

As to the system load factor issue, as noted in the summary bullets above, SWEPCO's CCOSS 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 CCOSS 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 CCOS; 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.

adds that its witness Mr. Aaron explained in detail the allocation methodologies for distribution-demand related costs, customer-related distribution costs, and generation- and transmission-related costs, and the rationale behind them.¹⁴⁷⁹ SWEPCO relies on Mr. Aaron's explanation that a class's unique attributes (demand, consumption, and time of peak) are taken into account when determining cost allocation factors for generation, transmission and distribution services. As noted by TCGA, SWEPCO's A&E/4CP used for the allocation of generation and transmission costs to classes reflects the fact that Cotton Gin customers have very low summer loads.¹⁴⁸⁰ SWEPCO also states that it does not allocate costs based on location.¹⁴⁸¹ Further, costs for distribution facilities are allocated on demands at the time of the class peak, not the system peak, during the summer months. SWEPCO argues that costs are allocated to the cotton ginners based on their contribution to the SWEPCO system peak for generation costs and the peak at the time of SPP peaks for transmission costs during the summer months. For the allocation of distribution costs to the Cotton Gin class, the annual class peak demand, or MDD, reflects the winter peaking attribute of the class. The MDD allocation when compared to the MDD allocations of other retail classes reflects the diversity of SWEPCO's distribution system design to serve the loads during the peak months for a wide range of customers and appropriately allocates all distribution-related costs.¹⁴⁸² SWEPCO adds that TCGA's criticism of SWEPCO's cost allocation "flies in the face of long-standing Commission precedent requiring uniform, system-wide rates."¹⁴⁸³ Essentially, SWEPCO argues that it uses accepted and approved allocation methods to allocate costs to the Cotton Gin class.

The ALJs conclude that TCGA makes a number of valid points as to how it is markedly different from SWEPCO's other commercial classes located in northeast Texas. The TCGA members are located in the Texas Panhandle, far removed from SWEPCO's primary service territory in northeast Texas. The evidence shows that TCGA is not served by underground conduit,

¹⁴⁷⁹ SWEPCO Ex. 31 (Aaron Dir.) at 18-19.

¹⁴⁸⁰ TCGA Initial Brief at 18.

¹⁴⁸¹ SWEPCO Reply Brief at 106.

¹⁴⁸² SWEPCO Ex. 31 (Aaron Dir.) at 18.

¹⁴⁸³ SWEPCO Reply Brief at 106.

or primarily from secondary lines, and its vegetation management requirements are much less than those required by SWEPCO's northeast Texas customers.¹⁴⁸⁴ The ALJs are also concerned that the Cotton Gin class historically has had a relative rate of return far below unity, meaning that the Cotton Gin class historically under-collects its allocated costs and must thereby be subsidized by other classes. These considerations suggest to the ALJs that SWEPCO's CCOSS, or its rate design, may not be applied properly to the Cotton Gin class. An example, which SWEPCO may need to reconsider, is its assertion that it "does not allocate costs based on location." SWEPCO has not addressed why its few Cotton Gin class customers in the Texas Panhandle should be treated the same, essentially, as commercial class customers in far northeast Texas.¹⁴⁸⁵

But neither has TCGA submitted an alternative class allocation (or rate design) proposal that the Commission could consider for adoption in this docket. That is, the ALJs are not presented with an alternative to SWEPCO's essentially standard class cost allocation methods that could address TCGA's situation. The ALJs, therefore, do not recommend that the Commission take additional action in this docket to address the Cotton Gin class. The ALJs recommend, however, that the Commission direct SWEPCO to address the rather unique Cotton Gin class situation in its direct testimony in its next base rate case, and there address whether some actions can be taken to address the Cotton Gin class's historical under-recovery of its cost of service calculated through the CCOSS. For reasons that will become apparent in the Rate Design section below, the ALJs also recommend that SWEPCO be required to address in its next base rate case why the Oilfield Secondary and Public Street and Highway Lighting rate classes historically far under-recover the costs assigned to them through the Company's cost allocation and rate design methods. The ALJs are not suggesting that, generally, SWEPCO's class cost allocation (and rate design) methods are flawed. However, based on TCGA's testimony, SWEPCO may be assuming that the Cotton Gin

¹⁴⁸⁴ The fact that the cotton ginneries may take service primarily in the late fall and winter months, however, may be properly reflected in the methods used to allocate costs in the class cost of service study. For example, SWEPCO's use of an A&E/4CP allocator to allocate generation and transmission costs to classes accounts the fact that Cotton Gin class customers have very low summer loads.

¹⁴⁸⁵ The ALJs also do not accept SWEPCO's assertion that TCGA is essentially requesting a deviation for "system-wide rates." SWEPCO Reply Brief at 106. This is not a situation in which a municipality is proposing to require SWEPCO to charge rates to its residential customers that are different than the rates charged by SWEPCO to its residential customers that are not within the municipality's city limits.

class (and the others mentioned) should be paying more than is justified given their unique situations.

TCGA's ultimate request is that the resulting rate increase for the Cotton Gin class in this docket "is no more than the lower of either the system average base rate increase or a rate increase no more than of 37.44%."¹⁴⁸⁶ This request is essentially that the ALJs recommend a rate gradualism approach that leaves TCGA with a rate increase that does not exceed 37.44%. Gradualism is addressed in the next section of this PFD and the ALJs' recommendation on gradualism responds to TCGA's request. Schedule C in the number running schedules attached to this PFD shows that the Cotton Gin class rate increase resulting from the ALJs' recommendations is 32.84%.

6. Staff's Class Allocation Issue

Staff supports the class allocation shown in its "Class-Functional Cost of Service Summary" attached to the direct testimony of Staff witness Narvaez.¹⁴⁸⁷ The only specific comment that Staff raises in its post-hearing briefs is that it agrees with the correction made by SWEPCO in its rebuttal testimony to revise its system load factor to reflect the single annual coincident peak as consistent with the Commission's decision in Docket No. 46449.¹⁴⁸⁸

SWEPCO responds that both the jurisdictional and class cost of service studies prepared by Mr. Narvaez appear accurate but for a few minor inconsistencies on selected functional calculations.¹⁴⁸⁹ SWEPCO states the inconsistencies do not change the retail revenue requirement by class or function, only the calculated base rate revenue deficiency by function.¹⁴⁹⁰ First, the functional calculations for GEN DEMAND, GEN ENERGY, and TRAN functions have proposed

¹⁴⁸⁶ TCGA Reply Brief at 12-13; *see also* TCGA Initial Brief at 21.

¹⁴⁸⁷ Staff Ex. 4 (Narvaez Dir.), Attachment AN-3. Staff Initial Brief at 69; Staff Reply Brief at 46.

¹⁴⁸⁸ SWEPCO Ex. 54 (Aaron Reb.) at 3; Staff Reply Brief at 46.

¹⁴⁸⁹ SWEPCO Reply Brief at 104.

¹⁴⁹⁰ SWEPCO Ex. 54 (Aaron Reb.) at 4.

revenue (line 65 of these functional calculations) reduced by miscellaneous revenues when proposed revenues should equal cost of service. Second, the Class Summary, DIST SEC, and DIST CUST calculations are missing calculations (lines 65-80 of these functional calculations) for the Residential Distributed Generation and Light and Power Distributed Generation classes.¹⁴⁹¹

SWEPCO agrees with the underlying methodology and calculations of Staff's class cost of service study when updated for the revisions described in SWEPCO witness Aaron's rebuttal testimony, but SWEPCO does not agree with Staff's calculated results.¹⁴⁹² SWEPCO states it disclosed changes needed to its class allocation in response to several data requests and in Mr. Aaron's rebuttal testimony that should be reflected in Commission Staff's number running calculations.¹⁴⁹³

The ALJs conclude that there is not a disagreement between SWEPCO and Staff regarding the underlying methodologies and calculations used in SWEPCO's rebuttal CCOS. When SWEPCO states that it "agrees to the underlying methodology and calculations of Staff's class cost-of-service study when updated for the revisions described in SWEPCO witness Aaron's rebuttal testimony," the ALJs assume that SWEPCO is stating that it agrees with the mechanics of Staff's CCOS, but not the result. That is, the ALJs assume that SWEPCO is not agreeing in its post-hearing briefs to Staff's proposed \$410.4 million annual revenue requirement, as compared to SWEPCO's rebuttal \$446.5 million revenue requirement.

With that assumption stated, the ALJs recommend that the class cost of service analysis should start with SWEPCO's as-filed CCOS, as then revised by its rebuttal CCOS. SWEPCO's rebuttal revisions resulted in a \$5 million revenue requirement reduction from \$451.5 million to \$446.5 million.¹⁴⁹⁴ The resulting rebuttal studies (\$446.5 million), *however*, must be further modified to account for the numerous revenue revisions (typically disallowances) proposed by

¹⁴⁹¹ SWEPCO Ex. 54 (Aaron Reb.) at 4-5.

¹⁴⁹² Staff Reply Brief at 104.

¹⁴⁹³ SWEPCO Ex. 54 (Aaron Reb.) at 5.

¹⁴⁹⁴ SWEPCO Ex. 54 (Aaron Reb.) at 6.

Staff and intervenors that the ALJs are recommending be adopted in this case. Specifically, the ALJs recommend the following to derive a final Commission-approved class costs of service study:

1. Start with SWEPCO's as-filed (direct case) cost of service studies included with Mr. Aaron's direct case; then
2. Adjust the as-filed studies to arrive at the \$5 million revenue requirement reduction recommended by Mr. Aaron in his rebuttal testimony and rebuttal cost of service studies; then
3. Further adjust the studies to account for the disallowances that the ALJs recommend in this PFD.

This results in the ALJs' recommended class cost of service study, which will be compiled through the number running process.¹⁴⁹⁵ Through this process, the ALJ-recommended cost of service summaries are produced and attached to this PFD, based on SWEPCO's underlying methodologies and calculations. The rates resulting from these costs of service, however, reflect the ALJs' recommendations, rather than the rates reflected in Staff's proposed cost of service studies.

C. Municipal Franchise Fees [PO Issues 31, 56]

SWEPCO develops the effective rate for municipal franchise fees based on test year actual municipal franchise taxes paid, less the amount in excess of the base amount and test year actual kWh sales, and applies this effective rate to the test year-adjusted kWh sales to determine the *pro forma* amount to include in SWEPCO's cost of service.¹⁴⁹⁶ No party raised an issue with regard to SWEPCO's municipal franchise fees. Based on the evidence presented by SWEPCO, the ALJs recommend that SWEPCO's method for calculating and allocating franchise fees to its test year-adjusted kWh sales should be approved.

¹⁴⁹⁵ The number running schedules attached to this PFD include a summary of class costs of service. At this stage of the allocation-to-rate design process, the jurisdictional cost of service has flowed into the class cost of service, so the resulting cost of service study that matters for designing rates is the class cost of service study.

¹⁴⁹⁶ SWEPCO Ex. 6 (Baird Dir.) at 30.

**X. REVENUE DISTRIBUTION AND RATE DESIGN [PO ISSUES 4, 5, 47,
48, 52, 59, 60, 61, 62, 75, 76, 77, 78, 79]**

The class revenue distribution is the rate design mechanism by which a utility's approved annual revenue requirement is assigned to the customer classes. The revenue distribution also determines the revenue requirement targets for each class.¹⁴⁹⁷ The percent increase in base rates for each class is based on its revenue deficiency as determined by the class cost of service study. The revenue deficiency determines the revenue requirement needed to bring each class to an equalized (sometimes referred to as "unity") return. The revenue requirement at an equalized return is the amount of revenue needed from each class to recover the full costs of serving that customer class.¹⁴⁹⁸ The equalized revenue requirement and revenue change based on that requirement is the starting place for the revenue distribution. Other factors may also be taken into consideration such as customer migration, and a potential need to moderate a rate increase through rate gradualism to avoid rate shock.¹⁴⁹⁹

As an initial and overarching matter before moving to rate moderation, Staff criticizes SWEPCO's revenue distribution calculations, alleging that they fail to recognize the Company's DCRF and TCRF revenues when assigning costs to the rate classes.¹⁵⁰⁰ Staff contends that the final order in SWEPCO's last rate case requires SWEPCO to evaluate a class's present revenues *inclusive* of TCRF and DCRF revenues when evaluating a potentially large rate increase that could warrant gradual movement to cost.¹⁵⁰¹ Staff states that, although SWEPCO is proposing a 30.31%

¹⁴⁹⁷ SWEPCO Ex. 32 (Jackson Dir.) at 9-10.

¹⁴⁹⁸ SWEPCO Ex. 32 (Jackson Dir.) at 8-9.

¹⁴⁹⁹ *E.g.*, SWEPCO Ex. 32 (Jackson Dir.) at 9.

¹⁵⁰⁰ Staff Ex. 4 (Narvaez Dir.) at 15-17. Nucor and TIEC also contend that the TCRF and DCRF test year revenues should be included in evaluation of a proposed base rate increase.

¹⁵⁰¹ Staff Ex. 4 (Narvaez Dir.) at 15-16 (citing Docket No. 46449, Order on Rehearing at FoF No. 314 (Mar. 19, 2018), which states "SWEPCO's proposed gradualism methodology, which reduces the subsidization among individual rate classes, is reasonable and should be adopted, *except that a class's present revenues should be evaluated inclusive of existing TCRF and DCRF revenues, which are base-rate related revenues.*") (Emphasis added.)

gross increase in base rates,¹⁵⁰² the actual net increase is 24.96% when the DCRF and TCRF revenues are moved into base rates.¹⁵⁰³

SWEPCO responds that its adjustments to base rates include costs recovered through the TCRF and DCRF riders, but not in the initial calculations. Instead, SWEPCO states that “*after* the appropriate adjustment to base rates is determined to assure full recovery based on the class cost of service study, SWEPCO’s revenue distribution indicates the rate class bill impact associated with the change in the TCRF and DCRF revenues recovered during the test year.”¹⁵⁰⁴ SWEPCO argues that no changes to SWEPCO’s proposal are necessary in order to recognize TCRF and DCRF revenues.¹⁵⁰⁵

The ALJs agree with Staff. SWEPCO has not adequately explained why it does not factor its TCRF and DCRF revenues into its proposed base rate increase at the outset of its cost of service and revenue distribution calculations. Based on both Staff’s and SWEPCO’s testimony, SWEPCO does not evaluate a class’s *present* revenues *inclusive* of TCRF and DCRF revenues as required by Docket No. 46449. If it had done so, SWEPCO’s actual proposed net base rate revenue increase is in the range of 25%, rather than 30%.¹⁵⁰⁶ Either percentage is a significant increase but, for revenue distribution purposes, a 25% increase is less harsh than a 30% increase. In its next base rate case, SWEPCO should present its rate change request such that its then-present revenues show the total present revenues inclusive of the TCRF and DCRF revenues.

¹⁵⁰² Citing SWEPCO Ex. 32 (Jackson Dir.), Exh. JJJ-1.

¹⁵⁰³ Staff. Ex. 4 (Narvaez Dir.) at 17. Although SWEPCO reduced its requested annual revenue requirement by \$5 million in its rebuttal case, that reduction does not resolve the issue of whether SWEPCO should have accounted for its TCRF and DCRF revenues up front in presenting its proposed percentage base rate increase.

¹⁵⁰⁴ SWEPCO Initial Brief at 120-21 (emphasis added).

¹⁵⁰⁵ SWEPCO Ex. 55 (Jackson Reb.) at 8-9, Exh. JJJ-1R; Tr. at 1531-32.

¹⁵⁰⁶ SWEPCO acknowledges that its proposed base rate revenue increase, inclusive of TCRF and DCRF revenues, is “26.01%” exclusive of fuel and (other non-TCRF and DCRF) riders. SWEPCO Ex. 1 (Application) at 4.

A. Rate Moderation/Gradualism [PO Issue 52]**1. SWEPCO's Proposal**

SWEPCO witness Jackson sponsors SWEPCO's as-filed proposed revenue distribution.¹⁵⁰⁷ The proposed revenue distribution shows the present rate schedule revenue by class along with each class's present rate of return, return relative to the retail total class return at the proposed return level (relative rate of return), equalized base increase, target base change in revenue, and total rate design proposed base change in revenue. The target base change in revenue determines the rate design revenue target for each class and is the basis for the class rate design.¹⁵⁰⁸

To mitigate the large increases and large impacts to certain classes resulting from SWEPCO's significant base rate increase, SWEPCO proposes that classes with similarly situated customers should be combined into four "major rate classes" and the combined change in class revenue requirement at an equalized rate of return should be applied to the individual classes.¹⁵⁰⁹ In this PFD, the four major rate classes proposed by SWEPCO are referred to as "class Groups" or a "class Group." SWEPCO's four class Groups are: (1) Residential, (2) Commercial and Industrial, (3) Municipal, and (4) Lighting. SWEPCO states it proposes these four class Groups as a mitigation mechanism, as well as to maintain relationships between rate schedules.¹⁵¹⁰ Under SWEPCO's proposal, the combined change in class revenue requirement at an equalized rate of return is applied to the individual classes within an applicable class Group.¹⁵¹¹

The class Groups were determined based on the results of the class cost of service study, precedent from prior rate cases, increases in certain customer classes and how to moderate the

¹⁵⁰⁷ SWEPCO Ex. 32 (Jackson Dir.), Exh. JLJ-1.

¹⁵⁰⁸ SWEPCO Ex. 32 (Jackson Dir.) at 9-10, Exh. JLJ-1.

¹⁵⁰⁹ SWEPCO Ex. 32 (Jackson Dir.) at 10, Exh. JLJ-1 at 2-3.

¹⁵¹⁰ SWEPCO Ex. 32 (Jackson Dir.) at 10-11. The ALJs understand that this major class grouping concept is unique to SWEPCO, and varies somewhat from case-to-case. Tr. at 1256; Nucor Ex. 1 (Daniel Dir.) at 11. Nucor opposes SWEPCO's class Group concept, arguing "This approach limits the ability to significantly move a specific customer class closer to its cost of service. As a result, the problem of inter-class subsidies is never fixed." *Id.*

¹⁵¹¹ SWEPCO Ex. 55 (Jackson Reb.) at 4, 9-10.

resulting bill impact, and the ability of customers to take service under other rate schedules within the class Group.¹⁵¹² For example, SWEPCO is proposing to group the GS, LP, LLP, Metal Melting, Oilfield, and Cotton Gin classes into one large rate class group: the Commercial and Industrial class Group. Under SWEPCO's proposal, the classes within this Commercial and Industrial class Group will share the proposed increase among all the customers in the individual rate classes within this Group.¹⁵¹³ As another example, unlike the Commercial and Industrial class Group, there is only one rate class in the Residential class Group—the Residential rate class.¹⁵¹⁴

Because there is general consensus among the parties regarding rate increase moderation for rate classes with equalized increases multiple times greater than the system average increase, SWEPCO proposed a rebuttal revenue distribution that moved all classes closer to cost.¹⁵¹⁵ In its rebuttal case, SWEPCO applied an approximate 43% cap to the increases of three individual rate classes that were significantly below unity: the Cotton Gin, Oilfield Secondary, and Public Street and Highway Lighting rate classes.¹⁵¹⁶ SWEPCO concedes that application of this cap creates a subsidy among the other classes that share the major class grouping with those classes, but SWEPCO claims this methodology is consistent with the Commission's order in Docket No. 46449 and moves all classes closer to cost, while recognizing the billing units associated with the proposed commercial rate structure proposals.¹⁵¹⁷ SWEPCO states that the rebuttal revenue distribution continues to recognize cost to serve, bill impacts, and rate moderation. SWEPCO also states that, under its rebuttal approach, the individual rate class increases for the GS and LP classes

¹⁵¹² Tr. at 1255-56.

¹⁵¹³ SWEPCO Ex. 32 (Jackson Dir.) at 11. Ms. Jackson also states on this page that this grouping is intended to "facilitate sustainable migration among the customer classes within a family of rate options." It is unclear from SWEPCO's testimony if this statement is meant to support SWEPCO's grouping approach for gradualism purposes, or is intended to address a separate issue involving migration between the General Service and Lighting and Power classes, which is addressed below in the Rate Design section of this PFD.

¹⁵¹⁴ *E.g.*, SWEPCO Ex. 55 (Jackson Reb.), Exh. JLJ-1R.

¹⁵¹⁵ SWEPCO Ex. 55 (Jackson Reb.) at 7-8, Exh. JLJ-1R.

¹⁵¹⁶ Tr. at 1247-48.

¹⁵¹⁷ SWEPCO Ex. 55 (Jackson Reb.) at 8.

are applied before including the Cotton Gin class subsidy.¹⁵¹⁸ SWEPCO's rebuttal case, however, retains the same class Group approach described above.

2. Intervenor's and Staff's Positions

As SWEPCO recognized in its rebuttal case, the parties and Staff agree that some form of rate moderation or gradualism is appropriate. TIEC, Nucor, and Staff, however, disagree on how and to what degree gradualism should be implemented.

TIEC recommends that increases for classes that are "producing negative rates of return and would require excessive base rate increases" be limited to approximately 43%, based on the cap approved in Docket No. 46449.¹⁵¹⁹ The ALJs note that, to this point, TIEC and SWEPCO generally agree. TIEC, however, does not accept SWEPCO's proposal to group 19 to 22 individual rate classes into the four class Groups.¹⁵²⁰ Instead, TIEC's class cost of service study results in 13 rate classes.¹⁵²¹ TIEC opposes SWEPCO's class Group approach for a number of reasons, including: (1) SWEPCO modified its proposed gradualism proposal in rebuttal in a manner that diminishes the importance of the major class groups; and (2) the Commission has applied gradualism without reference to major-class groupings in prior cases, and "the evidence in this case does not support the use of that technique here."¹⁵²² Because TIEC does not accept the class Group concept proposed by SWEPCO, TIEC's proposal "spreads any resulting subsidy among all

¹⁵¹⁸ SWEPCO Ex. 55 (Jackson Reb.) at 7.

¹⁵¹⁹ TIEC Ex. 1 (Pollock Dir.) at 46. The 43% increase (or also referred to as a 43% cap) is generally accepted by all parties that address the gradualism issue, including SWEPCO and Staff. *See also* TIEC Initial Brief at 79-80.

¹⁵²⁰ TIEC states that SWEPCO has 22 individual rate classes, although some of those classes take service under a single rate schedule. *See* TIEC Initial Brief at 76, citing TIEC Ex. 1 (Pollock Dir.) at 4, 42-43. However, SWEPCO Ex. 32 (Jackson Dir), Exh. JLJ-1 at 2-3, shows 19 rate classes. For purposes of dealing with the gradualism and rate design issues contested in this case, the ALJs conclude that the question of whether SWEPCO has 22 or 19 rate classes is immaterial. Some of the confusion may be based on an interpretation of the rate classes versus rate schedules. According to TIEC: "[S]everal of these [SWEPCO classes] take service under the same rate schedule. For example, while SWEPCO uses three distinct Light & Power classes in its CCOSS, all three take service under the same rate schedule. *See* TIEC Ex. 1 (Pollock Dir.) at 43-44.

¹⁵²¹ TIEC Ex. 1 (Pollock Dir.) at 45, Exh. JP-4.

¹⁵²² TIEC Initial Brief at 80 (footnote omitted, which includes citations to precedent TIEC asserts supports its position).

other rate classes in proportion to their base rate increases, rather keeping it within the ‘major class.’”¹⁵²³

Nucor recommends that gradualism should only be applied to three relatively small rate classes: the Cotton Gin, Oilfield Secondary, and Public Street and Highway Lighting classes. According to Nucor, the base rate revenue increases for these three rate classes should be limited to 1.5 times the average SWEPCO percent increase of 24.96%, or 37.44%. Nucor states the revenue shortfall resulting from this gradualism should be proportionately assigned to those rate classes that receive below-average base rate revenue percent increases. In effect, Nucor is also not adopting SWEPCO’s class Group approach because Nucor assigns the revenue shortfall to rate classes that have a below-average base rate increase regardless of which class Group the rate class has been assigned by SWEPCO. Adopting Nucor’s gradualism approach, according to Nucor, reduces the inter-class subsidies to \$421,839, as compared to SWEPCO’s proposed inter-class subsidies of \$6,047,984.¹⁵²⁴

Walmart does not oppose SWEPCO’s proposed revenue distribution but recommends that if the Commission approves a lower revenue requirement, that the reduction move individual customer classes closer to their respective cost to serve while ensuring that no class receives an increase larger than that proposed by SWEPCO.¹⁵²⁵

Staff proposes the greatest departure from SWEPCO’s gradualism proposal as compared to the other parties. In sum, Staff states that relying on the class groupings does not adequately address the requirement that rates are based on cost.¹⁵²⁶ As noted by Nucor, Staff also explains that

¹⁵²³ TIEC Initial Brief at 79-80.

¹⁵²⁴ Nucor Ex. 1 (Daniel Dir.) at 16-17, Exh. JWD-6.

¹⁵²⁵ Walmart Ex. 1 (Perry Dir.) at 19.

¹⁵²⁶ Staff Ex. 4 (Narvaez Dir.) at 22:

When rates are set at cost, the revenues that a utility recovers through these rates reflect the costs that customers impose on a utility’s system. Cost-based rates will more closely match the costs incurred as customer usage changes over time. When rates are set below cost, the revenues recovered through the below-cost rates will be insufficient to recover the cost to serve that group of customers.

SWEPCO's approach, which is been applied in SWEPCO's recent past rate cases, has not resulted in moving a number of classes to unity; meaning some classes continue to be subsidized significantly by other classes based on the filed cost of service studies. To finally resolve this historical subsidization situation, Staff recommends a four-year, phased-in gradualism approach.¹⁵²⁷ In the first year, "Phase One Rates" would be set consistent with the Commission's approved revenue distribution methodology approved in Docket No. 46449, and would be implemented upon the conclusion of this proceeding. That is, starting with the results of the class cost of service study reflecting the Commission's decisions on cost and allocation issues, revenue increases for any individual class, net of changes in TCRF and DCRF revenues, would be capped at 43%. Then, the residual revenues from classes subject to the 43% cap would be reallocated proportionally among the classes within the class Group that are not subject to the 43% cap. Staff is particularly focused on the same three classes addressed by Nucor that historically have been well under unity: the Cotton Gin, Oilfield Secondary, and Public Street and Highway Lighting classes.¹⁵²⁸ To achieve their relative rate of return in this docket, the cost responsibility for those three classes would need to increase by significantly greater than 43%. Thus, to stay at or within the 43% cap, in the first year of Staff's four-year gradualism proposal, the Cotton Gin and Oilfield Secondary classes would be capped at a 43% net increase, and the residual revenue amount would be allocated proportionally among the other classes within the class Group to which they are assigned—the Commercial and Industrial class Group. The Public Street and Highway Lighting class would also be capped at a 43% net increase and the residual revenue amount would be allocated proportionally among the other classes within the Group to which this class is assigned—

Furthermore, setting subsidized rates for some customers requires that the rates for other customers be set above cost.

¹⁵²⁷ Staff Ex. 4 (Narvaez Dir) at 23-25. Mr. Narvaez agrees that this approach has not been used in an electric base rate case, but has been implemented in two water utility-related cases. *Application of SWWC Utilities Inc. DBA Water Services, Inc. for Authority to Change Rates*, Docket No. 47736, Order at 12-13, 17 (Oct. 16, 2019); *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order at 22 (Nov. 5, 2020). The ALJs note that the Commission's orders in both of these water utility cases approved unanimous agreements submitted by the parties, rather than contested issues with evidence subject to cross-examination at a hearing on the merits.

¹⁵²⁸ These are the same three classes that Nucor addresses in its proposed gradualism method.

the Municipal class Group.¹⁵²⁹ This same process would be repeated in years two, three, and four by increasing an under-paying class's rates by 43% per year (year two would be capped at an 86% net increase; year three at a 129% increase; and year four at a 172% net increase).¹⁵³⁰ Under Staff's proposal, by the end of year four, all of SWEPCO's rate classes, including the three referenced classes, would have achieved unity: "This means that all rates would be set at cost during Phase IV."¹⁵³¹

CARD supports SWEPCO's proposal, and urges the Commission to reject TIEC's and Nucor's gradualism proposals, arguing primarily that TIEC's and Nucor's proposals shift costs to the residential class and away from the commercial and industrial classes. CARD also opposes Staff's four-year phased-in gradualism proposal, arguing that Staff's proposal has "one crucial flaw – the proposal is based on the idealistic simplification that present test-year base rate revenues remain constant over the four-year term of the phase-in plan."¹⁵³² Moreover, CARD witness Karl Nalepa testified that Staff's plan ignores the reality that, between rate cases, rate classes grow at different rates. According to CARD, Staff's phase-in plan could result in some of the classes moving further away from cost rather than closer to cost.¹⁵³³

3. ALJs' Analysis

The Commission approved SWEPCO's class Group approach in SWEPCO's last base rate case. In its Order on Rehearing in Docket No. 46449, the Commission found (as did the ALJs in the PFD) that SWEPCO's class Group approach:

- Had been approved in SWEPCO's prior base-rate proceeding, Docket No. 40443;

¹⁵²⁹ Staff Ex. 4 (Narvaez Dir.) at 24. Although the class name "Public Street and Highway Lighting Service" would indicate that this class would be placed in the Lighting class Group, SWEPCO assigns this class to the Municipal class Group (along with the Municipal Lighting class). *See* SWEPCO Ex. 32 (Jackson Dir.), Exh. JLJ-1 at 2-3. No party challenged this assignment to the Municipal class Group.

¹⁵³⁰ Staff Ex. 4 (Narvaez Dir.) at 23-25.

¹⁵³¹ Staff Ex. 4 (Narvaez Dir.) at 25.

¹⁵³² CARD's Initial Brief at 75; CARD Reply Brief at 45; *see also* Tr. at 1414.

¹⁵³³ CARD Ex. 8 (Nalepa Cross-Reb.) at 7-8.

- Moved all customer classes closer to cost of service, sets larger customer groups of similar size and type at cost of service, and facilitates sustainable migration among customer rates; and
- SWEPCO's proposed gradualism methodology, which reduces the subsidization among individual rate classes, is reasonable and should be adopted, except that a class's present revenues should be evaluated inclusive of existing TCRF and DCRF revenues, which are base-rate-related revenues.¹⁵³⁴

The ALJs are guided by the precedent supporting SWEPCO's approach and agree that it should be followed again in this case. No party has provided a sufficient explanation as to why that precedent should be rejected in this case. More specific analyses of the parties' positions on this issue, however, are addressed below.

The ALJs recognize there is an historical problem with regard to SWEPCO's revenue distribution: a number of its rate classes remain, and will remain, far from unity. This appears to be the situation in particular for the Cotton Gin, Oilfield Secondary, and Public Street and Highway Lighting classes.¹⁵³⁵ The ALJs are sympathetic to Nucor's proposal, which focuses on these three rate classes, and to Staff's proposal, which recognizes that these three classes would be most affected by the annual rate increases that would occur under Mr. Narvaez's proposal to finally move all classes—including these three—to equalized full cost of service rates.

However, as CARD notes and the ALJs agree, the effect of the Nucor and TIEC proposals is to spread the revenue deficiency primarily to the residential class. SWEPCO's class Group approach has the benefit of spreading the resulting revenue deficiency experienced by a class only to the other classes within that class's class Group. The ALJs understand, as noted by TIEC, that there potentially is a wide variation in the aspects of the rate classes within the Commercial and Industrial class Group. For example, some of the rate classes within the Commercial and Industrial

¹⁵³⁴ Docket No. 46449, Order on Rehearing at 48, FoF Nos. 312-314 (Mar. 19, 2018).

¹⁵³⁵ SWEPCO Ex. 55 (Jackson Reb.), Exh. JIJ-1R. Note the column titled "Proposed Relative Rate of Return," in which almost all rate classes are at or very close to 1.0 (unity) except for: the Cotton Gin Service class at 0.11; the Oilfield Secondary Service class at 0.50; and the Public Street and Highway Lighting class at 0.34.

class Group are “low population” as compared to other classes within that Group.¹⁵³⁶ The ALJs note, however, that the rate classes in the Commercial and Industrial class Group are properly considered to be rate classes that are generally either commercial or industrial customers. None of the rate classes in the Commercial and Industrial class Group are residential customers. TIEC’s rejection of the class Group approach ignores that important distinction and, as CARD argues, opens the door to require customers that are not commercial or industrial customers to nevertheless subsidize commercial or industrial classes. This same observation applies to Nucor’s proposal, which also would shift cost responsibility resulting from gradualism primarily to residential customers.

SWEPCO’s revenue distribution approach requires related classes within the Commercial and Industrial class Group to cover the revenue shortfall that continues to apply to the Cotton Gin and Oilfield Secondary services, and classes within the Municipal class Group to cover the deficiency in the Public Street and Highway Lighting class, rather than to the residential class.¹⁵³⁷ Application of the 43% cap limits the severity of the rate increases that could be borne by the Cotton Gin, Oilfield Secondary, and Public Street and Highway Lighting rate classes if there were no cap, or a higher cap. The ALJs agree with SWEPCO that this approach “creates a small subsidy among the other classes that share the major class grouping with those classes, but this methodology is consistent with the Order on Rehearing in Docket No. 46449 and moves all classes closer to cost, while recognizing the billing units associated with the proposed commercial rate structure proposals.”¹⁵³⁸

The ALJs appreciate Staff’s efforts to deal squarely with the failures of past gradualism methods to move all of SWEPCO’s rate classes to unity. But the ALJs also agree that Staff’s approach is not supported by Commission precedent, is cumbersome in that it would require a rate change for the three targeted classes every year for four years, and, as SWEPCO argues, “could

¹⁵³⁶ TIEC Initial Brief at 78.

¹⁵³⁷ The Public Street and Highway Lighting class subsidy would stay within the Municipal class Group.

¹⁵³⁸ SWEPCO Initial Brief at 122 (citing SWEPCO Ex. 55 (Jackson Reb.) at 8).

result in SWEPCO foregoing an opportunity to recover its cost to serve its customers until the phase-in period is over.”¹⁵³⁹ In essence, the actual effects of Staff’s proposal—the unintended consequences—are unknown, and it would require significant rate increases for the three targeted classes each year for four years. For these reasons, the ALJs recommend that the Commission approve SWEPCO’s gradualism mechanism as proposed in its rebuttal case.

B. Rate Design and Tariff Changes [PO Issues 60, 61, 62]

In addition to pricing changes to all of SWEPCO’s rate schedules that result from its proposed revenue distribution, the Company proposes a number of structural changes to some of its rate schedules, and proposes to add three new rate schedules.¹⁵⁴⁰ Most of these revisions are not addressed or contested by the parties.¹⁵⁴¹ In this section, the ALJs will address only those rate design issues challenged by the parties.¹⁵⁴² The ALJs recommend approval of the uncontested rate design-related revisions, which would be incorporated into SWEPCO’s compliance filing after the Commission issues its final order in this docket.

Three parties raise four rate design issues:

- Staff opposes SWEPCO’s proposal to remove the provision in the GS rate schedule that restricts availability of the rate schedule to customers with a maximum demand that does not exceed 50 kW.

¹⁵³⁹ SWEPCO Ex. 55 (Jackson Reb.) at 9. As noted, the water rate cases cited by Mr. Narvaez were from dockets in which settlements were approved, rather than the Commission ruling on the merits of a multi-year, phased-in rate change approach.

¹⁵⁴⁰ SWEPCO Ex. 32 (Jackson Dir.) at 14-15. As Ms. Jackson explains, the structural revisions and new proposed rate schedules primarily involve time-of-use and plug-in electric vehicle options, and revisions to the Company’s lighting rate schedules to implement light emitting diode usage.

¹⁵⁴¹ As addressed above and in Section X.D below, the ALJs recommend the Commission reject SWEPCO’s proposed new transmission rate for BTMG. Issues involving SWEPCO’s Renewable Energy Credits (REC) Rider are discussed in Section X.D below. SWEPCO’s Rate Case Surcharge (RCS) Rider is addressed in the context of rate case expenses in Section XII below.

¹⁵⁴² ETSWD’s proposal regarding COVID-19 adjustments to the cost of service, which would flow through to rates if adopted, is addressed in Section VIII above in the context of billing determinants. TCGA’s issues regarding the rate structure for the Cotton Gin class are discussed in Section IX above in the context of class cost allocation.

- Walmart opposes SWEPCO's proposal to shift demand-related costs from per kW demand charges to per kWh energy charges in the LP Secondary rate schedule.
- TIEC argues that the allocation of revenues to rates within the LLP rate schedule should be based on the CCOSS results and reflect cost causation.
- TIEC also argues that SWEPCO's proposal to increase its reactive power charge should be rejected.

1. Staff's Issues Regarding the GS Rate Schedule and Customer Migration

Staff raises two rate design issues: one involving the GS rate schedule and the other involving Staff's request to essentially preclude customers from migrating among numerous rate schedules between rate cases. These two issues are somewhat related to Staff's billing determinants "estimates" issue address in Section VIII above.

a. The GS Rate Schedule 50 kW Maximum Demand

Staff argues that the Commission should reject SWEPCO's proposal to revise its GS rate schedule to remove the provision that restricts availability of the rate schedule to customers with a maximum demand that does not exceed 50 kW. Staff argues that removing the maximum demand cap would allow customer migration from the LP rate schedule to the GS rate schedule.¹⁵⁴³ According to Staff, this could result in rates being insufficient to recover costs to serve those classes.¹⁵⁴⁴ Staff witness Narvaez testified that, if SWEPCO's proposal results in a large volume of customers migrating to GS service, "the rates approved by the Commission in this case for the two classes within the General Service tariff would no longer be sufficient to recover the costs of

¹⁵⁴³ Based on the parties' briefs, there may be some confusion between this GS rate schedule 50 kW maximum demand cap, and the migration among rate schedules addressed in the context of billing determinants in Section VIII above. These are two different but related concepts. Here, Staff is opposing SWEPCO's GS rate schedule proposal, not because of traditional inter-rate case migration, but because removing the 50 kW cap would allow LP rate schedule customers to flood into the GS class regardless of whether the LP customers' loads change.

¹⁵⁴⁴ Staff Ex. 4 (Narvaez Dir.) at 26-28.

providing service to the two classes within the General Service tariff.”¹⁵⁴⁵ Mr. Narvaez also testified:

While it is normal to expect that the number of customers taking service under a specific tariff to vary somewhat from [year-to-year], structural tariff changes specifically designed to encourage customer migration from tariffs that are less economical is a significant change that could drastically alter the cost of service of the two General Service classes.¹⁵⁴⁶

Summing up Mr. Narvaez’s testimony and Staff’s position on this issue, Staff contends that SWEPCO’s proposal:

completely ignores the purpose of classifying customers into certain rate classes based on their usage characteristics – the need to establish rates that reasonably reflect the costs to serve similarly situated customers. Without reasonably fixed customer classes based on cost-causation characteristics, one cannot design just and reasonable rates for a class that reasonably reflects the costs to serve that class, as customers could simply migrate to a class that is less costly to serve.¹⁵⁴⁷

SWEPCO counters that it proposes to revise its GS rate schedule to accommodate lower load factor customers, including churches and schools, consistent with customer requests.¹⁵⁴⁸ SWEPCO characterizes Staff’s recommendation as one that “lacks a recognition of customer focus and customer satisfaction by the utility.”¹⁵⁴⁹ According to SWEPCO, based on Staff’s argument, structural changes to existing rate schedules and proposing new rate schedules would not be allowed, making “it far more difficult for SWEPCO to provide rate solutions that are responsive to the evolving ways customers use electric energy.”¹⁵⁵⁰ SWEPCO emphasizes that migration

¹⁵⁴⁵ Staff Ex. 4 (Narvaez Dir.) at 27. It is not clear what Mr. Narvaez means by “the two classes within the General Service tariff,” but SWEPCO witness Jackson’s Rebuttal Revenue Distribution table at SWEPCO Ex. 55 (Jackson Reb.), Exh. JLJ-1R, shows a GS class “W/DEM” and a GS class “WO/DEM,” which may indicate a distinction between customers within the GS class who take service with a billing demand in excess of 10 kW, and those who do not take service in excess of 10 kW.

¹⁵⁴⁶ Staff Ex. 4 (Narvaez Dir.) at 28.

¹⁵⁴⁷ Staff Reply Brief at 52.

¹⁵⁴⁸ SWEPCO Ex. 55 (Jackson Reb.) at 20.

¹⁵⁴⁹ SWEPCO Ex. 55 (Jackson Reb.) at 19.

¹⁵⁵⁰ SWEPCO Ex. 55 (Jackson Reb.) at 20.

between the GS and LP rate schedules can occur after the test year and after approval of the new rate design, and that is no different from customer movement “(additions, removals, and changes in customer loads)” that occurs between rate cases for the existing classes: “[I]t is fluid at all times. SWEPCO has always provided additional rate options under which a customer may be eligible for service. The Commission has consistently approved those options. Providing rate options for customers puts SWEPCO in a position of better meeting its customers’ needs.”¹⁵⁵¹

The ALJs agree with Staff that the 50 kW maximum demand cap in the GS rate schedule should not be removed. What SWEPCO is proposing here is to blur distinctions between the separate GS and LP rate schedules, and this leads into Staff’s second issue discussed below regarding its opposition to allowing customers to choose to take service under multiple rate schedules. SWEPCO’s GS rate schedule proposal here does not reflect the typical situation in which customers can migrate from one rate schedule to another between rate cases as described by SWEPCO witness Jackson. Under SWEPCO’s proposal, customers with higher demands that take service under the LP schedule, for example at 100 kW, would now be able to migrate to the GS schedule even if there are no “additions, removals, or changes” in the LP customers’ loads. The ALJs agree with Staff that SWEPCO’s GS proposal is not one that simply accounts for typical movement between rate cases. SWEPCO has not shown that its proposal will facilitate “sustainable” migration among customer rates; instead it could cause a flood away from the LP class into the GS class, resulting in the unknowable cost recovery issues pointed out by Staff. The ALJs understand that some of SWEPCO’s customers may want the option to choose between taking service under either the LP or GS rate classes, but SWEPCO has not shown that its proposal is justified from a revenue distribution standpoint. For these reasons, the ALJs recommend that the Commission reject SWEPCO’s proposal to remove the 50 kW that limits those customers who can take service under the GS rate schedule.

¹⁵⁵¹ SWEPCO Ex. 55 (Jackson Reb.) at 10-11.

b. Staff's Proposal to Eliminate Migration Among Rate Classes

Staff also requests that the Commission:

order SWEPCO to revise its tariff in its next major rate proceeding to eliminate the potential for customer migration between rate schedules or between any other customer classification that would result in the potential for customers with the same cost of service characteristics to face different rates, so that any particular customer is only eligible to receive service under a single set of base rates.”¹⁵⁵²

Mr. Narvaez testified that SWEPCO is unusual among utilities regulated by the Commission in that the Company allows for many customers to choose to take service under a variety of rate schedules. He states that “almost all the customers of other electric utilities regulated by the Commission, and a substantial number of SWEPCO’s own customers, are required to take service under a single base rate schedule.” He contends that SWEPCO’s policy of providing special treatment to some customers by allowing them to choose to take service under multiple different rate schedules “undermines the Commission’s ability to establish just and reasonable rates.”¹⁵⁵³

SWEPCO responds to this issue with similar arguments that it raised in response to Staff’s opposition to removing the maximum demand cap in the GS rate schedule. Here, SWEPCO argues:

[C]ustomer movement (additions, removals, and changes in customer loads) between rate cases for the existing classes is typical and expected; it is fluid at all times. SWEPCO has always provided additional rate options under which a customer may be eligible for service, and those options have been consistently approved by the Commission. Providing rate options for customers puts SWEPCO in a position of better meeting its customers’ needs.¹⁵⁵⁴

¹⁵⁵² Staff Ex. 4 (Narvaez Dir.) at 29.

¹⁵⁵³ Staff Ex. 4 (Narvaez Dir.) at 29.

¹⁵⁵⁴ Staff Reply Brief at 109 (citing SWEPCO Ex. 55 (Jackson Reb.) at 10-11).

SWEPCO explains it made “migration adjustments, similar to test year adjustments and normalization, to estimate a reasonable rate year set of billing determinants on which to design these new rates.”¹⁵⁵⁵ SWEPCO concludes that Staff’s recommendation “is in direct conflict with Commission precedent based on SWEPCO’s currently approved tariff book that has multiple rate options in order to serve its customers. Staff’s recommendation is harmful to customers, targets SWEPCO’s tariff for different treatment and should be rejected.”¹⁵⁵⁶

The ALJs observe that this issue is not well developed. It is not clear from Staff’s testimony and arguments why customers having the ability to choose from multiple established and fixed rate schedules is problematic. This structure could lead to some uncertainty in designing rates, because the Company does not know how many customers will migrate to different rate schedules, and how often, between rate cases. On this point, although SWEPCO states it made migration adjustments to estimate rate year billing determinants, the Company does not explain how it computed those adjustments. That is, how valid are the estimates in this case and was a study performed to support those adjustments? On the other hand, SWEPCO states the Commission has not had a problem with this practice in SWEPCO’s past rate cases and, again, having multiple available rate schedules “meets its customers’ needs.” Staff’s recommendation, if adopted, apparently would require customers to choose one rate schedule. This could cause confusion and potential irritation among customers, but it is not clear from SWEPCO’s case why having access to multiple rate schedules “meets its customers’ needs.” For example, does this mean the customers are price shopping and, if yes, how does that affect SWEPCO’s ability to design rates so that it recovers its cost of service for any particular class?¹⁵⁵⁷ Finally, the ALJs understand that other Texas electric utilities may allow some customers to switch between rate offerings without noting

¹⁵⁵⁵ SWEPCO Reply Brief at 112.

¹⁵⁵⁶ Staff Reply Brief at 112; *see also* SWEPCO Ex. 55 (Jackson Reb.) at 5.

¹⁵⁵⁷ SWEPCO witness Jackson indirectly raises this issue in her rebuttal testimony: “Assigning individual class increases can skew those results and make it harder to predict migration *because customers are moving to a new rate schedule based on pricing without substantially changing their operating requirements*. An example of this occurred recently when a large customer moved between LLP to [Metal Melting Service] between rate cases based on the final pricing.” SWEPCO Ex. 55 (Jackson Reb.) at 6 (emphasis added).

a change in their load characteristics, but Staff's presentation suggests that this is a more widespread practice on the SWEPCO system.

Given the uncertainty and unanswered questions regarding this issue, the ALJs recommend that SWEPCO should not be required to revise its rate schedules in its next rate case to preclude the potential for customer migration between rate schedules or between any other customer classifications. However, the ALJs recommend that the Commission direct SWEPCO to address this issue in more detail in the direct testimony it will file with its next base rate case. That testimony should explain how SWEPCO computes its migration adjustments to account for customers moving among rate schedules, including whatever studies or data it uses to make its billing determinant estimates. The testimony should also explain what prompts customers to move among rate schedules, including whether this is a seasonal or more long-term phenomenon.

2. Walmart's LP Secondary Rate Schedule Issue

Walmart opposes SWEPCO's proposed changes to the current LP Secondary schedule rate design "that move away from the cost of service by collecting demand charges through an energy charge."¹⁵⁵⁸ Instead, Walmart argues that costs should be collected in a manner that reflects how they are incurred. "Collecting fixed demand-related costs through energy charges violates cost causation principles and creates a subsidy for lower load factor customers."¹⁵⁵⁹ Walmart's witness Lisa Perry testified that SWEPCO's proposed change in demand-related costs from per kW demand charges to per kWh energy charges for the LP Secondary rate schedule results in a shift in demand cost responsibility from lower load factor customers to higher load factor customers. According to Walmart, this shift results in a misallocation of cost responsibility as higher load factor customers overpay for the demand-related costs incurred by the Company to serve them.¹⁵⁶⁰ To correct this misallocation, Walmart recommends that the Commission should apportion any increase to LP Secondary as follows:

¹⁵⁵⁸ Walmart Ex. 1 (Perry Dir.) at 20-21.

¹⁵⁵⁹ Walmart Ex. 1 (Perry Dir.) at 22.

¹⁵⁶⁰ Walmart Ex. 1 (Perry Dir.) at 22-23.

- (1) Assign 9.3% – equal to the percent of LP Secondary costs that are energy-related – to the kWh charge revenue requirement;
- (2) Maintain the Company’s proposed changes to the minimum charge revenue requirement and the additional transformer and kilovolt-ampere reactive (kVAR) charges; and
- (3) Apply the remaining revenue requirement increase to the kW charge.¹⁵⁶¹

In its initial brief, SWEPCO states that Walmart’s witness advocates a more targeted approach to the LP rate schedule design, arguing that the Commission’s rate design goals should include the removal of subsidies contained in the rates within the rate schedules. To accomplish this, Walmart suggests assigning the majority of the LP class increase to the demand component of the rate schedule. However, “there is a concern that this proposed change would negatively impact lower load factor customers in favor of higher load factor customers. Walmart did not offer any analysis in support of this recommendation or offer customer impact for customers at different load profiles.”¹⁵⁶²

The ALJs agree with Walmart’s arguments and concerns. SWEPCO states that Walmart’s proposal “would negatively impact lower load factor customers in favor of higher load factor customers.” SWEPCO’s proposal, however, does the opposite: it would negatively impact higher load factor customers in favor of lower load factor customers. SWEPCO has not explained or justified why it is appropriate, in this case, to collect fixed demand-related costs through energy charges to the detriment of the higher load factor customers in the LP Secondary class. The ALJs, therefore, recommend that the Commission reject SWEPCO’s rate design change with regard to this class and instead adopt Walmart’s recommendation, with one clarification. The clarification is that Ms. Perry’s second of three requests is to maintain “the Company’s proposed changes to the minimum charge revenue requirement and the additional transformer and kVAR charges.”¹⁵⁶³

¹⁵⁶¹ Walmart Ex. 1 (Perry Dir.) at 23-24, Exh. LVP-6.

¹⁵⁶² SWEPCO Initial Brief at 125 (citing SWEPCO Ex. 55 (Jackson Reb.) at 11).

¹⁵⁶³ Walmart Ex. 1 (Perry Dir.) at 23-24.

In the following section, the ALJs recommend that SWEPCO not be authorized to increase its reactive power charge. Thus, to be consistent, the kVAR charge should remain at its current rate, rather than SWEPCO's proposed increased reactive power charge rate.

3. TIEC's LLP Rate Schedule and Reactive Power Issues

TIEC raises two issues with regard to LLP rate schedule rate design: (1) the rate of return for the LLP-Transmission (referred to as "LLP-T") as compared to LLP-Primary; and (2) SWEPCO's proposed increase to the reactive power rate.

As to the LLP-T versus LLP-Primary rate design issue, TIEC argues that the revenue requirement allocated to the rates within a rate schedule should be informed by the class cost of service study results.¹⁵⁶⁴ TIEC's class cost of service study shows that LLP-T is providing a much higher rate of return than LLP-Primary.¹⁵⁶⁵ Accordingly, to the extent that a rate increase is ordered in this case, LLP-Primary should receive a correspondingly higher increase than LLP-T. For example, at SWEPCO's proposed revenue requirement, LLP-Primary customers should receive a 32% increase, while LLP-T customers should receive a 3.2% increase.¹⁵⁶⁶

SWEPCO does not address this issue in either its initial or reply briefs. The ALJs, nevertheless, recommend against TIEC's proposal regarding LLP-T and LLP-Primary rate design because the ALJs have recommended against adopting TIEC's proposed revenue distribution method. As explained earlier in this section, the ALJs recommend approval of SWEPCO's revenue distribution. As such, TIEC's rate design proposal regarding the LLP-Primary class would undermine the recommended revenue distribution approach because it is based on a revenue distribution model that the ALJs recommend rejecting. Moreover, TIEC has not explained why

¹⁵⁶⁴ TIEC Ex. 1 (Pollock Dir.) at 7.

¹⁵⁶⁵ Specifically, LLP-T is providing a relative rate of return of 207 at present rates, compared to a relative rate of return of 96 for LLP-Primary. TIEC Ex. 1 (Pollock Dir), Exh. JP-3 at 3-4.

¹⁵⁶⁶ TIEC Ex. 1 (Pollock Dir.) at 49.

the results of SWEPCO's rebuttal CCOSS are somehow flawed in the way costs are allocated to the LLP class, and the ALJs are not recommending adoption of TIEC's CCOSS.

As to the reactive power rate design issue, TIEC states that SWEPCO proposes to increase the LLP rate schedule reactive demand charge by 29.4%, but SWEPCO did not provide any support for this increase in its application.¹⁵⁶⁷ Accordingly, TIEC recommends that no increase to the reactive demand charge be approved unless and until SWEPCO provides a study justifying the cost-based need for such an increase.¹⁵⁶⁸ "If SWEPCO wishes to increase this charge, it should be required to provide a study demonstrating the cost basis for this increase."¹⁵⁶⁹

SWEPCO acknowledges that it has not performed a reactive demand study but contends that a separate reactive demand study was not performed outside of the cost of service study because the reactive demand charge "is encompassed within and is part of the overall cost increase."¹⁵⁷⁰ Because the reactive demand charge can apply to multiple rate classes, SWEPCO utilized the system average increase to update the reactive demand charge. "The proposed reactive demand charge is \$0.66 per reactive kW, increased from the current charge of \$0.51. The proposed methodology is a reasonable way to adjust the reactive demand charge."¹⁵⁷¹

The ALJs agree with TIEC. There may be a reason that the reactive demand charge should be increased above \$0.51 per reactive kW, but simply assuming that increase is the same as the system average increase is not supported by the evidence. SWEPCO, therefore, has not met its burden of proof to justify its proposed \$0.16 increase in the reactive charge, and this charge should remain at \$0.51 per reactive kW.

¹⁵⁶⁷ TIEC Ex. 1 (Pollock Dir.) at 48-49.

¹⁵⁶⁸ TIEC Ex. 1 (Pollock Dir.) at 48-49.

¹⁵⁶⁹ TIEC Ex. 1 (Pollock Dir.) at 49.

¹⁵⁷⁰ SWEPCO Ex. 55 (Jackson Reb.) at 14-15.

¹⁵⁷¹ SWEPCO Ex. 55 (Jackson Reb.) at 14-15.

C. Transmission Rate for Retail BTMG

The ALJs addressed the BTMG issue in detail in Section VII above, recommending that SWEPCO's request to allocate BTMG-related costs to its Texas retail customers, and Eastman in particular, be denied. The ALJs also recommend above that Eastman's self-served BTMG load be removed from SWEPCO's jurisdictional and class cost of service studies. In its rebuttal testimony, SWEPCO proposed that its Synchronous Self-Generation Load (SSGL) rate could apply to any BTMG customer load included in SWEPCO's transmission load ratio share, in addition to Eastman.¹⁵⁷² SWEPCO witness Jackson acknowledged that it would be reasonable to create separate rate schedule for the SSGL charge.¹⁵⁷³

The ALJs recommend rejection of SWEPCO's proposal to establish a rate schedule (or a charge that could be applied within other rate schedules) to allow recovery of BTMG costs from customers in addition to Eastman. Because the ALJs recommend that the Commission deny SWEPCO's proposal to allocate the BTMG-related costs to its Texas retail customers, and at least initially solely to Eastman, the Commission should also reject SWEPCO's proposed BTMG-related transmission rates, including the SSGL charge (or rate schedule).¹⁵⁷⁴

¹⁵⁷² SWEPCO Ex. 55 (Jackson Reb.) at 14; Tr. at 1502.

¹⁵⁷³ Tr. at 1502-03.

¹⁵⁷⁴ The tension brought on by SWEPCO's BTMG proposal is captured in part by TIEC's initial statements in its reply brief addressing the Company's proposed SSGL rate:

SWEPCO's proposed SSGL charge should be rejected. The charge would apply to service that SWEPCO does not actually provide—transmission service to customers who serve their own load with BTMG. The charge is based on, as Eastman aptly puts it, "phantom load" that does not reflect actual costs imposed on the transmission network at the time of peak. Moreover, the charge would apply only to Eastman's phantom load because SWEPCO has not reported the phantom load of any of the nearly 200 other retail BTMG customers it has in Texas (or of any of the BTMG customers it has in other states). SWEPCO's proposed SSGL charge is thus unreasonable and discriminatory.

See TIEC Reply Brief at 59 (footnotes omitted, referencing, among other things, the hearing transcript and TIEC witness Pollock's testimony).

D. Riders [PO Issues 47, 48, 75, 76, 77, 78, 79]**1. Proposed Residential Service Plug-in Electric Vehicle Rider [PO Issues 75, 76, 77, 78, 79]**

SWEPCO proposes a residential plug-in electric vehicles (PEV) rider for customers taking service under the Residential Service rate schedule who use PEV charging.¹⁵⁷⁵ Under this option, an installed sub-meter separately measures PEV kWh usage while a standard meter measures total residence kWh usage.¹⁵⁷⁶ A feature of this rider is the application of a billing credit for all off-peak period PEV kWh usage measured at the sub-meter.¹⁵⁷⁷

No party raised any issue with SWEPCO's PEV Rider proposal. The ALJs find that SWEPCO has met its burden of proof on this issue, and the Commission should approve the PEV Rider.

2. Renewable Energy Credit Rider [PO Issues 47, 48]

The Renewable Energy Credit (REC) Rider is a voluntary rider available to customers wishing to support the Renewable Energy Certificates derived from SWEPCO's investment in renewable energy resources. These certificates are issued when one MWh of electricity is generated and delivered to the grid from a renewable energy resource. Customers may purchase RECs that are equivalent up to 100% of their total monthly billed kWh usage.¹⁵⁷⁸ SWEPCO treats proceeds from the REC sales, net of transaction costs, as a revenue credit to customers through SWEPCO's fuel balance. As such, all of SWEPCO's Texas customers benefit from the proposed REC rider because the proceeds will reduce SWEPCO's fuel balance and the rider will enable participating customers to meet either their personal or corporate environmental and sustainability

¹⁵⁷⁵ SWEPCO Ex. 3 (Smoak Dir.) at 8-9; SWEPCO Ex. 32 (Jackson Dir.) at 27-28, Exh. JLJ-3.

¹⁵⁷⁶ SWEPCO Ex. 3 (Smoak Dir.) at 8-9; SWEPCO Ex. 32 (Jackson Dir.) at 27.

¹⁵⁷⁷ SWEPCO Ex. 3 (Smoak Dir.) at 9.

¹⁵⁷⁸ SWEPCO Ex. 32 (Jackson Dir.) at 30, Exh. JLJ-6.

goals by purchasing the environmental attributes of renewable energy resources at a reasonable, market-based rate.¹⁵⁷⁹ Walmart and TIEC raise issues regarding the REC Rider.

Walmart welcomes the opportunity to purchase RECs through utility tariffs, but requests that the REC Rider provide customers with an opportunity to purchase RECs that the customer can link to the underlying resource creating such REC. Walmart is concerned that the REC Rider fails to provide crucial information necessary to allow the customer to link the REC to a specific renewable resource.¹⁵⁸⁰ Walmart states that, for itself and other customers with aggressive renewable energy goals, “it is important that the Company show the customer is receiving energy from new and *specific* renewable resources to meet those goals.”¹⁵⁸¹ SWEPCO does not address Walmart’s request in either of its post-hearing briefs or in Company witness Jackson’s rebuttal testimony. The ALJs therefore conclude that Walmart’s request has merit and is not challenged by SWEPCO. In its compliance filing in this docket, SWEPCO should revise the REC Rider to allow a customer to link its RECs to specific renewable resources.

TIEC’s issue is not with the REC Rider itself, but instead with the REC opt-out provision available to transmission-level customers. In accordance with 16 TAC § 25.173(j), a transmission-level voltage customer who submits an opt-out notice to the Commission is not required to pay any costs incurred by an investor-owned utility for acquiring RECs. A REC opt-out charge is a mechanism that refunds the REC costs associated with a customer that has opted out. TIEC witness Pollock explains that, as a result of the settlement in Docket No. 47533 (SWEPCO’s prior fuel reconciliation), the Company agreed to impute a value of the RECs for its renewable energy purchases. The test-year REC value is \$1.281 million. The Texas retail share of these REC costs is approximately \$466,500. Mr. Pollock testified that the LLP-T class would be allocated approximately \$52,800 of test-year REC costs. Assuming that all of the LLP-T customers were to submit opt-out letters pursuant to 16 TAC § 25.173(j), they would not be charged for these costs.

¹⁵⁷⁹ SWEPCO Ex. 32 (Jackson Dir.) at 31.

¹⁵⁸⁰ SWEPCO Ex. 32 (Jackson Dir.) at 31.

¹⁵⁸¹ Walmart Ex. 1 (Perry Dir.) at 25.

Mr. Pollock explained, assuming \$52,800 of REC costs are allocated to the LLP-T class, the REC opt-out charge would be a credit of 0.064¢ per kWh. TIEC therefore recommends that SWEPCO implement a REC opt-out credit of approximately 0.064¢ per kWh.¹⁵⁸²

SWEPCO agrees that it must file a REC opt-out tariff in the compliance phase of this case, and that it agreed in its last fuel reconciliation to impute a value of the RECs for its renewable energy purchases.¹⁵⁸³ SWEPCO states its calculation of the REC opt-out credit factor is based on the imputed total company REC values and allocation to SWEPCO's Texas retail jurisdiction and eligible rate classes.¹⁵⁸⁴ SWEPCO argues the allocation is demand-based because the REC value is recorded in FERC Account 555 and the credit factor is developed based on kWh sales at the meter for eligible customers.¹⁵⁸⁵

The contested issue here is whether the REC opt-out allocation should be demand-based or energy-based. TIEC contends that SWEPCO "erroneously used a demand allocator to allocate the REC costs," which resulted in a smaller credit than was calculated by Mr. Pollock.¹⁵⁸⁶ TIEC argues that RECs are energy-related, and this point is supported by SWEPCO itself when it notes that the REC certificates "are issued when one [MWh] of electricity is generated and delivered to the grid from a renewable energy resource."¹⁵⁸⁷ TIEC also notes that the Commission's REC rule defines RECs as representing "one MWh of renewable energy."¹⁵⁸⁸ TIEC contends that the fact that the REC value is recorded in FERC Account 555 (Purchased Power) has no bearing on this

¹⁵⁸² TIEC Ex. 1 (Pollock Dir.) at 49-50.

¹⁵⁸³ SWEPCO Ex. 55 (Jackson Reb.) at 15.

¹⁵⁸⁴ SWEPCO Ex. 55 (Jackson Reb.), Exh. JLJ-2R.

¹⁵⁸⁵ SWEPCO Ex. 55 (Jackson Reb.) at 15.

¹⁵⁸⁶ TIEC Initial Brief at 83 (citing SWEPCO Ex. 55 (Jackson Reb.), Exh. JLJ-2R).

¹⁵⁸⁷ SWEPCO Initial Brief at 128 ("These certificates are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the grid from a renewable energy source.") *See also* SWEPCO Ex. 32 (Jackson Dir.) at 30.

¹⁵⁸⁸ 16 TAC § 25.173(c)(13).

issue because purchased power expenses recorded to FERC Account 555 can be demand- or energy-based.¹⁵⁸⁹

The ALJs agree with TIEC. SWEPCO has failed to explain why credits that accrue on a per-MWh basis, rather than a per-MW (or kW) basis, should be allocated based on demand rather than energy. The “per-MWh” indicates an energy-based charge, rather than a per-kW demand-based charge. The ALJs also agree with TIEC that the fact that these credits are booked to FERC Account 555 does not bear on the question of whether the credits are demand- or energy-related because costs booked to that account can be either energy- or demand-related.¹⁵⁹⁰ The ALJs therefore recommend that the Commission adopt TIEC’s REC opt-out calculation, which results in an REC opt-out credit of approximately 0.064¢ per kWh.

E. Retail Choice Pilot Project

ETSWD witness Pevoto testified that a retail choice pilot project in SWEPCO’s service territory “makes sense as a tool for the Commission to obtain information on whether sufficient demand exists to entertain the idea” of opening up SWEPCO to retail open access.¹⁵⁹¹ Ms. Pevoto noted that ETSWD filed a petition for a declaratory order in Docket No. 51257 asking the Commission “to clarify whether current law and SWEPCO tariffs require that SWEPCO provide a retail pilot project.”¹⁵⁹² ETSWD did not address this retail choice pilot project in either of its post-hearing briefs, presumably because the Commission announced its ruling denying ETSWD’s petition at its open meeting on June 11, 2021.¹⁵⁹³

¹⁵⁸⁹ See 18 C.F.R. Pt. 101, 555 Purchased Power (“A. This account shall include the cost at point of receipt by the utility of electricity purchased for resale B. The records supporting this account shall show, by months, the demands and demand charges, kilowatt-hours and prices thereof”).

¹⁵⁹⁰ Under the Commission’s Fuel Rule, demand or capacity costs booked to FERC Account 555 are not deemed to be eligible fuel expenses and, as such, are not recoverable through SWEPCO’s fuel factor. 16 TAC § 25.236(a)(6). This preclusion of recovering demand-related purchased power costs through the fuel factor, however, has no bearing on whether a cost booked to FERC Account 555 is an energy-related or a demand-related cost.

¹⁵⁹¹ ETSWD Ex. 1 (Pevoto Dir.) at 21.

¹⁵⁹² ETSWD Ex. 1 (Pevoto Dir.) at 20.

¹⁵⁹³ *Petition of East Texas Salt Water Disposal Company for Declaratory Order and Request for the Opening of a Pilot Project Implementation Project*, Docket No. 51257, Declaratory Order (Jun. 22, 2021).

Because the Commission denied ETSWD's petition for a declaratory order on this topic, and ETSWD failed to pursue this issue in its post-hearing briefs, the ALJs find that ETSWD's is moot and should not be pursued.

XI. BASELINES FOR COST RECOVERY FACTORS [PO ISSUES 4, 5, 52, 63]

SWEPCO and Staff are the only parties that addressed baselines for cost-recovery factors. SWEPCO requests that its current TCRF and DCRF be set to zero, and that this case establish the baseline values consisting of the inputs to the calculations used to calculate SWEPCO's TCRF, DCRF, and GCRR in future dockets.¹⁵⁹⁴ Staff states that it "supports the adoption of its proposed TCRF and DCRF baselines based on the CCOSS approved by the Commission."¹⁵⁹⁵ Staff does not otherwise raise any issues with regard to how SWEPCO calculated the baselines, and does not oppose re-setting the current TCRF and DCRF rates to zero as required by the Commission's rules. SWEPCO responds that the revisions reflected in its rebuttal CCOSS, "are necessary and should be incorporated into the cost of service study used to derive the appropriate baseline values adopted by the Commission."¹⁵⁹⁶

A. Interim Transmission Cost of Service

SWEPCO states this issue is not pertinent to SWEPCO. The ALJs agree. Because SWEPCO does not provide transmission service within ERCOT, it does not offer open access transmission service that otherwise would be subject to an interim transmission cost of service.¹⁵⁹⁷

¹⁵⁹⁴ SWEPCO Ex. 31 (Aaron Dir.) at 26-35. In this testimony, and in his Exhibits JOA-5, JOA-6, and JOA-7, Mr. Aaron explains and sponsors the baseline values established in accordance with the Commission's substantive rules that are proposed to be used in SWEPCO's future TCRF, DCRF, and GCRR proceedings.

¹⁵⁹⁵ Staff Initial Brief at 79 (citing Staff Ex. 4 (Narvaez Dir.) at 37-40, Attachment AN-5).

¹⁵⁹⁶ SWEPCO Reply Brief at 117 (citing SWEPCO Ex. 54 (Aaron Reb.) at 2-5); SWEPCO Exs. 54A and 54B (Aaron Reb. Workpapers).

¹⁵⁹⁷ 16 TAC § 25.192(a) does not apply to SWEPCO because SWEPCO does not provide transmission service within ERCOT.

B. Transmission Cost Recovery Factor

SWEPCO's proposal to exclude TCRF revenues in its proposed rate increase calculation is addressed in Section X above. SWEPCO's proposal to defer net SPP charges to a future TCRF or base rate proceeding is also addressed in Section VII above.

No party opposed the Company's request to reset the baseline value of the TCRF for future filings. The ALJs recommend approval of SWEPCO's proposal to re-set its TCRF to zero. The TCRF baseline should be set in the compliance phase of this case after the Commission makes final rulings on the various contested issues that may affect the TCRF baseline calculation.¹⁵⁹⁸

C. Distribution Cost Recovery Factor

SWEPCO's proposal to exclude DCRF revenues in its proposed rate increase calculation is addressed in Section X above

No party opposed the Company's request to reset the baseline value of the DCRF for future filings. The ALJs recommend approval of SWEPCO's proposal to re-set its DCRF to zero. The DCRF baseline should be set in the compliance phase of this case after the Commission makes final rulings on the various contested issues that may affect the DCRF baseline calculation.

D. Generation Cost Recovery Rider

No party addressed or opposed the Company's request to establish the baseline value for the GCRR. The GCRR baseline should be set in the compliance phase of this case after the Commission makes final rulings on the various contested issues that may affect the GCRR calculation.

¹⁵⁹⁸ The schedules attached to this PFD include the recommended TCRF and DCRF baseline values based on the ALJs' recommendations in this PFD.

XII. REASONABLENESS AND RECOVERY OF RATE CASE EXPENSES [PO ISSUES 26, 27, 28]

SWEPCO requests recovery of its reasonable rate case expenses (RCEs) incurred in this proceeding as well as those expenses it pays to reimburse CARD for CARD's RCEs.¹⁵⁹⁹ SWEPCO also seeks to recover RCEs associated with its most recent TCRF filing, Docket No. 49042,¹⁶⁰⁰ its pending fuel reconciliation, Docket No. 50997,¹⁶⁰¹ as well as appellate expenses related to its last two base rate proceedings, Docket Nos. 40443 and 46449.¹⁶⁰²

The statutory basis for the recovery of RCEs incurred by a regulated utility is set forth in PURA § 36.061. PURA § 33.023 establishes the statutory foundation for the recovery of the expenses of municipalities incurred for participating in ratemaking proceedings before the Commission. The Commission's RCE Rule, 16 TAC § 25.245, addresses the means by which a utility is required to present and prove up its reasonable rate case expenses.

In this case, the RCE issues were not severed into a separate docket as had been the historical practice until last year.¹⁶⁰³ Severance of the RCEs would have allowed consideration of all RCEs related to these cases in a single docket decided after the Commission issues its final order in this docket. Instead, because RCEs are to be addressed in this docket, a cut-off was established after the close of the hearing and prior to issuing this PFD that would address recovery of most but not all RCEs incurred to process this docket and the four prior or pending SWEPCO dockets listed above.¹⁶⁰⁴ SOAH Order No. 13 set the procedures by which the parties would file

¹⁵⁹⁹ SWEPCO Ex. 5 (Ferry-Nelson Dir.) at 24.

¹⁶⁰⁰ *Application of Southwestern Electric Power Company to Amend its Transmission Cost Recovery Factor*, Docket No. 49042, Order (Jul. 18, 2019).

¹⁶⁰¹ *Application of Southwestern Electric Power Company for Authority to Reconcile Fuel Costs*, Docket No. 50997 (pending).

¹⁶⁰² SWEPCO Ex. 5 (Ferry-Nelson Dir.) at 24.

¹⁶⁰³ For example, the rate case expenses incurred by SWEPCO and CARD in SWEPCO's last base rate case were severed and addressed in Docket No. 47141. *Review of Rate Case Expenses Incurred by Southwestern Electric Power Company and Municipalities in Docket 46449*, Docket No. 47141, Order (Aug. 27, 2020).

¹⁶⁰⁴ Both SWEPCO and CARD filed periodic updates to their RCE reports commencing in March 2021.

their final RCE reports and testimony for consideration in this docket. On July 6, 2021, in accordance with SOAH Order No. 13, SWEPCO and CARD filed their final supplemental RCE reports. As indicated in those reports, SWEPCO's RCEs subject to review in this docket are those incurred by the Company through May 2021; CARD's RCEs subject to review in this docket are those incurred through June 2021. Also in accordance with SOAH Order No. 13, Staff filed its final supplemental direct testimony addressing RCEs on July 20, 2021, and SWEPCO filed its final supplemental rebuttal testimony addressing RCEs on July 27, 2021.¹⁶⁰⁵

All RCEs incurred up to the cut-off date found to be reasonable by the Commission will be recovered from SWEPCO's customers through SWEPCO's Rate Case Surcharge (RCS) Rider. SWEPCO will reimburse CARD for its Commission-authorized RCEs to the extent it has not already done so. Any additional RCEs incurred for this docket after the cut-off date, referred to as "trailing RCEs," would be recorded as a regulatory asset and deferred for analysis and recovery in a future docket.

The total RCEs sought for recovery by SWEPCO and CARD are \$3,769,007.¹⁶⁰⁶ Two RCE-related issues remain contested in this case.¹⁶⁰⁷ First, Staff opposes CARD's request for reimbursement of \$6,321 in RCEs CARD incurred in Docket No. 47141 after the agreed RCE

¹⁶⁰⁵ "Final Supplemental Testimony of Ruth Stark," and "Final Supplemental Rebuttal Testimony of Lynn Ferry-Nelson," respectively. Because these testimonies, and the reports filed by SWEPCO and CARD on July 6, 2021, were filed after the hearing on the merits in accordance with SOAH Order No. 13, they do not have stated exhibit numbers. In this PFD, they are referred to by their names, such as "Stark Final RCE Testimony," rather than by an exhibit number. These documents are part of the record in this case. On this point, SWEPCO's and CARD's RCE reports filed on and before July 6, 2021, Ms. Stark's Final RCE testimony filed on July 20, 2021, and Ms. Ferry-Nelson's Final RCE testimony filed on July 27, 2021, are admitted into the record in this docket, and are so noted on the Exhibit Attestation filed in conjunction with this PFD. This includes SWEPCO's Second Supplemental RCE Report filed on June 11, 2021, and CARD's First Supplemental RCE Report filed on June 18, 2021. CARD filed a Statement of Position regarding its RCEs on July 27, 2021, which adds no new arguments or evidence.

¹⁶⁰⁶ Stark Final RCE Testimony at 7; Ferry-Nelson Final RCE Testimony at 4.

¹⁶⁰⁷ Prior to filing its post-hearing briefs, Staff raised a third issue involving a potential \$45,457 double-counting in the RCEs. In its initial brief, however, Staff addressed this double-counting issue but concluded "Staff agrees that the \$45,457 is recoverable by SWEPCO." Staff Initial Brief at 81.

cut-off date in that proceeding.¹⁶⁰⁸ Second, Staff recommends a \$65,167 disallowance of SWEPCO's requested RCEs related to legal billings in excess of \$550 per hour.¹⁶⁰⁹

A. Amounts Sought for Recovery and the Proposed Recovery Method

SWEPCO's RCEs fall into four categories of costs: outside legal counsel, outside consultants, cities' expenses, and miscellaneous expenses.¹⁶¹⁰ SWEPCO witness Lynn Ferry-Nelson's Exhibits LFN-1 and LFN-2 to her direct testimony and Exhibit LFN-1R to her rebuttal testimony contain a summary of the items that make up SWEPCO's requested RCEs. CARD's RCEs, which are subsumed within SWEPCO's RCEs, are supported by CARD witness Catherine Webking.¹⁶¹¹

The total RCEs requested by SWEPCO and CARD, by docket, are reflected in the following table:

Total RCEs Subject to Review in this Docket¹⁶¹²

Docket No.	SWEPCO	CARD	Total
40443	\$ 188,132	\$ 18,029	\$ 206,161
46449	\$ 183	\$ 0	\$ 183
47141	\$ 0	\$ 6,320	\$ 6,320
49042	\$ 176,913	\$ 41,463	\$ 218,376
50997	\$ 382,257	\$ 219,813	\$ 602,070
51415	\$1,992,830	\$ 743,067	\$2,735,897
Total	\$2,740,315	\$1,028,692	\$3,769,007

¹⁶⁰⁸ Staff Ex. 3B (Stark Supp. Dir.) at 12.

¹⁶⁰⁹ Stark Final RCE Testimony at 7.

¹⁶¹⁰ SWEPCO Ex. 5 (Ferry-Nelson Dir.) at 31.

¹⁶¹¹ CARD Ex. 5 (Webking Dir.).

¹⁶¹² Stark Final RCE Testimony at 8, Attachment RS-1FS.

SWEPCO proposes that the Commission: (1) review and determine the reasonableness of its and CARD's RCEs presented in their RCE reports filed on and before the July 6, 2021 cut-off date; and (2) authorize recovery of any expenses found to have been reasonably incurred through the RCS Rider.¹⁶¹³ No party opposes the RCS Rider recovery method. As to the trailing RCEs that will be subject to a future proceeding, SWEPCO agrees with Staff's recommendation that the Commission authorize SWEPCO to establish a regulatory asset to record both SWEPCO's and CARD's trailing RCEs from this proceeding to be reviewed and recovered to the extent found to be reasonable in a future docket.¹⁶¹⁴

The ALJs agree that approved RCEs in this docket should be recovered through SWEPCO's proposed RCS Rider, and that the trailing expenses should be booked as a regulatory asset for review and potential recovery in a future case.

B. The Docket No. 47141 Issue Regarding CARD's RCEs

Staff contends that CARD's requests for \$6,321 in RCEs associated with Docket No. 47141 should be denied because the amended unanimous settlement (settlement) adopted in that docket precludes recovery of this amount.¹⁶¹⁵ The findings of fact in the Commission's order approving the settlement include the following:

78. The parties agreed that SWEPCO would recover \$5,429,804.52 in rate-case expenses. This black-box amount includes reimbursement to CARD in the amount of \$1,086,322.14 through April 13, 2020. In addition, the black-box amount includes reimbursement to CARD for actual expenses incurred in this docket after April 13, 2020 but caps that reimbursement at \$2,500.

¹⁶¹³ SWEPCO Ex. 5 (Ferry-Nelson Dir.) at 26.

¹⁶¹⁴ SWEPCO Reply Brief at 118. CARD does not oppose these proposals; CARD's only issue is with Staff's proposed disallowance of \$6,321 adjustment related to Docket No. 47141.

¹⁶¹⁵ Citing Docket No. 47141, Order at 12-13, FoF Nos. 78 and 79 (Aug. 27, 2020). *See* Stark Final RCE Testimony at 7.

79. SWEPCO and CARD agreed not to request any additional recovery for rate-case expenses incurred in this docket, in litigation before the Commission in Docket Nos. 40443 and 46449, and in Docket Nos. 48233 and 47553.¹⁶¹⁶

Staff argues that because the Commission's order in Docket No. 47141 prohibits recovery of any additional expenses related to that proceeding, CARD's requested rate-case expenses should be adjusted by (\$6,321).¹⁶¹⁷

CARD agrees that the \$6,321 was incurred after April 13, 2020, and the settlement caps reimbursement of such expenses at \$2,500.¹⁶¹⁸ CARD argues that Staff's calculation of the adjustment is not accurate because it fails to account for the \$2,500 in rate-case expenses that SWEPCO was required to reimburse CARD pursuant to the settlement. Hence, according to CARD, the correct adjustment is a reduction of \$3,821 and not \$6,321 (that is, \$6,321 - \$2,500 = \$3,821).

The ALJs agree with CARD. The disallowance necessary to recognize the \$2,500 cap in the settlement is \$3,821, not \$6,321. It appears that the dispute as to the amount of the disallowance arises because Staff construes FoF No. 79 to mean that CARD is not entitled to *any* additional RCEs incurred in Docket No. 47141 (presumably after April 13, 2020). Standing alone, the ALJs understand how Staff arrived at that interpretation. FoF No. 78, however, must be read in conjunction with FoF No. 79. Finding of Fact No. 78 allows CARD to recover up to \$2,500 in RCEs for Docket No. 47141; that is, CARD is authorized to recover up to an additional \$2,500. The ALJs read the words "*any additional* recovery" in FoF No. 79 to mean that CARD is precluded from recovering any RCEs in addition to (or above) the amounts authorized in FoF No. 78. Finding of Fact No. 78 allows CARD to recover \$1.09 million plus up to an additional \$2,500. For these reasons, Staff has justified the disallowance of \$3,821 in CARD's RCEs subject to recovery in this docket, but CARD has also justified recovery of \$2,500 related to RCEs incurred in Docket No.

¹⁶¹⁶ Docket No. 47141, Order at 12-13, FoF Nos. 78 and 79 (Aug. 27, 2020).

¹⁶¹⁷ Staff Initial Brief at 85 (citing Staff Ex. 3b (Stark Suppl. Dir.) at 12). Staff does not address this issue in its reply brief.

¹⁶¹⁸ CARD Reply Brief at 46-47.

47141. The ALJs therefore recommend that CARD be allowed to recover \$2,500, but not \$6,321, related to Docket No. 47141.

C. Staff's Proposed \$550 Per-Hour RCE Cap

Staff's proposes to reduce SWEPCO's requested RCEs by \$65,167, arguing that any amounts billed above an hourly rate above \$550 an hour are excessive under the Commission's RCE Rule and, therefore, are neither reasonable nor recoverable.¹⁶¹⁹ Staff identified two instances in which SWEPCO paid attorneys based on an hourly rate in excess of \$550 per hour: one for an attorney with Eversheds Sutherland US LLP (Eversheds), who billed at \$1,230 per hour, and the other for a Baker Botts LLP (Baker Botts) attorney who billed at \$1,010 per hour.

The Company requests recovery of the entire amounts paid regardless of the hourly rate. Staff is not proposing to disallow all fees charged by the two attorneys who billed in excess of \$550 per hour. Instead, Staff's proposal is to allow SWEPCO to recover dollars resulting from the number of hours billed times \$550. Thus, Staff's proposal is to disallow the amounts billed in excess of \$550 per hour, but not amounts incurred up to that hourly rate.¹⁶²⁰

In her Supplemental Direct testimony filed on May 5, 2021, Staff witness Stark proposed a RCE disallowances related to hourly billing rates in excess of \$550 per hour as follows:¹⁶²¹

- With respect to Docket No. 51415, SWEPCO incurred \$12,423 of legal expenses for services provided by [Eversheds] consisting of 10.1 hours billed at an hourly rate of \$1,230.

¹⁶¹⁹ Stark Final RCE Testimony at 7; Staff Ex. 3B (Stark Supp. Dir.) at 7.

¹⁶²⁰ Staff Ex. 3B (Stark Supp. Dir.) at 7. Staff's final recommended \$65,167 disallowance is based on the final RCE reports filed by SWEPCO and CARD on July 6, 2021. Ms. Stark's figure is the product of multiplying the number of hours billed in each of the two instances identified by Staff by the portion of the hourly billing rate that is above \$550. See Staff Ex. 3B (Stark Supp. Dir.) at 8.

¹⁶²¹ Staff Ex. 3B (Stark Suppl. Dir.) at 7.

- With respect to the appeal of Docket No. 40443, SWEPCO incurred legal expenses for services provided by [Baker Botts] a portion of which included \$96,354 for 95.4 hours billed at an hourly rate of \$1,010.¹⁶²²

In her Final RCE testimony filed on July 20, 2021, based on SWEPCO's and CARD's final RCE Reports filed on July 6, 2021, Ms. Stark testified:

[I] recommend an additional disallowance of \$14,414 of SWEPCO's legal expenses based on SWEPCO's Second and Third Supplemental rate-case expense filings. This combined with the previously recommended disallowance in my supplemental direct testimony equals a total recommended disallowance of \$65,167 of SWEPCO's rate-case expenses for this proceeding related to legal billings in excess of \$550 per hour.¹⁶²³

In her Final RCE Testimony, Ms. Stark does not state how much of the \$14,414 increase from her Supplemental Direct testimony is attributable to Eversheds and how much is attributable to Baker Botts. But SWEPCO does not dispute Ms. Stark's testimony that the total amount in this docket attributable to billings in excess of \$550 per hour is \$65,147. Thus, the issue is not how the amount was calculated, but whether the ALJs should recommend for or against imposing a \$550 per-hour cap on recoverable RCEs.

1. Staff's Arguments and Evidence

Staff relies on the Commission's RCE Rule to support its proposed \$550 per-hour cap:

- (c) **Criteria for review and determination of reasonableness.** In determining the reasonableness of the rate-case expenses, the presiding officer shall consider the relevant factors listed in subsection (b) of this section and any other factor shown to be relevant to the specific case. The presiding officer shall decide whether and the extent to which the evidence shows that:
- (1) the fees paid to, tasks performed by, or time spent on a task by an attorney or other professional were *extreme or excessive*;¹⁶²⁴

¹⁶²² Staff Ex. 3B (Stark Supp. Dir.) at 7.

¹⁶²³ Stark Final RCE Testimony at 7.

¹⁶²⁴ 16 TAC § 25.245 (emphasis added).

Ms. Stark noted that, in considering the pending adoption of 16 TAC § 25.245, the Commission commented on the need to establish a more robust process for reviewing attorney's fees, and that such "fees need to be proven up with real evidence from credible experts."¹⁶²⁵ Ms. Stark explained that the Commission's order adopting 16 TAC § 25.245 concluded that "adopting clear evidentiary standards and specific criteria for the review and determination of the reasonableness of rate-case expenses will incentivize utilities and municipalities to act more like self-funded litigants, while still providing for recovery of reasonable rate-case expenses."¹⁶²⁶ In recent years, Staff has consistently recommended that any amount billed above an hourly rate of \$550 an hour is excessive under 16 TAC § 25.245(c)(1).¹⁶²⁷

Ms. Stark also relies on a 2016 memorandum and 2019 follow-up memorandum issued by the Office of the Attorney General of Texas (OAG) to state agencies, university systems, and institutions of higher education outlining policies and procedures relating to the retention of outside legal counsel, which states that unless expressly approved, the hourly rate for attorneys shall not exceed \$525 per hour.¹⁶²⁸ The memoranda state: "Timekeeper Rates—Unless expressly approved by the First Assistant Attorney General in advance, hourly rates for attorneys shall not exceed \$525/hour, while hourly rates for paralegals shall not exceed \$225/hour."¹⁶²⁹

Ms. Stark further testified that the majority of the legal billings requested by SWEPCO and CARD in this proceeding relate to services provided by three law firms: Duggins Wren Mann

¹⁶²⁵ Staff Ex. 3B (Stark Supp. Dir.) at 8.

¹⁶²⁶ *Rulemaking to Propose New Subst. R. § 25.245 Relating to Recovery of Expenses for Ratemaking Proceedings*, Project No. 41622, Order Adopting Rule § 25.245 at 13-14 (Aug. 6, 2014) (RCE Rule Preamble).

¹⁶²⁷ Staff Ex. 3B (Stark Supp. Dir.) at 7.

¹⁶²⁸ Staff Ex. 3B (Stark Supp. Dir.) at 8-9, and Attachments RS-1S (2016 OAG Memorandum) and RS-2S (2019 OAG Memorandum). Ms. Stark notes that the 2019 memorandum superseded the 2016 memorandum, but the \$525 per hour cap remained unchanged. The memoranda specifically addressed "Outside Counsel Contract Rules and Templates."

¹⁶²⁹ Staff Ex. 3B (Stark Supp. Dir.), Attachment RS-1S at 7. In the OAG's 2019 memorandum, the hourly rate caps language replaced the word "paralegal" in the 2016 memorandum with "non-attorney legal work (limited to paralegals, legal assistants, and other timekeepers performing similar legal work)." Stark Final RCE Testimony, Attachment RS-2S at 7. The hourly rate caps were not changed in the 2019 memorandum.

& Romero, LLP (Duggins Wren), Herrera Law & Associates, PLLC (Herrera Law), and Scott, Douglass & McConnico, LP, and the hourly billing rates for the lawyers in this docket range from \$250 per hour to \$550 per hour.¹⁶³⁰

Staff cites as additional support the PFD in Docket No. 45979.¹⁶³¹ Ms. Stark notes that, while the Commission ultimately dismissed Docket No. 45979, the PFD in that case is instructive.¹⁶³²

The ALJ agrees with Staff and OPUC that, in general, a cap on hourly fees charged by attorneys in utility rate cases before the Commission is appropriate and, in this case, the record supports a \$550 per hour cap . . . While Rule 25.245(c)(1) does not specify a cap on attorneys' fees, it contemplates that fees paid to an attorney or other professional could be "extreme or excessive." Otherwise, there would be no purpose for Rule 25.245 to identify the level of fees paid to an attorney (or other professional) as a consideration under that rule.¹⁶³³

Staff also quotes the following from the Docket No. 45979 PFD:

Setting attorneys' fees in an RCE case based on the upper end of hourly rates charged by large, national law firms would remove the intended incentive for regulated public utilities to act more like self-funded litigants . . . National law firms may charge \$600 and more per hour, and Sharyland is free to hire such firms to represent it before the PUC, but that does not mean that rates in that range are reasonable for practitioners before the PUC, and Sharyland's captive customers should not be expected to cover hourly fees at and above \$550 per hour.¹⁶³⁴

¹⁶³⁰ Staff Ex. 3B (Stark Supp. Dir.) at 9. The most experienced lawyers at Duggins Wren who worked on this case billed at \$420 per hour. *E.g.*, SWEPCO Ex. 34 (Ferry-Lynn Reb.), Exh. LFN-2R at 922. Herrera Law's hourly rates ranged from \$250 to \$485 per hour. CARD Ex. 5 (Webking Dir.), Attachment CJW-2 at 2. These exhibits indicate that Ms. Webking bills at \$550 per hour.

¹⁶³¹ *Review of Rate Case Expenses Incurred by Sharyland Utilities, L.P. in Docket No. 45414*, Docket No. 45979, PFD (Oct. 29, 2018). *See also* Staff Ex. 3B (Stark Supp. Dir.) at 9-10.

¹⁶³² Docket No. 45979, Order of Dismissal at 1 (Oct. 8, 2019), "The Commission finds that Sharyland's original request to recover rate-case expenses from Docket No. 45414 is obsolete and moot, given the agreement and final order in Docket No. 48989 prohibiting Sharyland from recovering those expenses, and the Commission therefore finds good cause under 16 TAC § 22.181(d) to grant Sharyland's motion to dismiss."

¹⁶³³ Staff Ex. 3B (Stark Supp. Dir.) at 9-10 (citing Docket No. 45979, PFD at 41-42).

¹⁶³⁴ Staff Ex. 3B (Stark Supp. Dir.) at 10 (citing Docket No. 45979, PFD at 42-43).

Staff also argued in its initial brief that SWEPCO should not be allowed to recover rate case expenses above \$550 an hour because SWEPCO failed to provide information regarding the charges about \$550 per hour until after the discovery period closed in this case.¹⁶³⁵

Staff notes that the Commission has approved a cap on attorney fees in some settled cases but has yet to rule on the issue in a contested proceeding.¹⁶³⁶ Staff witness Stark explained that Staff's recommended \$550 per-hour cap does not limit SWEPCO from paying above \$550 an hour for legal counsel services: "[m]y recommendation is only intended to be a cap on the amount that should reasonably be recovered from ratepayers."¹⁶³⁷

2. SWEPCO's Arguments and Evidence

SWEPCO counters that a fixed \$550 per-hour cap is inconsistent with how courts and the Commission typically consider the reasonableness of attorneys' fees and is inconsistent with the Commission's RCE Rule.¹⁶³⁸ SWEPCO notes that the Commission's RCE Rule does not specify a cap on professional fees. Instead, the rule states that the presiding officer shall consider multiple relevant factors in deciding whether the fee paid to an attorney or other professional was extreme or excessive, including, among other factors: (1) the nature, extent, and difficulty of the work; (2) the time and labor required and expended; (3) the nature and scope of the case, including but not limited to the amount of money or value of property or interest at stake and the novelty or complexity of the issues addressed; and (4) the amount of rate-case expenses reasonably associated with each issue.¹⁶³⁹ SWEPCO contends that courts consider a variety of factors in determining whether attorneys' fees are reasonable and they do not employ bright-line limitations such as the

¹⁶³⁵ Staff Ex. 3B (Stark Supp. Dir.) at 11. Staff states in its initial brief that SWEPCO's RCE witness waited until her supplemental rebuttal testimony, rather than her direct or rebuttal testimony, to describe the services provided by the attorneys who charged more than \$550 per hour, describe the issues they addressed, and address the rates that they charged. Staff Initial Brief at 83-84.

¹⁶³⁶ See *Application of El Paso Electric Company to Change Rates*, Docket No. 46831, FoF No. 64 (Dec. 18, 2017).

¹⁶³⁷ Staff Ex. 3B (Stark Supp. Dir.) at 11.

¹⁶³⁸ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 4.

¹⁶³⁹ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 5; see also 16 TAC § 25.245.

one Staff recommends.¹⁶⁴⁰ For example, other relevant factors to consider include the experience, reputation, and ability of the professional and the fees customarily charged for similar professional services.¹⁶⁴¹

SWEPCO also argues that the OAG opinions and Docket No. 45979 PFD cited by Staff do not support limiting the recovery of every professional in a ratemaking proceeding to \$550 per hour. First, the OAG memoranda sets an amount of \$525 per hour as presumptively reasonable for an attorney's hourly rate for routine matters, and simply requires pre-authorization for an hourly rate exceeding \$525.¹⁶⁴² According to SWEPCO, if a firm \$525 per hour cap were uniformly imposed, there would be no reason for the OAG to allow for an exception in circumstances in which a higher hourly rate might be appropriate.¹⁶⁴³ Second, the Docket No. 45979 PFD also does not require that a \$550 per hour cap must be applied to every professional in a ratemaking proceeding. Instead, as the PFD noted, the RCE Rule is intended to help ensure that utilities act more like self-funded litigants.¹⁶⁴⁴

SWEPCO's witness Ferry-Nelson explains the expertise and SWEPCO's need for counsel from its two outside attorneys who charged in excess of \$550 per hour: Mr. Bradley M. Seltzer, who is an energy tax law expert, and former Chief Justice of the Supreme Court of Texas Thomas Phillips. Ms. Ferry-Nelson confirmed that these two attorneys are routinely hired by self-funded litigants for their expert representation at the same or greater rates than those charged to SWEPCO.¹⁶⁴⁵ Ms. Ferry-Nelson testified that, in this rate case, SWEPCO is litigating the treatment of a complex tax issue involving SWEPCO's net operating loss carry-forward accumulated deferred federal income tax asset.¹⁶⁴⁶ The vast majority of this issue was handled by

¹⁶⁴⁰ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 5.

¹⁶⁴¹ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 5.

¹⁶⁴² SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 7.

¹⁶⁴³ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 7.

¹⁶⁴⁴ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 7.

¹⁶⁴⁵ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.), Exh. LFN-1SR (Affidavit of Thomas R. Phillips), Exh. LFN-2SR (Affidavit of Bradley M. Seltzer).

¹⁶⁴⁶ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

internal SWEPCO employees who were assisted by in-house and outside counsel charging an hourly rate lower than Staff's recommended \$550 per hour cap.¹⁶⁴⁷ However, due to the complex nature and the amount at stake with this issue, SWEPCO contends that it was reasonable to hire an outside energy tax law expert to opine on the substantial risk that adopting Staff's proposed tax approach would violate normalization consistency rules.¹⁶⁴⁸ Ms. Ferry-Nelson concludes that, although his hourly rate is over \$550, Mr. Seltzer's expertise and experience are counterbalanced by efficiency in dealing with an extremely complex topic, making his fees reasonable.¹⁶⁴⁹

Ms. Ferry-Nelson explained that SWEPCO hired Justice Phillips to represent SWEPCO in the appeal before the Texas Supreme Court wherein SWEPCO successfully defended the Commission's order in Docket No. 40443.¹⁶⁵⁰ Ms. Ferry-Nelson testified that, at all other levels of the appellate process, SWEPCO used less expensive appellate counsel.¹⁶⁵¹ However, at the Supreme Court level, it was reasonable to hire Justice Phillips because he is intimately familiar with the procedure at the Texas Supreme Court and is experienced in preparing written and oral arguments. He provided SWEPCO with efficient and effective service in defending the Commission's order and reversing the decision made by the Austin Court of Appeals over an issue with a major financial impact.¹⁶⁵² Justice Phillips was therefore not providing standard utility rate case counsel, but counsel that combined the unique aspects of utility ratemaking with the appellate process before the Supreme Court of Texas.¹⁶⁵³

SWEPCO emphasizes its claim that it acted like a reasonable, self-funded litigant with regard to both Mr. Seltzer and Justice Phillips.¹⁶⁵⁴ Ms. Ferry-Nelson testified:

¹⁶⁴⁷ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

¹⁶⁴⁸ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

¹⁶⁴⁹ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

¹⁶⁵⁰ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

¹⁶⁵¹ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

¹⁶⁵² SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8-9.

¹⁶⁵³ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 9.

¹⁶⁵⁴ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 9. SWEPCO Initial Brief at 139-40. SWEPCO's reply brief summarizes and reiterates the RCE arguments it made in its initial brief.

[T]he facts in this case demonstrate that SWEPCO acted like a reasonable, self-funded litigant. The vast majority of SWEPCO's outside attorneys and consultants are well below Staff's proposed \$550/hour cap. For those few whose rates exceed the cap, it was reasonable to exceed that hourly amount based on their experience and the complexity of the issues addressed. Further, as discussed in my supplemental rebuttal testimony, these professionals are routinely hired by self-funded litigants for their expert representation at the same rates charged to SWEPCO.¹⁶⁵⁵

3. ALJs' Analysis

The ALJs find that Staff's proposed \$550 per-hour cap on hourly rates sought for recovery as RCEs in this case is reasonable and supported by the record in this case. The ALJs, however, are not recommending that a hard \$550 per-hour cap should apply in all future cases for two primary reasons. First, at some point in the future, hourly rates in excess of \$550 per hour may not be deemed excessive, and instead might be deemed reasonable, depending on the then-existing circumstances, such as the economy, inflation, or any other number of factors. Today, however, and particularly in light of the OAG's 2016 and 2019 memoranda on this topic, \$550 is the upper limit. Second, there may be instances in the near term, not present here, where an electric utility could justify a request to recover in excess of \$550 per hour from its customers.

In this case, SWEPCO has not met its burden of proof to show the reasonableness of RCEs in excess of \$550 per hour. The RCE Rule requires SWEPCO to file sufficient information that details and itemizes all rate-case expenses.¹⁶⁵⁶ SWEPCO did not provide sufficient information in its direct or rebuttal case explaining, or justifying, why it would be reasonable for SWEPCO's customers to reimburse SWEPCO for legal counsel rates in excess of \$550. As Staff noted, this \$550 per hour cap issue is not novel to this rate case, and SWEPCO could have anticipated that this issue would be contested. Staff, however, presented a compelling case that legal fees in excess

¹⁶⁵⁵ Ferry-Nelson Final RCE Testimony at 5.

¹⁶⁵⁶ 16 TAC § 25.245(b).

of \$550 per hour in this rate case are excessive and, therefore, unreasonable and should not be borne by the SWEPCO's customers.

Moreover, SWEPCO has not shown that the considerations specified in the RCE Rule justify the rates charged in excess of \$550 per hour in this case. The ALJs agree that the “nature, extent, and difficulty of the work” in electric utility rate and fuel reconciliation dockets may not be something that a junior associate could handle competently, and that many issues in a rate case, routinely handled by lawyers who bill at less than \$550 per hours, are complex and sometimes novel. Ms. Ferry-Jackson concedes that, as to Mr. Seltzer's work, “[t]he vast majority of this issue was handled by internal SWEPCO employees who were assisted by in-house and outside counsel charging an hourly rate lower than Staff's recommended \$550 per hour cap.”¹⁶⁵⁷ Similarly, for Justice Phillips, “at all other levels of the appellate process, SWEPCO used less expensive appellate counsel.”¹⁶⁵⁸ SWEPCO has not explained why these issues could not have been handled by its in-house or traditional outside counsel, or by other attorneys who bill at \$550 per hour or less. Considerations regarding the time and labor required by Mr. Seltzer and Justice Phillips are not addressed in SWEPCO's case, other than to note the number of hours they both billed to these projects.

The ALJs also conclude that SWEPCO's argument that it was “acting like a reasonable, privately funded litigant” by paying attorneys' fees in excess of \$550 per hour (and in fact over \$1000 per hour) is flawed. The reference to “self-funded litigants” in the preamble to the RCE Rule is there to “incentivize” utilities and municipalities to act with some restraint when incurring RCEs—as would self-funded litigants who do not recover their legal expenses from their captive customers.¹⁶⁵⁹ A true self-funded litigant relies on its shareholders or association members to pay, or cover, its legal fees, not its customers. SWEPCO argues that it is nevertheless “acting” like a

¹⁶⁵⁷ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

¹⁶⁵⁸ SWEPCO Ex. 35 (Ferry-Nelson Supp. Reb.) at 8.

¹⁶⁵⁹ As noted, the particular language in the preamble states: “[A]dopting clear evidentiary standards and specific criteria for the review and determination of the reasonableness of rate-case expenses will incentivize utilities and municipalities to act more like self-funded litigants, while still providing for recovery of reasonable rate-case expenses.” RCE Rule Preamble at 13-14.

self-funded litigant because self-funded litigants routinely hire Mr. Seltzer and Justice Phillips at the same rates those two attorneys charged to SWEPCO.¹⁶⁶⁰ Essentially, SWEPCO argues that if some person or company is willing to hire Mr. Seltzer and Justice Phillips in excess of \$550 per hour (in these cases, in excess of \$1000 per hour), then SWEPCO's customers should be expected to also cover RCEs in excess of \$550 per hour. The evidence shows that Mr. Seltzer and Justice Phillips bill out at hourly rates in excess of \$1000 per hour. SWEPCO, however, has pointed to nothing in the RCE Rule that suggests that if a consultant or lawyer hired by a utility or municipality routinely bills at a rate in excess of \$550 per hour to non-utility clients, then that rate is, essentially, *de facto* reasonable in the context of utility rate case RCEs.

As addressed in the Docket No. 45979 PFD, the ALJs have some reservations about recommending a \$550 per hour cap for attorneys' fees in this case because this recommendation could lead some lawyers providing services in ratemaking proceedings to assume they can increase their hourly rates to \$550. That is not the intent of this recommendation. The \$550 cap recommended in this case is a reasonable cap for the highest fees charged by the most experienced attorneys participating in a complex base rate case.¹⁶⁶¹ SWEPCO and CARD can agree to pay more than \$550 per hour to their outside counsel and consultants, but they should not expect to be compensated for charges in excess of that amount without a compelling showing that the payment is reasonable and not excessive. In any event, they must justify all of their requested RCEs regardless of hourly rate.

For these reasons, the ALJs recommend that the Commission adopt Staff's position on this issue, and disallow \$65,167 in RCEs requested by SWEPCO in this docket. This disallowance is reflected in the table on page 8 of Ms. Stark's Final RCE testimony filed on July 20, 2021, with the clarification that the total allowed amount presented on that page in her testimony should be increased by \$2,500 to account for the CARD RCEs discussed above in the context of Docket

¹⁶⁶⁰ *E.g.*, Ferry-Nelson Final Supplemental RCE Testimony at 5, where she states "these professionals are routinely hired by self-funded litigants for their expert representation at the same rates charged to SWEPCO."

¹⁶⁶¹ *See* Docket No. 45979, PFD at 43. The ALJs recognize that there may be instances in other cases in which a \$550 per-hour fee is unreasonable, depending on the facts in that case.

No. 47141. Taking these adjustments into account, the total amount of RCEs the ALJs recommend for recovery in this case for both SWEPCO's and CARD's RCEs is \$3,700,021.¹⁶⁶²

The ALJs also suggest that the Commission consider re-instating its prior practice that severed RCEs from electric base rate cases and allowed the RCEs to be addressed in a self-contained docket after a final order had been issued in the underlying base rate case. Doing so would avoid situations, as in this docket, where it was necessary to allow SWEPCO, CARD, and Staff to continue to file RCE reports and testimony up to two months after the close of the hearing to ensure that as many RCEs as possible could be addressed in this PFD. As noted above, there are still considerable "trailing" RCEs attributable to this docket that have not yet been addressed and will need to be handled in some future docket. In this docket, SWEPCO's RCEs are those through May 2021, meaning that all outside legal and consultant fees incurred in June 2021 to prepare the Company's post-hearing briefs, and all fees that will be incurred to prepare exceptions and replies to exceptions to this PFD, and potentially motions for rehearing after the Commission issues its order in this case, are not addressed in this PFD. The ALJs are aware that the Commission recently rejected a proposal in a Sharyland base rate case to use estimated RCEs and then later true up the estimates in a compliance filing.¹⁶⁶³ In the Sharyland case, the Commission provided the parties with two alternatives: one allowing RCE recovery as an expense in the utility's revenue requirement, and the other allowing recovery through a rider. The ALJs' suggestion that the Commission allow electric utilities to sever the RCE issues from their base rate dockets for consideration in a separate docket does not appear to contradict the Commission's ruling in the Sharyland case. The ALJs are not suggesting that estimates should be used, and the recommended proposal is that the RCEs subject to this docket will be recovered through SWEPCO's RCS Rider.

¹⁶⁶² See the table in Stark Final RCE Testimony at 8 and add \$2,500 to the Docket No. 47141 line in the columns labeled "CARD" and "Total."

¹⁶⁶³ *Application of Sharyland Utilities, L.L.C. for Authority to Change Rates*, Docket No. 51611, Order Remanding Case to Docket Management (Jun. 28, 2021).

XIII. OTHER ISSUES [INCLUDING BUT NOT LIMITED TO PO ISSUES]

A number of the issues addressed in this section either were not challenged by any party, or may have been challenged by a party, but SWEPCO agreed with the challenged party's position and agreed to the proposed adjustment. In those situations, where an issue was not contested, or where SWEPCO agreed to the opposing party's adjustment, the ALJs find that the unchallenged or agreed proposal is reasonable and should be approved by the Commission.

A. Additional Issues

1. Factoring Expense

SWEPCO agrees with Staff that the final approved return on equity should be included in the factoring rate calculation to synchronize factoring expense properly to the approved revenue requirement.¹⁶⁶⁴ SWEPCO notes that that a final "compliance" cost of service study that properly reflects the Commission's final decisions will be completed at the conclusion of this case. The ALJs agree that compliance cost of service study is intended to synchronize all impacts of the case, including factoring expense.¹⁶⁶⁵ The final approved return on equity should be included in the factoring rate calculation to synchronize factoring expense to the approved revenue requirement, and this will be accomplished through the compliance cost of service study.

2. Interest on Customer Deposits

SWEPCO does not contest Staff's adjustment to update the customer deposit interest amount to incorporate the Commission-approved 2021 interest rate.¹⁶⁶⁶ No other party addressed this issue. The ALJs agree that the customer deposit interest amount should incorporate the approved 2021 interest rate.

¹⁶⁶⁴ SWEPCO Ex. 36 (Baird Reb.) at 36.

¹⁶⁶⁵ SWEPCO Ex. 36 (Baird Reb.) at 5.

¹⁶⁶⁶ SWEPCO Ex. 36 (Baird Reb.) at 37.

3. Supplemental Employee Retirement Plan (SERP)

SWEPCO argues that SERP is not an extraordinary or discretionary benefit. Instead, this retirement plan provides the same benefits that general (or “qualified”) pension plans do. The two differ only in when the IRS allows the tax deduction to be taken. Contributions for benefits under qualified pension plans, which had a specific compensation limit of \$270,000 in 2017, are deducted in the current year. The pension benefits for the portion of an employee’s salary that exceeds the compensation limit would be in the SERP and that deduction would occur when the employee receives the benefit.¹⁶⁶⁷ Nevertheless, SWEPCO has removed this SERP expense from its requested cost of service based on the Commission’s precedents in Docket Nos. 40443 and 46449.¹⁶⁶⁸ Staff witness Stark, however, raised concerns with how SERP was removed from SWEPCO’s requested cost of service.¹⁶⁶⁹ SWEPCO states that it does not contest Ms. Stark’s recommended additional adjustment for SERP expenses.¹⁶⁷⁰

4. Pension Expense

Staff originally challenged SWEPCO’s use of the actual payroll capitalization rate in the cost of service. Staff, however, has since accepted SWEPCO’s approach.¹⁶⁷¹ This issue is no longer contested by any party.

5. Executive Perquisites

SWEPCO concedes that, given the Commission’s decisions in Docket Nos. 40443 and 46449, it does not contest Staff’s recommended adjustment for executive perquisites.¹⁶⁷²

¹⁶⁶⁷ Docket No. 46449, PFD at 248 (Sep. 22, 2017).

¹⁶⁶⁸ SWEPCO Ex. 6 (Baird Dir.) at 26.

¹⁶⁶⁹ Staff Ex. 3 (Stark Dir.) at 10-12.

¹⁶⁷⁰ SWEPCO Ex. 36 (Baird Reb.) at 35.

¹⁶⁷¹ Staff Initial Brief at 90-91 (“Ms. Stark concedes that the use of the actual test year capitalization ratio is more appropriate.”)

¹⁶⁷² SWEPCO Ex. 36 (Baird Reb.) at 36.

6. Potential Natural Gas Conversion of the Welsh Plant

SWEPCO addresses the Welsh Plant conversion issues in Sections II and X of its post-hearing briefs. In Section X of its briefs, SWEPCO summarizes Sierra Club witness Glick's request that the Commission not allow the recovery of future capital or fixed O&M associated with a conversion of the Welsh generating plant to operate on natural gas until SWEPCO has presented an analysis justifying such conversion. SWEPCO urges that Ms. Glick's recommendation is premature at this time.¹⁶⁷³

This issue is addressed in full in Section V of this PFD, dealing with rate base items. The ALJs' recommendation on this issue is provided in Section V.

B. Construction Work in Progress [PO Issue 17]

SWEPCO has not included any Construction Work in Progress in its requested rate base.¹⁶⁷⁴

C. Cash Working Capital [PO Issue 18]

SWEPCO's request regarding Cash Working Capital is uncontested. SWEPCO notes that, by using the last approved lead-lag study, as supported by Staff, SWEPCO anticipates savings of around \$75,000 in rate-case expenses, which is the average cost of the last SWEPCO and AEP Texas lead-lag studies.¹⁶⁷⁵ SWEPCO agrees with Staff that the amount of Cash Working Capital should be synchronized with the Commission's final decision.¹⁶⁷⁶

¹⁶⁷³ SWEPCO Ex. 33 (Brice Reb.) at 16-17.

¹⁶⁷⁴ SWEPCO Ex. 6 (Baird Dir.) at 6.

¹⁶⁷⁵ SWEPCO Ex. 6 (Baird Dir.) at 58-59.

¹⁶⁷⁶ SWEPCO Ex. 36 (Baird Reb.) at 28.

D. Administrative and General O&M Expenses [PO Issue 25]

SWEPCO notes that it inadvertently included \$46,306 in its requested regulatory commission expenses that should have been removed.¹⁶⁷⁷ Staff witness Stark's adjustment of (\$46,306) excludes this amount from SWEPCO's requested revenue requirement.¹⁶⁷⁸ SWEPCO agrees with this adjustment.¹⁶⁷⁹ No other party raised any issue with respect to the Company's administrative and general expenses.

E. Tax Savings From Liberalized Depreciation [PO Issue 34]

As explained and supported by Company witness Hodgson, SWEPCO's federal income taxes were calculated consistent with PURA § 36.059, the provisions addressing treatment of tax savings derived from liberalized depreciation and amortization, the investment tax credit, or similar methods.¹⁶⁸⁰ No party challenged this issue or SWEPCO's federal income tax calculation or methodology.

F. Advertising Expense [PO Issue 35]

No party challenged SWEPCO's proposed advertising expense.¹⁶⁸¹

G. Competitive Affiliates [PO Issue 43]

SWEPCO has competitive affiliates but states that it did not include any competitive affiliate charges in its rate request in this proceeding.¹⁶⁸² No party raised an issue with respect to competitive affiliate charges.

¹⁶⁷⁷ Staff Ex. 3 (Stark Dir.), Attachment RS-18.

¹⁶⁷⁸ Staff Ex. 3 (Stark Dir.) at 15.

¹⁶⁷⁹ SWEPCO Ex. 36 (Baird Reb.) at 36.

¹⁶⁸⁰ SWEPCO Ex. 17 (Hodgson Dir.) at 3, 20.

¹⁶⁸¹ SWEPCO Ex. 6 (Baird Dir.) at 9, 30, 62; *see also* SWEPCO Ex. 1 (Application) at Schedules G-4, G-4.1-G-4.1c, G-4.1d, G-4.2-4.2c, and G-4.3-4.3e.

¹⁶⁸² SWEPCO Initial Brief at 126.

H. Deferred Costs [PO Issues 50, 51]

SWEPCO is not seeking to include in rates any costs previously deferred by an order of the Commission.

As to costs SWEPCO seeks to defer from this case to a future case, as discussed in Section VII of this PFD, the ALJs recommend that the Commission reject SWEPCO's proposal that the portion of its ongoing net SPP OATT bill that is above or below the net test year level be deferred into a regulatory asset or liability, which would then be addressed in a future TCRF or base-rate proceeding. As to RCEs, discussed in Section XII above, SWEPCO agrees Staff's recommendation that the Commission authorize SWEPCO to establish a regulatory asset to record both SWEPCO's and CARD's trailing expenses from this proceeding to be recovered in the future.¹⁶⁸³ As recommended in Section XII, the ALJs agree with this proposal to address trailing RCEs in a future proceeding.

I. Proposed Time-of-Use Rate Pilot Projects [PO Issues 80, 81, 82, 83, 84, 85]

SWEPCO witnesses Smoak and Jackson support SWEPCO's proposal to offer Texas customers a time-of-use rate.¹⁶⁸⁴ Specifically, SWEPCO proposes an optional Residential Time-of-Use rate schedule as a pilot available to residential customers and a Commercial Time-of-Use rate schedule for commercial loads of 100 kW or greater.¹⁶⁸⁵ The pilots will gauge interest and utilization of the time-of-use format by customers that do not qualify for SWEPCO's Off Peak Rider for LP, LLP, and Metal Melting Service.¹⁶⁸⁶ Under the offerings, participating

¹⁶⁸³ Staff Initial Brief at 87.

¹⁶⁸⁴ See SWEPCO Ex. 3 (Smoak Dir.) at 9-10; SWEPCO Ex. 32 (Jackson Dir.) at 28-30, Exhs. JLJ-4 and JLJ-5.

¹⁶⁸⁵ SWEPCO Ex. 3 (Smoak Dir.) at 9; SWEPCO Ex. 32 (Jackson Dir.) at 28-29 (describing the proposed optional residential time of use offering) and 29-30 (describing the commercial time-of-use offering).

¹⁶⁸⁶ SWEPCO Ex. 3 (Smoak Dir.) at 9-10.

customers can more precisely manage their energy costs by shifting energy consumption to off-peak periods.¹⁶⁸⁷ No party addressed or challenged this proposal.

J. Experimental Economic Development Rider

SWEPCO witnesses Smoak and Jackson support SWEPCO's proposal to update its economic development rider.¹⁶⁸⁸ SWEPCO states that these update is intended to spur economic growth in its Texas service territory, providing long-term benefits to SWEPCO's customers.¹⁶⁸⁹ The proposed tariff revisions offer two options to attract loads from a variety of businesses with different load requirements.¹⁶⁹⁰ No party addressed or challenged these proposals.

K. Any Exceptions Requested to PUC Rules [PO Issue 64]

As addressed in Section II.A.1 of this PFD, the Commission's 16 TAC § 25.231 requires that an asset in rate base be depreciated over its service life. After the excess ADFIT offset to the remaining undepreciated value of Dolet Hills, SWEPCO proposes an additional mitigation measure to expense the remaining value of SWEPCO's investment in Dolet Hills over four years, the anticipated period between rate cases.¹⁶⁹¹

The ALJs recommend that the Commission reject SWEPCO's proposed treatment for Dolet Hills after it is retired on December 31, 2021. If the Commission agrees with the ALJs, SWEPCO's request for an exception to 16 TAC § 25.231 is, therefore, moot.

¹⁶⁸⁷ SWEPCO Ex. 3 (Smoak Dir.) at 10; SWEPCO Ex. 32 (Jackson Dir.) at 29.

¹⁶⁸⁸ See SWEPCO Ex. 3 (Smoak Dir.) at 11-12; SWEPCO Ex. 32 (Jackson Dir.) at 26; SWEPCO Ex. 1 (Application) at Schedule Q-8.8, Sheet IV-17.

¹⁶⁸⁹ SWEPCO Ex. 3 (Smoak Dir.) at 11.

¹⁶⁹⁰ SWEPCO Ex. 32 (Jackson Dir.) at 26.

¹⁶⁹¹ SWEPCO Ex. 6 (Baird Dir.) at 49.

L. Any Requests for Waivers [PO Issue 65]

SWEPCO has provided all of the schedules and workpapers required by the Commission's RFP for Generating Utilities.¹⁶⁹² However, SWEPCO requests a waiver of the portions of the RFP that request information related to fuel reconciliation proceedings.¹⁶⁹³ SWEPCO did not file a fuel reconciliation request in this docket; therefore, the schedules dealing with fuel reconciliation proceedings are not applicable.¹⁶⁹⁴ Schedule V of SWEPCO's RFP details the specific schedules that are not required in this proceeding related to fuel reconciliation, as well as certain other waivers requested by SWEPCO.¹⁶⁹⁵ SWEPCO's requested waivers are uncontested.

SWEPCO also requested and was granted a waiver of the requirement to file Schedule S (Independent Audit of the Application) in Docket No. 50917.¹⁶⁹⁶ Commission Staff states in its initial brief that it supports this waiver.¹⁶⁹⁷ No other party addressed this Schedule S issue in evidence or post-hearing briefs.

The ALJs agree with both waiver requests and recommend that the Commission approve the Company's requests that it not be required to file fuel reconciliation schedules. The Commission has already granted SWEPCO's request for waiver of the RFP requirement to file a Schedule S in this docket

M. Compliance with Docket No. 46449 [PO Issue 66]

Ordering Paragraph 10 of the Order on Rehearing in Docket No. 46449, SWEPCO's last base-rate case, states, "[t]he regulatory treatment of any excess deferred taxes resulting from the

¹⁶⁹² SWEPCO Ex. 4 (Brice Dir.) at 5.

¹⁶⁹³ SWEPCO Ex. 4 (Brice Dir.) at 5.

¹⁶⁹⁴ SWEPCO Ex. 4 (Brice Dir.) at 5.

¹⁶⁹⁵ SWEPCO Ex. 1 (Application) at Schedule V.

¹⁶⁹⁶ SWEPCO Ex. 4 (Brice Dir.) at 5; *Application of Southwestern Electric Power Company for Waiver of Rate Filing Package Schedule S*, Docket No. 50917, Order at 1 (Dec. 17, 2020).

¹⁶⁹⁷ Staff Initial Brief at 92.

reduction in the federal-income-tax rate will be addressed in SWEPCO's next base-rate case." SWEPCO's compliance with this requirement is addressed in the direct testimonies of SWEPCO witnesses Brice and Baird.¹⁶⁹⁸ Although the ALJs do not recommend SWEPCO's proposals with regard to excess deferred taxes, and instead propose a different treatment, the regulatory treatment of excess deferred taxes is addressed in this PFD.

XIV. CONCLUSION

The ALJs recommend that the Commission implement their recommendations and findings set forth in the discussion above by adopting the following proposed findings of fact and conclusions of law in the Commission's final order.

XV. FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDERING PARAGRAPHS

A. Findings of Fact

Procedural History

1. Southwestern Electric Power Company (SWEPCO or the Company) is a wholly-owned subsidiary of American Electric Power Company (AEP) and is a fully integrated electric utility serving retail and wholesale customers in Texas, Louisiana, and Arkansas.
2. SWEPCO serves approximately 187,400 Texas retail customers, all of whom are affected by SWEPCO's application to change rates.
3. The Federal Energy Regulatory Commission (FERC) regulates SWEPCO's wholesale electric operations.
4. On October 14, 2020, SWEPCO filed its Petition and Statement of Intent requesting that the Public Utility Commission of Texas (Commission) authorize SWEPCO to increase its Texas retail base rate revenue by \$90,199,736, which is an increase of 26.03% over its adjusted Texas retail test year base rate revenues exclusive of fuel and rider revenues. The overall impact of the proposed revenue requirement increase, considering both fuel and non-fuel revenues, is a 15.57% increase.
5. SWEPCO employed the 12-month period ending March 31, 2020, as its historical test year.

¹⁶⁹⁸ SWEPCO Ex. 4 (Brice Dir.) at 7-8; *see also* SWEPCO Ex. 6 (Baird Dir.) at 23, 48-49.

6. SWEPCO's proposed rate increase reflects incremental investment in generation since its last test year and incremental investment in transmission and distribution since SWEPCO last modified its Transmission Cost Recovery Factor (TCRF) and Distribution Cost Recovery Factor (DCRF).
7. SWEPCO proposes revisions to many of its rate schedules and riders, and requests that the Commission set SWEPCO's TCRF and DCRF to zero, and establish the baseline values consisting of the inputs to the calculations that will be used to calculate SWEPCO's TCRF and DCRF in future proceedings.
8. Additionally, SWEPCO has announced the early retirement of its Dolet Hills Power Plant (Dolet Hills) as of December 31, 2021. As a result, SWEPCO proposes rate treatments to address this early retirement.
9. SWEPCO requests an increase of \$5 million over test year costs to expand its distribution vegetation management program.
10. SWEPCO also requests that the Commission approve certain policy-oriented proposals, including the establishment of a self-insurance reserve, deferred recovery of Hurricane Laura restoration cost, and certain charges billed to SWEPCO by the Southwest Power Pool (SPP).
11. SWEPCO provided notice of its application by publication for four consecutive weeks in newspapers having general circulation in each county of SWEPCO's Texas service territory. Individual notice of its proposed rate change was provided to all of its retail customers by bill inserts and direct mailing. SWEPCO timely served notice of its statement of intent to change rates on all municipalities retaining original jurisdiction over its rates and services. Additionally, SWEPCO electronically provided notice to the Staff of the Public Commission of Texas (Staff), the Office of Public Utility Counsel (OPUC), and legal representatives of all parties to SWEPCO's most recent base case, Docket No 46449.
12. The following intervening parties participated in this docket: OPUC; Cities Advocating Reasonable Deregulation (CARD); Eastman Chemical Company (Eastman); Texas Industrial Energy Consumers (TIEC); Nucor Steel-Longview; Texas Cotton Ginners Association; Northeast Texas Electric Cooperative, Inc. (NTEC) and East Texas Electric Cooperative, Inc.; Sierra Club and Dr. Lawrence Brough (Sierra Club); East Texas Salt Water Disposal Company and East Texas Oil and Gas Producers (ETSWD); and Walmart Inc.. Staff also participated in this docket.
13. On October 30, 2020, the Commission referred this case to the State Office of Administrative Hearings (SOAH).
14. On November 19, 2020, SWEPCO filed an Agreed Motion to Adopt Procedural Schedule in which it agreed to extend the statutory deadline to October 27, 2021.

15. On December 17, 2020, the Commission issued its Preliminary Order identifying the issues to be addressed in this proceeding.
16. On November 23, 2020, SOAH Order No. 2 was issued, setting the hearing on the merits for May 19-28, 2021.
17. Collectively, the Commission's Preliminary Order and SOAH Order No. 2 include a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or an attachment that incorporates the reference by factual matters asserted in the complaint or petition filed with the state agency.
18. SWEPCO timely filed with the Commission petitions for review of rate ordinances of the municipalities exercising original jurisdiction within its service territory. All such appeals were consolidated for determination in this proceeding.
19. The hearing on the merits commenced before four SOAH Administrative Law Judges (ALJs) on May 19, 2021, and concluded on May 26, 2021.
20. The parties submitted initial post-hearing briefs on June 17, 2021, and reply briefs on July 1, 2021. Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs were filed July 1, 2017, and the record closed on that date.
21. In accordance with Order No. 13, SWEPCO and CARD filed final rate case expense (RCE) reports on July 6, 2021.
22. On July 20, 2021, Staff filed its Final Supplemental Direct Testimony regarding rate case expenses.
23. On July 27, 2021, SWEPCO filed its Final Supplemental Rebuttal Testimony on RCEs, and CARD filed a Statement of Position on its final requested RCEs.
24. The ALJs issued a Proposal for Decision in this docket on August 27, 2021.

Rate Base/Invested Capital

Generation, Transmission, and Distribution Capital Investment

25. SWEPCO has invested approximately \$636.7 million in its transmission system since the end of the test year (June 30, 2016) in its last base rate case, Docket No. 46449.
26. SWEPCO has incurred a total amount of \$143.5 million of distribution capital investment placed in service during the period July 1, 2016, through March 31, 2020.

27. No party contested SWEPCO's transmission or distribution investment. The entirety of the transmission and distribution investment is used and useful in providing service to the public and is reasonable and necessary.

New Generation Capital Investment

28. SWEPCO regularly reviews capital projects that could provide economic, environmental, reliability, or safety-related benefits to SWEPCO's generating fleet. The first step in any capital addition evaluation is to research alternatives that may exist, and when warranted to perform cost-benefit analyses to estimate a project's value.
29. The Commission's Electric Utility Rate Filing Package for Generating Utilities (RFP) Schedule H-5.2b provides a list of every capital project with a value of greater than \$100,000 placed in service since the close of the previous rate case test year through the end of the test year in this case. This schedule provides a description of the reason for the capital investment, including: (1) Immediate Personnel Safety Requirement, (2) Regulatory Safety of Operations Requirement, (3) Regulatory Commitment (not classified in (2)), (4) Plant Efficiency Improvement, (5) New Building, (6) Productivity Improvement, (7) Reliability, (8) Economic, (9) Habitability, and (10) Other. The schedule also indicates whether a cost-benefit analysis was done for the project, which was done for a large majority of the projects.
30. SWEPCO uses multiple processes to ensure its generation operations and maintenance (O&M) expenses are reasonable. These include the use of budget controls, the review of cost trends, and tracking of staffing levels at its power plants.
31. RFP Schedule H-1.2 provides a description of the operations and maintenance (O&M) expenses incurred by FERC Account, by plant, for each month of the test year. RFP Schedule H-3 provides historical SWEPCO generation O&M expenses, by FERC Account, by year since 2015. RFP Schedule H-4 provides the major O&M projects undertaken during the test year by plant.
32. Except for Sierra Club's challenges to the test-year capital and O&M spending at the Flint Creek, Welsh, and Dolet Hills plants, no party contested the prudence of SWEPCO's generation capital investments since the end of the Docket No. 46449 test year, nor the reasonableness of the test-year O&M expenses.
33. The legally competent, credible evidence presented in this case does not show that SWEPCO's capital investment at Flint Creek, Welsh, and Dolet Hills was imprudent, or that the O&M expenses were unreasonable or unnecessary.
34. SWEPCO's capital investment placed in service since the end of the Docket No. 46449 test year, including the test year capital spending at the Flint Creek, Welsh, and Dolet Hills plants, is prudent.

35. SWEPCO's O&M expenses incurred at its generating plants during the test year, including Flint Creek, Welsh, and Dolet Hills, are a reasonable and necessary component of SWEPCO's cost of service.

Retired Gas-Fired Generating Units

36. In January 2019, SWEPCO retired Knox Lee Unit 4. Additionally, in May 2020 the Company retired Knox Lee Units 2 and 3, Lieberman Unit 2, and Lone Star Unit 1.
37. In deciding to retire these units, the Company considered the age and condition of the units' equipment, the significant capital investment required for them to continue operating, and their relatively high cost to generate electricity. In light of those considerations, SWEPCO determined it was in the best interest of its customers to retire the generating units. The prudence of those retirement decisions was unchallenged.
38. SWEPCO accounted for these retirements in accordance with the FERC Uniform System of Accounts (USofA), which requires that the book cost of the unit retired be credited to electric plant and the same book cost be charged to the accumulated provision for depreciation applicable to that property.
39. SWEPCO used that method to account for the retirement of Lieberman Unit 1 in Docket No. 46449, although this was uncontested and thus not specifically addressed by the Commission in that docket.
40. Although 16 Tex. Admin. Code (TAC) § 25.72(c) requires SWEPCO to maintain its books and records according to the FERC Uniform System of Accounts USofA, this prescribed accounting treatment does not necessarily control the treatment of the assets for ratemaking purposes.
41. In Docket No. 46449, the Commission determined that: (1) because Welsh Unit 2 was retired and no longer generating electricity, it was not used by and useful to SWEPCO in providing electric service to the public; (2) because Welsh Unit 2 was no longer used and useful, SWEPCO could not include its investments associated with the plant in its rate base and earn a return on that remaining investment; (3) allowing SWEPCO a return of, but not on, its remaining investment in Welsh Unit 2 properly balances the interests of customers and shareholders with respect to a plant that no longer provides service; and (4) the appropriate accounting treatment that results in the appropriate ratemaking treatment was to record the undepreciated balance of Welsh Unit 2 in a regulatory-asset account rather than leaving it in Accumulated Depreciation.
42. Consistent with the Commission's rate treatment of the retired Welsh Unit 2 in Docket No. 46449, the net book values of the retired Lieberman Unit 2, Lone Star Unit 1, and Knox Lee Units 2, 3, and 4 should be removed from rate base, so as to cease earning a return, and be placed in a regulatory asset.

43. The regulatory asset should be amortized over the four-year period in which the rates approved in this case are expected to be in effect.

Dolet Hills

44. Dolet Hills is a lignite-fueled generating unit located southeast of Mansfield, Louisiana, and jointly owned by SWEPCO; Cleco Power, LLC (CLECO); NTEC; and Oklahoma Municipal Power Authority. CLECO is the majority owner and operator of Dolet Hills.
45. Dolet Hills went into commercial operation in 1986, and its previously established useful life extends until 2046.
46. Dolet Hills is fueled by lignite mined in the same area by Dolet Hills Lignite Company (DHLC), a SWEPCO subsidiary. An equity return on DHLC and associated taxes is currently included in SWEPCO's rate base.
47. An investment in the Oxbow Mine reserves is also included in SWEPCO's rate base.
48. In early 2020, SWEPCO and CLECO determined that all economically recoverable lignite at the Dolet Hills associated mines had been depleted, that mining operations should cease, and that Dolet Hills should be retired by the end of 2021.
49. In deciding whether to retire Dolet Hills, SWEPCO evaluated mining operations and the costs of operating the plant beyond 2021. SWEPCO studied the expected total SWEPCO system cost to serve customers, comparing the scenario where Dolet Hills continues to serve customers through 2046 versus through a December 31, 2021 retirement. The study determined that the expected least-cost path for SWEPCO and its customers lay in retiring the plant.
50. No party contested the prudence of SWEPCO's decision to retire Dolet Hills at the end of 2021. The decision was prudent.
51. Dolet Hills will be retired on December 31, 2021, and will continue providing service until that time. SWEPCO plans to continue operating the plant on a seasonal basis, principally during the peak summer months, as it has done in recent years. However, the plant remains available in case called upon by SWEPCO or CLECO's respective regional transmission organizations for reliability reasons.
52. Until its retirement, output from Dolet Hills will continue to be offered into the energy market year-round, incurring expenses required to ensure the unit is available to operate when called upon.
53. Although mining operations ceased in May 2020, SWEPCO's investment in the Oxbow reserves will continue to provide service until Dolet Hills' retirement, as the plant will continue to burn previously mined lignite to generate electricity.

54. Similarly, DHLC will continue to exist and deliver lignite to Dolet Hills, and SWEPCO will continue incurring this non-eligible fuel expense through the plant's retirement.
55. In this case, the rate year began on the relate-back date, March 18, 2021.
56. Dolet Hills, SWEPCO's Oxbow investment, and DHLC have provided service to customers during the rate year.
57. Good cause exists to make post-test-year reductions to SWEPCO's rate base to reflect, consistent with the Commission's rate treatment of Welsh Unit 2 in Docket No. 46449, that Dolet Hills, the Oxbow investment, and DHLC will cease to provide service to SWEPCO's customers when the plant retires on December 31, 2021.
58. It is appropriate to remove all cost recovery for Dolet Hills, the Oxbow investment, and DHLC from base rates and address these issues instead in a Dolet Hills Rate Rider.
59. Through the Dolet Hills Rate Rider, SWEPCO should be permitted, with respect to the period between March 18, 2021 (the date when the rates are effective) and December 31, 2021 (the date of Dolet Hills' retirement) (the Operative-Plant Phase of the Dolet Hills Rate Rider), to recover the costs ordinarily permitted for an operating generating plant, including a return on the plant's net book value, depreciation, and O&M. SWEPCO should similarly be permitted to continue earning a return on the Oxbow investment and the return on equity (ROE) and associated taxes for DHLC.
60. With respect to the period after December 31, 2021 (the Post-Retirement Phase of the Dolet Hills Rate Rider), the remaining net book values of Dolet Hills and of the Oxbow investment should be placed in a regulatory asset to be amortized without a return. All other cost recovery for Dolet Hills, the Oxbow investment, or DHLC should cease, as the assets will no longer be providing service.
61. SWEPCO's recovery of Dolet Hills' remaining net book value (whether through depreciation during the Operative-Plant Phase or recovery from the regulatory asset during the Post-Retirement Phase) should be amortized in accord with the asset's useful life ending in 2046.
62. SWEPCO's recovery of its Oxbow investment following the Dolet Hills retirement should be amortized according to the same schedule as with the Dolet Hills plant.
63. Amortizing these assets in accord with Dolet Hills' useful life ending in 2046 equitably balances the interests of SWEPCO and both its current and future customers.
64. It would be inequitable to SWEPCO's current customers to accelerate SWEPCO's recovery of these assets, as SWEPCO proposes to do, through offsetting the excess

Accumulated Deferred Federal Income Taxes (ADFIT) SWEPCO owes to its current customers and/or amortizing the balance over only four years.

65. SWEPCO's calculation and use of estimated demolition costs for Dolet Hills is reasonable.

Coal and Lignite Inventories

66. SWEPCO must maintain solid fuel inventories to assure a continuous supply of coal and lignite of appropriate quality, delivered at a reasonable cost over a period of years so as to promote the generation of the lowest cost per kilowatt-hour (kWh) of electricity, within the constraints of safety, reliability of supply, unit design, and environmental requirements.
67. Coal and lignite deliveries must be arranged so that sufficient fuel is available at all times to provide and maintain adequate and dependable electric service for SWEPCO's customers.
68. Setting inventory levels for SWEPCO's coal power plants (Welsh, Flint Creek, and Turk) and lignite power plants (Pirkey and Dolet Hills) based on the average level of burn from the test year would negatively impact SWEPCO's ability to reliably serve the needs of its customers and SPP and expose SWEPCO's customers to reliability risk.
69. Setting coal and lignite inventory targets for SWEPCO's coal and lignite power plants based on full-load burn ensures that adequate inventory is available to provide the necessary reliability for SWEPCO customers and SPP.
70. The target coal and lignite inventory levels SWEPCO requests to include in rate base are reasonable and necessary to ensure adequately reliable service to its customers.
71. However, because Dolet Hills will be retired on December 31, 2021, and consistent with the findings regarding the appropriate rate treatment of SWEPCO's investments in that plant, the Oxbow reserves, and DHLC, SWEPCO's lignite inventory for Dolet Hills should be removed from rate base and placed in the Dolet Hills Rate Rider; SWEPCO should recover a return on that inventory only during the Operative-Plant Phase, and have no cost recovery for the inventory during the Post-Retirement Phase.
72. Good cause exists to make these post-test year adjustments regarding SWEPCO's lignite inventory for Dolet Hills.

Prepaid Pension and OPEB Assets

73. SWEPCO records an additional cash investment in the pension trust fund as a prepaid pension asset in accordance with Generally Accepted Accounting Principles (GAAP) under Accounting Standards Codification 715-30. The prepaid pension asset is the cumulative additional pension cash contributions beyond the amount of pension cost.

74. No party has contested, and the evidence establishes, that an additional cash investment recorded as a prepaid pension asset should be included in rate base in accordance under § 36.065 of the Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-64.158 (PURA).

NOLC ADFIT

75. SWEPCO records its stand-alone federal income tax net operating loss carry-forward (NOLC) ADFIT on its books and records consistent with GAAP and the USofA.
76. For the period 2009 through the March 20, 2020 test year end, SWEPCO recorded a total net amount of stand-alone tax NOLC ADFIT of \$455,122,490.
77. SWEPCO does not file a separate federal income tax return, as it is a subsidiary of AEP and included in AEP's consolidated federal income tax return.
78. SWEPCO participates in the AEP Tax Allocation Agreement for allocating the consolidated income taxes for AEP and its consolidated affiliates.
79. Under the AEP Tax Allocation Agreement, through the March 20, 2020 test year end, SWEPCO received net cash payments of \$455,122,490 for the use of its tax net operating losses to offset the taxable income of its affiliates on the AEP consolidated income tax return.
80. SWEPCO reflected its receipt of these tax allocation payments in its financial books and records by reducing the balance of its NOLC ADFIT to \$0.
81. SWEPCO used the tax allocation payments to finance plant assets now in its rate base. In essence, SWEPCO exchanged its previously recorded NOLC ADFIT asset (an asset that would reduce ADFIT and therefore increase rate base) for plant assets now included in rate base.
82. Under these circumstances, SWEPCO's proposed adjustment to recognize the \$455,122,490 NOLC ADFIT again would effectively double the proper rate base impact of the NOLC ADFIT, contrary to normalization requirements.
83. Staff's recommendation instead to reflect SWEPCO's book NOLC ADFIT balance of \$0 is consistent with PURA § 36.060, prevents SWEPCO from earning a return on the same \$455,122,490 twice, and is consistent with normalization principles.

Excess ADFIT

84. The Tax Cuts and Jobs Act of 2017 reduced the corporate federal income tax rate from 35% to 21% effective January 1, 2018. This reduction, and the associated revaluation of the ADFIT balances previously recorded at 35% decreased due to the new 21% tax rate, results in excess ADFIT balances that should be returned to SWEPCO's customers.

85. The Commission determined in Docket No. 46449 that the regulatory treatment of excess deferred taxes resulting from the reduction in the federal tax rate would be addressed in SWEPCO's next base rate case. This proceeding is SWEPCO's next base rate base after Docket No. 46449.
86. In determining the amount of excess ADFIT available to its Texas customers, it is reasonable for SWEPCO to use the Texas retail allocation factor of 35.01% approved in Docket No. 46449.
87. Excess ADFIT related to differences in method and life for calculating depreciation expense for book versus tax purposes is considered to be "protected" excess ADFIT that cannot be returned to customers more rapidly than over the remaining lives of the assets that gave rise to the deferred taxes. All other excess ADFIT is considered to be unprotected, meaning there are no limitations on the timing or manner of returning it to customers.
88. SWEPCO began amortizing the protected excess ADFIT on January 1, 2018, by recording a provision for refund on its books as a regulatory liability related to the Texas jurisdictional portion of the excess ADFIT amortization.
89. SWEPCO should refund the balance of excess ADFIT available to return to customers (both unprotected ADFIT and accrued protected ADFIT) by first crediting the balance against any amount owed by customers because of the March 18, 2021 relate-back date in this proceeding, then refunding any excess ADFIT balance remaining over a six-month period, with carrying charges at the Commission-allowed weighted average cost of capital.
90. The remaining balance of protected excess ADFIT should be returned to customers as an amortization included in rates, in a manner consistent with normalization requirements.

Accumulated Depreciation

91. SWEPCO's calculation of accumulated depreciation was not contested and is reasonable.
92. SWEPCO's adjustments to accumulated depreciation were not contested, are reasonable, and should be adopted.

Self-Insurance Reserve

93. SWEPCO requests approval of a self-insurance reserve pursuant to PURA § 36.064 and 16 TAC § 25.231(b)(1)(G).
94. SWEPCO's proposed self-insurance reserve would be funded by an annual accrual of \$1,689,700, consisting of \$799,700 to account for annual expected O&M losses from storm damage in excess of \$500,000, plus \$890,000 to build a target reserve of \$3,560,000 in four years.

95. SWEPCO further proposes to charge its Texas jurisdictional Hurricane Laura restoration costs against the self-insurance reserve.
96. SWEPCO did not present a cost-benefit analysis demonstrating that, with consideration of all costs, self-insurance is a lower-cost alternative than commercial insurance and that customers will receive the benefits of the self-insurance plan.

Rate of Return

97. An ROE of 9.45% will allow SWEPCO a reasonable opportunity to earn a reasonable return on its invested capital.
98. A 9.45% ROE is consistent with SWEPCO's business and regulatory risk.
99. SWEPCO did not demonstrate that either a size or credit risk adjustment was appropriate in setting its ROE.
100. A downward adjustment to the ROE is not warranted for the August 18, 2019 outage on SWEPCO's transmission system, which was caused by vegetation contact with a SWEPCO transmission line. The evidence does not show the outage was due to negligent vegetation management practices, or indicative of overall poor quality of service or management.
101. A downward adjustment to the ROE is not warranted for SWEPCO's worsening System Average Interruption Duration Index and System Average Interruption Frequency Index scores. These changing metrics can result from many factors, including weather. The evidence does not show these metrics were indicative of overall poor quality of service or management.
102. SWEPCO's proposed 4.18% cost of debt is reasonable.
103. A capital structure composed of 50.63% long-term debt and 49.37% equity is reasonable in light of SWEPCO's business and regulatory risks.
104. A capital structure composed of 50.63% long-term debt and 49.37% equity will be sufficient to attract capital from investors.
105. SWEPCO's overall rate of return should be as follows:

COMPONENT	CAPITAL STRUCTURE	COST OF CAPITAL	WEIGHTED AVERAGE COST OF CAPITAL
LONG-TERM DEBT	50.63%	4.18%	2.12%
COMMON EQUITY	49.37%	9.45%	4.67%
TOTAL	100.00%		6.79%

Financial Integrity (Ring-Fencing Protections)

106. AEP is a large corporation with several subsidiaries in multiple states, including both regulated and non-regulated entities. The effects of financial instability or weakness in one of these entities could affect not only AEP as the parent company, but also its subsidiaries, including SWEPCO.
107. Ring-fencing measures have been used to protect utilities from risky parents or other affiliates to protect the utility's financial integrity and to ensure the utility can continue to operate and serve its customers.
108. Ordering the following financial protections is reasonable and necessary to protect SWEPCO's financial integrity and to ensure SWEPCO's ability to provide reliable service at just and reasonable rates:
 - a. SWEPCO will work to ensure that its credit ratings at Standard and Poor's (S&P) and Moody's remain at or above SWEPCO's current credit ratings.
 - b. SWEPCO will notify the Commission if its credit issuer rating or corporate rating as rated by either S&P or Moody's falls below investment-grade level.
 - c. SWEPCO will take the actions necessary to ensure the existence of a SWEPCO stand-alone credit rating.
 - d. SWEPCO will not share a credit facility with any unregulated affiliates.
 - e. SWEPCO's debt will not be secured by non-SWEPCO assets.
 - f. SWEPCO's assets will not secure the debt of AEP or its non-SWEPCO affiliates. SWEPCO's assets will not be pledged for any other entity.
 - g. SWEPCO will not hold out its credit as being available to pay the debt of any AEP affiliates.
 - h. Except for access to the utility money pool and the use of shared assets governed by the Commission's affiliate rules, SWEPCO will not commingle its assets with those of other AEP affiliates.
 - i. SWEPCO will not transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis in accordance with the Commission's affiliate standards applicable to SWEPCO, regardless of whether such affiliate standards would apply to the particular transaction.
 - j. Without prior approval of the Commission, neither AEP nor any affiliate of AEP (excluding SWEPCO) will incur, guaranty, or pledge assets in respect of any incremental new debt that is dependent on: (1) the revenues of SWEPCO in more

than a proportionate degree than the other revenues of AEP; or (2) the stock of SWEPCO.

- k. SWEPCO will not seek to recover from customers any costs incurred as a result of a bankruptcy of AEP or any of its affiliates.
109. These financial protections are similar to those agreed to by SWEPCO affiliate AEP Texas in Docket No. 49494, which were approved by the Commission. SWEPCO already abides by most of the ring-fencing measures approved for AEP Texas and confirmed that SWEPCO is amenable to similar measures.
110. The evidence shows substantial benefit, and does not show a significant cost or harm, to ordering SWEPCO to employ the financial protections listed above.

Transmission O&M Expense

111. SWEPCO's test year transmission O&M expenses were \$46,683,319, of which \$8,636,052 were affiliate expenses.
112. SWEPCO's transmission O&M expenses were not contested by any party and are reasonable.

Transmission Expenses and Revenues under FERC-Approved Tariff

113. The SPP charges SWEPCO for the provision of transmission service to SWEPCO's customers. SWEPCO also receives payment from SPP for SPP members' use of SWEPCO's transmission facilities. These expenses and revenues are incurred and received pursuant to the FERC-approved SPP Open Access Transmission Tariff (OATT). The net amount that SWEPCO incurred under the SPP OATT during the test year is included in SWEPCO's requested cost of service in this proceeding.

Proposed Deferral of SPP Wholesale Transmission Costs

114. SWEPCO proposes to defer the portion of its approved transmission charges (ATC) that is above or below the test year level into a regulatory asset or liability for recovery in a future TCRF or rate case proceeding.
115. SWEPCO has not shown that the proposed recovery mechanism is needed here.
116. SWEPCO has not demonstrated that the ATC tracker is necessary for it to have a reasonable opportunity to earn a reasonable return above its necessary expenses.

Distribution O&M Expense

117. SWEPCO's adjusted test year distribution O&M expenses including its own costs plus the charges from its service company affiliate, AEP Service Company (AEPSC), for distribution activities necessary to provide safe, reliable distribution services were \$93,656,735.
118. The adjusted test year distribution O&M costs reflect the amount necessary to perform distribution functions—e.g., planning, construction, operation, and maintenance of the distribution system; and implementing SWEPCO's distribution system asset management programs, reliability programs, and the vegetation management program.
119. SWEPCO's distribution O&M expenses are reasonable and necessary.

Distribution Vegetation Management

120. SWEPCO's proposal to recover distribution O&M base-rate expenses of \$14.57 million, consisting of the test year amount of \$9.57 million and an additional amount of \$5 million, is reasonable.
121. The additional amount of distribution O&M expense in the amount of \$5 million is reasonable and necessary to carry forward SWEPCO's vegetation management program to improve overall reliability on targeted circuits and decrease outages caused by trees.
122. SWEPCO commits to spending the entirety of the increased amount of \$5 million for distribution O&M expense solely on vegetation management.
123. A compliance docket should be opened regarding SWEPCO's system reliability, vegetation management, and vegetation management expense.

Generation O&M Expense

124. SWEPCO's proposed rate increase does not adjust the test year (O&M) expense for Dolet Hills to reflect the scheduled retirement of the plant by the end of 2021.
125. During the test year, SWEPCO incurred approximately \$12.5 million in non-fuel O&M expense related to its 257 megawatts (MW) (40.28%) ownership share of Dolet Hills.
126. For Dolet Hills, SWEPCO's test year average monthly O&M expense level is approximately \$1.04 million per month.
127. After SWEPCO retires Dolet Hills at the end of 2021, SWEPCO will avoid significant non-fuel O&M expenses for operations at Dolet Hills.

128. The reduced utilization and ultimate retirement of Dolet Hills will result in known and measurable changes in the cost to maintain and operate the plant.
129. SWEPCO should recover O&M expense associated with the operation of Dolet Hills from March 18, 2021 (the relate-back date of rates in this proceeding) through December 31, 2021, at a monthly O&M expense level of \$1.04 million per month.
130. SWEPCO should not recover O&M expense for Dolet Hills past its retirement in December 2021.

Payroll Expenses

131. SWEPCO's proposed base payroll is based on the salaries of its employees for the final pay period at the end of the test year (March 2020) plus post-test year pay increases of 3.0% for merit-eligible employees and 2.5% for hourly physical and craft employees, which were implemented in April 2020 and September 2020, respectively.
132. In June and July of 2020, retirement incentive packages were offered to certain SWEPCO and AEPSC employees. One SWEPCO employee and 189 AEPSC employees accepted the retirement incentive package.
133. Staff proposes an adjustment of \$544,331 in addition to SWEPCO's requested payroll adjustment based on a more recent time period, October 31, 2020, that was after the retirement incentives were offered.
134. It is appropriate to annualize SWEPCO's base payroll as of October 31, 2020, increasing SWEPCO's base payroll by \$544,300 on a total company basis and \$199,282 on a Texas retail jurisdiction basis, inclusive of the pay raise actually given by SWEPCO to its employees.
135. SWEPCO requests an increase of \$3,804,876 to the test-year payroll expense allocated from AEPSC, based on an annualization of the end of test year headcount and inclusion of a merit increase.
136. Staff proposes an adjustment of (\$4,480,512) to the allocated AEPSC payroll, also based on annualization of the October 2020 AEPSC payroll that was after the retirement incentives were offered.
137. The impact of the retirements is reflected in Staff's adjustment of \$544,331 to SWEPCO's payroll and an adjustment of (\$4,480,512) to SWEPCO's requested AEPSC allocated payroll.
138. SWEPCO failed to 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.

139. The retirement package and revised employee headcount is a material known and measurable change that merits an adjustment to payroll.
140. It is appropriate to annualize the base payroll for AEPSC payroll expense as of October 31, 2020, resulting in a decrease to the Company's proposed base rates of \$4,480,512 on a total company basis and \$1,686,106 on a Texas retail jurisdiction basis.

Short-Term Incentive Compensation

141. SWEPCO's Application excluded financial-based short-term incentive compensation (STI) expense and 50% of the financial-based funding mechanism related to its STI plans.
142. SWEPCO's request to recover STI expense should be adjusted to correct errors in accordance with the testimony of Staff witness Ruth Stark, which SWEPCO does not oppose.
143. SWEPCO's requested STI expense, adjusted in accordance with the testimony of Commission Staff witness Ruth Stark, is approved.

Long-Term Incentive Compensation

144. SWEPCO adjusted its test year long-term incentive compensation (LTI) expenses to remove the 75% of those expenses related to performance units but retained the 25% related to restricted stock units.
145. Restricted stock units are not based on financial measures and are appropriate to include in SWEPCO's rates.
146. SWEPCO's requested LTI expense is approved.

Severance Costs

147. In calendar years 2017 and 2018, SWEPCO incurred \$0 in direct severance costs. During the test year, SWEPCO incurred \$767,074 in direct severance costs.
148. SWEPCO's \$767,074 in direct severance costs during the test year is atypical and does not represent normal levels of direct severance costs.
149. It is appropriate to average three years of direct severance costs to calculate SWEPCO's direct allowable severance costs, which equates to \$252,033.
150. AEPSC allocates severance costs to SWEPCO. During the test year relative to calendar year 2017 and 2018, AEPSC charged severance costs to SWEPCO that increased from less than \$550,000 for the two years prior to \$1,460,876 during the test year.

151. SWEPCO's \$1,460,876 in allocated severance costs during the test year is atypical and does not represent normal levels of allocated severance costs.
152. It is appropriate to average three years of allocated severance costs to calculate SWEPCO's allowable allocated severance costs, which equates to \$824,300.

Pension Expense

153. SWEPCO's requested cost of service pension 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 Willis Towers Watson, the Company's independent actuary. SWEPCO applies the test year actual payroll expense/capital ratio to these 2020 costs to determine the pro forma level of expense to include in the cost of service. SWEPCO's requested cost of service pension expense is reasonable.

Other Post Retirement Benefits Expense

154. SWEPCO's requested Other Post-Employment Benefits (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 Willis Towers Watson. SWEPCO's requested OPEB expense is reasonable.

Depreciation and Amortization Expense

Net Salvage/Demolition Study

155. The use of a 10% contingency factor in SWEPCO's demolition study to determine terminal net salvage amounts for SWEPCO's generating plants is reasonable.
156. It is reasonable for SWEPCO to escalate the terminal net salvage amounts in the demolition study (which are stated in year end 2020 dollars) to the expected final retirement date of each plant using a 2.22% inflation rate from the "Livingston Survey" dated December 2019 published by the research department of the Federal Reserve Bank of Philadelphia.

Curve Life Combinations – Mass Property Accounts

157. It is reasonable to apply an S0.0-68 Iowa curve life combination for FERC Account 353, Transmission Station Equipment.
158. It is reasonable to apply an S1.5-74 Iowa curve life combination for FERC Account 354, Transmission Towers and Fixtures.
159. It is reasonable to apply an L1.5-49 Iowa curve life combination for FERC Account 355, Transmission Poles and Fixtures.

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160. It is reasonable to apply an R2.0-70 Iowa curve life combination for FERC Account 356, Overhead Conductors and Devices.
161. It is reasonable to apply an S-.5-55 Iowa curve life combination for FERC Account 364, Poles, Towers, and Fixtures.
162. It is reasonable to apply an R4.0-80 Iowa curve life combination for FERC Account 366, Underground Conduit.
163. It is reasonable to apply an R3.0-46 Iowa curve life combination for FERC Account 367, Underground Conductor.
164. It is reasonable to apply an R3.0-59 Iowa curve life combination for FERC Account 369, Services.
165. It is reasonable to apply an L0.0-15 Iowa curve life combination for FERC Account 370, Meters.

Amortization Expense

166. SWEPCO's amortization expense related to an intangible asset that was fully amortized as of the end of the test year should be excluded from SWEPCO's revenue requirement.

Purchased Capacity Expense

167. During the test year, SWEPCO continued to purchase 50 MW of capacity under its long-term purchase power agreement with Louisiana Generating Company (formerly Cajun Electric Power Cooperative) (the Cajun contract). That agreement began in 1992. These capacity costs have been consistently recovered through base rates.
168. During the test year, SWEPCO purchased the product designated as Operating Reserve Capacity under the Cajun contract and counted that capacity in SWEPCO's compliance with SPP's capacity reserve requirements. During the test year SWEPCO did not purchase any Operating Reserve Energy under the Cajun contract.
169. The Operating Reserve Capacity under the Cajun contract is distinguishable from Regulation and Operating Reserve Services procured in the SPP Independent Monitor day-ahead and real-time market.
170. The costs that SWEPCO incurred during the test year under the Cajun contract continue to be properly recovered in base rates.

171. The cost of energy incurred under SWEPCO's wind energy contracts has been collected through SWEPCO's fuel factor and reconciled as energy purchases since their inception, starting with Docket No. 40443 for the Majestic Renewable Energy Purchase Agreements.
172. According to the SPP Planning Criteria, the amount of capacity that may be accredited to a renewable resource is determined by a set of formulas using the historical output of that particular facility and updated over time.
173. The Commission should continue to account for the costs incurred under these wind contracts as energy.

Affiliate Expense

174. SWEPCO incurred a total of \$87,634,578 in adjusted total company test year affiliate charges: \$85,227,881 in charges from AEPSC and \$2,406,697 from other affiliates.
175. Staff proposed an adjustment to SWEPCO's affiliate expense that SWEPCO did not oppose.
176. As adjusted by Staff, SWEPCO's affiliate expenses are reasonable and necessary for each item or class of items, are allowable, and are charged to SWEPCO at a price no higher than was charged by the supplying affiliate to other affiliates, and the rate charged was a reasonable approximation of the cost of providing the service.

Federal Income Tax Expense

177. SWEPCO's method of calculating its federal income tax expense is reasonable.
178. The amount of federal income tax SWEPCO included in its cost of service was calculated in accordance with the provisions of PURA §§ 36.059 and 36.060.
179. No party challenged the inclusion of federal income tax expense in SWEPCO's cost of service.

Ad Valorem Taxes

180. SWEPCO's requested effective ad valorem tax rate excludes Texas jurisdictional differences that would decrease the effective rate but includes Texas jurisdictional differences that increase the effective rate.
181. The effective ad valorem tax rate should be synchronized with the plant to which the rate is to be applied.
182. Including SWEPCO's proposed Texas jurisdictional plant differences related to depreciation and Allowance for Funds Used During Construction (AFUDC) rates in the

plant balance used to calculate ad valorem taxes requires that such jurisdictional differences be included in the determination of the effective ad valorem tax rate.

183. Including SWEPCO's proposed Texas jurisdictional plant differences related to depreciation and AFUDC rates in the determination of the effective ad valorem tax rate does not result in other states subsidizing Texas customers.
184. The appropriate effective ad valorem tax rate that includes the Texas jurisdictional differences in the determination of the rate is 0.961262%.

Payroll Taxes

185. It is reasonable to synchronize payroll taxes with adjustments to SWEPCO's payroll expenses.
186. Incentive compensation is part of SWEPCO's payroll expenses.
187. A potential offset of incentive compensation with additional base pay by SWEPCO in the future is speculative.
188. Payroll tax on disallowed incentive compensation is properly borne by shareholders.
189. An adjustment of (\$258,162) to SWEPCO's payroll tax expense is appropriate. This synchronizes payroll taxes with the adjustments to payroll and incentive compensation expenses as recommended by Staff.

Gross Margin Tax

190. SWEPCO calculates the Texas gross receipts (margin) tax amount using an effective rate derived from test year payments and test year Texas retail base and fuel revenues.
191. Revenue related taxes should be updated and synchronized with the final revenue requirement set in this case.

Allocated Transmission Expenses Related to Retail Behind-the-Meter Generation

192. To serve its retail and wholesale customers, SWEPCO purchases Network Integration Transmission Service (NITS) from SPP for the use of SPP's transmission system.
193. SPP charges for NITS pursuant to its FERC-approved OATT.
194. SWEPCO is obligated to pay SPP the charges SPP bills to SWEPCO pursuant to the SPP OATT for the provision of transmission services to SWEPCO.

195. SPP allocates the cost of using its transmission system to NITS customers (referred to as Network Customers in the OATT) based on the load ratio share of each customer's monthly Network Load to the total system load at the time of the monthly system peak.
196. To obtain the data necessary to make this allocation, SPP requires Network Customers, such as SWEPCO, to submit their monthly Network Load data to SPP.
197. In October 2018, SWEPCO changed how it reports its monthly Network Load to SPP by adding load served by retail behind-the-meter generation (BTMG).
198. In this context, BTMG refers to a generation unit that is behind the transmission system meter—*i.e.*, not directly connected to the bulk transmission system—and is intended to serve all or part of the capacity or energy needs for the load behind the meter without withdrawing energy from the SPP transmission system.
199. Retail BTMG (in contrast to wholesale BTMG) is on-site generation operated by a retail end-use customer to serve its own local load requirements. Retail BTMG may be large scale, such as an industrial customer with a cogeneration facility, or small scale, such as a residential rooftop solar facility.
200. When retail BTMG is excluded from a Network Customer's monthly load report, it is reported on a "net" basis, whereas when retail BTMG is included, it is reported on a "gross" basis.
201. SPP provided educational information to its stakeholders, including SWEPCO, clarifying that FERC policy and the SPP OATT do not exclude or "net" BTMG from the Network Load calculation.
202. At this time, SWEPCO is only reporting the retail BTMG load of one customer, Eastman, which is located in SWEPCO's Texas service area.
203. Eastman operates an on-site cogeneration facility that generates approximately 150 MW of power to supply the full load requirements of Eastman's operations. Eastman is a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978.
204. During scheduled maintenance outages and forced/unscheduled outages when Eastman's generation is not operating, Eastman purchases standby electricity service from SWEPCO under SWEPCO's Supplementary, Backup, Maintenance and As-Available Power Service Tariff. Eastman coordinates routine maintenance outages with SWEPCO to avoid system peaks.
205. Due to the configuration of Eastman's campus and BTMG, Eastman uses a SWEPCO-owned transmission line to serve all the load at its campus, but its use of the line is incidental and is not imposing new costs on SWEPCO's system.

206. During the test year, the Network Load that SWEPCO reported to SPP included 146 MW of load served by Eastman's BTMG. The higher reported Network Load resulted in SPP allocating a higher share of its transmission system costs to SWEPCO, which was reflected in SWEPCO's NITS charges in the test year.
207. There is a lack of consensus among SPP and its Network Customers regarding how to report retail BTMG load to SPP under the OATT.
208. Determining whether SWEPCO's NITS charges are pursuant to the OATT necessarily requires an interpretation of the OATT.
209. FERC has exclusive jurisdiction to resolve disputes involving the interpretation of a FERC-approved tariff, such as SPP's OATT.
210. SWEPCO's role in providing the data to SPP on which SPP relied to allocate NITS charges does not remove the issue from FERC's jurisdiction because the determination of monthly Network Load is addressed in SPP's OATT and the resulting rates are wholesale rates.
211. 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.
212. SWEPCO's test year NITS charges from SPP are reasonable under the filed rate doctrine.
213. The NITS charges are part of SWEPCO's overall transmission costs, which SWEPCO allocates jurisdictionally among Texas, Arkansas, and Louisiana.
214. SWEPCO did not identify the increase in NITS charges attributable to reporting Eastman's BTMG load.
215. To recover the additional cost, SWEPCO proposed to change how it allocates its transmission costs by imputing Eastman's BTMG load to the Texas jurisdiction for jurisdictional allocation and to the Large Lighting and Power-Transmission (LLP-T) class for class allocation.
216. Adding Eastman's BTMG load to the Texas jurisdiction would increase Texas's share of SWEPCO's transmission costs by \$5.7 million, with corresponding reductions to the Arkansas and Louisiana jurisdictions.
217. Adding Eastman's BTMG load to the LLP-T class would have a larger impact, increasing that class's share of SWEPCO's transmission costs by \$7.5 million, with corresponding reductions to the remainder of SWEPCO's classes.
218. Adjusting the jurisdictional and class allocators for SWEPCO's overall transmission costs results in a shift of not just the SPP-related costs, but also the non-SPP-related costs.

- 219. SWEPCO did not explain why adjusting the allocations was the appropriate method to recover its increased NITS charges, or why reporting Eastman's BTMG load would impact non-SPP-related costs.
- 220. SWEPCO has 187 retail BTMG customers in Texas, including Eastman. Of these customers, at least three have cogeneration facilities (including Eastman) and the rest are commercial or residential solar facilities.
- 221. SWEPCO has retail BTMG customers in Arkansas and Louisiana, including at least one industrial retail BTMG customer (a paper mill) in Arkansas, and solar retail BTMG customers in both Arkansas and Louisiana.
- 222. 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 not attributable to SPP requiring Network Customers to report retail BTMG load, as SWEPCO presented evidence that all retail BTMG load should be reported.
- 223. SWEPCO's decision to increase the Texas jurisdictional allocator, but not the Arkansas and Louisiana jurisdictional allocators, is unreasonable and results in unreasonably discriminatory rates for Texas customers.
- 224. SWEPCO's corresponding change to the LLP-T class allocator is unreasonable and results in unreasonably discriminatory rates among SWEPCO's Texas customers.
- 225. SWEPCO's proposals to allocate transmission costs at both the jurisdictional and class levels by adding Eastman's BTMG load to the Texas jurisdiction and LLP-T class, respectively, are not reasonable, necessary, and non-discriminatory.
- 226. Eastman's BTMG load should be removed when performing the jurisdictional and class allocations of transmission costs.

Billing Determinants

- 227. The Commission's RFP accepts the use of estimated billing units.
- 228. SWEPCO used estimated billing determinants to address potential customer migration among rate classes between rate cases.
- 229. SWEPCO's initial filing 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.

230. The ongoing effects, if any, of the COVID-19 pandemic on SWEPCO's billing determinants are not known and measurable and do not reflect conditions that are likely to prevail when the rates approved in this case are in effect.
231. ETSWD's proposal that SWEPCO should update its class cost of service study (CCOSS) to incorporate new data and account for the "enduring 'work from home'" shift and other effects of COVID-19 is not reasonable because the effects of COVID-19 are not known and measurable.
232. ETSWD's alternative proposal that the Commission instruct SWEPCO to recalculate and adjust its CCOSS using the data provided in SWEPCO's response to ETSWD Request for Information 3-1 also is not reasonable because the effects of COVID-19 are not known and measurable.
233. A pro forma adjustment to billing determinants should not be used to address a temporary event, because a pro forma adjustment is intended to ensure that test year data better represents a utility's ongoing operations.
234. Customers who permanently left SWEPCO during the test year should be removed from SWEPCO's proposed billing determinants.
235. Except in an extraordinary event not present in this case, a pro forma adjustment to remove a customer that permanently left SWEPCO after the close of the test year should not be made because that event was not known or measureable during the test year.
236. SWEPCO's adjusted test year billing determinants are reasonable and should be used in designing rates resulting from this case.

Functionalization and Cost Allocation

237. The allocation methodologies and processes used in SWEPCO's jurisdictional cost of service study and CCOSS reflect criteria generally used to determine the appropriateness of allocation methodologies.
238. The allocation methodologies and processes used in SWEPCO's jurisdictional cost of service study and CCOSS are consistent with the development of the jurisdictional cost of service study and CCOSS ordered by the Commission in Docket No. 46449 and with the base rates approved by the Commission in that docket and updated in the Company's related compliance filing in Docket No. 48233.

Jurisdictional Allocation

239. Until this rate case, SWEPCO has not proposed to include the self-served load of any retail customer in allocating transmission costs in any of its jurisdictions.

- 240. SWEPCO's proposal to increase the allocation to Texas customers by \$5.7 million through the inclusion of the self-served load of a single customer is unreasonable.
- 241. The jurisdictional allocation of transmission costs to Texas retail customers should be established by using the actual load served by SWEPCO in each of its jurisdictions.
- 242. SWEPCO's allocation of Eastman's load served by its retail BTMG should be removed from the jurisdictional cost of service study.
- 243. SWEPCO appropriately removed the allocation of certain distribution investments from the wholesale class.

Class Allocation

- 244. SWEPCO corrected its CCOSS in rebuttal testimony to use a system load factor based on the single annual coincident peak in the average and excess demand four-coincident peak methodology.
- 245. The use of the single annual coincident peak in calculating the system load factor is consistent with Commission precedent and cost causation.
- 246. SWEPCO properly accounted for customer prepayments in its rebuttal CCOSS.
- 247. SWEPCO appropriately does not allocate major account representative costs to the residential class.
- 248. In its rebuttal CCOSS, SWEPCO appropriately corrected an error regarding its allocation of line transformer costs.
- 249. SWEPCO's correction to the line transformer allocation is not contrary to the Commission's decision in Docket No. 46449.
- 250. Staff's proposal for a four-year phase-in of rate increases to move all classes to their relative rate of return ignores that customers' consumption patterns change year-to-year and would cause some classes to incur significant rate increases each year for four years.
- 251. The Cotton Gin class, with its customers located in the Texas Panhandle, is markedly different from SWEPCO's other commercial classes located in northeast Texas because, among other things, they operate primarily on a seasonal basis in the winter months, their vegetation management requirements are different than those located in northeast Texas, and they typically are served directly from line transformers, rather than from secondary lines.

252. Three customer classes historically have been well below their relative rates of return as shown though SWEPCO's CCOSS, including its rebuttal CCOSS: the Cotton Gin class, the Oilfield Secondary class, and the Public Street and Highway Lighting class.
253. It is appropriate to require SWEPCO to provide direct testimony in its next base rate case addressing why these three classes continue to be well below unity and address whether there are measures that can be taken in the class allocation (or rate design) process to address this situation, other than simply applying gradualism.
254. Based on the evidence in this case, SWEPCO's proposed class allocation to address classes that are not at a unitary relative rate of return is reasonable.
255. None of the \$5.7 million in transmission costs SWEPCO allocated to the Texas retail jurisdiction and in its CCOSS through its retail BTMG proposal should be allocated to any Texas retail customers.

Municipal Franchise Fees

256. SWEPCO develops the effective rate for municipal franchise fees based on test year actual municipal franchise taxes paid, less the amount in excess of the base amount and test year actual kWh sales.
257. SWEPCO applies the effective rate for municipal franchise fees to the test year-adjusted kWh sales to determine the pro forma amount to include in SWEPCO's cost of service.
258. SWEPCO's allocation of municipal franchise fees was not contested by any party and is reasonable.

Revenue Distribution

259. The class revenue distribution is the rate design mechanism by which a utility's approved annual revenue requirement is assigned to the customer classes.
260. The revenue distribution also determines the revenue requirement targets for each class.
261. The percent increase in base rates for each class is based on its revenue deficiency as determined by the CCOSS.
262. The revenue deficiency determines the revenue requirement needed to bring each class to an equalized return.
263. The revenue requirement at an equalized return is the amount of revenue needed from each class to recover the full costs of serving that customer class.

264. The equalized revenue requirement and revenue change based on that requirement is the starting place for the revenue distribution. Other factors may also be taken into consideration such as customer migration, and a potential need to moderate a rate increase through rate gradualism.
265. SWEPCO's proposed rebuttal revenue distribution moves all customer classes closer to cost of service.
266. All present base rate-related revenues, inclusive of TCRF and DCRF revenues, are the appropriate starting point for evaluating any rate increase.
267. In Docket No. 46447, SWEPCO was required to present its rate change request in this case such that its then-present revenues show the total present revenues inclusive of the TCRF and DCRF revenues.

Rate Moderation/Gradualism

268. All parties to this case agree that some form and level of rate moderation should be applied to the revenue distribution.
269. The design of rates within each rate schedule should be cost-based and informed by the results of the CCOSS, subject to gradualism.
270. Gradualism and rate moderation are appropriate exceptions to this requirement when a class's proposed rate increase leads to "rate shock."
271. A proposed rate increase of 43% or less in any one class is an appropriate upper percentage to apply in this case for the gradualism/rate moderation evaluation.
272. SWEPCO's approach of grouping major rate classes for purposes of implementing the revenue distribution was approved by the Commission in SWEPCO's two most recent base rate proceedings, Docket Nos. 40443 and 46449.
273. SWEPCO's proposed rate moderation methodology, which reduces the subsidization among individual rate classes, is reasonable and should be adopted.
274. Staff's proposed four-year phased-in method to move all customers to unity does not account for the fact that customers' consumption patterns change year-to-year, and would result in significant rate increases every year over the four-year phase-in period to some customers.
275. Staff's proposed four-year phased-in method should not be accepted.

Rate Design and Tariff Changes

276. In general, SWEPCO's proposed rate design retains the rate structures and relationships approved by the Commission in SWEPCO's two most recent base rate proceedings, Docket Nos. 40443 and 46449.
277. SWEPCO's proposed rate design provides a reasonable basis for establishing rates in this proceeding.
278. SWEPCO has not met its burden of proof to justify removing the 50 kilowatt (kW) maximum demand cap in the GS rate schedule.
279. SWEPCO should not be required to revise its rate schedules in its next rate case to preclude the potential for customer migration between rate schedules or between any other customer classification.
280. SWEPCO should be required to address the customer migration issue in more detail in its next base rate case filing, including which classes are structured to allow migration among classes even if customers' loads or operations do not change, why customers migrate among classes, and how SWEPCO adjusts, or estimates, its billing determinants to account for customer migration among rate classes between base rate cases.
281. SWEPCO has not explained or justified why it is appropriate, in this case, to collect fixed demand-related costs through energy charges in the Large Power Secondary class.
282. SWEPCO offers a rate option for Cotton Gin customers that allows the application of the minimum monthly bill only during the ginning season as defined as November through February.
283. In SWEPCO's prior fuel reconciliation proceeding, Docket No. 47553, SWEPCO agreed to impute the value of renewable energy credits (RECs) and treat them as a base-rate expense.
284. SWEPCO should revise the REC Rider to allow a customer to link its RECs to specific renewable resources.
285. SWEPCO must implement a REC opt-out tariff that would refund REC costs to transmission-voltage customers who have opted out.
286. The REC opt-out charge should be calculated based on an energy allocator for REC costs, consistent with how RECs are generated, and set at a credit of 0.064 cents per kWh.
287. SWEPCO did not perform or provide a study justifying its proposal to increase the reactive demand charge by 29.4%.

- 288. SWEPCO has not met its burden of demonstrating that there is a cost basis for increasing the reactive demand charge in the Large Lighting and Power (LLP) rate schedule.
- 289. Under the Company's residential plug-in electric vehicles (PEV) rider, an installed sub-meter separately measures PEV kWh usage while a standard meter measures total residence kWh usage.
- 290. SWEPCO has met its burden of proof regarding the residential PEV rider.
- 291. ETSWD's request that the Commission direct SWEPCO to implement a retail choice pilot project is moot based on the Commission's denial of ETSWD's request for a declaratory ruling on this matter in Docket No. 51257.

Transmission Rate for Retail Behind-the-Meter Generation

- 292. Because SWEPCO's proposal to allocate to any customer or class the SPP charges related to Eastman's load served by its retail BTMG should be rejected, it is not appropriate for SWEPCO to implement a Synchronous Self-Generation Load rate schedule or rate.

Baselines for Cost-Recovery Factors

- 293. A TCRF is a rate mechanism that allows an electric utility outside of the Electric Reliability Council of Texas to periodically update its recovery of transmission costs.
- 294. SWEPCO is eligible under 16 TAC § 25.239 to have a TCRF.
- 295. TCRF baseline values should be set during the compliance phase of this docket, after the Commission makes final rulings on the various contested issues that may affect this calculation.
- 296. A DCRF is a rate mechanism that allows an electric utility to periodically adjust its rates for changes in certain distribution costs.
- 297. The Commission has adopted 16 TAC § 25.243 to implement PURA § 36.210. The rule allows an electric utility not offering customer choice (*e.g.*, SWEPCO) to file an application for a DCRF at any time other than April and May.
- 298. DCRF baseline values should be set during the compliance phase of this docket, after the Commission makes final rulings on the various contested issues that may affect this calculation.
- 299. A Generation Cost Recovery Rider (GCRR) is a rate mechanism authorized under PURA § 32.213 that allows an electric utility to recover its investment in a power generation facility outside of a base rate proceeding.

300. The baseline values for a subsequent implementation of the GCRR should be established during the compliance phase of this docket, after the Commission makes final rulings on the various contested issues that may affect this calculation.

Rate Case Expenses

301. SWEPCO and CARD sought to recover a total of \$3,769,007 in RCEs for this docket as well as Docket Nos. 49042, 46449, 40443, 47141, and 50997, consisting of \$2,740,315 for SWEPCO's own RCEs and \$1,028,692 in RCEs paid or to be paid by SWEPCO to CARD for its participation in these dockets and reflected on SWEPCO's and CARD's RCE reports.
302. The Commission's order in Docket No. 47141 authorized CARD to collect up to an additional \$2,500 in RCEs in that docket after April 13, 2020.
303. In this docket, CARD originally requested to recover \$6,321 in RCEs incurred in Docket No. 47141 after April 13, 2020.
304. CARD's request to recover \$6,321 for Docket No. 47141 RCEs should be reduced to \$2,500.
305. SWEPCO seeks to recover \$65,167 in RCEs in Docket Nos. 51415 and 40443 that are computed based on paying two outside attorneys in those dockets rates in excess of \$550 per hour.
306. The Office of the Attorney General (OAG) issued a memorandum in 2016 that limited the maximum outside counsel per-hour fee to \$525, but allowing the Deputy Attorney General to authorize a higher fee. This memorandum was addressed to, among others, state agencies and addressed "Outside Counsel Contract Rules and Templates."
307. The OAG issued a follow-up memorandum, in 2019 that did not increase the \$525 per-hour fee cap. This follow-up memorandum also was directed to state agencies and addressed Outside Counsel Contract Rules and Templates.
308. SWEPCO did not meet its burden of proof to show that the nature, extent, and difficulty of the work performed by the attorneys who charged in excess of \$550 per hour justified hourly rates in excess of \$550 in this base rate case.
309. The rates SWEPCO paid to outside attorneys in excess of \$550 per hour are excessive and not reasonable.
310. The fact that other entities may be willing to pay an attorney a rate in excess of \$550 per hour does not mean that the rate is reasonable and not excessive in the context of a Commission electric utility rate proceeding.

- 311. SWEPCO's request to recover \$65,167 in RCEs related to outside attorney fees billed in excess of \$550 per hour should be denied.
- 312. The total amount of RCEs that SWEPCO and CARD should recover in this docket is \$3,700,021.
- 313. SWEPCO should reimburse CARD for its requested rate case expenses, except that CARD's recovery related for Docket No. 47141 is \$2,500, not \$6,321.
- 314. It is reasonable for SWEPCO to recover the \$3,700,021 in rate case expenses authorized in this docket through its proposed Rate Case Surcharge Rider.
- 315. Any trailing RCEs related to Docket No. 51415 that are incurred after the dates of the RCEs addressed in the final reports filed in this docket should be recorded as a regulatory asset and deferred for analysis in a future SWEPCO docket.

Other Issues

- 316. It is uncontested and reasonable that the final approved return on equity should be included in the factoring rate calculation to synchronize factoring expense properly to the approved revenue requirement.
- 317. Staff's proposed adjustments of (\$1,164,427) to remove carrying charges paid by SWEPCO associated with affiliate or shared assets and (\$530,384) to remove carrying charges the Company received from its affiliates is uncontested and reasonable.
- 318. Staff's adjustment to update the customer deposit interest amount to incorporate the Commission-approved 2021 interest rate is uncontested and reasonable. In this case that is 0.61%, which results in an adjustment of (\$1,041,156) to SWEPCO's request.
- 319. In accordance with the Commission's decisions in Docket Nos. 40443 and 46449, SWEPCO removed Supplement Executive Retirement Plan expense from its requested cost of service, which is reasonable.
- 320. In accordance with the Commission's decisions in Docket Nos. 40443 and 46449, Staff recommended an adjustment for executive perquisites. Based on Staff's adjustment, SWEPCO agreed to remove \$20,595 from its revenue requirement related to executive perquisites. This adjustment is reasonable.
- 321. SWEPCO has announced that the Welsh plant will cease coal-fired operations in 2028 in light of the Coal Ash Combustion Residual Rule and the Effluent Limitations Guidelines.
- 322. SWEPCO has not yet determined whether natural gas conversion of the Welsh plant is in customers' best interest.

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- 323. If such a conversion to natural gas were to occur in the future, SWEPCO will request Commission authorization to include the costs associated with that conversion in customer rates in a future proceeding.
- 324. SWEPCO has not included any Construction Work in Progress in its requested rate base.
- 325. RFP Schedule E-4 contains the calculation of SWEPCO's cash working capital allowance included in rate base.
- 326. The lead-lag study used in this proceeding is the one approved in SWEPCO's last base rate case, Docket No. 46449.
- 327. The lead-lag study conducted by SWEPCO considered the actual operations of SWEPCO, adjusted for known and measurable changes, and is consistent with 16 TAC § 25.231(c)(2)(B)(iii).
- 328. At the time the current proceeding was filed, less than five years had passed since SWEPCO's last lead-lag study. By using the last approved study, SWEPCO estimates that it saved around \$75,000 in rate case expenses.
- 329. It is uncontested and reasonable that cash working capital should be updated and synchronized with the final revenue requirement.
- 330. Staff's adjustment of (\$46,306) to administrative and general O&M expense, specifically for regulatory commission expense, is not contested and is reasonable.
- 331. SWEPCO's federal income taxes were calculated consistent with PURA § 36.059 including treatment of tax savings derived from liberalized depreciation and amortization, investment tax credit, or similar methods.
- 332. SWEPCO's expenditures for advertising, contributions, memberships, and donations included in its cost of service meet the standard and thresholds set forth in 16 TAC § 25.231(b)(1)-(2).
- 333. SWEPCO uses advertising to convey information regarding safety and reliability to its customers and to support local initiatives.
- 334. SWEPCO did not include any prohibited advertising expenses in its request.
- 335. SWEPCO makes charitable contributions toward education, community service, and economic development in and for the benefit of the communities in which it operates. These costs are reasonable and consistent with the Commission's requirements and thresholds for recovery

336. SWEPCO membership expenses are reasonable and comply with the Commission's standards.
337. No party raised an issue with respect to SWEPCO's competitive affiliates.
338. SWEPCO is not seeking to include in rates any costs previously deferred by a Commission order.
339. SWEPCO's request to defer the portion of its ongoing net SPP OATT bill that is above or below the net test year level is not reasonable and should be denied.
340. SWEPCO proposed an optional Residential Time-of-Use rate schedule as a pilot available to residential customers.
341. SWEPCO proposed a Commercial Time-of-Use rate schedule for commercial loads of 100 kW or greater.
342. The pilot projects will gauge interest and utilization of the time-of-use format by customers that do not qualify for SWEPCO's Off-Peak Rider for the Lighting and Power, LLP, and Metal Melting Service classes. Participating customers can manage certain energy costs by shifting energy consumption to off-peak periods.
343. The proposed time-of-use rate schedule and design is reasonable and appropriate under 16 TAC § 25.234.
344. SWEPCO proposes to update its economic development rider.
345. SWEPCO's proposed tariff revisions to attract loads from a variety of businesses with different load requirements in order to spur economic growth in its service territory and provide long-term benefits to SWEPCO customers are reasonable and appropriate.
346. The proposed tariff revisions are consistent with the Commission's standards including 16 TAC § 25.234.
347. SWEPCO is not filing a fuel reconciliation proceeding in this docket; therefore, the schedules dealing with fuel reconciliation proceedings are not applicable. Accordingly, SWEPCO's requested waiver of the portions of the RFP that request information related to fuel reconciliation proceedings should be granted.
348. SWEPCO obtained authorization in Docket No. 50917 to waive the requirement that it file an RFP Schedule S in this base rate case.
349. Ordering Paragraph 10 of the Order on Rehearing in Docket No. 46449 states, "[t]he regulatory treatment of any excess deferred taxes resulting from the reduction in the

federal-income-tax rate will be addressed in SWEPCO's next base-rate case." The treatment of SWEPCO's excess deferred taxes has been addressed in this case.

B. Conclusions of Law

1. SWEPCO is subject to PURA. Tex. Util. Code §§ 11.001-66.016.
2. SWEPCO is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6)
3. The Commission exercises regulatory authority over SWEPCO, and jurisdiction over the subject matter of this application under PURA §§ 14.001, 32.001, 32.101, 33.002, 33.051, and 36.001-112.
4. The Commission's jurisdiction to establish rates extends beyond the date a proposed rate is suspended. PURA §§ 36.003-.004, 36.051-.065, 36.108(c), and 36.111.
5. SOAH has jurisdiction over matters related to the conduct of the hearing and the preparation of a proposal for decision in this docket, under PURA § 14.053 and Tex. Gov't. Code § 2003.049.
6. This docket was processed in accordance with the requirements of PURA and the Texas Administrative Procedure Act, Texas Government Code chapter 2001.
7. SWEPCO provided notice of its application in compliance with PURA § 36.103 and 16 TAC § 22.51(a).
8. Pursuant to PURA § 33.001, each municipality in SWEPCO's service area that has not ceded jurisdiction to the Commission has jurisdiction over the Company's application, which seeks to change rates for the distribution services within each municipality.
9. Pursuant to PURA § 33.051, the Commission has jurisdiction over an appeal from a municipality's rate proceeding.
10. SWEPCO has the burden of proving that the rate change it is requesting is just and reasonable under PURA § 36.006.
11. In compliance with PURA § 36.051, SWEPCO's overall revenues approved in this proceeding permit SWEPCO a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses.
12. Consistent with PURA § 36.053, the rates approved in this proceeding are based on original cost, less depreciation, of property used and useful to SWEPCO in providing service.

13. The rates approved in this proceeding are consistent with 16 TAC § 25.231(b)(1)(B), which states that depreciation expense based on original cost and computed on a straight-line basis as approved by the Commission shall be used; it also provides that other methods may be used when the Commission determines such depreciation methodology is a more equitable means of recovering the costs of plant.
14. The rates approved in this proceeding are consistent with 16 TAC § 25.231(c)(2)(A)(ii), which states that the reserve for depreciation is the accumulation of recognized allocations of original cost, representing the recovery of initial investment over the estimated useful life of the asset.
15. SWEPCO's STI payments to collectively bargained employees should not be reduced to remove financially-based STI. PURA § 14.006.
16. Upon completion of this base rate case, SWEPCO's TCRF should be set to zero. 16 TAC § 25.239(f).
17. The ROE and overall rate of return authorized in this proceeding are consistent with the requirements of PURA §§ 36.051 and 36.052.
18. The Commission has authority to order SWEPCO to adopt the financial protections listed in Finding of Fact No. 108. PURA §§ 11.002, 14.001, 14.003, 14.154(a), 14.201, 36.003(a).
19. Prudence is the exercise of that judgment and the choosing of one of that select range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available at the point in time such judgments is exercised or option is chosen. *Gulf States Util. Co. v. Public Util. Comm'n*, 841 S.W.2d 459, 476 (Tex. App.—Austin 1992, writ denied).
20. There may be more than one prudent option within the range available to a utility in a given context. Any choice within the select range of reasonable options is prudent, and the Commission should not substitute its judgment for that of the utility. The reasonableness of an action or decision must be judged in light of the circumstances, information, and available options existing at the time, without benefit of hindsight. Docket No. 40443, Order on Rehearing at 5 (citing *Nucor Steel v. Public Utility Commission of Texas*, 26 S.W.3d 742, 752 (Tex. App.—Austin 2000, pet. denied)).
21. A utility may demonstrate the prudence of its decision making through contemporaneous evidence. Alternatively, the utility may obtain an independent, retrospective analysis that demonstrates that a reasonable utility manager, having investigated all relevant factors and alternatives, as they existed at the time the decision was made, would have found the utility's actual decision to be a reasonably prudent course. *Gulf States*, 841 S.W.2d at 476.
22. The utility does not enjoy a presumption that the expenditures reflected in its books have been prudently incurred merely by opening the books to inspection. But while the ultimate

- burden of persuasion on the issue of prudence remains with the utility, its initial burden of production (*i.e.*, to come forward with evidence) is shifted to opponents if the utility establishes a prima facie case of prudence. This is a “Commission-made” rule, intended “to aid in the trial of utility prudence reviews” and facilitate “efficient hearings,” allowing the utility to establish prudence “by introducing evidence that is comprehensive, but short of proof of the prudence of every bolt, washer, pipe hanger, cable tray, I-beam, or concrete pour.” *Entergy Gulf States, Inc. v. Public Util. Comm’n*, 112 S.W.3d 208, 214-15, and n.5 (Tex. App.—Austin 2003, pet. denied).
23. The rate year is defined as the 12-month period beginning with the first date that rates become effective. 16 TAC § 25.5(101).
 24. The rates approved by this order are effective for consumption on and after March 18, 2021 in accordance with PURA § 36.211(b) and 16 TAC § 25.246(d)(1).
 25. The Commission’s Cost of Service Rule permits post-test year adjustments for known and measurable decreases to test year data under conditions that include a plant being removed from service, mothballed, sold, or removed from the electric utility’s books prior to the rate year. 16 TAC § 25.231(c)(2)(F)(iii).
 26. The Commission has discretion to make exceptions to its substantive rules applicable to electric-service providers, including its Cost of Service Rule, for good cause. 16 TAC § 25.3.
 27. While the Commission’s Cost of Service Rule generally requires that depreciation expense shall be computed on a straight-line basis, other methods may be used when it is determined that such depreciation methodology is a more equitable means of recovering the cost of the plant. 16 TAC § 25.231(b)(1)(B).
 28. PURA § 36.064 requires SWEPCO to prove that: (1) its proposed self-insurance reserve coverage is in the public interest; (2) the plan, considering all costs, would be a lower cost alternative to purchasing commercial insurance; and (3) customers would receive the benefits of the savings. Tex. Util. Code § 36.064(b).
 29. For SWEPCO to establish that its self-insurance plan is in the public interest, SWEPCO “must present a cost benefit analysis performed by a qualified independent insurance consultant who demonstrates that, with consideration of all costs, self-insurance is a lower-cost alternative than commercial insurance and the customers will receive the benefits of the self insurance plan.” Further, “[t]he cost benefit analysis shall present a detailed analysis of the appropriate limits of self insurance, an analysis of the appropriate annual accruals to build a reserve account for self insurance, and the level at which further accruals should be decreased or terminated.” 16 TAC § 25.231(b)(1)(G).
 30. SWEPCO did not meet its burden of proof to show that its proposed self-insurance reserve would be in the public interest. Tex. Util. Code § 36.064(b); 16 TAC § 25.231(b)(1)(G).

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31. Affiliate expenses to be included in SWEPCO's rates must meet the standards articulated in PURA §§ 36.051 and 36.058 and in *Railroad Commission of Texas v. Rio Grande Valley Gas Co.*, 683 S.W.2d 783 (Tex. App.—Austin 1984, no writ).
32. Investor-owned utilities may include in rate base a reasonable allowance for cash working capital as determined by a lead-lag study conducted in accordance with 16 TAC § 25.231(c)(2)(B)(iii)(IV).
33. A lead-lag study is performed to determine the reasonableness of a cash working capital allowance. 16 TAC § 25.231(c)(2)(B)(iii)(IV) and (V).
34. The filed rate doctrine requires that interstate power rates filed with FERC or fixed by FERC must be given binding effect by the Commission when determining interstate rates. *Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm'n*, 539 U.S. 39, 47 (2003).
35. FERC has exclusive jurisdiction over the wholesale sale or transmission of electricity in interstate commerce. 16 U.S.C. § 824(b).
36. Pursuant to its exclusive jurisdiction over wholesale rates, FERC is the appropriate arbiter of disputes involving the interpretation of a FERC-approved tariff, such as SPP's OATT. *AEP Texas North Co. v. Texas Indus. Energy Consumers*, 473 F.3d 581, 585-86 (5th Cir. 2006).
37. 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. *Entergy Texas, Inc. v. Nelson*, 889 F.3d 205, 209-10 (5th Cir. 2018).
38. A transmission-voltage customer that submits an opt-out notice to the Commission is not required to pay costs incurred by the utility to acquire RECs. 16 TAC § 25.173(j).
39. Utilities seeking recovery or municipalities seeking reimbursement of RCEs have the burden to prove the reasonableness of such expenses by a preponderance of the evidence to include those amounts in customers' rates.
40. Except for charges by attorneys and consultants in excess of \$550 per hour and the \$2,500 cap on CARD's expenses in Docket No. 47141, the RCEs SWEPCO is seeking to recover in this case for itself and CARD are recoverable pursuant to PURA § 36.061(b).
41. SWEPCO's rates, as approved in this proceeding, are just and reasonable in accordance with PURA § 36.003.

C. Proposed Ordering Paragraphs

In accordance with these Findings of Fact and Conclusions of Law, the Commission issues the following orders:

1. The Proposal for Decision issued by the SOAH ALJs is adopted to the extent consistent with this order.
2. SWEPCO's application is granted to the extent consistent with this order.
3. SWEPCO shall implement and adhere to the financial protections listed in Finding of Fact No. 108. No later than 90 days from the date of this Order, SWEPCO shall have implemented, and be adhering to, all of those financial protections.
4. In its direct testimony in its next base rate case, SWEPCO shall address why some of its customer classes, including the Cotton Gin class, the Oilfield Secondary class, and the Public Street and Highway Lighting class, historically are far below their relative rates of return produced by the Company's CCOSS, and whether adjustments, other than gradualism, can and should be made to address this recurring situation.
5. In its direct testimony in its next base rate case, SWEPCO shall address why customers can or should be allowed to migrate from class-to-class without experiencing a change in load or operations. In that testimony, SWEPCO should explain how it accounts for these future migrations through its adjusted billing determinants, and either justify its existing relatively open class structure, or propose rate schedule revisions that more closely group similarly situated customers into rate schedules.
6. SWEPCO may recover its authorized RCEs through its proposed Rate Case Surcharge Rider.
7. SWEPCO and CARD may seek to recover in a future proceeding any trailing RCEs not already presented in their July 6, 2021 rate case expense reports for this case.
8. SWEPCO's TCRF and DCRF are set to zero at the conclusion of this base rate case. The baseline values for SWEPCO's TCRF, DCRF, and GCRR shall be developed and set during the compliance phase of this docket in *Compliance Tariff for Final Order in Docket No. 51415 (Application of Southwestern Electric Power Company for Authority to Change Rates)*, Control No. ____.
9. SWEPCO shall file tariffs consistent with this order within 20 days of the date of this order in *Compliance Tariff for Final Order in Docket No. 51415 (Application of Southwestern Electric Power Company for Authority to Change Rates)*, Control No. _____. No later than ten days after the date of the tariff filings, Staff shall file its comments recommending