹ For this reason, Ms. Cannady asserted, the proposed reduction is appropriate.¹¹¹⁰

OPUC also argues that under 16 TAC § 25.246(b)(1)(B), SWEPCO can use initial estimates of costs for inclusion in base rates, provided actual cost information is submitted during an update period ending no later than 30 days before SWEPCO filed its rate application.¹¹¹¹ OPUC explains that SWEPCO did not file updated information 30 days before this proceeding (and could not because the short-term incentive compensation payments were not made until March 2020, five months after the filing of the rate case).¹¹¹² Therefore, OPUC argues, SWEPCO does not qualify for the limited exception to use initial estimates in rate base under 16 TAC § 25.246(b)(1)(B).

In addition, OPUC seeks to reduce STI compensation awarded to SWEPCO union employees based on financial performance measures.¹¹¹³ Ms. Cannady stated that although for most employees SWEPCO removed the amounts it determined to be based on financial

¹¹⁰⁶ OPUC Ex. 1 (Cannady Dir.) at 37.

¹¹⁰⁷ OPUC Ex. 1 (Cannady Dir.) at 37.

¹¹⁰⁸ OPUC Ex. 1 (Cannady Dir.) at 41-42.

¹¹⁰⁹ OPUC Ex. 1 (Cannady Dir.) at 41-42.

¹¹¹⁰ OPUC Ex. 1 (Cannady Dir.) at 42.

¹¹¹¹ OPUC Initial Brief at 19. *See* 16 TAC § 25.246(b)(1)(B).

¹¹¹² SWEPCO Ex. 3 (Smoak Dir.) at 6.

¹¹¹³ OPUC Ex. 1 (Cannady Dir.) at 38-41.

performance measures, for union employees, SWEPCO did not remove compensation awarded based on financial performance.¹¹¹⁴ She agreed that PURA § 14.006 provides that an employee wage rate or benefit that is the product of collective bargaining is presumed to be reasonable.¹¹¹⁵ But she stated that here the agreement between SWEPCO and its union employees provides only that the employee may participate in the incentive plan.¹¹¹⁶ This is no different, in her view, from any other employee, and so STI compensation based on financial performance measures should be removed for union employees as well.¹¹¹⁷ She noted that SWEPCO remains free to contract with unions and pay union employees according to those contracts, but the costs of financially-based incentive compensation should not be passed on to ratepayers.¹¹¹⁸

OPUC also argues that Commission precedent excluding financially-based performance measures from STI compensation pre-dated the union agreement signed in April 2018, so the Commission is not “interfering with” the product of collective bargaining.¹¹¹⁹ In other words, the union agreement was signed subject to the Commission’s longstanding precedent and the background understanding that financially-based incentive compensation is excluded from allowable expenses.¹¹²⁰

iii. CARD’s Position

CARD seeks to disallow a portion of SWEPCO’s short-term incentive compensation based on the funding mechanism used during the test year. CARD witness M. Garrett explained that SWEPCO’s request removed the incentive costs directly related to financial performance and removed 35% of the remaining incentives, which represents 50% of SWEPCO’s *anticipated* 70%

¹¹¹⁴ OPUC Ex. 1 (Cannady Dir.) at 38.

¹¹¹⁵ OPUC Ex. 1 (Cannady Dir.) at 39. *See generally* PURA § 14.006.

¹¹¹⁶ OPUC Ex. 1 (Cannady Dir.) at 39.

¹¹¹⁷ OPUC Ex. 1 (Cannady Dir.) at 39-40.

¹¹¹⁸ OPUC Ex. 1 (Cannady Dir.) at 40.

¹¹¹⁹ OPUC Initial Brief at 21.

¹¹²⁰ OPUC Initial Brief at 21.

funding.¹¹²¹ But SWEPCO's actual funding differed from what was anticipated: although AEP used a funding requirement of only 70% in 2019, it changed to a full earnings per share threshold of 100% for 2020 because of the uncertainty related to COVID-19.¹¹²² Mr. M. Garrett stated that it is better to calculate the sharing of incentive costs between customers and shareholders based upon the actual funding mechanism used during the test year rather than the anticipated funding mechanism that was not used.¹¹²³

CARD witness M. Garrett also testified that all incentive plan funding was contingent on meeting a particular share price.¹¹²⁴ He asserted that, as a result, the Commission should recognize that 100% of the annual incentive plan compensation plan's funding is based on the Company's financial performance and therefore exclude 50% of the otherwise recoverable incentive plan costs.¹¹²⁵

iv. ALJs' Analysis

The ALJs agree with SWEPCO. Consistent with Commission precedent, for non-union employees, SWEPCO applied a 50% exclusion to the 70% of the funding mechanism that was based on financial measures (i.e., earnings per share), resulting in a 35% exclusion of STI compensation based on the funding mechanism.

The ALJs disagree with CARD that an earnings per share funding trigger makes the entire compensation plan based on SWEPCO's financial performance and therefore there should be a 50% disallowance. The fact that incentive compensation has a baseline funding trigger does not change that SWEPCO used a balanced scorecard of performance measures for awards. As Mr. Carlin explained, SWEPCO has met the funding trigger each year for many years; it is contrary

¹¹²¹ CARD Ex. 2 (M. Garrett Dir.) at 18.

¹¹²² CARD Ex. 2 (M. Garrett Dir.) at 18.

¹¹²³ CARD Ex. 2 (M. Garrett Dir.) at 19.

¹¹²⁴ CARD Ex. 2 (M. Garrett Dir.) at 20.

¹¹²⁵ CARD Ex. 2 (M. Garrett Dir.) at 20.

to the Company's interest to reduce incentive compensation by setting an unachievable goal; and the funding method ensures that short-term compensation does not impair the Company. Thus, the trigger provides more of a baseline assurance of funding rather than a financial incentive for performance.

The ALJs also disagree with CARD that the 2020 change from the balanced scorecard approach to earnings per share merits a disallowance. The change was limited: the Company previously used the balanced scorecard approach; the change only affected the last quarter of the test year; and the change does not reflect future plans. Moreover, the change was a response to the uncertainty of the COVID-19 pandemic and done to maintain access to capital. Overall, the evidence shows this was a temporary change because of a pandemic.

The ALJs disagree with OPUC that the timing of payments under SWEPCO's short-term incentive compensation plan—75% for 2019 performance (awarded in March 2020), and 25% for 2020 performance (to be awarded in March 2021)—means the last quarter of payments should be disallowed because they are not “known and measurable.” SWEPCO's STI compensation is set at a target level. The target level is known and measurable. The Commission has approved this practice in the past. And SWEPCO demonstrated that historically it provides awards at or above the target level. Because SWEPCO's target level expenses are known and measurable and based on information provided for the test year, the ALJs are not persuaded that 16 TAC § 25.246(b)(1)(B), involving estimates and later updates with actual information, is on point.

Finally, the ALJs disagree with OPUC's position regarding compensation for union employees. The Commission's prior precedent in preventing SWEPCO from recovering a portion of executive compensation expense from customers does not change that under PURA § 14.006 employee wages and benefits that are the product of collective bargaining are presumed to be reasonable. Neither OPUC's arguments nor its evidence showed that the benefit provided to union employees for participating in the short-term incentive compensation system and receiving benefits under it was unreasonable. The ALJs therefore recommend that SWEPCO recover the reasonable expenses incurred for providing union employees short-term incentive compensation.

In sum, the ALJs recommend no change to SWEPCO's short-term incentive compensation expense.

b. Long-Term Incentive (LTI) Compensation

SWEPCO states that it adjusted its LTI expense for both SWEPCO and AEPSC to remove the performance unit portion (75%). Thus, for LTI expense, SWEPCO only requests the target level of the restricted stock unit (RSU) portion.¹¹²⁶ Only CARD challenges SWEPCO's proposed LTI compensation.

i. SWEPCO's Position

Approximately 1,300 employees (about 7% of AEP employees) received a LTI award in the test year.¹¹²⁷ Participation is generally limited to employees in positions that have responsibility for decisions that have a longer-term impact on the AEP companies and their customers.¹¹²⁸

SWEPCO witness Carlin explained the RSUs. He stated that RSUs vest subject to the participants' continued AEP employment on three vesting dates over a three or more year period;¹¹²⁹ RSUs are not tied to performance measures;¹¹³⁰ RSUs do not have any metrics or goals but rather are designed to vest a number of years after employee service;¹¹³¹ and participants who remain continuously employed with AEP through an RSU vesting date receive an equal number

¹¹²⁶ SWEPCO Ex. 46 (Carlin Reb.) at 11.

¹¹²⁷ SWEPCO Ex. 21 (Carlin Dir.) at 42.

¹¹²⁸ SWEPCO Ex. 21 (Carlin Dir.) at 43.

¹¹²⁹ SWEPCO Ex. 21 (Carlin Dir.) at 44.

¹¹³⁰ SWEPCO Ex. 21 (Carlin Dir.) at 44.

¹¹³¹ SWEPCO Ex. 46 (Carlin Reb.) at 12.

of shares of AEP common stock as the number of RSUs that vest on such date.¹¹³² In sum, he opined that RSUs are a retention incentive to foster management continuity.¹¹³³

SWEPCO admits that LTI compensation is treated differently by state regulatory agencies: although western U.S. states generally disallow all LTI compensation, eastern states may not.¹¹³⁴ But in Texas, SWEPCO emphasizes, the Commission has consistently approved recovery of RSU expenses, as it did in Dockets 40443 and 46449.¹¹³⁵ Each time the Commission found that RSUs are not based on financial measures and are appropriate to include in rates. SWEPCO urges that the same be done here, particularly because the facts have not changed.

Finally, SWEPCO warns that reducing the value of its market-competitive compensation package, of which RSUs are a part, would put it at a competitive disadvantage with respect to attracting and retaining suitably skilled employees.¹¹³⁶ Mr. Carlin stated that utility companies compete for skilled and experienced employees. He asserted CARD ignores the benefits that market-competitive compensation provides to customers by enabling the retention of employees needed to provide quality service.¹¹³⁷

ii. CARD's Position

CARD argues that SWEPCO should be denied recovery of the RSU expenses. CARD witness Mr. M. Garrett stated that RSUs are tied to financial performance because the value of the RSU is directly tied to the value of the Company's common stock.¹¹³⁸ Like performance units, RSUs are tied to financial performance measures because the value of the compensation the

¹¹³² SWEPCO Ex. 21 (Carlin Dir.) at 44.

¹¹³³ SWEPCO Ex. 46 (Carlin Reb.) at 13.

¹¹³⁴ SWEPCO Ex. 46 (Carlin Reb.) at 13.

¹¹³⁵ Docket No. 40443, PFD at 84 (May 20, 2013); Docket No. 46449, Order on Rehearing, FoF No. 199 (Mar. 19, 2018).

¹¹³⁶ SWEPCO Ex. 46 (Carlin Reb.) at 15-16.

¹¹³⁷ SWEPCO Ex. 46 (Carlin Reb.) at 16.

¹¹³⁸ CARD Ex. 2 (M. Garrett Dir.) at 27.

employees receive is tied to the appreciation of AEP's stock price over the vesting period.¹¹³⁹ As a result, he argued, RSUs are designed to align the interest of AEP's management with the interest of shareholders and to promote the financial success and growth of AEP.¹¹⁴⁰ Mr. Garrett further opined that longer-term incentive plans are designed to tie executive compensation to the financial performance of AEP, and because the employees' compensation is tied over a long period of time to AEP's stock price, it motivates employees to make business decisions from the perspective of long-term shareholders.¹¹⁴¹ It would be inappropriate, he stated, to require ratepayers to bear the costs of incentive plans designed to encourage employees to put the interests of the shareholders first.¹¹⁴²

CARD also argues that disallowing SWEPCO's request for LTI compensation will not place SWEPCO at a competitive disadvantage.¹¹⁴³ Mr. M. Garrett testified that when SWEPCO competes with other utilities for qualified executives, and the executive compensation plans of those other utilities are not being recovered through rates, SWEPCO is not placed in a competitive disadvantage when its executive incentive compensation is excluded as well.¹¹⁴⁴ And because most states exclude executive compensation, he opined, SWEPCO would actually be given an unfair advantage if its executive plans were included in rates.¹¹⁴⁵ Mr. M. Garrett stated that long-term, stock-based incentives (including RSUs) are not allowed in most states.¹¹⁴⁶ He testified that a survey found that 20 of the 24 western states tend to exclude all or virtually all long-term stock-based incentive pay, and in the other four states the issue has not been addressed.¹¹⁴⁷

¹¹³⁹ CARD Ex. 2 (M. Garrett Dir.) at 27.

¹¹⁴⁰ CARD Ex. 2 (M. Garrett Dir.) at 27.

¹¹⁴¹ CARD Ex. 2 (M. Garrett Dir.) at 28.

¹¹⁴² CARD Ex. 2 (M. Garrett Dir.) at 28.

¹¹⁴³ CARD Ex. 2 (M. Garrett Dir.) at 28.

¹¹⁴⁴ CARD Ex. 2 (M. Garrett Dir.) at 28.

¹¹⁴⁵ CARD Ex. 2 (M. Garrett Dir.) at 28.

¹¹⁴⁶ CARD Ex. 2 (M. Garrett Dir.) at 31.

¹¹⁴⁷ CARD Ex. 2 (M. Garrett Dir.) at 31.

CARD states that recovery for LTI compensation should be disallowed. Mr. Garrett explained that the Commission has previously disallowed rate case expenses associated with trying to recover financially-based long-term incentives.¹¹⁴⁸ However, Mr. M. Garrett acknowledged that in SWEPCO's last rate case, the Commission allowed recovery for RSUs. The Commission's decision states that "restricted stock units are not based on financial performance measures as are other SWEPCO or AEP incentive plans and are appropriate to include in SWEPCO's rates."¹¹⁴⁹ CARD disagrees and argues that the Commission was previously mistaken that long-term RSUs are not financially-based. Mr. Garrett stated that payments in stock are financial-based per se, especially those that vest over time because they are designed to align the interests of the employee with the financial interests of the Company.¹¹⁵⁰ He recommended following Oklahoma's example and disallowing 100% of long-term executive incentive plan costs.¹¹⁵¹

iii. ALJs' Analysis

The ALJs agree with SWEPCO's position on RSUs. RSUs have no financial performance target and are awards paid only for time. The evidence shows they are intended to retain executives. The Commission has previously authorized recovery of RSUs, and the evidence here does not merit departing from Commission precedent. The ALJs therefore recommend that SWEPCO recover its RSU expenses.

3. Severance Costs

OPUC seeks a (\$1,403,705) adjustment to SWEPCO's severance pay expense.¹¹⁵² OPUC seeks a denial of \$767,100 in severance costs for SWEPCO during the test year and a reduction of severance costs incurred by AEPSC and charged to SWEPCO from a requested \$1,460,876 to

¹¹⁴⁸ CARD Ex. 2 (M. Garrett Dir.) at 29.

¹¹⁴⁹ Docket No. 46449, Order on Rehearing, FoF No. 199 (Mar. 19, 2018).

¹¹⁵⁰ CARD Ex. 2 (M. Garrett Dir.) at 30.

¹¹⁵¹ See CARD Ex. 2 (M. Garrett Dir.) at 30.

¹¹⁵² OPUC Ex. 1 (Cannady Dir.) at 44.

\$824,300.¹¹⁵³ OPUC witness Cannady stated that SWEPCO's test-year severance pay expense is not a normal level of expense and thus unjustified.¹¹⁵⁴ OPUC argues, in other words, that SWEPCO's test year severance costs "spiked" and are "inflated." In 2017 and 2018, SWEPCO did not pay severance pay, and AEPSC charged SWEPCO with less than \$550,000 for each year.¹¹⁵⁵ But in the test year from April 2019 through March 2020, SWEPCO recorded \$756,100 in severance pay, and AEPSC charged SWEPCO \$1,460,876 in severance pay.¹¹⁵⁶ Ms. Cannady testified that because this level of severance pay is not "a normal expense on a going forward basis," the entire test year amount of severance pay to former SWEPCO employees should be removed and the 2017, 2018, and test year severance pay AEPSC charges should be averaged.¹¹⁵⁷

SWEPCO contends that it prudently incurred severance costs and should recover them. SWEPCO states that its severance program allows management to evaluate operations on a continuing basis to provide the most efficient and effective operation at the lowest reasonable cost for customers.¹¹⁵⁸ SWEPCO then notes that, under the Cost of Service Rule, only a utility's historical test year expenses, as adjusted for known and measurable changes, will be considered.¹¹⁵⁹ SWEPCO asserts that OPUC's recommendation to depart from test year expenses is not a known and measurable change but "cherry-picking historical data."¹¹⁶⁰ For AEPSC severance costs allocated to SWEPCO, the average of the costs incurred in the 2017, 2018, and 2019 calendar years was \$1,313,281—similar to the test year's \$1,460,876.¹¹⁶¹

¹¹⁵³ OPUC Ex. 1 (Cannady Dir.) at 43-44.

¹¹⁵⁴ OPUC Ex. 1 (Cannady Dir.) at 43-44.

¹¹⁵⁵ OPUC Ex. 1 (Cannady Dir.) at 44.

¹¹⁵⁶ OPUC Ex. 1 (Cannady Dir.) at 43-44.

¹¹⁵⁷ OPUC Ex. 1 (Cannady Dir.) at 44.

¹¹⁵⁸ SWEPCO Ex. 36 (Baird Reb.) at 33.

¹¹⁵⁹ 16 TAC § 25.231(b).

¹¹⁶⁰ SWEPCO Reply Brief at 84.

¹¹⁶¹ SWEPCO Ex. 36 (Baird Reb.) at 34.

After considering the evidence, the ALJs agree with OPUC. The evidence shows that SWEPCO's test year severance costs significantly exceeded prior years. In comparison with prior years' expenses, SWEPCO failed to show that its test-year severance expense was reasonable and necessary and expected to continue at the requested level. The ALJs thus agree with OPUC that an adjustment is appropriate to normalize this expense. To do this, the ALJs recommend adopting OPUC's proposal to average the 2017 calendar year, 2018 calendar year, and test year (April 2019 through March 2020) severance costs for AEPSC severance costs charged to SWEPCO. The ALJs disagree with OPUC's proposal to disallow SWEPCO's direct severance costs, but rather recommend that these costs also be normalized through the three-year average.

4. Other Post-Retirement Benefits

SWEPCO seeks to recover its other post-employment benefits (OPEB) expense.¹¹⁶² SWEPCO states that its requested OPEB expense reflects the costs being recorded by SWEPCO in 2020 as presented in the 2020 actuarial studies, which are the latest available actuarial studies performed by the Company's independent actuary.¹¹⁶³ SWEPCO notes that although CARD witness M. Garrett previously reported a discrepancy in SWEPCO's calculation of OPEB expense,¹¹⁶⁴ SWEPCO filed a corrected work paper with a revised calculation.¹¹⁶⁵ SWEPCO states that the corrected work paper shows no adjustment is due.¹¹⁶⁶ CARD does not argue the matter in post-hearing briefing.¹¹⁶⁷ The ALJs conclude that no adjustment is due and SWEPCO should recover its requested OPEB expense.

¹¹⁶² SWEPCO Ex. 6 (Baird Dir.) at 25.

¹¹⁶³ SWEPCO Ex. 6 (Baird Dir.) at 25.

¹¹⁶⁴ CARD Ex. 2 (M. Garrett) at 32.

¹¹⁶⁵ SWEPCO Initial Brief at 93.

¹¹⁶⁶ SWEPCO Ex. 36 (Baird Reb.) at 39-40.

¹¹⁶⁷ CARD Initial Brief at 53; CARD Reply Brief at 25.

D. Depreciation and Amortization Expense [PO Issues 29, 34]

Depreciation is the process used for recovering the cost of electric plant in service. It is a system of accounting that aims to distribute the cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It focuses on allocation rather than valuation. The FERC USofA defines depreciation, as applied to depreciable electric plant, as:

the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of electric plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.¹¹⁶⁸

SWEPCO calculated its depreciation rates using the Average Remaining Life method, which recovers the original cost of the plant, adjusted for net salvage, less accumulated depreciation over the average remaining life of the plant.¹¹⁶⁹ SWEPCO witness Jason Cash conducted a depreciation study based on electric utility plant in service as of December 31, 2019, adjusted as necessary for the units that were retired in 2020.¹¹⁷⁰ The depreciation rates determined by the study are intended to provide recovery of invested capital, cost of removal, and credit for salvage over the expected life of the applicable property. Based on the study, Mr. Cash recommended revised depreciation accrual rates for SWEPCO, and SWEPCO witness Baird used those depreciation rates to develop test-year-adjusted depreciation expense.¹¹⁷¹

The revised depreciation rates recommended by Mr. Cash result in a \$31.7 million increase to SWEPCO's annualized depreciation expense/accrual amounts on a total company basis, which is primarily due to increases in investment levels since the Company's last depreciation study dated

¹¹⁶⁸ 18 C.F.R. Part 101, Def. 12.

¹¹⁶⁹ SWEPCO Ex. 16 (Cash Dir.) at 6.

¹¹⁷⁰ SWEPCO Ex. 16 (Cash Dir.) at 2, Exh. JAC-2.

¹¹⁷¹ SWEPCO Ex. 16 (Cash Dir.) at 5; *see also* SWEPCO Ex. 1 (Application), Schedule D-4.

December 31, 2015.¹¹⁷² Even though Dolet Hills remains in service, SWEPCO excluded all costs related to the plant for the purpose of calculating depreciation rates.¹¹⁷³

The contested depreciation issues in this case relate to: (i) the treatment of the remaining net book value of SWEPCO's five retired gas-fired generating units (Knox Lee Units 2, 3, and 4; Lieberman Unit 2, and Lone Star Unit 1) and Dolet Hills, which will retire on December 31, 2021; (ii) the production plant net salvage calculation (specifically, the use of a contingency factor in SWEPCO's production plant demolition study and the escalation of plant demolition study results); and (iii) the selection of the survivor curve and average remaining life combinations for nine mass asset accounts.

1. Treatment of Remaining Net Book Value of Retired Gas-Fired Generating Units and Dolet Hills

As discussed in Section V.A, the remaining net book value of SWEPCO's five retired gas-fired generating units should be removed from base rates, placed in a regulatory asset, and amortized over four years. In addition, the remaining net book value of Dolet Hills (and the associated Oxbow investment) should be removed from base rates and recovered through the Dolet Hills Rate Rider based on a 2046 useful life.

2. Net Salvage/Demolition Study

Terminal production net salvage includes the final cost to remove production plant facilities on their retirement, less any salvage received from property removed.¹¹⁷⁴ The final terminal net salvage amount is the cost expected to be incurred when the plant is removed after the end of its useful life.

¹¹⁷² SWEPCO Ex. 16 (Cash Dir.) at 3. Increases in SWEPCO's generating plant investment levels accounted for \$16.4 million, or a little over half, of the \$31.7 million total annualized depreciation expense/accrual increase. *Id.*

¹¹⁷³ SWEPCO Ex. 16 (Cash Dir.) at 9.

¹¹⁷⁴ SWEPCO Ex. 43 (Cash Reb.) at 6-7.

For unique assets such as power plants, SWEPCO contends that the cost of removal and net salvage should be determined by taking the specific characteristics of each power plant into account.¹¹⁷⁵ For this reason, SWEPCO retained an independent engineering firm, Sargent & Lundy (S&L), to prepare a study of the expected terminal costs to remove (*i.e.*, dismantle or demolish) each of SWEPCO's generating plants and the components associated with each plant, net of the salvage expected to be realized in connection with the removal. The S&L study provided the terminal net salvage amounts for production plant in 2020 dollars.¹¹⁷⁶ SWEPCO then applied a 2.22% inflation rate factor to those amounts to determine the terminal net salvage amount at each plant's retirement year. The terminal net salvage amount after inflation was used in the calculation of net salvage percentages in SWEPCO's depreciation study. In this proceeding, SWEPCO seeks an overall terminal net salvage percentage for its generating plants of negative 4%.¹¹⁷⁷

CARD raises two objections to the calculation of the terminal net salvage amount. First, CARD opposes the inclusion of a 10% contingency factor in S&L's demolition cost estimate, arguing instead that there should be no contingency factor.¹¹⁷⁸ Second, CARD criticizes SWEPCO's use of an escalation factor to adjust the dismantling costs from 2020 levels to the values that would apply at the end of the expected life of each plant.¹¹⁷⁹

a. Contingency Factor

S&L's demolition study applied a positive 10% contingency factor to estimated labor costs, materials costs, and indirect costs, and a negative 10% contingency factor to scrap value.¹¹⁸⁰ SWEPCO states that it included the contingency factors because it is not possible to precisely

¹¹⁷⁵ SWEPCO Ex. 43 (Cash Reb.) at 7.

¹¹⁷⁶ SWEPCO Ex. 16 (Cash Dir.) at 7.

¹¹⁷⁷ SWEPCO Ex. 43 (Cash Reb.) at 9.

¹¹⁷⁸ CARD Ex. 1 (D. Garrett Dir.) at 8-9.

¹¹⁷⁹ CARD Ex. 1 (D. Garrett Dir.) at 9.

¹¹⁸⁰ SWEPCO Ex. 15 (Eiden Dir.), Exh. PME-2 at 7.

anticipate all the ways a plant will be modified over time and, based on experience, unknown challenges will occur during demolition that cannot be predicted.¹¹⁸¹

However, CARD argues that the use of a contingency factor is inappropriate because the underlying costs themselves—the costs to demolish a generation plant at some distant point in the future—are not known and measurable.¹¹⁸² As a comparison, CARD witness David Garrett noted that the Commission disallows interim retirements (*i.e.*, retirements of plant components prior to the retirement of the plant itself) for not being known and measurable.¹¹⁸³ He asserted that future decommissioning cost estimates are even less known and measurable than interim retirements and similarly should be disallowed. According to CARD, applying a 10% contingency factor on top of future costs that are uncertain further exacerbates the underlying problem with such costs. While the unpredictability of future demolition costs may justify the use of a contingency factor as a matter of standard industry practice, CARD argues that doing so fails to pass muster in a ratemaking context, which requires a utility's revenue requirement to be based on historic test-year costs adjusted for known and measurable changes.¹¹⁸⁴

CARD also contends that the contingency factors are arbitrary.¹¹⁸⁵ CARD points out that SWEPCO claims the contingency factors are based on the level of detail included in the cost estimates regarding the scope of demolition for the plants.¹¹⁸⁶ However, SWEPCO did not provide any calculations or other formal analysis to show why a 10% contingency factor is appropriate for the expected costs to demolish these particular plants. Even if the percentage may vary with the scale of the study—higher if less detailed or lower if more detailed¹¹⁸⁷—CARD claims there is no credible evidence that 10% is the correct contingency factor level for this particular study.

¹¹⁸¹ SWEPCO Ex. 42 (Eiden Reb.) at 4.

¹¹⁸² CARD Initial Brief at 55.

¹¹⁸³ CARD Ex. 1 (D. Garrett Dir.) at 8.

¹¹⁸⁴ CARD Reply Brief at 26.

¹¹⁸⁵ CARD Initial Brief at 56.

¹¹⁸⁶ SWEPCO Ex. 42 (Eiden Reb.) at 5.

¹¹⁸⁷ SWEPCO Ex. 42 (Eiden Reb.) at 5.

CARD acknowledges that the Commission approved the use of a 10% contingency factor for SWEPCO in its last rate case, Docket No. 46449.¹¹⁸⁸ However, CARD urges reconsideration given that the Commission rejected the inclusion of interim retirements in calculating depreciation rates in Docket No. 40443. According to CARD, neither interim retirements of generation plant facilities, nor estimates of the future costs to demolish a generation plant, constitute known and measureable changes to test-year costs.

SWEPCO responds that CARD witness D. Garrett made the same arguments against a contingency factor in SWEPCO's last two rate cases, which were rejected in both instances.¹¹⁸⁹ In particular, SWEPCO points out that the 10% contingency factor is consistent with Commission precedent in Docket No. 46449, where the Commission made the following findings of fact:

The plant demolition studies SWEPCO used to develop terminal removal cost and salvage for each of SWEPCO's generating facilities, when adjusted to account for a 10% contingency factor, are reasonable.

It is common practice to include contingency amounts in cost estimates for contract work across all industries.¹¹⁹⁰

In addition to this precedent, SWEPCO witness Paul Eiden, an officer, vice president, and project director with S&L, explained that it is appropriate to use a contingency factor when preparing demolition cost estimates because it is common practice, is reasonable, and more accurately reflects the realities of power plant operating lives.¹¹⁹¹ Mr. Eiden confirmed that, based on his experience in performing engineering tasks for over 30 years, including a contingency factor is necessary. He testified that S&L's standard practice is to include a contingency factor of 15% for power plant demolition estimates, but to comply with prior Commission precedent, S&L used a 10% factor in the demolition study provided to SWEPCO in this case.¹¹⁹²

¹¹⁸⁸ CARD Initial Brief at 56.

¹¹⁸⁹ SWEPCO Initial Brief at 95-96.

¹¹⁹⁰ Docket No. 46449, Order on Rehearing at FoF Nos. 177, 179 (Mar. 19, 2018).

¹¹⁹¹ SWEPCO Ex. 42 (Eiden Reb.) at 3-4.

¹¹⁹² SWEPCO Ex. 42 (Eiden Reb.) at 6.

b. Escalation Factor

SWEPCO proposes to escalate the present estimated generation plant demolition costs by an annual inflation rate of 2.22%.¹¹⁹³ This rate was taken from “The Livingston Survey,” which is published by the research department of the Federal Reserve Bank of Philadelphia and provides a long-term inflation outlook that projects an inflation rate for a 10-year period.¹¹⁹⁴

CARD argues against applying an escalation factor for two reasons.¹¹⁹⁵ First, the escalation of estimated demolition costs is unwarranted given that the underlying costs are not known and measurable. According to CARD, the 2.22% escalation factor results in an additional \$116 million in costs that SWEPCO is asking ratepayers to pay. Yet, in light of the uncertainty in whether the underlying demolition costs will ever be incurred, CARD contends the burden on ratepayers should not be increased by applying an escalation factor.

Second, CARD claims the escalation factor deprives ratepayers of the time value of money; that is, it is not proper to charge current ratepayers for a future cost that has not been discounted to present value.¹¹⁹⁶ According to CARD, this basic notion is reflected in the Discounted Cash Flow Model, which is widely used to calculate a regulated utility’s return on equity. This model applies a growth rate to a company’s dividends many years in the future and that dividend stream is then discounted back to the current year by a discount rate in order to arrive at the present value of an asset. In contrast, CARD claims that SWEPCO proposes to escalate the present value of its demolition costs decades into the future and is essentially asking current ratepayers to pay the future value of a cost with present-day dollars.

¹¹⁹³ SWEPCO Initial Brief at 96-97.

¹¹⁹⁴ SWEPCO Ex. 16 (Cash Dir.) at 8.

¹¹⁹⁵ CARD Initial Brief at 57.

¹¹⁹⁶ CARD Ex. 1 (D. Garrett Dir.) at 9.

SWEPCO contends that CARD's position is at odds with straight-line depreciation principles and fails to take into account how depreciation is treated in the ratemaking process.¹¹⁹⁷ SWEPCO witness Cash explained that customers receive a return on the net salvage component of depreciation expense through accumulated depreciation as a reduction to rate base, which reduces the required return to be included in rates (*i.e.*, customers receive a return via lower base rates).¹¹⁹⁸ He further testified that, because straight-line depreciation is meant to allocate costs evenly over time, discounting the net salvage costs back to a net present value level would produce (all other factors being the same) the need for an increase in the depreciation accrual expense each year, shifting the cost from current to future customers, despite the plant being of at least equal utility to current customers.¹¹⁹⁹ Thus, applying an escalation factor allocates the depreciation expense more evenly over the life of the plant. Finally, SWEPCO notes that the use of an escalation factor is consistent with Commission precedent established in Docket Nos. 40443 and 46449.

CARD disagrees with SWEPCO's contention that CARD's approach is inconsistent with depreciation principles because customers receive a return on the net salvage component of depreciation expense.¹²⁰⁰ CARD contends that any ratepayer benefit that might arise due to a reduced return will only occur when SWEPCO files a rate case, which may not occur for another four years. The delay arises because any changes to accumulated depreciation only occur after SWEPCO's depreciation expense is credited to the accumulated depreciation account and any resulting reduction to rate base and impact to retail rates are addressed in a rate case.

c. ALJs' Analysis

As SWEPCO notes, CARD's arguments regarding the contingency and escalation factors were litigated and rejected by the Commission in SWEPCO's last two rate cases, Docket Nos. 40443 and 46449. In this proceeding, CARD has not pointed to any change in law, policy, or

¹¹⁹⁷ SWEPCO Initial Brief at 96-97; SWEPCO Ex. 43 (Cash Reb.) at 10.

¹¹⁹⁸ SWEPCO Ex. 43 (Cash Reb.) at 10-11.

¹¹⁹⁹ SWEPCO Ex. 43 (Cash Reb.) at 11.

¹²⁰⁰ CARD Reply Brief at 27-28.

fact that warrants a reconsideration of this established precedent. Accordingly, the ALJs recommend that the Commission adopt SWEPCO's terminal production net salvage amounts in calculating depreciation rates.

3. Service Lives of Mass Property Accounts

Both SWEPCO witness Cash and CARD witness D. Garrett performed actuarial analyses of SWEPCO's mass property accounts to produce depreciation parameters, such as the average service life, dispersion curve, and remaining life.¹²⁰¹ For each account, they created an observed life table (OLT) using SWEPCO's historical property data, which they plotted graphically to form a curve (OLT curve). They then compared each one to the well-established Iowa curves to determine which Iowa curve and average life best matched the Company's data shown in the OLT curves.¹²⁰² Both witnesses agreed that the curve-fitting process involves a combination of visual and mathematical matching techniques, as well as professional judgment.¹²⁰³ While their analyses were similar, they recommended different curve life combinations for nine of SWEPCO's mass property accounts.

SWEPCO and CARD each urge adoption of their respective witnesses' recommendations. Their arguments that apply to all of the accounts are summarized here, while their account-specific arguments are addressed below.

For each of the nine accounts at issue, CARD recommends longer average service lives than SWEPCO and, therefore, lower depreciation expense. CARD notes that Mr. Cash agreed at the hearing that the Commission may consider ratepayers' ability to pay in establishing just and reasonable rates.¹²⁰⁴ Further, the COVID-19 pandemic created unprecedented economic hardship

¹²⁰¹ SWEPCO Ex. 43 (Cash Reb.) at 12. Mass property refers to property in accounts that include large numbers of similar units where the life of any one unit is not dependent on the life of the other units. *Id.*

¹²⁰² The Iowa curves are empirically derived curves based on extensive studies of the actual mortality patterns of many different types of industrial property. CARD Ex. 1 (D. Garrett Dir.) at 10 & Appendix B.

¹²⁰³ SWEPCO Ex. 43 (Cash Reb.) at 15; CARD Ex. 1 (D. Garrett Dir.) at 10.

¹²⁰⁴ Tr. at 558.

for many of SWEPCO's customers, a fact that CARD contends the Commission should consider in exercising its broad discretion in setting rates.

SWEPCO states that Mr. Cash's selections are based on visual and mathematical fits as well as an understanding of the property included in the accounts.¹²⁰⁵ According to SWEPCO, Mr. Cash routinely works with and understands the nature of the property in the accounts. In contrast, SWEPCO contends Mr. D. Garrett simply wants to delay and push a higher depreciation expense on future customers.¹²⁰⁶

a. Account 353 – Transmission Station Equipment

For Account 353, SWEPCO witness Cash proposed an S0.0-68 curve,¹²⁰⁷ and CARD witness D. Garrett recommended an L0.5-75 curve.¹²⁰⁸ CARD's recommendation would decrease annual depreciation expense by \$1,318,069.¹²⁰⁹

CARD acknowledges that both curves provide relatively close visual fits to the relevant observed data, but contends its curve is superior because it results in a longer average life and lower depreciation rate.¹²¹⁰ According to CARD, SWEPCO's curve is not unreasonable for this account, but CARD's curve should be adopted because it will help mitigate the rate increase SWEPCO seeks in this proceeding, particularly given the impact of COVID-19. CARD notes that Mr. Cash testified that he considered "additional factors" in making his recommendations for this

¹²⁰⁵ SWEPCO Initial Brief at 98.

¹²⁰⁶ SWEPCO Reply Brief at 87.

¹²⁰⁷ SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23. The letter/number combination preceding the dash (here, S0.0) designates the particular Iowa curve selected, and the number after the dash (here, 68) is the average service life recommended.

¹²⁰⁸ CARD Ex. 1 (D. Garrett Dir.) at 12-13.

¹²⁰⁹ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 3.

¹²¹⁰ CARD Initial Brief at 58; CARD Ex. 1 (D. Garrett Dir.) at 12-13.

account, but did not offer any analysis or explanation as to why those factors better supported his curve selection, and thus, did not provide a meaningful basis for selecting SWEPCO's curve.¹²¹¹

SWEPCO witness Cash testified that depreciation rates should be selected with the intention of matching the loss in the asset's service value over the remaining life of the asset.¹²¹² He opined that purposely calculating a lower depreciation rate to provide rate relief to current customers only makes future customers pay more in future depreciation costs than current customers, which is contrary to generational equity and the matching concept. He also identified the following "additional factors" that support his recommendation for Account 353: (1) the average age of the property in Account 353 is 13.56 years and only 0.33% of the property balance is older than the 68-year life he selected; and (2) his curve life selection calculates that 25% of the \$703 million in Account 353 (*i.e.*, \$176 million) is expected to last longer than 93 years versus Mr. D. Garrett's selection, which calculates that 32% of the \$703 million in Account 353 (*i.e.*, \$225 million) is expected to last longer than 93 years.¹²¹³

The two proposed curve life combinations are quite similar, and even CARD notes that SWEPCO's recommendation is not unreasonable. CARD's primary basis for supporting its curve is that it produces a lower depreciation expense. However, the ALJs agree with Mr. Cash that depreciation rates should be selected with the goal of matching the loss in the asset's service value over the remaining life of the asset. This approach best fulfills the Commission's duty to set rates that are just and reasonable to both the consumers and the utility.¹²¹⁴ The ALJs also find that the impacts of COVID-19 do not justify departing from this general concept. The evidence did not show that COVID-19 impacted the service lives of the assets, and making adjustments due to the current economic impacts on customers elevates present-day economic challenges over those that

¹²¹¹ CARD Reply Brief at 29-31.

¹²¹² SWEPCO Ex. 43 (Cash Reb.) at 19.

¹²¹³ SWEPCO Ex. 43 (Cash Reb.) at 18-19.

¹²¹⁴ *See* PURA § 11.002 ("The purpose of this title [PURA] is to establish a comprehensive and adequate regulatory system for public utilities to assure rates, operations, and services that *are just and reasonable to the consumers and to the utilities.*") (emphasis added).

may occur in the future. Accordingly, the ALJs recommend that the Commission adopt SWEPCO's recommended S0.0-68 curve life combination for this account.

b. Account 354 – Transmission Towers and Fixtures

For Account 354, SWEPCO witness Cash proposed an L3.0-65 curve,¹²¹⁵ and CARD witness D. Garrett recommended an S1.5-74 curve.¹²¹⁶ CARD's recommendation would decrease annual depreciation expense by \$130,874.¹²¹⁷

According to CARD, both of the selected Iowa curves provide relatively close and reasonable fits to the observed data, but all else being held equal, the S1.5-74 curve would result in a lower depreciation rate and expense. CARD also argues that its curve provides a better mathematical fit. Mathematical curve fitting essentially involves measuring the distance between the OLT curve and the selected Iowa curve.¹²¹⁸ The best mathematically fitted curve is the one that minimizes the distance between the OLT curve and the Iowa curve. The "distance" between the curves is calculated using a technique known as the "sum of squared differences" (SSD). Specifically, the SSD for the Company's curve is 0.0157 while the SSD for CARD's recommended curve is 0.0112. The smaller the value of the SSD, the better the mathematical fit.

SWEPCO witness Mr. Cash noted that SWEPCO's 65-year average service life selection represents a five-year increase in the 60-year average service life that is embedded in current rates.¹²¹⁹ He also criticized Mr. D. Garrett for making a selection to lower depreciation rate and expense, and for relying primarily on mathematical fit. He noted that Mr. D. Garrett's selection of a 74-year average service life means that approximately \$12 million of the \$40 million in Account 354 is expected to last longer than 88 years.

¹²¹⁵ SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23.

¹²¹⁶ CARD Ex. 1 (D. Garrett Dir.) at 13-15.

¹²¹⁷ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 3.

¹²¹⁸ CARD Ex. 1 (D. Garrett Dir.) at 14.

¹²¹⁹ SWEPCO Ex. 43 (Cash Reb.) at 22.

Here again, the two proposed curve life combinations provide close visual fits. CARD demonstrated, however, that its recommendation provides a better mathematical fit, and SWEPCO did not explain how the other factors Mr. Cash considered might outweigh that fact. Accordingly, the ALJs recommend that the Commission adopt CARD's recommended S1.5-74 curve life combination for this account, which results in a decrease of \$130,874 in annual depreciation expense.

c. Account 355 – Transmission Poles and Fixtures

For Account 355, SWEPCO witness Cash proposed an S0.5-46 curve,¹²²⁰ and CARD witness D. Garrett recommended an L1.5-49 curve.¹²²¹ CARD's recommendation would decrease annual depreciation expense by \$1,795,499.¹²²²

CARD notes that, as with Accounts 353 and 354, both parties' curves provide relatively close fits to the observed data.¹²²³ However, CARD argues its curve has a superior mathematical fit to the data as its SSD is 0.0047 whereas SWEPCO's curve has an SSD of 0.0064. Further, CARD's curve results in a lower depreciation rate, which CARD asserts is an added reason to adopt it given the economic hardship resulting from COVID-19.

SWEPCO witness Mr. Cash testified that SWEPCO's 46-year average service life selection represents a four-year decrease in the 50-year average service life that is embedded in current depreciation rates.¹²²⁴ He again criticized Mr. D. Garrett for making a selection to lower depreciation rate and expense, and for relying primarily on mathematical fit. He stated that Mr. D. Garrett's selection of a 49-year average service life means that approximately \$53 million

¹²²⁰ SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23.

¹²²¹ CARD Ex. 1 (D. Garrett Dir.) at 15-16.

¹²²² CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 3.

¹²²³ CARD Initial Brief at 59.

¹²²⁴ SWEPCO Ex. 43 (Cash Reb.) at 24-25.

of the \$759 million in Account 355 is expected to last longer than 86 years and 5% of the property, or about \$38 million, is expected to last longer than 93 years.

The deciding factor here is CARD's mathematical fit analysis. As with Account 354, CARD demonstrated its curve provides a better mathematical fit, and SWEPCO did not explain how the other factors Mr. Cash considered might outweigh that fact. Accordingly, the ALJs recommend that the Commission adopt CARD's recommended L1.5-49 curve life combination for this account, which results in a decrease of \$1,795,499 in annual depreciation expense.

d. Account 356 – Overhead Conductors and Devices

For Account 356, SWEPCO witness Cash proposed an R2.0-70 curve,¹²²⁵ and CARD witness D. Garrett recommended an L1.5-80 curve.¹²²⁶ CARD's recommendation would decrease annual depreciation expense by \$1,285,746.¹²²⁷

CARD acknowledges that both parties' curves provide relatively close fits to the OLT curve.¹²²⁸ However, CARD's curve results in a lower depreciation rate, which CARD suggests is an added reason for its adoption given the economic hardship resulting from COVID-19.

As with Account 353, SWEPCO witness Cash testified that purposely calculating a lower depreciation rate than justified to provide rate relief to current customers is inappropriate as it makes future customers pay more in future depreciation costs than current customers, which is contrary to generational equity and the matching concept.¹²²⁹ He noted that SWEPCO's 70-year average service life selection is not changed from the average service life that is embedded in current rates.

¹²²⁵ SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23.

¹²²⁶ CARD Ex. 1 (D. Garrett Dir.) at 16-17.

¹²²⁷ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 3.

¹²²⁸ CARD Initial Brief at 59-60.

¹²²⁹ SWEPCO Ex. 43 (Cash Reb.) at 27.

CARD's primary support for its recommended curve is that it produces a lower depreciation expense. As with Account 353, the ALJs conclude this fact is not a sufficient basis for rejecting SWEPCO's proposal, which CARD agrees provides a close fit to the Company's data. Accordingly, the ALJs recommend that the Commission adopt SWEPCO's recommended R2.0-70 curve life combination for this account.

e. Account 364 – Poles, Towers, and Fixtures

SWEPCO witness Cash's depreciation study indicated that he used the S0.5 Iowa curve for Account 364, but he explained in rebuttal that this notation was an error and the S-.5 Iowa curve should have been used instead.¹²³⁰ As corrected, he recommended an S-.5-55 curve. Because the S0.5 Iowa curve was inadvertently used as an input throughout Mr. Cash's analysis, he testified that SWEPCO's proposed depreciation rate for Account 364 should be updated from 2.83% to 2.65%, resulting in a decrease in total company depreciation expense of \$847,189.¹²³¹ CARD witness D. Garrett recommended an L0.0-62 curve for this account.¹²³² CARD's recommendation would decrease annual depreciation expense by \$2,741,568 from SWEPCO's as-filed case.¹²³³

Even with the change in SWEPCO's curve from S0.5-55 to S-.5-55, CARD argues that Mr. D. Garrett's recommended L0.0-62 curve is superior.¹²³⁴ CARD's curve and SWEPCO's revised curve both provide close visual fits to the Company's data through the 80-year age interval. CARD's curve also decreases depreciation expense by a larger amount than SWEPCO's revised curve, which CARD asserts is a further reason to adopt it given the economic hardship resulting from COVID-19. In addition, CARD contends that SWEPCO did not explain why its revised curve should be adopted over CARD's curve.¹²³⁵

¹²³⁰ SWEPCO Ex. 43 (Cash Reb.) at 29.

¹²³¹ SWEPCO Ex. 43 (Cash Reb.) at 29.

¹²³² CARD Ex. 1 (D. Garrett Dir.) at 17-19.

¹²³³ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 4.

¹²³⁴ CARD Initial Brief at 60.

¹²³⁵ CARD Reply Brief at 33.

SWEPCO witness Mr. Cash testified that, despite the correction to his own recommended curve, Mr. D. Garrett's proposed curve life combination should be rejected.¹²³⁶ He noted that the average service life he recommended remains unchanged from the average service life approved in SWEPCO's prior rate case, Docket No. 46449.

As CARD points out, SWEPCO provided little explanation for why its revised curve was superior to the one recommended by Mr. D. Garrett. However, the ALJs conclude SWEPCO met its burden regarding the reasonableness of the revised curve. In particular, SWEPCO's revised curve provides a close visual fit to the OLT curve, including beyond the 80-year age interval.¹²³⁷ In addition, SWEPCO proposes to retain the average service life approved in its last rate case, which, while not definitive standing alone, is further evidence of its reasonableness. Accordingly, the ALJs recommend that the Commission adopt SWEPCO's revised S-.5-55 curve life combination for this account, which results in a decrease in total company depreciation expense of \$847,189 from SWEPCO's filed case.

f. Account 366 – Underground Conduit

For Account 366, SWEPCO witness Cash proposed an R4.0-70 curve,¹²³⁸ and CARD witness D. Garrett recommended an R4.0-80 curve.¹²³⁹ Given that both witnesses propose an R4.0 Iowa curve, the difference in their recommendations is that Mr. D. Garrett advocates a ten-year longer average service life. CARD's recommendation would decrease annual depreciation expense by \$148,914.¹²⁴⁰

¹²³⁶ SWEPCO Ex. 43 (Cash Reb.) at 30.

¹²³⁷ See SWEPCO Ex. 43 (Cash Reb.) at 28.

¹²³⁸ SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23.

¹²³⁹ CARD Ex. 1 (D. Garrett Dir.) at 19-20.

¹²⁴⁰ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 4.

CARD points out that the Company's data for this account shows a 70% survival rate at the 90-year age interval for the assets in this account.¹²⁴¹ Even though both curves assume the retirement rate will decrease going forward, SWEPCO's R4.0-70 curve is too short at this time, according to CARD, given that the data show that 70% of the assets survive to the 90-year age interval. In addition, CARD's curve has an SSD of 0.0129 whereas SWEPCO's curve has an SSD of 0.0411, which shows that CARD's curve is the better mathematical fit.

SWEPCO witness Mr. Cash testified that the main factor he considered for this account was whether a change was justified from the 2015 depreciation study, which used the same R4.0-70 curve life combination.¹²⁴² Since there have not been many retirements from Account 366, he recommended retaining the same curve life combination approved in Docket No. 46449.

CARD demonstrated that its curve life combination is the better choice for calculating depreciation of this account. The SSD resulting from CARD's choice shows a superior mathematical fit. Accordingly, the ALJs recommend the Commission adopt CARD's recommended R4.0-80 curve life combination for this account, which results in a decrease of \$148,914 in annual depreciation expense.

g. Account 367 – Underground Conductor

For Account 367, SWEPCO witness Cash proposed an R3.0-46 curve,¹²⁴³ and CARD witness D. Garrett recommended an R1.0-62 curve.¹²⁴⁴ CARD's recommendation would decrease annual depreciation expense by \$2,081,345.¹²⁴⁵

¹²⁴¹ SWEPCO Initial Brief at 60-61.

¹²⁴² SWEPCO Ex. 43 (Cash Reb.) at 32.

¹²⁴³ SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23.

¹²⁴⁴ CARD Ex. 1 (D. Garrett Dir.) at 20-21.

¹²⁴⁵ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 4.

CARD asserts that Figure 9 in Mr. D. Garrett's direct testimony shows that SWEPCO's R3.0-46 curve does not provide a close visual fit or description of the historical retirement rate observed thus far in this account compared to CARD's proposed curve.¹²⁴⁶ In addition, CARD's curve is a better mathematical fit—CARD's curve has an SSD of 0.0011 whereas the Company's curve has an SSD of 0.1426. While CARD acknowledges that its curve is based on a truncated OLT curve, it contends that it eliminates a mere 1% of the data at the tail end of the OLT curve because, as Mr. D. Garrett testified, that data has minimal analytical value.¹²⁴⁷ That is because points at the tail end of the curve are often based on fewer dollars exposed to retirement and therefore may be given less weight than points based on larger samples.¹²⁴⁸ By not truncating the data, SWEPCO's curve gives undue weight to the statistically less valuable part of the data and less weight to the more valuable upper and middle portions of the data on the OLT curve, according to CARD.

SWEPCO witness Cash criticized Mr. D. Garrett for using a truncated OLT curve, which Mr. Cash asserted drastically impacts the results of the analysis.¹²⁴⁹ Mr. Cash testified that the National Association of Regulatory Utility Commissioners' *Public Utility Depreciation Practices* describes a truncation or "T-cut" as follows:

A T-cut is a truncation of the observed life table values and is generally used in a mathematical fitting of a curve to the observed values. A T-cut is used to mathematically perform a function that is automatic in visual fitting (i.e., setting a point beyond which the observed data are considered irrelevant or unreliable and are, therefore, ignored).¹²⁵⁰

Mr. Cash noted that if he had done a similar T-cut, he might have agreed with Mr. D. Garrett on this account. However, a T-Cut was not necessary for this account, according to Mr. Cash, because the observed data beyond 45 years continues to be relevant for the analysis. In support, he provided

¹²⁴⁶ CARD Initial Brief at 61.

¹²⁴⁷ CARD Reply Brief at 35; CARD Ex. 1 (D. Garrett Dir.) at 11.

¹²⁴⁸ CARD Ex. 1 (D. Garrett Dir.) at 11.

¹²⁴⁹ SWEPCO Ex. 43 (Cash Reb.) at 33-36.

¹²⁵⁰ SWEPCO Ex. 43 (Cash Reb.) at 36.

two graphs comparing the results both with and without the T-cut at approximately year 45.¹²⁵¹ He asserted that, as shown in the graphs, the retirements occurring after year 50 are very important to make the proper selection of a curve and life for Account 367. He testified that his recommended curve life selection did not include a T-cut and is more representative of the retirements occurring in this account.

A review of the two graphs provided by Mr. Cash supports his position that truncating the Company's data has a significant impact on selecting the appropriate curve life combination for Account 367. Mr. Cash and Mr. D. Garrett agreed that truncation of the data can be appropriate in the right circumstances. However, the question is whether it was appropriate for this account. While Mr. D. Garrett testified generally that data at the tail end of the OLT curve may have minimal analytical value, he did not flag that he had used a truncated OLT curve for this specific account or explain why it was appropriate to do so here. Thus, the evidence does not show that truncating the data was appropriate in this case. Mr. Cash's proposed curve life combination appears to be a better fit for the non-truncated data. Accordingly, the ALJs recommend the Commission adopt SWEPCO's recommended R3.0-46 curve life combination for this account.

h. Account 369 – Services

For Account 369, SWEPCO witness Cash proposed an R3.0-59 curve,¹²⁵² and CARD witness D. Garrett recommended an R1.5-76 curve.¹²⁵³ CARD's recommendation would decrease annual depreciation expense by \$806,053.¹²⁵⁴

CARD argues that its proposed curve provides a better visual fit than does SWEPCO's curve.¹²⁵⁵ In addition, CARD's curve has an SSD of 0.0254, compared to the SSD of 0.4459 for

¹²⁵¹ SWEPCO Ex. 43 (Cash Reb.) at 34-35.

¹²⁵² SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23.

¹²⁵³ CARD Ex. 1 (D. Garrett Dir.) at 22-23.

¹²⁵⁴ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 4.

¹²⁵⁵ CARD Initial Brief at 35.

SWEPCO's curve, which shows that CARD's curve has a better mathematical fit. CARD witness D. Garrett used a truncated OLT curve for this account, which CARD contends was appropriate for the same reasons discussed above regarding Account 367.

SWEPCO witness Cash again criticized Mr. D. Garrett's use of truncated data.¹²⁵⁶ As with Account 367, Mr. Cash provided two graphs comparing the results both with and without the T-cut, this time with the T-cut at approximately year 65.¹²⁵⁷ He asserted that, as shown in the graphs, truncation was not necessary for Account 369 because the observed data beyond 65 years continues to be relevant for the analysis. Mr. Cash noted that his curve life selection did not use truncated data and is more representative of the retirements occurring in this account.

The ALJs apply the same analysis here as with Account 367 because the parties' arguments are essentially the same. The two graphs provided by Mr. Cash for Account 369 show a significant impact from truncating the data. Mr. D. Garrett's testimony did not indicate that he used truncated data for this specific account or explain why it was appropriate to do so. Thus, the evidence does not show that truncating the data was appropriate here. Mr. Cash's proposed curve life combination appears to be a better fit for the non-truncated data. Accordingly, the ALJs recommend the Commission adopt SWEPCO's recommended R3.0-59 curve life combination for this account.

i. Account 370 – Meters

Account 370 consists of distribution meters, and the parties' differing proposals relate primarily to the impact of SWEPCO replacing electromechanical meters with electronic meters. For this account, SWEPCO witness Cash proposed an L0.0-15 curve,¹²⁵⁸ and CARD witness

¹²⁵⁶ SWEPCO Ex. 43 (Cash Reb.) at 37-40.

¹²⁵⁷ SWEPCO Ex. 43 (Cash Reb.) at 38-39.

¹²⁵⁸ SWEPCO Ex. 16 (Cash Dir.), Exh. JAC-2 at 23.

D. Garrett recommended an O2.0-21 curve.¹²⁵⁹ CARD's recommendation would decrease annual depreciation expense by \$2,527,878.¹²⁶⁰

CARD argues that its O2.0-21 curve provides a better visual fit than does SWEPCO's L0.0-15 curve.¹²⁶¹ CARD's curve is also a better mathematical fit, with an SSD of 0.0062 compared to the SSD of 0.7716 for SWEPCO's curve. CARD witness D. Garrett explained that the primary purpose of Iowa curve fitting is to develop a smooth and complete survivor curve to conduct an average life calculation.¹²⁶² With regard to the data in this account, he testified that the OLT curve is already smooth and complete, which makes the Iowa curve fitting process relatively straightforward.

SWEPCO states that Mr. D. Garrett apparently based his selected curve on the retirement history for Account 370, but in this instance, the account history does not accurately reflect the average life of the meters currently in the account.¹²⁶³ The full history includes electromechanical meters, which often had an average service life of 25 to 30 years.¹²⁶⁴ However, Mr. Cash confirmed that SWEPCO replaced almost all of the meters in its service territory with electronic meters, which have a manufacturer-prescribed useful life of 15 years or less.¹²⁶⁵ As a result, Mr. Cash graphed Account 370 for the activity years 2000 to 2019 to reflect a period when the electronic meters would have been installed by the Company.¹²⁶⁶

¹²⁵⁹ CARD Ex. 1 (D. Garrett Dir.) at 23-24.

¹²⁶⁰ CARD Ex. 1 (D. Garrett Dir.), Exh. DJG-3 at 4.

¹²⁶¹ CARD Initial Brief at 62.

¹²⁶² CARD Ex. 1 (D. Garrett Dir.) at 24.

¹²⁶³ SWEPCO Initial Brief at 98-99.

¹²⁶⁴ SWEPCO Ex. 43 (Cash Reb.) at 40.

¹²⁶⁵ SWEPCO Ex. 43 (Cash Reb.) at 40.

¹²⁶⁶ SWEPCO Ex. 43 (Cash Reb.) at 40.

CARD disagrees with SWEPCO's contention that Mr. Garrett failed to account for the fact that SWEPCO has replaced its electromechanical meters with electronic meters.¹²⁶⁷ CARD notes that Mr. Garrett's analysis is based on the data SWEPCO provided, which includes the retirement histories of both types of meters. CARD also criticizes Mr. Cash's testimony regarding the service lives of both types of meters. Mr. Cash stated that the electromechanical meters "often had" an average service life of 25 to 30 years, but did not elaborate on what he meant by "often" and did not show any firsthand experience or understanding of the meters. For the electronic meters, Mr. Cash relied on manufacturers' estimates without specifying the type(s) of meter that SWEPCO has installed or the life expectancy of those meters. Further, Mr. Cash testified that SWEPCO "has almost completely" replaced its electromechanical meters, but the exact extent to which SWEPCO has done so is not known. Thus, CARD contends SWEPCO's proposed service life for Account 370 is based on vague and unsupported factual claims.

The ALJs find that SWEPCO raised a valid consideration—the expected service life of the newer electronic meters—when considering the appropriate curve life combination for this account. While SWEPCO could have provided more detail about the types of meters installed, their specific life expectancies, and the exact meter count for each type of meter, the ALJs conclude Mr. Cash's testimony is sufficient to demonstrate that it was reasonable to limit the analysis of this account to more recent activity years to reflect a period when the electronic meters would have been installed by the Company. SWEPCO therefore showed that Mr. D. Garrett's analysis, which considered the full retirement history of the account, is not representative of SWEPCO's current installed investment. Accordingly, the ALJs recommend the Commission adopt SWEPCO's recommended L0.0-15 curve life combination for this account.

4. Amortization

According to Staff, SWEPCO's application included an amount of amortization related to an intangible asset that was fully amortized as of the end of the test year.¹²⁶⁸ Staff witness Stark

¹²⁶⁷ CARD Reply Brief at 35-36.

¹²⁶⁸ Staff Initial Brief at 60.

proposed a reduction of \$1,855,750 to correct this error.¹²⁶⁹ SWEPCO witness Baird indicated in rebuttal that he does not contest Ms. Stark's adjustment to intangible plant amortization,¹²⁷⁰ and SWEPCO does not contest this item.¹²⁷¹ Accordingly, the ALJs conclude that intangible plant amortization should be reduced by \$1,855,750 from SWEPCO's filed case.

1. Purchased Capacity Expense

1. The Cajun Contract

SWEPCO purchases power under a contract with the Louisiana Generating Company (formerly Cajun Electric Power Cooperative). SWEPCO asserts that these costs should be recovered through base rates, rather than through the fuel factor.¹²⁷² TIEC agrees and supports SWEPCO's request.¹²⁷³ CARD disagrees.

CARD argues that the costs incurred under the contract should be removed from SWEPCO's base rates and recovered through the fuel factor as reconcilable purchased energy costs.¹²⁷⁴ CARD argues that in a recent fuel reconciliation case SWEPCO sought to treat purchased operating reserves as reconcilable purchased energy costs and to recover those costs through the fuel factor.¹²⁷⁵ CARD adds that SWEPCO's proposed recovery of purchased operating reserve costs through base rates is inconsistent with the Commission's decision in a prior SWEPCO fuel

¹²⁶⁹ Staff Ex. 3 (Stark Dir.) at 16.

¹²⁷⁰ SWEPCO Ex. 36 (Baird Reb.) at 36.

¹²⁷¹ SWEPCO Reply Brief at 88.

¹²⁷² SWEPCO Initial Brief at 100-01.

¹²⁷³ TIEC Initial Brief at 65.

¹²⁷⁴ CARD Initial Brief at 63.

¹²⁷⁵ CARD Initial Brief at 62; CARD Ex. 3 (Norwood Dir.) at 10.

reconciliation case.¹²⁷⁶ There, the Commission concluded that the purchase of ancillary services were purchases of energy and thus properly recorded as eligible fuel expenses.¹²⁷⁷

SWEPCO responds that CARD is mistaken. First, SWEPCO states that it does not recover any portion of capacity costs through the fuel factor.¹²⁷⁸ Second, SWEPCO asserts that previously the Commission recognized the contract at issue as providing capacity.¹²⁷⁹ Third, SWEPCO argues that under the contract there is a difference between “Operating Reserve Capacity Charges” and “Operating Reserve Energy,” and CARD confuses the two.¹²⁸⁰ SWEPCO purchased “Operating Reserve Capacity”; it did not purchase “Operating Reserve Energy.”¹²⁸¹ SWEPCO explains that capacity is purchased several months before the peak summer season; firm transmission must be obtained from SPP (taking time); and purchased capacity is acquired for a longer term (at least four months), as compared to energy.¹²⁸² This is distinguishable from the SPP definition of “operating reserves,” which are procured in the day-ahead and real-time market and is economically cleared simultaneously with the energy offers in the SPP Integrated Marketplace based on the bids and offers submitted by market participants.¹²⁸³ SWEPCO also points out that the contract has different charges for capacity and energy: “Operating Reserve Capacity” is a capacity charge and priced on a \$/kW month basis; “Operating Reserve Energy” is an energy charge and priced on per-kWh basis.¹²⁸⁴ SWEPCO adds that the purchased capacity is paid for by a fixed monthly payment—consistent with a capacity product, rather than an energy product.¹²⁸⁵

¹²⁷⁶ CARD Initial Brief at 63; *Application of Southwestern Public Service Company for Authority to Reconcile Fuel and Purchased Power Costs*, Docket No. 48973, Order on Rehearing at FoF No. 98 (Feb. 18, 2020); PFD at 14 (Oct. 17, 2019).

¹²⁷⁷ Docket No. 48973, Order on Rehearing at FoF No. 98 (Feb. 18, 2020).

¹²⁷⁸ SWEPCO Ex. 47 (Stegall Reb.) at 7.

¹²⁷⁹ Docket No. 40443, PFD at 293 (May 20, 2013).

¹²⁸⁰ SWEPCO Initial Brief at 100.

¹²⁸¹ SWEPCO Ex. 47 (Stegall Reb.) at 9.

¹²⁸² SWEPCO Ex. 47 (Stegall Reb.) at 8-9.

¹²⁸³ SWEPCO Ex. 47 (Stegall Reb.) at 8.

¹²⁸⁴ SWEPCO Ex. 47 (Stegall Reb.) at 8.

¹²⁸⁵ See SWEPCO Ex. 1 (Application), Schedule H-12.4c.

And it uses the purchased capacity to meet its SPP capacity requirement.¹²⁸⁶ Thus, SWEPCO argues, the capacity payments should continue to be recovered through base rates.

The ALJs agree with SWEPCO. The preponderance of the evidence shows that SWEPCO is purchasing operating capacity under this contract, rather than energy or ancillary services for energy. As such, capacity costs are recovered through base rates, rather than as an eligible fuel expense that would be recovered through the fuel factor.

2. Wind Contracts

SWEPCO purchased power from four wind projects. SWEPCO and OPUC argue that the cost of the wind energy should continue to be collected through SWEPCO's fuel factor. TIEC argues that these contracts contain a capacity component, which should be imputed to the contracts, recovered through base rates, and be removed from the fuel factor. CARD disagrees with TIEC's proposed imputed capacity calculation and argues that TIEC's proposal should be rejected.

SWEPCO and OPUC argue that these wind contract costs have consistently been collected through the fuel factor and reconciled as energy purchases. According to SWEPCO, this practice began in Docket No. 40443, a SWEPCO base rate and fuel reconciliation proceeding, where the first wind power purchase agreement was considered, and none of the costs incurred under that agreement were attributed to capacity and included in base rates.¹²⁸⁷ This practice continued in Docket No. 46449, where the Commission found that the wind contracts entered into as part of a settlement were economic, that SWEPCO prudently agreed to include the contracts in the settlement, and no capacity component was imputed to these contracts.¹²⁸⁸ Further, because the wind contracts came into service on or before 2013, there has been ample opportunity for the

¹²⁸⁶ SWEPCO Ex. 47 (Stegall Reb.) at 9.

¹²⁸⁷ Docket No. 40443, PFD at 293 (May 20, 2013) ("SWEPCO's only current [capacity] contract in Texas rates is an 18-year contract with Louisiana Generating LLC.").

¹²⁸⁸ See Docket No. 46449, Order on Rehearing, FoF Nos. 150-151 (Mar. 19, 2018).

Commission to reconsider the treatment of the contracts if it were inclined to do so.¹²⁸⁹ In contrast, SWEPCO and OPUC assert that the only authority offered by TIEC is from a settled case with no precedential value.¹²⁹⁰

TIEC argues that, if the wind contracts provide capacity, a Commission rule and precedent provide that the expense must be recovered through base rates, rather than through the fuel factor. TIEC contends that, under 16 TAC § 25.236(a)(6), absent a finding of special circumstances, for eligible fuel expenses the electric utility may not recover capacity costs: capacity costs are not considered to be eligible fuel expense and, as such, are not recovered through the fuel factor.¹²⁹¹ TIEC also argues that, where the Commission concluded in prior dockets that contracts provide capacity benefits by offering system-wide reliability and firm supply, the Commission concluded that the contracts' embedded capacity component should be recognized.¹²⁹²

TIEC continues that it is irrelevant that no party has ever proposed imputing capacity for these wind contracts, and the Commission's determination should be based on the evidence in this case.¹²⁹³ Here, TIEC argues, the evidence shows that the wind contracts provide capacity.¹²⁹⁴ And that capacity is used to meet SWEPCO's SPP reserve margin requirement.¹²⁹⁵

¹²⁸⁹ OPUC Ex. 60 (Georgis Cross-Reb.) at 8.

¹²⁹⁰ *Application of El Paso Electric Company to Change Rates*, Docket No. 44941, Order at 15 (Aug. 25, 2016) ("Entry of this Order consistent with the amended and restated agreement does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the amended and restated agreement. Entry of this Order shall not be regarded as precedent as to the appropriateness of any principle or methodology underlying the amended and restated agreement.").

¹²⁹¹ 16 TAC § 25.236(a)(6). *See generally* *Entergy Gulf States, Inc. v. Pub. Util. Comm'n of Tex.*, 173 S.W.3d 199, 211-12 (Tex. App.—Austin 2005, pet. denied) (plain language of previous fuel rule prohibited a utility from recovering capacity charges associated with purchased power).

¹²⁹² *Application of Entergy Gulf States, Inc. for the Authority to Reconcile Fuel Costs*, Docket No. 23550, Order at 2-3 (Aug. 2, 2002); *see also* *City of El Paso v. Pub. Util. Comm'n of Tex.*, 344 S.W.3d 609, 619-22 (Tex. App.—Austin 2011, no pet.).

¹²⁹³ TIEC Reply Brief at 36.

¹²⁹⁴ TIEC Ex. 4 (LaConte Dir.) at 23-24.

¹²⁹⁵ TIEC Ex. 4 (LaConte Dir.) at 23-24.

SWEPCO responds that because the contracts are for wind resources, SPP only allows a utility a portion of the nameplate capacity in satisfying SPP's reserve margin capacity.¹²⁹⁶

Acknowledging the intermittency of the wind resource, TIEC replies that its calculations therefore used the capacity that SPP accredits to the wind resources and that SWEPCO includes when conducting system planning.¹²⁹⁷ TIEC contends that the wind contracts provide capacity value, and SWEPCO did not challenge TIEC witness LaConte's calculation of imputed capacity costs for the wind contracts.¹²⁹⁸

CARD, however, does dispute TIEC's calculation. CARD does not disagree with the concept of imputing capacity charges for wind energy power purchase agreements and recovering those amounts through base rates.¹²⁹⁹ Nor does CARD disagree with TIEC's use of SPP's accredited capacity rating of SWEPCO's wind contracts as the basis for calculating the imputed capacity value.¹³⁰⁰ But CARD argues that TIEC's assigned value for the imputed capacity cost adjustment is based on an unreasonably high \$/kW estimate of avoided cost of capacity.¹³⁰¹ First, CARD asserts that SWEPCO forecasts having excess capacity on its system until at least 2024, so the Company's current avoided cost of capacity is very low.¹³⁰² TIEC responds that CARD is mistaken because SWEPCO's 2019 Integrated Resource Plan did not account for certain plant retirements, and SWEPCO has stated that it projects it will need to add capacity beginning in 2023. CARD contends that SWEPCO will have excess capacity until the Pirkey plant is retired at the end of 2023. Second, CARD notes that Ms. Laconte's calculation uses an approximately \$80/kW-year avoided capacity cost proxy, which is used by utilities to evaluate the

¹²⁹⁶ SWEPCO Initial Brief at 102.

¹²⁹⁷ TIEC Ex. 4 (LaConte Dir.) at 23-24; Tr. at 663; TIEC Ex. 28, SWEPCO response to CARD RFI 1-12.

¹²⁹⁸ TIEC Reply Brief at 36; TIEC Ex. 4 (LaConte Dir.) at 26.

¹²⁹⁹ CARD Initial Brief at 64.

¹³⁰⁰ CARD Initial Brief at 64-65.

¹³⁰¹ CARD Initial Brief at 65.

¹³⁰² CARD Ex. 7 (Norwood Cross-Reb.) at 5.

cost-effectiveness of energy efficiency programs less the estimated cost of ancillary costs.¹³⁰³ CARD argues that SWEPCO forecasts that capacity will be available for purchase within SPP at a price of \$9.13/kW-year for the next ten years—a rate far lower than Ms. Laconte’s proposed rate for an annual capacity charge of approximately \$80/kW-year.¹³⁰⁴ In other words, TIEC’s proposed imputed capacity rate is nearly eight times SWEPCO’s forecasted market-capacity price as shown in the Company’s 2019 Integrated Resource Plan. And SWEPCO can purchase capacity through bilateral contracts with other utilities within SPP.¹³⁰⁵ Additionally, CARD argues that TIEC’s imputed capacity computation method is untested and has not been accepted by the Commission.

Finally, OPUC argues against moving any portion of the cost of the wind contracts from the fuel factor to base rates because doing so will misalign costs and shift costs from large industrial and commercial customers to residential and small commercial customers.¹³⁰⁶ OPUC witness Tony Georgis explains that the costs of the wind contracts have consistently been recovered as fuel costs and recovered on an energy-related basis.¹³⁰⁷ OPUC argues that shifting the wind generation costs from an energy-related basis in fuel costs to a demand-related basis in base rates will misalign costs. According to OPUC, industry practice aligns how costs are incurred with how those costs are allocated to customers.¹³⁰⁸

The ALJs recommend that that costs incurred under the wind contracts continue to be accounted for as energy. SWEPCO has met its burden of proof to show that these contracts are energy-only contracts and, contrary to TIEC’s arguments, there is no capacity to impute to these contracts that would, as capacity costs, be recovered through base rates. CARD’s concerns about the cost of imputed capacity and the untested nature of the proposed computation further support

¹³⁰³ TIEC Ex. 4 (LaConte Dir.) at 25; 16 TAC § 25.181(d)(2) (calculation of avoided cost of capacity when evaluating the cost-effectiveness of energy-efficiency programs).

¹³⁰⁴ TIEC Ex. 4 (LaConte Dir.) at 29-30.

¹³⁰⁵ See Tr. at 1112.

¹³⁰⁶ OPUC Ex. 60 (Georgis Cross-Reb.) at 10.

¹³⁰⁷ OPUC Ex. 60 (Georgis Cross-Reb.) at 10.

¹³⁰⁸ OPUC Ex. 60 (Georgis Cross-Reb.) at 12.

that the costs incurred under the wind contracts should continue to be accounted for as energy at this time.

F. Affiliate Expenses

SWEPCO incurred approximately \$87.60 million in adjusted total company test year affiliate charges. Staff proposes two adjustments involving affiliates—one to remove carrying charges associated with affiliate or shared assets, and another to remove carrying charges SWEPCO received from affiliates in the form of rent billings (and included in rent income). Reducing rent income partially offsets the reduction for carrying charges paid by SWEPCO. The net adjustment to SWEPCO's revenue requirement resulting from these adjustments is (\$634,043).¹³⁰⁹ SWEPCO does not contest the adjustments.¹³¹⁰ The ALJs recommend adoption of Staff's position on this issue, which SWEPCO accepts.

G. Federal Income Tax Expense

SWEPCO and Staff agree that federal income tax expense should be updated and synchronized with the final revenue requirement in this case.¹³¹¹ SWEPCO and Staff also agree on how to calculate federal income tax expense. SWEPCO calculated federal income taxes using the "return" method (or Method 1) for the historical test year.¹³¹² Staff used the same method.¹³¹³ Their calculations are consistent with PURA § 36.060 and 16 TAC § 25.231(b)(1)(D).¹³¹⁴

The differences in federal income tax expense calculated by the parties reflect only flow-through impacts of their positions on other disputed issues. Staff's proposed calculation of federal income tax expense is consistent with SWEPCO's calculation presented on Schedule G-7.8 of its

¹³⁰⁹ Staff Ex. 3 (Stark Dir.) at 13-14.

¹³¹⁰ SWEPCO Reply Brief at 92.

¹³¹¹ Staff Initial Brief at 61; SWEPCO Reply Brief at 92.

¹³¹² SWEPCO Ex. 17 (Hodgson Dir.) at 17.

¹³¹³ Staff Ex. 3 (Stark Dir.) at 54.

¹³¹⁴ SWEPCO Ex. 17 (Hodgson Dir.) at 20; Staff Ex. 3 (Stark Dir.) at 54.

application, except for (1) the proposed return and synchronized interest amounts related to Staff's proposed change in invested capital and rate of return and (2) an adjustment for Staff's proposed amortization of protected excess of ADFIT.¹³¹⁵

The ALJs' recommended federal income tax expense includes adjustments for (1) the proposed return and synchronized interest for the recommended amounts of invested capital and rate of return and (2) an adjustment for Staff's proposed amortization of protected excess ADFIT.

H. Taxes Other Than Income Tax

1. Ad Valorem (Property) Taxes

Staff raised four issues with SWEPCO's ad valorem taxes. Three of them are now uncontested:

- Capital lease balances should be included when calculating the effective ad valorem tax rate,¹³¹⁶
- Operating leases should be excluded from the rate base on which the effective tax rate is applied,¹³¹⁷ and
- Dolet Hills and the retired gas-fired generating units should remain in the ad valorem tax calculation.¹³¹⁸

¹³¹⁵ Staff Ex. 3 (Stark Dir.) at 54.

¹³¹⁶ SWEPCO agrees with Staff's recommendation to include capital lease balances in the calculation of the effective ad valorem tax rate. SWEPCO Reply Brief at 93, n. 490. Staff witness Stark explains that SWEPCO had approximately \$26 million in capital leases on its books that was included in the numerator but not the denominator of the calculation, resulting in an overstated effective ad valorem tax rate. Staff Ex. 3 (Stark Direct) at 49. Correcting this error reduces SWEPCO's effective ad valorem tax rate from approximately 1.0026% to .9986%. Staff Ex. 3 (Stark Dir.) at 49.

¹³¹⁷ SWEPCO agrees with Staff's recommendation to exclude operating leases from the rate base on which the effective tax rate is applied. SWEPCO Reply Brief at 93, n.490. Staff witness Stark states that because SWEPCO does not separately account for the property taxes on its operating leases in its property tax expense account, and SWEPCO confirms that it does not separate non-lease components like property taxes from the associated lease components, including non-operating leases in the calculation of property tax expense would have the effect of double-counting this expense in SWEPCO's cost of service. Staff Ex. 3 (Stark Dir.) at 52.

¹³¹⁸ Staff agrees that removing Dolet Hills and the retired gas-fired generating units from the ad valorem tax calculation would be inconsistent with the Commission's decision in a prior case. Docket No. 46449, Order on

The remaining issue is how to address Texas-only adjustments in the ad valorem tax calculation.

Staff states that SWEPCO included two pro forma plant adjustments in the March 2020 plant balance—one for Texas-only depreciation rates and another for a Texas-only allowance for funds used during construction (AFUDC) rate.¹³¹⁹ The adjustments recognize what the balance of the plant and accumulated depreciation accounts would be if the Texas depreciation and AFUDC rates were used in all SWEPCO jurisdictions.¹³²⁰ Staff does not challenge SWEPCO's jurisdictional adjustments to accumulated depreciation or AFUDC.¹³²¹ But Staff states that SWEPCO failed to include the January 2019 Texas depreciation and AFUDC adjustments in the January 2019 net plant balance used to calculate the effective tax rate.¹³²² According to Staff, the failure to include the January 2019 balance Texas-only adjustments in calculating the effective tax rate while applying the effective rate to the March 2020 balance that includes them fails to properly synchronize the effective ad valorem tax rate with the associated property subject to tax and the assets to which it is applied.¹³²³ This results in an overstated effective ad valorem tax rate, Staff asserts.¹³²⁴

SWEPCO responds that a Texas-only adjustment should not be applied to the 2019 rate base when calculating the effective tax rate to be applied because this would misstate the actual ad valorem tax rate being incurred by SWEPCO, which is based on the actual composite book value of SWEPCO's rate base.¹³²⁵ The Texas-only adjustment is then applied to the test year end rate

Rehearing at FoF Nos. 261-264 (Mar. 19, 2018). Staff agrees that these plants should be included in the ad valorem tax calculation. Staff Reply Brief at 41.

¹³¹⁹ Staff Ex. 3 (Stark Dir.) at 50.

¹³²⁰ Staff Ex. 3 (Stark Dir.) at 50.

¹³²¹ Staff Reply Brief at 44.

¹³²² Staff Ex. 3 (Stark Dir.) at 50.

¹³²³ Staff Ex. 3 (Stark Dir.) at 51.

¹³²⁴ Staff Ex. 3 (Stark Dir.) at 51.

¹³²⁵ SWEPCO Initial Brief at 107.

base to allocate those taxes to SWEPCO's three state jurisdictions.¹³²⁶ SWEPCO adds that removing the Texas-only adjustments results in other states subsidizing Texas customers.¹³²⁷

Staff replies in two parts. First, Staff points out that SWEPCO includes Texas jurisdictional differences in the calculation of its effective tax rate—including items that reduce the balance of plant subject to the tax (and therefore increase the effective rate), such as the Texas jurisdictional Turk imprudence disallowance, Texas vegetation management write-offs, and capitalized incentive compensation.¹³²⁸ Staff argues SWEPCO offers no reason why it is appropriate to include Texas jurisdictional differences that increase the effective rate but not those that decrease it.¹³²⁹ Second, Staff states it is not opposed to including the Texas jurisdictional depreciation and AFUDC differences in the ad valorem tax calculation if the effective ad valorem tax rate is synchronized by including these differences in the determination of the rate.¹³³⁰ Staff explains that SWEPCO confirmed that the Texas jurisdictional depreciation and AFUDC differences existed in January 2019 and that the effective ad valorem tax rate if the January 2019 balances of the Texas jurisdictional differences are included in the calculation of the rate is .961262%.¹³³¹ Staff urges that this .961262% effective ad valorem tax rate be used.¹³³²

The ALJs agree with Staff. Staff's proposed adjustment will synchronize the effective ad valorem tax rate with the associated property subject to tax and the assets to which it is applied. And although SWEPCO raised concerns about removing Texas-only jurisdictional adjustments, SWEPCO failed to explain why including some but not other Texas-only jurisdictional adjustments is appropriate when calculating its effective tax rate.

¹³²⁶ SWEPCO Initial Brief at 107.

¹³²⁷ SWEPCO Ex. 36 (Baird Reb.) at 38.

¹³²⁸ SWEPCO Ex. 1 (Application), WP A-3.13.1 (ad valorem).

¹³²⁹ Staff Initial Brief at 65.

¹³³⁰ Staff Reply Brief at 42.

¹³³¹ Staff Ex. 12 at 17-13.

¹³³² Staff Initial Brief at 66.

2. Payroll Taxes

There are two payroll tax issues. The first involves Staff's proposed payroll adjustment. The ALJs agreed with Staff's recommended payroll adjustment (for SWEPCO's payroll and for its AEPSC allocated payroll). SWEPCO and Staff agree that a payroll adjustment requires an adjustment to payroll tax: the Commission should synchronize payroll tax expense with payroll adjustments, if any.¹³³³ The ALJs therefore recommend that payroll taxes expense be revised to include Staff's recommended payroll adjustment.¹³³⁴

But SWEPCO and Staff part ways on whether a proposed adjustment to incentive compensation merits an adjustment to payroll taxes. When previously addressing executive compensation, the ALJs agreed with SWEPCO and Staff that there were two small errors in SWEPCO's incentive compensation expense but otherwise no adjustments were appropriate. The remaining question is whether, given the adjustment to executive compensation expense, SWEPCO's payroll tax should be adjusted.

SWEPCO argues that its payroll tax should not be adjusted. It contends that even if financially-based incentive compensation is excluded from allowable expenses because it is more properly borne by shareholders than ratepayers, the reasonableness of the Company's compensation from a cost or market-competitive standpoint was not challenged. As a result, the compensation provided is part of a market-competitive package, and any reduced or eliminated part of this package would need to be offset to maintain its overall market-competitiveness. Therefore, SWEPCO argues, it will still incur the attendant payroll and other taxes on the additional base wages in lieu of incurring it on wages paid in the form of incentive compensation, so these taxes should not be removed from its cost of service.

¹³³³ SWEPCO Ex. 36 (Baird Reb.) at 34; Staff Initial Brief at 66-67.

¹³³⁴ See Staff Ex. 3 (Stark Dir.) at 53, Attachment RS-57 (specifying SWEPCO and AEPSC payroll adjustments).

Staff argues that what SWEPCO might do in response to a disallowance of a portion of executive compensation expense is speculative. Staff also argues that “the Commission has previously ruled that removing the corresponding flow-through reductions associated with the elimination of incentive plan costs results in an allowable expense for the incentive plan that is reasonable and necessary for the provision of service.”¹³³⁵

The ALJs agree with Staff that what SWEPCO might do in response to a disallowance is speculative. The ALJs further note that the rationale for excluding executive compensation similarly extends to excluding the payroll taxes on that executive compensation: if the executive compensation is more properly borne by shareholders, then the payroll taxes on that executive compensation are too. The ALJs thus agree with Staff on both payroll tax matters and recommend adopting Staff’s adjustment to payroll taxes.

3. Gross Margin Tax

SWEPCO’s calculation of the cost of service margins was not contested. The parties agree that revenue-related taxes should be updated and synchronized with the final revenue requirement set in this case.

I. Post-Test-Year Adjustments for Expenses [PO Issue 45]

Contested post-test year adjustments are addressed in other areas of this PFD specific to an adjustment.

VIII. BILLING DETERMINANTS [PO ISSUES 4, 5, 6, 54]

SWEPCO’s adjusted test year billing determinants used to design rates are sponsored by SWEPCO witnesses Brian Coffey, Chad Burnett, John Aaron, and Jennifer Jackson, and are

¹³³⁵ Staff Initial Brief at 67 (quoting Docket No. 46449, Order on Rehearing at FoF No. 198 (Mar. 19, 2018)).

detailed in various RFP schedules.¹³³⁶ Staff and ETSWD raise two issues regarding billing determinants

A. Staff's Opposition to Adjusting Billing Determinants Based on Estimates

In the Billing Determinants section of its initial brief, Staff argues that the Commission should reject SWEPCO's proposal to "adjust billing determinants to account for estimated customer migration issues from the General Services [GS] Tariff to the Lighting and Power [LP] Tariff."¹³³⁷ Staff witness Narvaez testified that adjusting billing determinants to account for customer migration "would violate 16 TAC § 25.234(b), which requires that rates be 'determined using revenues, billing and usage data for a historical Test Year adjusted for known and measurable changes. . . .'"¹³³⁸ According to Mr. Narvaez, any estimates regarding unknown future customer migration would not meet the "known and measurable" standard.¹³³⁹ Staff therefore recommends that "SWEPCO's proposed use of estimates to adjust billing determinants based on speculative customer migration should be rejected."¹³⁴⁰ In the Billing Determinants section of its reply brief, however, Staff simply states: "Staff addresses SWEPCO's proposal to adjust billing determinants to account for estimated customer migration issues from the General Services (GS) tariff to the Lighting and Power (LP) tariff . . . below."¹³⁴¹

SWEPCO responds that the RFP, which it is required to use to prepare and file its major base rate cases, specifically authorizes the use of estimated billing units.¹³⁴² SWEPCO explains that migration adjustments, similar to test year adjustments and normalization, are performed to

¹³³⁶ SWEPCO Exs. 29 (Coffey Dir.) at 2; 30 (Burnett Dir.) at 10-11; 31 (Aaron Dir.) at 20; and 32 (Jackson Dir.) at 5.

¹³³⁷ Staff Initial Brief at 68.

¹³³⁸ Staff Ex. 4 (Narvaez Dir.) at 28.

¹³³⁹ Staff Ex. 4 (Narvaez Dir.) at 28.

¹³⁴⁰ Staff Initial Brief at 68.

¹³⁴¹ Staff Reply Brief at 45.

¹³⁴² SWEPCO Ex. 55 (Jackson Reb.) at 17 (quoting *Electric Utility Rate Filing Package for Generating Utilities* (Sept. 9, 1992), Schedule Q-7, Proof of Revenue Statement).

estimate a reasonable rate year set of billing determinants on which to design new rates. Taking into account the effect of customer migration based on new pricing is comparable to and is part of the process of normalizing estimated test year billing determinants.¹³⁴³ SWEPCO concludes that its commercial rate design proposals reasonably estimate the new class billing determinants based on test year adjusted billing determinants.¹³⁴⁴

The ALJs conclude that there appears to be some confusion regarding this issue, and Staff may be intermixing billing determinants and rate design issues in the Billing Determinants sections of its initial and reply briefs. The billing determinant issue presented by Staff appears to be its dispute over whether SWEPCO can use estimates to adjust the billing determinants to account for potential customer migration among rate schedules. This issue is distinct from two related, but different, rate design issues raised by Staff with regard to the GS rate schedule, and Staff's request that SWEPCO be required to revise many of its rate schedules in its next base rate case to prevent customers from migrating among multiple rate schedules. Those latter two issues are addressed separately below in the Rate Design section of this PFD, and not in this Billing Determinants section. Thus, the ALJs conclude that the sole specific "billing determinant" issue raised by Staff is Staff's opposition to SWEPCO's proposed use of estimates to adjust billing determinants based on what Staff characterizes as speculative customer migration.

On this issue, the ALJs agree with SWEPCO. RFP Schedule Q-7, Proof of Revenue Statement, directs the utility to "Provide a proof of revenue statement (sometimes known as a pro forma revenue statement) showing expected *or estimated adjusted billing units*, proposed prices, and the resulting base rate revenue and fuel revenue for the proposed rate classes."¹³⁴⁵ SWEPCO is allowed to use estimated billing units in determining the resulting base rate revenues for its proposed rate classes. Staff and any party are free to challenge the Company's evidence supporting potential customer migration, but SWEPCO can use estimated adjusted billing units to calculate

¹³⁴³ SWEPCO Ex. 55 (Jackson Reb.) at 18.

¹³⁴⁴ SWEPCO Ex. 55 (Jackson Reb.) at 10.

¹³⁴⁵ SWEPCO Ex. 55 (Jackson Reb.) at 17 (emphasis added). RFP Schedule Q-7 also states "Estimates of billing units are acceptable."

the resulting base rate revenues based on its evidence. For these reasons, the ALJs recommend that the Commission reject Staff's opposition to the use of estimated adjusted billing units (or billing determinants) to prepare its proposed rates.

B. ETSWD's Proposed COVID-19 Adjustment

ETSWD proposes that SWEPCO should update its class cost of service study (also referred to as a CCOSS) to incorporate new data and account for the "enduring 'work from home'" shift and other effects of COVID-19.¹³⁴⁶ Alternatively, ETSWD recommends that the Commission instruct SWEPCO to recalculate and adjust its class cost of service study using the data provided in SWEPCO's response to ETSWD Request for Information (RFI) 3-1 because, according to ETSWD, it is the most current information regarding changes in customer usage by customer class since the COVID-19 pandemic began.¹³⁴⁷ Finally, ETSWD recommends SWEPCO update the CCOSS to reflect the loss of certain customers' load since the filing of this case as reflected in SWEPCO's response to ETSWD RFI 3-2.¹³⁴⁸ SWEPCO, Staff, OPUC, TIEC, and CARD oppose ETSWD's recommended COVID-19 adjustments. SWEPCO also explains why it should not update its studies to reflect lost customer load as proposed by ETSWD.

1. Arguments Opposing ETSWD's Proposed COVID-19 Adjustments

SWEPCO, Staff, OPUC, TIEC, and CARD argue that ETSWD's proposal should be rejected because the adjustments ETSWD seeks are not known and measurable. Staff argues that ETSWD's proposal does not comply with the Commission's known and measurable standard because the adjustment is not reasonably quantifiable and does not describe a situation that is apt

¹³⁴⁶ ETSWD Ex. 1 (Pevoto Dir.) at 5, 14.

¹³⁴⁷ ETSWD Ex. 1 (Pevoto Dir.) at 5, 14. ETSWD supports its requests for an updated cost of service study by citing 16 TAC § 25.231(a) ("rates are to be based upon an electric utility's cost of rendering service to the public during a historical test year, adjusted for known and measurable changes."); *Entergy Texas, Inc. v. Public Util. Comm'n*, 490 S.W.3d 224, 232 (Tex. App.-Austin 2016) (affirming a Commission decision to deny known and measurable changes that relied on uncertain forecasts of future costs). ETSWD Initial Brief at 3, n.14.

¹³⁴⁸ ETSWD Ex. 1 (Pevoto Dir.) at 14-15.

to prevail in the future.¹³⁴⁹ Among other things, OPUC argues that the Commission has impliedly found that the pandemic's long-term effects, if any, are unknown.¹³⁵⁰ CARD asserts that the effect of ETSWD's proposal would mean that a residential customer would pay a rate that is disproportionate to the cost it actually caused the utility to incur.¹³⁵¹ TIEC adds that ETSWD has not:

provided a specific adjustment, leaving it unclear how the Commission would implement this recommendation if it were inclined to do so. TIEC would note that parties are entitled to review, analyze, and take positions on any data used to set rates in this case, and it is unclear how they would have that opportunity under ETSWD's proposal.¹³⁵²

Staff, OPUC, and CARD present additional arguments in opposition to ETSWD's proposal, which are subsumed within the SWEPCO arguments set out in more detail below.

As an initial matter, SWEPCO notes that its Application in this docket included pro forma adjustments to the test year billing determinants for all of the known and measureable items at the time this case was filed.¹³⁵³ SWEPCO argues that ETSWD's primary recommendation fails for two reasons. First, as noted by other parties including Staff, the proposed adjustment is not known and measurable. ETSWD acknowledges that the goal of a pro forma adjustment is to reflect conditions that are likely to prevail in the future; that is, when the rates approved in this case are in effect. But, according to SWEPCO, there is no evidence that its sales and usage data during the pandemic, which by definition is a transitory event, are representative of what is likely to prevail

¹³⁴⁹ Staff Ex. 4B (Narvaez Cross-Reb.) at 6. OPUC makes a similar argument in its reply brief, arguing that ETSWD has not accounted for the "apt to apply in the future" requirement. OPUC Reply Brief at 24 (citing *Southwestern Public Service Co v. Pub Util. Comm'n of Tex.*, No. 07-17-00146-CV (Tex. App.—Amarillo 2018) (citing *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 188 (Tex. 1994))).

¹³⁵⁰ See *Application of El Paso Electric Company to Amend Its Certificate of Convenience and Necessity for an Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso*, Docket No. 50277, PFD at 24 (Sep. 3, 2020) (Docket No. 50277). There, the ALJs rejected an argument that the effects of the COVID-19 obviated the need for a new generating facility. Specifically, the ALJs explained that the long-term effect of the COVID-19 pandemic "remains no more than speculation." See also Docket No. 50277, Order at 1 (Oct. 16, 2020) (approving the PFD).

¹³⁵¹ CARD Reply Brief at 42-43.

¹³⁵² TIEC Reply Brief at 49.

¹³⁵³ SWEPCO Ex. 53 (Burnett Reb.) at 4.

in the future.¹³⁵⁴ Second, ETSWD has not provided and the record does not contain the information necessary to implement the recommendation. SWEPCO contends ETSWD concedes as much in its initial brief when it requests that the Commission instruct SWEPCO to provide “current, certain, and actual data regarding customer class usage.”¹³⁵⁵

SWEPCO acknowledges that the pandemic affected SWEPCO’s Texas jurisdictional load in the months immediately after the end of the test year, but contends that the pandemic’s effects were temporary and are not expected to continue.¹³⁵⁶ SWEPCO argues that ETSWD witness Kit Pevoto’s testimony bears this out:

- On July 2, 2020, Governor Abbott issued an order requiring face coverings for all public spaces in Texas.¹³⁵⁷ However, by March 2, 2021, Governor Abbott issued an executive order (Executive Order GA-34) removing the mask mandate and allowing businesses in Texas to operate at 100% capacity with no restrictions.¹³⁵⁸ Given Executive Order GA-34, SWEPCO argues that it is now known that businesses that were temporarily forced to limit their operations in response to the pandemic in 2020 will not be under the same restrictions moving forward.¹³⁵⁹
- SWEPCO agrees with Ms. Pevoto’s observation that, compared to 2019, SWEPCO’s total Texas Retail kWh sales dropped 3.2% in 2020, and, while Residential kWh sales increased by 3.3 percent, Commercial and Industrial kWh consumption declined by 5.0% and 6.9%, respectively.¹³⁶⁰ SWEPCO witness Burnett agreed that the impact of the pandemic was severe initially.¹³⁶¹ But Mr. Burnett explained that this impact has been offset as businesses have been able to reopen, vaccinations have come in place, and the government has put significant stimulus money into the economy.¹³⁶²

¹³⁵⁴ SWEPCO Ex. 53 (Burnett Reb.) at 4.

¹³⁵⁵ SWEPCO Reply Brief at 99 (citing ETSWD Initial Brief at 5-6); *see also* Staff Ex. 4b (Narvaez Cross-Reb.) at 5-6.

¹³⁵⁶ SWEPCO Ex. 53 (Burnett Reb.) at 4.

¹³⁵⁷ SWEPCO Ex. 53 (Burnett Reb.) at 5.

¹³⁵⁸ SWEPCO Ex. 53 (Burnett Reb.) at 5; *see also* ETSWD Ex. 9 (Executive Order No. 34 relating to the opening of Texas in response to the COVID-19 disaster).

¹³⁵⁹ SWEPCO Ex. 53 (Burnett Reb.) at 6; *see also* Tr. at 1481-82.

¹³⁶⁰ ETSWD Ex. 1 (Pevoto Dir.) at 10.

¹³⁶¹ Tr. at 1494.

¹³⁶² Tr. at 1494-95.

- Mr. Burnett also testified that the sales data Ms. Pevoto cites in her testimony is not reflective of what SWEPCO expects going forward. Instead, the most recent data from April 2021 shows that the “narrative is flipped”; that is, residential sales are down and Commercial and Industrial sales are up significantly.¹³⁶³
- Finally, Mr. Burnett testified that Table 2 in Ms. Pevoto’s direct testimony illustrates that despite the initial severity of the pandemic, its impact has lessened as time has passed.¹³⁶⁴ That is, the evidence shows that SWEPCO’s billing determinants are moving back to normal.¹³⁶⁵

SWEPCO argues that ETSWD’s alternative recommendation—that the Commission direct SWEPCO to update its CCOSS to account for COVID-19—should also be rejected because, as with its primary recommendation, the result ETSWD seeks is not known and measurable. SWEPCO concedes that its response to ETSWD RFI 3-1 shows that, compared to 2019, SWEPCO’s total Texas Retail kWh sales dropped 3.2% in 2020, and, while Residential kWh sales increased by 3.3%, Commercial and Industrial kWh consumption declined by 5.0% and 6.9%, respectively.¹³⁶⁶ SWEPCO witness Burnett agreed that the impact of the pandemic was severe initially.¹³⁶⁷ But he explained that this impact has been offset as businesses have been able to reopen, vaccinations have come in place, and the government has put significant stimulus money into the economy.¹³⁶⁸ To accept ETSWD’s recommendation to make a pro forma adjustment based on the “known” post-test year normalized sales data, SWEPCO states one would have to assume that the pandemic’s effect on SWEPCO’s Texas jurisdictional sales is permanent.¹³⁶⁹ SWEPCO contends that assumption is not consistent with the evidence, and is not reasonable given Governor Abbott’s March 2021 executive order.

¹³⁶³ Tr. at 1474, 1495-96.

¹³⁶⁴ Tr. at 1493-94.

¹³⁶⁵ SWEPCO Initial Brief at 110-11.

¹³⁶⁶ ETSWD Ex. 1 (Pevoto Dir.) at 10.

¹³⁶⁷ Tr. at 1494.

¹³⁶⁸ Tr. at 1494-95.

¹³⁶⁹ SWEPCO Reply Brief at 100.

Finally, SWEPCO agrees with ETSWD that SWEPCO identified in response to ETSWD RFI 3-2 the loss of load for two customers (one commercial and one industrial) due to business closures after the Company filed this case. SWEPCO argues, however, that ETSWD's recommendation that SWEPCO include a pro forma adjustment to reflect this loss of load is unreasonable because the commercial customer has only "temporarily idled its operations."¹³⁷⁰ SWEPCO states that a pro forma adjustment should not be used to address a temporary event, because a pro forma adjustment instead is intended to ensure that test year data better represents a utility's ongoing operations.¹³⁷¹ Consequently, it is inappropriate to adjust for an item that is known but temporary because doing so would not represent the expected ongoing operations for the utility.¹³⁷² As to the small industrial customer, SWEPCO did not make a pro forma adjustment because the customer announced its plant shutdown after SWEPCO filed this case.¹³⁷³ SWEPCO states that when it files a base rate case, significant effort is made to ensure that all of the key assumptions and inputs are coordinated and provide a comprehensive assessment of the need for the base rate adjustment.¹³⁷⁴ SWEPCO states that it does not, however, continuously update these assumptions and inputs after the case has been filed,¹³⁷⁵ nor would such an approach be consistent with the rules governing base rate cases.

2. ETSWD's Responses

ETSWD argues that SWEPCO bears the burden of proof in this case to justify its proposed rates, and it has not shown that its proposed rates are just and reasonable without a COVID-19 adjustment to its CCOSS. ETSWD argues that SWEPCO's CCOSS "ignores all but the first week of the single most disruptive event to hit the country's economic patterns in at least one hundred years" and this proceeding "should not knowingly rely on antiquated data and an obsolete view of

¹³⁷⁰ ETSWD Initial Brief at 7; *see also* ETSWD Ex. 1 (Pevoto Dir.), Exh. KP-4; SWEPCO Ex. 53 (Burnett Reb) at 2.

¹³⁷¹ SWEPCO Ex. 53 (Burnett Reb.) at 2.

¹³⁷² SWEPCO Ex. 53 (Burnett Reb.) at 2.

¹³⁷³ SWEPCO Ex. 53 (Burnett Reb.) at 3.

¹³⁷⁴ SWEPCO Ex. 53 (Burnett Reb.) at 3.

¹³⁷⁵ SWEPCO Ex. 53 (Burnett Reb.) at 3.

the world.”¹³⁷⁶ ETSWD claims that SWEPCO witness Burnett testified to two critical facts regarding this topic: (1) SWEPCO has much more current information about loads among customer classes that it has not included in the record to date; and (2) data in SWEPCO’s possession quantifies differences in current usage patterns among the classes.¹³⁷⁷ ETSWD asserts that SWEPCO concedes that the assumptions about usage across customer classes utilized in SWEPCO’s Application are antiquated.¹³⁷⁸

Next, ETSWD argues that the Commission “may, in its discretion, go outside the test year when necessary to achieve just and reasonable rates that will *more accurately reflect the cost of service* that is apt to apply to the utility in the future.”¹³⁷⁹ ETSWD asserts that no party has challenged the accuracy of SWEPCO’s data reported in its response to ETSWD RFI 3-1.¹³⁸⁰ ETSWD states that the opposing parties’ witnesses acknowledged under cross-examination that COVID-19 continues to impact economic and usage patterns in ways not incorporated into SWEPCO’s test year study.¹³⁸¹ ETSWD also argues that, while Staff’s, OPUC’s, and SWEPCO’s speculations about a return to pre-COVID work-from-home behaviors and a pre-COVID economy would not require a known and measurable change, “the *Entergy* case shows the Commission’s unwillingness to rely on unsubstantiated and unquantified forecasts of the future in setting rates.”¹³⁸²

¹³⁷⁶ ETSWD Initial Brief at 2-3 (citing Tr. at 1472, 1496).

¹³⁷⁷ Tr. at 1496-97.

¹³⁷⁸ Tr. at 1496-97 (related to new data in SWEPCO’s possession); Tr. at 1491 (SWEPCO’s response to ETSWD RFI 3-1, which is ETSWD Ex. 1 (Pevoto Dir.), Exh. KP-2, represents the most current information on customer usage by revenue class currently in the record of this docket).

¹³⁷⁹ Emphasis added (citing *Southwestern Public Service Co.*, No. 07-17-00146-CV (emphasis added) (citing *City of El Paso*, 883 S.W.2d at 188).

¹³⁸⁰ ETSWD notes that Staff witness Narvaez contends that SWEPCO’s data will need to be disaggregated before it could be applied for purposes of making known and measurable changes. Staff Ex. 4b (Narvaez Cross-Reb) at 7. ETSWD does not disagree with Staff that disaggregation would be appropriate. ETSWD Initial Brief at 4.

¹³⁸¹ See, e.g., Tr. at 1409-10.

¹³⁸² ETSWD Initial Brief at 6 (citing *Entergy Texas, Inc.*, 490 S.W.3d at 232 (the Commission rejected the inclusion of cost data that was fraught with uncertainty and significant variability)); *Rizkallah v. Conner*, 952 S.W.2d 580, 587 (Tex. App.—Houston [1st Dist.] 1997) (in the context of civil litigation, pointing out, “Conclusory statements without factual support are not credible and are not susceptible to being readily controverted.”).

ETSWD asserts that the Commission has noted the potential for COVID-19 to affect class consumption.¹³⁸³ Consistent with ETSWD witness Pevoto's recommendation, the best way for the Commission "to determine whether" COVID-19 has caused a shift in class consumption is for the Commission to order SWEPCO to update its customer class of service studies with the most current data available.¹³⁸⁴ ETSWD urges that the opposing parties' predictions lacks statistical support and are contradicted by multiple forms of information both in the evidence and in SWEPCO's possession. For example, if the Governor's March 2, 2021 order did, in fact, mark the return to pre-COVID electricity consumption behaviors as implied by SWEPCO witness Burnett¹³⁸⁵ and OPUC witness Georgis,¹³⁸⁶ then updated data in SWEPCO's possession would prove that shift in usage among customer classes and a return to "normalcy."¹³⁸⁷ ETSWD contends that an updated run of the analyses "is not likely" to show a return to normalcy.¹³⁸⁸ ETSWD concludes that new record data from SWEPCO and statements reveal even more recent data in SWEPCO's possession that continues to show that a return to pre-COVID electricity consumption behaviors among classes has not occurred.¹³⁸⁹

3. ALJs' Analysis

The ALJs conclude that SWEPCO, Staff, OPUC, and CARD have presented credible evidence and argument that the continuing effects of COVID-19 are transitory and unknown.¹³⁹⁰ As such, updating SWEPCO's cost of service study through post-test year data would not result in rates that are known to be reflective of customer demands going forward. ETSWD impliedly

¹³⁸³ Docket No. 50277, PFD at 24 (Sep. 3, 2020).

¹³⁸⁴ ETSWD Ex. 1 (Pevoto Dir.) at 5.

¹³⁸⁵ SWEPCO Ex. 53 (Burnett Reb.) at 7.

¹³⁸⁶ OPUC Ex. 60 (Georgis Cross-Reb.) at 5-6.

¹³⁸⁷ ETSWD Initial Brief at 5.

¹³⁸⁸ ETSWD Initial Brief at 5.

¹³⁸⁹ ETSWD Ex. 1 (Pevoto Dir.) at Exh. KP-3.

¹³⁹⁰ The ALJs also agree with TIEC's comments regarding the lack of clarity on how the Commission could implement ETSWD's proposal, or how the parties could respond to the data used to set rates through a COVID-19 adjusted cost of service study.

concedes as much when it argues “an updated run of the analyses ‘is not likely’ to show a return to normalcy.”¹³⁹¹ ETSWD’s own words—“is not likely”—shows the speculative nature of its request. Similarly, although ETSWD appears to concede that updated billing determinants need not be based on a “known and measureable change,” it highlights that, at least in the context of a post-test year adjustment, the Commission is unwilling to rely on “unsubstantiated and unquantified forecasts of the future in setting rates.”¹³⁹² But that essentially is what ETSWD is requesting. In short, ETSWD is requesting that the Commission discard the filed adjusted cost of service study and instead require a new cost of service study based solely on its snap shot-based speculation that the COVID-19 effects are not transitory. Even if a more recent study shows a change in customers’ usage, which a new study could show despite a pandemic situation, ETSWD has not shown that a more recent study would be more apt to show the usage that will prevail into the future before SWEPCO’s rates are re-set in its next base rate case.

SWEPCO’s evidence also shows, based on April 2021 data, that the “narrative is flipped” with residential sales moving down as commercial and industrial sales move up “significantly.”¹³⁹³ Similarly, SWEPCO’s evidence showed, at the time it filed rebuttal testimony on April 23, 2021, that the impact of the pandemic has lessened as time has passed.¹³⁹⁴ The ALJs also decline to recommend approval of ETSWD’s proposals because approval could serve as future precedent whereby an adjusted test year-based cost of service study filed in accordance with the Commission’s rules and historical practice is essentially abandoned and replaced with a new cost of service study (or at least new billing determinants) shortly after the close of the applicable test year. That perhaps would be advisable if the dramatic post-test year changes were known and measureable and would be apt to prevail in the future, but that is not the case with COVID-19.

The ALJs are also persuaded by SWEPCO’s evidence that adjustments for a customer that has since returned after a temporary shutdown, or a customer that shut down after the close of the

¹³⁹¹ ETSWD Initial Brief at 5.

¹³⁹² ETSWD Initial Brief at 6.

¹³⁹³ Tr. at 1474, 1495-96.

¹³⁹⁴ Tr. at 1493-94.

test year in what could not have been foreseen as a known and measureable change, are not warranted and should not be implemented in this case.

In conclusion, the ALJs agree with SWEPCO, Staff, OPUC, TIEC, and CARD that SWEPCO should not be required to update its customer class cost of service study to incorporate new data and account for the “enduring ‘work from home’” shift and other effects of COVID-19. The Commission also should not instruct SWEPCO to recalculate and adjust its class cost of service study using the data provided in SWEPCO’s response to ETSWD RFI 3-1. The ALJs also recommend that the Commission not require SWEPCO update the class cost of service study to reflect the loss of certain customers’ loads as requested by ETSWD.

IX. FUNCTIONALIZATION AND COST ALLOCATION [PO ISSUES 4, 5, 31, 52, 53, 55, 56, 57, 58]

For non-ERCOT Texas electric utilities, the cost allocation aspects of ratemaking involve primarily two types of allocations. First, jurisdictional allocation examines the allocation of the portion of SWEPCO’s “total company costs,” which comprise SWEPCO’s costs from all of its jurisdictions (Texas, Arkansas, Louisiana, and FERC) to its Texas retail jurisdiction.¹³⁹⁵ The question with jurisdictional allocation is whether Texas retail customers are only paying for their share of SWEPCO’s total system costs. Second, once the reasonable amount of jurisdictional costs are allocated to Texas retail, the next step is to allocate that Texas retail jurisdictional total cost of service among the SWEPCO’s Texas retail customer classes, such that each class (at a high level, the Residential, Commercial, Industrial, Municipal, and Lighting classes) is bearing its appropriate share of the total Texas retail amount. The point of the class cost of service analysis is to determine the reasonable and necessary cost that each customer class should contribute to SWEPCO’s Commission-approved annual revenue requirement. This does not end the analysis, however, because in the next section of the PFD the ALJs address rate moderation (also known as

¹³⁹⁵ SWEPCO’s Texas wholesale customers (as distinct from SWEPCO’s Texas retail customers) are treated as within the FERC jurisdiction.

“gradualism”) to avoid “rate shock,” and how rates are designed to recover costs allocated within each specific class.

Staff witness Narvaez prepared Staff’s jurisdictional and class cost of service studies based on the revisions recommended by Staff witnesses to SWEPCO’s as-filed proposed revenue requirement. Staff’s class cost of service study results in a total retail Texas revenue requirement of \$410,378,080.¹³⁹⁶ Mr. Narvaez’s studies were filed with his direct testimony on April 7, 2021.

On April 23, 2021, SWEPCO witness Aaron filed SWEPCO’s rebuttal Texas jurisdictional and class cost of service studies with his rebuttal testimony to reflect: (1) changes to certain costs allocated to the Texas retail jurisdiction; and (2) allocation changes among SWEPCO’s Texas retail classes.¹³⁹⁷ SWEPCO’s proposed rebuttal Texas retail jurisdictional revenue requirement reflects changes in total company values made from SWEPCO’s as-filed case to its rebuttal case.¹³⁹⁸ SWEPCO’s rebuttal cost of service reflects a \$5 million decrease to the Texas retail base rate revenue requirement as compared to its as-filed case, and includes shifts of base rate revenues among the retail customer classes. The table below summarizes the changes to SWEPCO’s Texas base rate revenue requirement in total and by major class grouping at an equalized return.¹³⁹⁹

	<u>FILED</u>	<u>REBUTTAL</u>	<u>CHANGE</u>
Texas Retail	\$ 451,529,538	\$ 446,466,201	\$ (5,063,337)
Residential	\$ 188,152,651	\$ 188,778,452	\$ 625,801
Commercial	\$ 193,497,125	\$ 191,044,316	\$ (2,452,809)
Industrial	\$ 57,506,958	\$ 54,451,107	\$ (3,055,851)
Municipal	\$ 4,303,143	\$ 4,219,413	\$ (83,730)
Lighting	\$ 8,069,661	\$ 7,972,913	\$ (96,748)

¹³⁹⁶ Staff Ex. 4 (Narvaez Dir), Attachment AN-4 at 2.

¹³⁹⁷ SWEPCO Ex. 54A (Aaron Reb. Workpapers).

¹³⁹⁸ SWEPCO Ex. 36 (Baird Reb.), Exh. MAB-1R.

¹³⁹⁹ SWEPCO Ex. 54 (Aaron Reb.) at 6. Mr. Aaron’s rebuttal workpapers include this table as well as a table showing his changes to SWEPCO’s as-filed cost of service studies, his rebuttal jurisdictional cost of service study, and his rebuttal class cost of service study. SWEPCO Ex. 54A (Aaron Reb. Workpapers).

The difference between Staff's class cost of service study and SWEPCO's rebuttal class cost of service study is just over \$36 million (\$446.5 million less \$410.4 million). The ALJs' analyses in this section start with SWEPCO's as-filed cost of service studies, accept SWEPCO's revisions that resulted in its rebuttal cost of service studies, and then address the numerous, primarily class, cost of service issues raised by Staff and the other parties.

A. Jurisdictional Allocation [PO Issues 55, 57]

1. SWEPCO's Jurisdictional Allocation, as Revised by Its Rebuttal Case

a. Production Demand

SWEPCO used a four coincident peak (4CP) allocation methodology for the jurisdictional assignment of production demand-related costs, reflecting the jurisdictions' use of SWEPCO's production facilities at the time of the system peak demands for June through September.¹⁴⁰⁰ Each jurisdiction's allocation factor is a ratio of the average of that jurisdiction's 4CP demand to the average of the SWEPCO's total production system 4CP.¹⁴⁰¹ SWEPCO reduced the average of the 4CP demand for SWEPCO's FERC jurisdiction by customer supplied resources, the output of which is included in the metered values in SWEPCO's demand and energy accounting. According to SWEPCO, allocating production costs on the unadjusted gross 4CP value would inappropriately allocate production costs to the wholesale jurisdiction.¹⁴⁰² No party contests this methodology.

b. Production Energy

Production energy-related costs, including expenses recorded in FERC Account 501 not recovered through SWEPCO's fuel clause (*i.e.*, non-reconcilable fuel expenses), were allocated to

¹⁴⁰⁰ SWEPCO Ex. 31 (Aaron Dir.) at 14.

¹⁴⁰¹ SWEPCO Ex. 31 (Aaron Dir.) at 14.

¹⁴⁰² SWEPCO Ex. 31 (Aaron Dir.) at 14-15.

each jurisdiction based on adjusted test year annual kWh sales as reflected in RFP Schedule O-4.1.¹⁴⁰³ No party contested this allocation methodology.

c. Transmission

Transmission-related costs are allocated to SWEPCO jurisdictions using the average of SWEPCO's twelve monthly peak demands (12CP) coinciding with the monthly peaks in Zone 1 of the SPP. SWEPCO states this allocation methodology appropriately reflects SWEPCO's load responsibility in the SPP.¹⁴⁰⁴ No party contested this allocation methodology.

d. Distribution

Distribution plant was directly assigned to the states based on geographic location and allocated to the FERC jurisdiction by individual FERC distribution accounts. Certain wholesale customers take service from SWEPCO pursuant to wholesale formula rates at distribution voltage levels. SWEPCO states this methodology appropriately assigns the cost responsibility to the FERC jurisdiction.¹⁴⁰⁵ Customer-related distribution costs such as investment in meters and lights were also directly assigned to the jurisdictions by individual FERC distribution accounts. Customer accounting, information, and service expenses were allocated to each jurisdiction using a combination of adjusted test year-end number of customers, manually billed customers, and other customer-based allocators as provided on RFP Schedule P-11.¹⁴⁰⁶ These methodologies were not contested.

e. General Plant

SWEPCO's investment in general plant is allocated using the labor allocation factors developed in RFP Schedules P-7 and P-10, which allocate the labor portion of each O&M expense

¹⁴⁰³ SWEPCO Ex. 31 (Aaron Dir.) at 15.

¹⁴⁰⁴ SWEPCO Ex. 31 (Aaron Dir.) at 15.

¹⁴⁰⁵ SWEPCO Ex. 31 (Aaron Dir.) at 15-16.

¹⁴⁰⁶ SWEPCO Ex. 31 (Aaron Dir.) at 16.

account on the same basis as the total expense. These labor allocation factors are also used to allocate many administrative and general expense items.¹⁴⁰⁷ No party contested this allocation methodology.

f. Revenues

In the jurisdictional cost of service study, electricity sales revenues are directly assigned to the jurisdictions based on the existing approved jurisdictional tariffs.¹⁴⁰⁸

g. Revisions From SWEPCO's As-Filed Case to Its Rebuttal Case

SWEPCO notes in its initial brief that it inadvertently directly assigned certain distribution investments to the wholesale class in its as-filed jurisdictional cost of service study.¹⁴⁰⁹ The Company contends there should have been no such assignment because it collects revenues from wholesale customers for the associated investments, thereby reducing cost allocation. SWEPCO argues that removing this allocation from the wholesale jurisdiction in its rebuttal jurisdictional cost of service study increases the allocation to other jurisdictions that is offset by a larger allocation of distribution miscellaneous revenues.¹⁴¹⁰ CARD raises concerns with this revision, which are discussed below.

In responding to discovery from ETSWD, SWEPCO determined that pro forma adjustments to test year load and customer data related to the loss of three large industrial customers were not properly reflected in the as-filed jurisdictional production and transmission demand allocations. SWEPCO included these adjustments in its rebuttal jurisdictional cost of service study, resulting in a slight decrease to the jurisdictional production allocation and a slight

¹⁴⁰⁷ SWEPCO Ex. 31 (Aaron Dir.) at 16.

¹⁴⁰⁸ SWEPCO Ex. 31 (Aaron Dir.) at 19.

¹⁴⁰⁹ SWEPCO Initial Brief at 115.

¹⁴¹⁰ SWEPCO Ex. 54 (Aaron Reb.) at 6.

increase to the jurisdictional transmission allocation.¹⁴¹¹ As to the three customers who permanently left the system, there is no dispute about removing their customer data from the cost of service, but there is a dispute about other customers that SWEPCO contends only left temporarily. These disputes are discussed below.

h. Eastman BTMG

As addressed in Section IV above, Eastman disputes SWEPCO's allocation to the Texas retail jurisdiction of \$5.7 million in transmission costs related to Eastman's load served by its retail BTMG, arguing that such allocation is not based on cost causation requirements.¹⁴¹² As also noted above, SWEPCO argues that if these retail BTMG costs are removed from the Texas jurisdictional allocations, the costs incurred to provide service to SWEPCO's Texas jurisdiction would be inappropriately shifted to SWEPCO's other jurisdictions (Arkansas, Louisiana, and FERC).¹⁴¹³

2. Staff's and Intervenors' Positions Regarding Jurisdictional Allocation and ALJs' Analysis on Each Issue

The parties addressed three issues with regard to jurisdictional cost allocation:

- The allocation of \$5.7 million in SPP charges to the retail BTMG load, primarily borne by Eastman Chemical;
- SWEPCO's removal of costs inadvertently assigned in Schedule P-3 (Allocation of Rate Base to Proposed Rate Classes) to the wholesale class through the as-filed jurisdictional cost-of-service study; and
- SWEPCO agrees with Staff's Jurisdictional Cost of Service Summary prepared by Staff witness Narvaez, but SWEPCO does not agree with Staff's calculated results.

¹⁴¹¹ SWEPCO Ex. 54 (Aaron Reb.) at 6-7.

¹⁴¹² Eastman Ex. 1 (Al-Jabir Dir.) at 26.

¹⁴¹³ SWEPCO Ex. 54 (Aaron Reb.) at 1-2; SWEPCO Initial Brief at 116.

a. \$5.7 Million Allocated to the Texas Retail Jurisdiction Related to Retail BTMG

Because this BTMG issue has already been addressed above in the context of transmission O&M expense, it will not be repeated in this section in the context of jurisdictional and class cost of service studies. However, to ensure that the Eastman load served by its retail BTMG does not seep into the cost of service analyses, the ALJs recommend that SWEPCO's allocation of Eastman's load served by its retail BTMG should be removed from the jurisdictional cost of service study approved by the Commission in this docket.¹⁴¹⁴

b. SWEPCO's Removal of Certain Distribution Investments from the Wholesale Class

SWEPCO states it inadvertently assigned costs to the wholesale jurisdiction in RFP Schedule P-3 (Allocation of Rate Base to Proposed Rate Classes) of the as-filed jurisdictional cost of service study.¹⁴¹⁵ The Company states costs should not have been directly assigned to the wholesale class because revenues are collected from the wholesale customers for the associated investments, reducing the amounts to be collected from other jurisdictions.¹⁴¹⁶ For this reason, SWEPCO removed these costs from the allocation to the wholesale jurisdiction. SWEPCO argues that removing the allocation of selected distribution investments from the wholesale jurisdiction increases the allocation of those costs to other jurisdictions that is offset by a larger allocation of distribution miscellaneous revenues.¹⁴¹⁷

CARD disagrees with SWEPCO's proposal to remove certain distribution investments from the wholesale class. CARD argues that this removal from the wholesale class deviates from the methodology approved by the Commission in Docket No. 46449, and that SWEPCO's

¹⁴¹⁴ This same recommendation applies to SWEPCO's class cost of service study, which is addressed in Section IX.B. below.

¹⁴¹⁵ SWEPCO Reply Brief at 102-03.

¹⁴¹⁶ SWEPCO Ex. 54 (Aaron Reb.) at 6.

¹⁴¹⁷ SWEPCO Ex. 54 (Aaron Reb.) at 6.

rationale for the removal is incorrect.¹⁴¹⁸ CARD explains that by adjusting the assignment of costs so that there are no costs directly assigned to the wholesale class, SWEPCO is improperly removing the allocation of certain distribution costs from the wholesale jurisdiction, which consequently increases the allocation to other jurisdictions. CARD notes that SWEPCO witness Aaron alleged that the increased cost allocation is offset by a larger allocation of distribution miscellaneous revenues but provided no support for this contention. CARD does not outright oppose this removal of distribution investment from the wholesale class, but instead urges, absent “an understanding of how this change impacts the rate classes and recognizing that this change deviates from the methodology approved in Docket No. 46499,” SWEPCO’s proposed adjustment should be rejected and the Commission should instead rely on SWEPCO’s as-filed cost of service study as to this issue.¹⁴¹⁹ The only additional point that SWEPCO makes in response to CARD’s opposition to this wholesale class issue is that, while CARD complains that Mr. Aaron offered no support for this offset, “CARD does not offer nor point to any evidence that controverts it, or explains why it is incorrect.”¹⁴²⁰

The ALJs agree with SWEPCO on this issue. CARD has neither presented evidence that controverts SWEPCO’s position, nor explained why its position is supported by the Commission’s decision in Docket No. 46499. Instead, CARD simply does not want SWEPCO to make this adjustment because it has the effect of moving costs from the wholesale class to other jurisdictions, including, implicitly, the Texas retail jurisdiction.¹⁴²¹ CARD’s response does not explain why SWEPCO is wrong, but instead simply states that the distribution costs should stay with the wholesale class so other classes do not have to pick them up. In this situation, the ALJs conclude that SWEPCO has met its burden of proof to support removing these distribution costs from the wholesale class. Accordingly, the ALJs recommend that SWEPCO not be required to include these distribution-related costs in its wholesale class.

¹⁴¹⁸ Citing SWEPCO Ex. 54 (Aaron Reb.) at 6.

¹⁴¹⁹ CARD Initial Brief at 68; CARD Reply Brief at 40.

¹⁴²⁰ SWEPCO Reply Brief at 103.

¹⁴²¹ CARD Reply Brief at 41 (“By adjusting the assignment of costs so that there are no directly assigned costs to the wholesale class, SWEPCO is improperly removing the allocation of certain distribution costs from the wholesale jurisdiction, which consequently increases the allocation to other jurisdictions.”)

c. Staff's Jurisdictional Cost of Service Study vs. SWEPCO's Rebuttal Jurisdictional Cost of Service Study

In both its initial and reply briefs, Staff simply urges that the Commission adopt Staff's jurisdictional cost of service study presented by Staff witness Narvaez.¹⁴²² Both Staff's jurisdictional and class cost of service studies result in Staff's \$410 million annual revenue requirement as compared to SWEPCO's \$446 million final (rebuttal) request. In the context of jurisdictional allocation, what Staff essentially is requesting is that the Commission accept all of Staff's recommendations, including those regarding rate base, ROE, and expenses and, by doing so, the Commission would be adopting Staff's proposed jurisdictional (and class) cost of service studies.

As addressed in the prior sections of this PFD dealing with rate base, ROE, and expenses, the ALJs recommend some, but not all, of the disallowances recommended by Staff and the other parties. Using the ALJs' recommended figures in the cost of service studies through the number running process results in a recommended annual revenue requirement. The ALJs recommend that the cost of service resulting from their analyses in this PFD be adopted by the Commission. As such the ALJs do not recommend a blanket approval of Staff's as-filed studies.

B. Class Allocation [PO Issues 53, 58]

SWEPCO's Texas jurisdictional production, transmission, and distribution demand-related components are allocated differently in the class cost of service study. Customer-related costs are allocated on a similar manner in both the jurisdictional and class cost of service studies.¹⁴²³ For the class cost of service study:¹⁴²⁴

¹⁴²² Staff Ex. 4 (Narvaez Dir.), Exh. AN-2; Staff Initial Brief at 69; Staff Reply Brief at 45.

¹⁴²³ SWEPCO Initial Brief at 116.

¹⁴²⁴ These class allocation methodology summaries are derived from SWEPCO's descriptions in its initial brief at 116-18.

- Production demand-related costs are allocated to the various retail customer classes on the average and excess demand 4CP methodology (A&E/4CP).¹⁴²⁵
- Transmission-related costs also are allocated to the retail customer classes on an A&E/4CP basis.¹⁴²⁶
- Distribution plant costs recorded in FERC Accounts 360-368 are allocated on the basis of customer class Maximum Diversified Demands (MDD) during the test year. MDDs are the maximum demand placed on the system regardless of the relationship of that point in time to the system peak. Customer-related distribution costs recorded in FERC Accounts 369 through 373 are limited to the costs that vary directly with the number of customers (*i.e.*, meters, service drops, transformers, and associated expenses). These costs and associated expenses are allocated to the customers who require such facilities using a weighted-number-of-customers methodology.¹⁴²⁷
- Electricity sales revenues reflect test year adjusted retail sales assigned to classes by the tariff code designated for the type of service. Late Payment Charges and Miscellaneous Service Revenues are directly assigned to the retail jurisdictions. Other Miscellaneous Electric Revenue are first functionalized based upon an analysis of the Company's records and then allocated to the jurisdictions based on the functional assignment of the asset used to generate the revenue.¹⁴²⁸

The parties raised numerous issues with regard to class allocation and the class cost of service, including arguments regarding whether or how the BTMG costs should be allocated among the customer classes, and opposition to ETSWD's proposed COVID-19 adjustments. The BTMG and COVID-19 issues are discussed separately above in Sections VII and VIII of this PFD, and will not be addressed again here.

¹⁴²⁵ SWEPCO Ex. 31 (Aaron Dir.) at 17.

¹⁴²⁶ SWEPCO Ex. 31 (Aaron Dir.) at 18. SWEPCO notes in its initial brief, in its description of its transmission cost class allocation, that "The A&E 4CP allocation for transmission-related costs differs from the A&E 4CP allocation used for production-related costs because the transmission allocation includes synchronized BTMG included in SWEPCO's transmission load responsibility in the SPP." SWEPCO Initial Brief at 117.

¹⁴²⁷ SWEPCO Ex. 31 (Aaron Dir.) at 17-18.

¹⁴²⁸ SWEPCO Ex. 31 (Aaron Dir.) at 19.

1. CARD's Class Allocation Issues

CARD raises four class allocation issues: (1) allocation of line transformers; (2) allocation of major account representative costs; (3) assignment of costs to the wholesale class; and (4) opposition to ETSWD's proposed COVID-19 adjustments. The latter two of these four issues have been addressed in prior sections of this PFD and will not be addressed again here. The assignment of costs to the wholesale class is addressed in the prior Section IX.A. ETSWD's proposed COVID-19 adjustments are addressed in the context of billing determinants addressed in Section VIII.

In the context of the first two class allocation issues, CARD argues generally that SWEPCO is incorrect in its assertion that "the allocation factors and process are the same as those approved by the Commission in Docket No. 46449 and updated in Docket No 48233."¹⁴²⁹

a. SWEPCO's Allocation of Line Transformers

CARD notes that SWEPCO allocated both primary and secondary line transformer costs (FERC Account 368) among the customer classes on the same percentage basis.¹⁴³⁰ However, according to CARD, Nucor witness Daniel argued that allocations should be different for primary and secondary line transformer costs.¹⁴³¹ CARD argues that SWEPCO's proposal is a deviation from the allocation factors and methodologies the Commission approved in Docket No. 46449 and from SWEPCO's response to CARD RFI 11-7, but that SWEPCO nevertheless incorporated this adjustment to the allocation of line transformer costs in the Company's rebuttal cost of service study.¹⁴³² CARD contends that this adjustment to the allocation of line transformer costs will result in an improper allocation of costs. While the allocations SWEPCO presented in its as-filed cost of service study did not change the primary line transformer cost allocations, CARD asserts the

¹⁴²⁹ CARD Initial Brief at 67 (citing CARD Exh. 19 (SWEPCO's response to CARD RFI 11-7)).

¹⁴³⁰ SWEPCO Exh. 54 (Aaron Reb.) at 2.

¹⁴³¹ Nucor Ex. 1 (Daniel Dir.) at 15, 18.

¹⁴³² SWEPCO Exh. 54 (Aaron Reb.) at 2.

allocation presented in SWEPCO's rebuttal class cost of service study unfairly result in the secondary class receiving a higher allocation of secondary line transformer costs, and subsequently more total line transformer costs.¹⁴³³

SWEPCO responds that CARD's overarching criticism of SWEPCO's revisions introduced through its rebuttal class cost of service study is its position that they deviate from the allocation factors and methodologies approved in Docket No. 46449. As to the line transformer costs from FERC Account 368, only a portion of the account should have been allocated to primary service customers, and the as-filed class cost of service study had incorrectly allocated all of that account to primary service customers.¹⁴³⁴ Therefore, this change in SWEPCO's rebuttal class cost of service study was reasonable and appropriate.

The ALJs agree with SWEPCO on this issue. CARD has not explained how SWEPCO's correction to the allocation of line transformer costs is contrary to Docket No. 46449. SWEPCO explained that it was correcting an error in the allocation of line transformer costs in its rebuttal cost of service study, as pointed out by Nucor witness Daniel. CARD's reply brief on this issue simply points back to its initial brief without explaining why SWEPCO's correction is wrong or contrary to Docket No. 46449. Based on SWEPCO's evidence, the ALJs conclude the correction was appropriate and necessary. The ALJs therefore recommend against CARD's proposal regarding the allocation of line transformer costs in the class cost of service study.

b. Major Account Representative Costs and Prepayments

CARD states that SWEPCO made two changes to the cost of service study presented in its as-filed direct case. The first change was to the components of its test-year prepayment balances included in rate base.¹⁴³⁵ The second adjustment SWEPCO made was to the quantification and

¹⁴³³ Citing SWEPCO Exh. 54A (Aaron Reb. Workpapers).

¹⁴³⁴ Nucor Ex. 1 (Daniel Dir.) at 15, Exh. JWD-5 (SWEPCO's response to Nucor RFI 3-20).

¹⁴³⁵ SWEPCO Exh. 54A (Aaron Reb. Workpapers) at 7.

allocation of major account representative costs recorded in FERC Account 908.¹⁴³⁶ CARD claims that these changes are not consistent with the allocation factors approved in Docket No. 46449.¹⁴³⁷ CARD concedes that these changes have a relatively small impact on the overall revenue requirement, but nevertheless urges the ALJs to reject the adjustment to the components of the test-year prepayment balances included in rate base and the adjustment SWEPCO made to the quantification and allocation of major account representative costs recorded in FERC Account 908.

As an overarching matter raised in the context of these two issues, CARD correctly notes that SWEPCO's rebuttal case adjustments caused a shift in costs from SWEPCO's as-filed cost of service study to its rebuttal cost of service study, resulting in an increase to the residential class, despite an overall \$5 million reduction to the cost of service.¹⁴³⁸ CARD suggests that unreasonable changes were proposed by the commercial and industrial parties to shift costs to the residential class based on allocation factors that deviate from the factors approved in Docket No. 46449.¹⁴³⁹

SWEPCO responds that it has not assigned major account representative costs to the residential class,¹⁴⁴⁰ and the Commission's order in Docket No. 46449 precludes the Company from doing so. Findings of fact in that order include the following:

- 296. SWEPCO uses major account representatives to work with 69 large commercial and 68 industrial customers.
- 297. It is reasonable to allocate major-account-representatives expenses solely to the large commercial and industrial customers who benefit from that service.

¹⁴³⁶ SWEPCO Exh. 54A (Aaron Reb. Workpapers) at 7.

¹⁴³⁷ Docket No. 46449, Order on Rehearing at 47 (Mar. 19, 2018).

¹⁴³⁸ See SWEPCO Ex. 54 (Aaron Reb.) at 6, which shows a \$625,801 increase in the Residential class, despite an overall decrease of \$5 million.

¹⁴³⁹ CARD Initial Brief at 70.

¹⁴⁴⁰ SWEPCO Ex. 54A (Aaron Reb. Workpapers) at "JOA WP – SWEPCO TX COS_Class TY 3_2020 Rebuttal.xlsx," Tab "COS Changes – Discovery," Lines 69-72, 100-108 (reproducing SWEPCO's response to TIEC RFI 7-1(d)); see also SWEPCO Ex. 54 (Aaron Reb.) at 7.

298. Major account representative costs should not be assigned to residential and general-service customers who do not receive these services.¹⁴⁴¹

SWEPCO explains further that its rebuttal adjustment to FERC Account 908 was merely to remove certain labor expenses that are not related to major account representative expenses from the direct assignment to these customers.¹⁴⁴²

As to the prepayments issue, CARD does not explain how or why SWEPCO's correction deviates from Docket No. 46449, and does not address this issue in its reply brief.

The ALJs agree with SWEPCO on both of these issues. The evidence does not show that SWEPCO, through its rebuttal cost of service studies, allocated any major account representative costs to the residential class, and SWEPCO correctly points out that these costs can only be allocated to large commercial and industrial customers in accordance with Commission precedent. CARD also has not presented a reason why SWEPCO's correction regarding prepayments was in error, or how that correction deviated from Docket No. 46449. For these reasons, the ALJs recommend against CARD's proposals regarding major account representatives and prepayments.

2. TIEC's Class Allocation Issues

TIEC addresses two aspects of SWEPCO's proposed class cost of service study. First, the Commission should adopt SWEPCO's rebuttal proposal to use a single coincident peak (1CP) system load factor to weight average demand in the A&E/4CP allocation methodology. Second, the Commission should reject SWEPCO's proposed allocation of costs purportedly caused by SWEPCO's decision to report Eastman's BTMG load to SPP as part of SWEPCO's Monthly Network Load.

¹⁴⁴¹ Docket No. 46449, Order on Rehearing at FoF Nos. 296-298 (Mar. 19, 2018).

¹⁴⁴² SWEPCO Ex. 54A (Aaron Reb. Workpapers) at "JOA WP – SWEPCO TX COS_Class TY 3_2020 Rebuttal.xlsx," Tab "COS Changes – Discovery," Lines 73-76 (reproducing SWEPCO's response to TIEC RFI 7-1(d)).

As to the system load factor issue, as noted in the summary bullets above, SWEPCO's CCROSS uses the A&E/4CP methodology to allocate production and transmission costs.¹⁴⁴³ According to TIEC, a key component of A&E/4CP is the system load factor,¹⁴⁴⁴ which is the ratio of the average load over a designated period compared to the peak demand in that period.¹⁴⁴⁵ In its Application, SWEPCO inadvertently used a system load factor calculated based on the average of SWEPCO's four coincident peaks (4CP) rather than the actual peak demand (1CP).¹⁴⁴⁶ However, after TIEC witness Pollock pointed out this error in his direct testimony,¹⁴⁴⁷ SWEPCO revised its class allocation through its rebuttal CCROSS to use a system load factor based on its 1CP.¹⁴⁴⁸ No party filed in opposition to SWEPCO's correction. TIEC argues that the use of a 1CP system load factor is consistent with cost-causation and well-established Commission precedent.¹⁴⁴⁹ Because this issue is now not contested due to SWEPCO's correction in its rebuttal case, the ALJs recommend approval of the method SWEPCO ultimately used to allocate production and transmission costs to its classes.

As to the retail BTMG issue, as discussed in Section VII above, SWEPCO proposes to change its *jurisdictional* allocation of transmission costs by adding Eastman's BTMG load to the Texas jurisdiction. TIEC points out that SWEPCO made a similar adjustment to the *class* allocation.¹⁴⁵⁰ Specifically, SWEPCO imputed Eastman's BTMG load to the LLP-T class. This adjustment increased the LLP-T class's purported peak demand from 97.7 MW to 246.7 MW.¹⁴⁵¹ According to TIEC, the consequence of imputing this load to the LLP-T class is a massive cost

¹⁴⁴³ SWEPCO Ex. 31 (Aaron Dir.) at 17-18.

¹⁴⁴⁴ TIEC Ex. 1 (Pollock Dir.) at 30-31.

¹⁴⁴⁵ TIEC Ex. 1 (Pollock Dir.) at 33.

¹⁴⁴⁶ SWEPCO Ex. 54 (Aaron Reb.) at 3; TIEC Ex. 1 (Pollock Dir.) at 31-32.

¹⁴⁴⁷ TIEC Ex. 1 (Pollock Dir.) at 32-35.

¹⁴⁴⁸ SWEPCO Ex. 54 (Aaron Reb.) at 3.

¹⁴⁴⁹ TIEC Ex. 1 (Pollock Dir.) at 32-34.

¹⁴⁵⁰ TIEC Initial Brief at 69.

¹⁴⁵¹ SWEPCO Ex. 54 (Aaron Reb.), Exh. JOA-1R. This exhibit shows the production and transmission demands by class. As Mr. Aaron explained, the only difference between the peak demand shown for production and transmission for each class is that 149 MW was added to the LLP-T class to account for BTMG. *Id.* at 3.

shift. While imputing Eastman's BTMG load to Texas at the jurisdictional level increased the revenue requirement in this case by \$5.7 million, doing so at the class level increased the LLP-T class's share of transmission costs by nearly \$8 million.¹⁴⁵² Given that the transmission allocation must equal 100%, increasing the share to the LLP-T class necessarily reduces the allocation to all remaining classes. In particular, under SWEPCO's proposal, the remaining classes see a decrease of approximately \$2.3 million, which is the difference between the \$8 million allocated to the LLP-T class and the \$5.7 million Texas retail revenue requirement impact from imputing Eastman's BTMG load in the jurisdictional allocation.¹⁴⁵³

For the same reasons discussed above regarding SWEPCO's jurisdictional allocation, the ALJs find that SWEPCO's corresponding change to the class allocation should be rejected. SWEPCO did not demonstrate that the allocation was reasonable, necessary, and non-discriminatory. Accordingly, the ALJs recommend that Eastman's BTMG load that SWEPCO added to the LLP-T class for allocation purposes be removed.¹⁴⁵⁴

3. OPUC's Class Allocation Issue

OPUC states that it does not oppose SWEPCO's requested class allocations.¹⁴⁵⁵ OPUC requests, however, that OPUC's revenue requirement adjustments be applied to SWEPCO's proposed cost of service model.¹⁴⁵⁶ OPUC also expresses some concern over SWEPCO's proposed revenue distribution for future rates, which moves the residential customer class to cost at a relative rate of return of 1.0, while still leaving the large industrial customer class 7% under cost at a relative rate of return of 0.93 (1.0 when combined with the commercial class).¹⁴⁵⁷

¹⁴⁵² TIEC Ex. 74, SWEPCO's response to TIEC RFI 11-1, at Bates 002; Tr. at 1216.

¹⁴⁵³ TIEC Ex. 74 SWEPCO's response to TIEC RFI 11-1, at Bates 002.

¹⁴⁵⁴ Because different allocators are used to allocate transmission costs at the jurisdictional and class levels (12CP and A&E/4CP, respectively), the adjustment differs slightly. For the class allocation, SWEPCO imputed 149 MW of 4CP demand and 146 MW of average demand for Eastman. TIEC Ex. 1 (Pollock Dir.) at 32.

¹⁴⁵⁵ OPUC Initial Brief at 26.

¹⁴⁵⁶ OPUC Ex. 57 (Georgis Dir.) at 5-8.

¹⁴⁵⁷ OPUC Initial Brief at 27 (citing SWEPCO Ex. 32 (Jackson Dir.), Exh. JLJ-1 at 3).

TIEC responds to OPUC's concern that the large industrial class remains under cost in SWEPCO's class cost of service study by claiming that OPUC is referring to SWEPCO's as-filed class cost of service study.¹⁴⁵⁸ TIEC refers to SWEPCO's rebuttal CCOSS and concludes that "when proper revisions are made, the residential class is shown as having a lower relative rate of return than, for example, the LLP-T customer class."¹⁴⁵⁹

Neither OPUC nor SWEPCO address OPUC's concern in their reply briefs. Because OPUC did not request a change to SWEPCO's proposed allocations, and its arguments were citing to SWEPCO's direct case rather than its rebuttal case, in which the rebuttal CCOSS was presented, the ALJs conclude that no changes are needed to SWEPCO's class cost of service based on OPUC's concerns regarding where classes ultimately were positioned with regard to relative rate of return.

4. Walmart's Class Allocation Issue

Walmart states that it does not oppose the Company's proposed revenue allocation. Walmart requests, however, that if the Commission approves a revenue requirement lower than that proposed by the Company, the Commission should use the reduction from proposed revenue requirement to move the customer classes closer to their respective costs of service while ensuring that no class receives an increase larger than that proposed by the Company.¹⁴⁶⁰

The ALJs' recommendations in this docket result in a reduction to SWEPCO's proposed revenue requirement. The ALJs recommendations will be flowed through the class cost of service study and result in rates derived through that final, approved cost of service study.

¹⁴⁵⁸ TIEC Reply Brief at 48 (citing OPUC Initial Brief at 27-28, where OPUC is citing SWEPCO Ex. 32 (Jackson Dir.), Exh. JLJ-1 at 2).

¹⁴⁵⁹ TIEC Reply Brief at 48 (citing TIEC Ex. 1 (Pollock Dir.), Exh. JP-3 at 2-3). The ALJs understand that Mr. Pollock's direct testimony was filed before SWEPCO filed its rebuttal CCOSS, but the point made by TIEC is that the rebuttal CCOSS purportedly moved classes closer to unity.

¹⁴⁶⁰ Walmart Initial Brief at 6-7.

5. TCGA's Class Allocation Issues

TCGA's primary issue in this case is that it opposes SWEPCO's proposed class allocation and class cost of service study, arguing that it "inequitably and unreasonably allocates costs to the Cotton Gin class that the class did not cause."¹⁴⁶¹ TCGA's issue also involves revenue distribution and rate design, addressed below, because TCGA urges that the Commission direct SWEPCO to essentially re-design the Cotton Gin class rates. All of the TCGA issues regarding the Cotton Gin class are addressed in this Class Allocation section of the PFD.

TCGA argues that the cost allocations made to the Cotton Gin class are not equitable or reasonable considering the unique attributes of the class. First, SWEPCO has proposed in this case a high base rate increase on SWEPCO's Cotton Gin class, and Staff proposes to significantly increase those rates over multiple years.¹⁴⁶² TCGA contends this proposed high base rate increase is based on a test-year that reflected a low ginning season that will cause the revenues and the resulting relative rate of return from the Cotton Gin class to increase dramatically in years with average or above-average ginning. TCGA states that SWEPCO has recognized:

- Having few customers in a class can result in unusual circumstance in load from year to year;
- Unusual outcomes generally refer 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; and
- 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.¹⁴⁶³

¹⁴⁶¹ TCGA Initial Brief at 14-20.

¹⁴⁶² TCGA is referring in part here to the Revenue Distribution/Gradualism recommendation by Staff, which is addressed in detail in the next section of this PFD.

¹⁴⁶³ Citing TCGA Ex. 33, SWEPCO's response to Nucor RFI 3-12.

TCGA states:

- As a result of the variations in the quantity of cotton ginned the energy consumption of cotton gins between years can vary significantly;
- 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; and
- With these highly variable factors in play, the quantity of cotton grown, harvested, and ginned in specific areas can also vary significantly between years.¹⁴⁶⁴

Because SWEPCO's current Cotton Gin class 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.¹⁴⁶⁵ 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 relative rate of return for the class to increase dramatically in years with average or above-average ginning.¹⁴⁶⁶

TCGA explains further that the ginning season for its class occurs during the autumn and winter months and generally runs from mid-October to early February each year:

Consequently, during the spring and summer months, their consumption is very low. During those months, their average consumption per cotton gin is less than 300 kWh per month. 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. 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

¹⁴⁶⁴ TCGA Ex. 1 (Evans Cross-Reb.) at 14. The cover page to Evan Evans's cross-rebuttal testimony states that it is his "direct" testimony, but the body of this testimony indicates it is cross-rebuttal testimony.

¹⁴⁶⁵ TCGA Ex. 1 (Evans Cross-Reb.) at 14.

¹⁴⁶⁶ TCGA Initial Brief at 17 (citing TCGA Ex. 1 (Evans Cross-Reb.) at 15-17).

to the Cotton Gin Service class. Therefore, again, the ROR earned from the Cotton Gin Service class will be significantly higher during average and above average ginning years.¹⁴⁶⁷

TCGA adds that most of the base rate cost of service for the Cotton Gin 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.¹⁴⁶⁸ TCGA contends this "is in stark contrast" with the annual peak months for the Cotton Gin class.¹⁴⁶⁹ For investor-owned utilities in Texas, TCGA witness Evans testified that it is very rare for distribution substations, primary lines, and secondary lines to peak in the winter months. 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 approaching their peak operating temperature ratings than they can during the summer months.¹⁴⁷⁰ 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.¹⁴⁷¹

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 CCOSS; 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.¹⁴⁷² Similarly, TCGA argues that 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.¹⁴⁷³ Despite these unique attributes and specific considerations,

¹⁴⁶⁷ TCGA Initial Brief at 17, summarizing TCGA Ex. 1 (Evans Cross-Reb.) at 15-17.

¹⁴⁶⁸ Tr. at 183.

¹⁴⁶⁹ TCGA Initial Brief at 18.

¹⁴⁷⁰ TCGA Ex. 1 (Evans Cross-Reb.) at 18.

¹⁴⁷¹ TCGA Ex. 1 (Evans Cross-Reb.) at 18.

¹⁴⁷² TCGA Initial Brief at 18 (citing TCGA Ex. 1 (Evans Cross-Reb.) at 18).

¹⁴⁷³ TCGA Ex. 1 (Evans Cross-Reb.) at 18.

distribution-related costs that are not “caused” by cotton gins comprise the largest portion of the costs allocated to Cotton Gin class.

Lastly, according to TCGA, SWEPCO’s proposal to increase vegetation management expenses results in a class cost allocation of these expenses when virtually no vegetation management expenses are incurred in SWEPCO’s Texas Panhandle/North Texas service area where all of the cotton gin customers are located. 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.¹⁴⁷⁴ 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.¹⁴⁷⁵ TCGA argues that, 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. TCGA concludes that cotton gin customers are bearing costs that they have not caused, and “it is entirely unreasonable to allocate a system-average for the exorbitant vegetation management costs to the Cotton Gin class.”¹⁴⁷⁶ TCGA concludes and recommends:

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. TCGA respectfully requests the ALJs to recommend a rate design in its PFD consistent with the positions set out above, 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 a rate increase no more than of 37.44%.¹⁴⁷⁷

SWEPCO, in response to TCGA’s detailed criticism of the costs allocated to the Cotton Gin class, argues neither TCGA’s witness nor its brief “offers any alternative proposal for allocation of these costs or makes any cost allocation recommendation whatsoever.”¹⁴⁷⁸ SWEPCO

¹⁴⁷⁴ Citing TCGA Ex. 11, SWEPCO’s Response to CARD RFI 4-53; Tr. at 202-07.

¹⁴⁷⁵ *E.g.*, Tr. at 207-08.

¹⁴⁷⁶ TCGA Initial Brief at 20.

¹⁴⁷⁷ TCGA Reply Brief at 12-13; *see also* TCGA Initial Brief at 21.

¹⁴⁷⁸ SWEPCO Reply Brief at 106.