

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

**CLECO POWER LLC AND)
SOUTHWESTERN ELECTRIC POWER)
COMPANY EX PARTE. IN RE: JOINT)
APPLICATION FOR: (I))
AUTHORIZATION TO CLOSE THE)
OXBOW MINE; AND (II))
AUTHORIZATION TO INCLUDE AND)
DEFER CERTAIN ACCELERATED MINE)
CLOSING COSTS IN FUEL AND)
RELATED RATEMAKING TREATMENTS;)
(III) REVIEW OF CLECO POWER AND)
SOUTHWESTERN ELECTRIC POWER)
DECISION TO RETIRE DOLET HILLS)
POWER STATION BY DECEMBER 31,)
2021, INCLUDING WHETHER SUCH)
DECISION WAS PRUDENT; AND (IV))
RELATED RATE ISSUES.)**

DOCKET NO. U-35753

LA PUBLIC SERVICE COMM
DEC 27 2023 AM 11:35

STAFF'S EXCEPTION TO ALJ RECOMMENDATION

MAY IT PLEASE THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Staff submits its exception to Your Honor's recommendation of November 28, 2023 in two sections. The first section addresses the mines; the second addresses the plant, or DHPS itself.

THE MINES

Your Honor correctly concludes that the mining orders do not predetermine or guarantee a right to recover from customers all costs through the FAC that the applicants pay to or on behalf of the miner. Instead, the mining orders, read serially, establish a method of recovery from customers – that is through the FAC – but such recovery from ratepayers is subject to the strictures of the FAC: costs must be reasonably and prudently incurred and the FAC does not authorize recovery beyond what would be just and reasonable charges to ratepayers. “The FAC General Order only allows recovery of fuel costs that were prudently incurred and produced just and

reasonable rates.” Recommendation at 24. Your Honor correctly finds that the operation of the mines and DHPS as a source for electrical energy from 2019 forward that concomitantly sought to impose exorbitant fuel costs on ratepayers was imprudent and resulted in charges to customers that are not just and reasonable. Recommendation at 26.

Staff respectfully submits that Your Honor’s recommendation goes astray in calculating the mining costs recoverable by applicants. Initially Your Honor correctly sets forth the positions of the applicants, Staff, and PCA-IP. Staff’s position is that \$217 million for Cleco and \$55 million for SWEPCO of mine costs should not be recovered. Recommendation at 13. Your Honor next writes that

PCA-IP recommends a total of \$228 million in disallowances, which includes (i) \$100 million disallowance of imprudently incurred costs that Cleco proposes to recover from ratepayers through securitization (including Oxbow Mine-related costs, fuel inventory, and regulatory asset) and (ii) at least \$128 million in imprudently incurred fuel costs that Cleco has already recovered from ratepayers through its Fuel Adjustment Clause, with the amount representing the difference between actual incurred fuel costs and alternative fuel costs, and with such amount to be refunded to customers on a kWh basis.

Recommendation at 14. Notably, PCA-IP is a Cleco customer and is not a SWEPCO customer. Therefore, PCA-IP’s recommendation and the supporting testimony of PCA-IP witness Brubaker only addresses and concerns cost recovery sought by Cleco. At page 26, under the heading “Result of Imprudence,” Your Honor writes: “Commission Staff maintains that the recovery of mine-related costs of \$217 million for Cleco and \$55 million for SWEPCO should not be allowed. PCA-IP urges the Commission to disallow recovery of at least \$228 million in imprudent costs.” It appears that an origin for error may begin to creep in at this point in the recommendation, in not specifying that PCA-IP’s figure applies only to Cleco. However, beginning at page 27, Your Honor again writes:

PCA-IP, as customers of Cleco, urge the Commission to disallow recovery of at least \$228 million in imprudent costs incurred by Cleco relating to its imprudent operation and dispatch of Dolet Hills, of which at least \$128 million should be refunded to customers on a kWh basis consistent with how such costs were collected. PCA-IP further urges the Commission to disallow recovery of any Miner costs incurred after 2021, as such costs were not authorized by the Commission and are contrary to ratepayer protections provided by the Commission in the Mining Orders. PCA-IP witness Mr. Brubaker calculated that the excess fuel costs for 2019, 2020, and 2021 were roughly \$128 million (\$35 million in 2019, \$43 million in 2020, and \$50 million in 2021) by comparing what the fuel costs would have been using the next highest cost generation unit in Cleco's fleet.

So, it seems that Your Honor here has returned to a recognition that PCA-IP's numbers only relate to Cleco. The next couple of paragraphs address and discuss the replacement cost of power to be used to offset the expensive Dolet power. Here, it seems unclear whether or to what extent Your Honor credits that offsetting amounts were baked into and already accounted for in Staff's numbers for SWEPCO and Cleco as well as PCA-IP's numbers that only apply to Cleco. But on page 29 a clear and unfortunate error in calculations occurs:

According to the Louisiana Supreme Court, if imprudent, the utility is responsible for replacement costs. Cleco stated that there is no spot market for lignite and mine mouth operations are the only feasible way to fuel a generating facility with lignite. Therefore, the closest analogy for replacement costs would be Cleco's next highest cost generation unit. **Accordingly, Cleco and SWEPCO are disallowed \$128 million for fuel costs related to Dolet Hills.** To determine the breakdown for each company's disallowance, we look at the percentage of Dolet Hills costs each company flowed through the FAC. Cleco's portion is 52.27% or 66,905,600. SWEPCO's portion is 47.31% or \$61,094,400. Additionally, SWEPCO's disallowance would need to be cut to 33% or the Louisiana jurisdictional amount ($61,094,400 \times 33\% = 20,161,152$).

Recommendation at 29 (emphasis in original).

This calculation does not follow from Your Honor's prior reasoning in the recommendation or a correct view of the numbers presented by PCA-IP. First, the Cleco amount posited by PCA-IP is not a shared amount with SWEPCO. Second, aside from erroneously applying it to both applicants, if Mr. Brubaker's methodology for \$128 million is only applied to Cleco (which is the

only party to which it can be applied), it is unclear whether that amount of “disallowance” is total or further that Cleco cannot recover the additional \$100 million of the total of \$228 million that Mr. Brubaker’s testimony also states is not recoverable. Third, only Staff stated an amount for SWEPCO, and that amount, \$55 million, already had the jurisdictional issue included in calculations. At this point, the recommendation stops as to the mines.

Staff respectfully submits that the correct resolution of these issues and clarification of the recovery/disallowance that should follow from the heart of Your Honor’s ruling would be to adopt Staff’s position and analysis, which Staff submits is warranted by Your Honor’s recognition of the FAC as the mechanism and source of authority for cost recovery by applicants. Staff respectfully submits its market-based methodology provides the correct outcome.

Fundamentally, premising recovery for costs based on Rodemacher 2 (“Cleco’s next highest cost generation unit”) as was done by Mr. Brubaker because it might be the closest analogy to lignite-fired DHPS is incorrect and not warranted. There is no reason or legal requirement to default to the “next highest cost generation unit” as a comparator in this matter, and certainly not for events in 2019 to 2021 when there were well-developed protocols for acquiring replacement power in both the MISO and SPP footprints. Staff respectfully submits that the nature or type of fuel used to generate the replacement power used as a comparator is irrelevant and not based on market realities. Rather, the price for the most economical power available **at the time of dispatch** is appropriate and consonant with the FAC General Order. The proper replacement cost to use is the energy that was readily available in the MISO and SPP markets with a clear and transparent price during the relevant time period: 2019 forward. This is the replacement power that was used by Staff in its calculations. Additionally the use of Rodemacher 2 for calculations concerning

SWEPCO is further unrealistic given that no circumstances could exist for SWEPCO to elect dispatch from Rodemacher 2.

Your Honor's recommendation should be clarified and supplemented to specify correct amounts of refunds to be paid by each applicant and the amount, if any, to be allowed as a remaining regulatory asset for each applicant. This requires two steps.

First, returning to basics, the gross numbers are the difference between what was paid by applicants to the miner as costs for the lignite, less what replacement power could be purchased for, less the costs of the allowed fuel inventory on hand, at and after the time (from 2019 forward) Your Honor correctly determined that the operation of the mines and DHPS as a source for electrical energy was imprudent and resulted in charges to customers that are not just and reasonable. Staff respectfully submits that its calculations for this first step are correct: \$217 million for Cleco and \$55 million for SWEPCO of mine costs should not be recovered. *See* Recommendation at 27. As explained previously, one basic flaw in intervenor PCA-IP's methodology is the use of an improper comparator for replacement power (and PCA-IP's number does not account at all for SWEPCO's portion).

Notably, Cleco and SWEPCO would have already passed through to ratepayers under their FACs their full claimed mining costs asserted in this matter but for the Commission Order establishing regulatory assets for accounting purposes. That order allowed limited recovery in the interim but protected ratepayers from excessive FAC charges until it could be determined whether and to what extent applicants would be allowed to recover those costs. Thus, that interim order created two "buckets" for each applicant to be dealt with in the event of a ruling (upon which we now have Your Honor's recommendation) disallowing the full recovery sought by applicants – one "bucket" consisting of what has been recovered under the FAC, and another "bucket"

consisting of a regulatory asset. Crucially, both “buckets” are composed of amounts to be recovered/retained by applicants, if at all, under the applicants’ respective FACs.

So, the second step is allocating the amount determined in the first step between each “bucket” for each applicant. Staff respectfully submits this is not as formidable as it may seem. If, as proposed by Staff, Your Honor were to correct the numbers from her preliminary recommendation by recognizing that Staff’s numbers were correctly derived and should be used, Cleco’s disallowance of \$217 million would wipe out its regulatory asset (\$111 million, *see* Recommendation at 27, 30) in full and require a refund of \$106 million. Likewise, SWEPCO’s disallowance of \$55 million would wipe out its regulatory asset (\$31 million, *see* Recommendation at 27, 30) in full and require a refund of \$24 million. These numbers are rounded and may need to be tweaked because of, *inter alia*, continued collections, but this is essentially the division between “buckets.”

While Staff disagrees with the use of intervenor PCA-IP’s numbers and methodology at least in part because of the comparator for replacement energy (Rodemacher 2) and the complete absence of any calculations by intervenor for SWEPCO, Staff adds out of an abundance of caution that, if Your Honor were to retain PCA-IP’s numbers and methodology for Cleco, adjustments would still be necessary to Cleco’s disallowance as well as SWEPCO’s. It appears to Staff that PCA-IP asserts that Cleco has *already recovered* \$128 million of excess costs that would be required to be refunded, and that PCA-IP asserts Cleco additionally has a regulatory asset of \$100 million (not \$111 million) that should likewise be disallowed. See, e.g., Recommendation at 14, 27-28). Candidly, Staff believes intervenor’s numbers err in not subtracting the cost of inventory on hand at the beginning of 2019, but should Your Honor elect to stick with intervenor’s position on Cleco, then Cleco should be required to refund \$128 million and recover nothing on its

regulatory asset. Obviously, Cleco's disallowance as calculated by intervenor cannot be reduced by placing a portion thereof upon SWEPCO. The glaring issue then becomes what to do with SWEPCO, given that intervenor's methods and numbers relate solely to Cleco. The only evidence of record that calculates a disallowance for SWEPCO consonant with Your Honor's reasoning in her recommendation is the evidence presented by Staff, which would disallow SWEPCO recovery on its regulatory asset and require a refund of \$24 million. It may seem strained to apply PCA-IP's numbers and methodology to Cleco and Staff's to SWEPCO, but there is no evidence that would allow otherwise if Your Honor were to retain her recommendation as to the \$128 million, which can only be applied to Cleco and has no relevance to SWEPCO. Of course, Staff respectfully submits that the recommendation should be amended and clarified to comport with Staff's position as to both applicants on mining costs.

THE PLANT

Staff does not have any staunch objection to Your Honor's recommendation regarding the recovery of the remaining net book value of the plant after its retirement (i.e., the stranded plant) but Staff does suggest that Your Honor's recommendation requires some limited tweaking and clarification. Staff agrees that applicants should be allowed a return of that investment. Staff also agrees with Your Honor's finding that this recovery should be net of the depreciation and O&M over-recovered since the time that the plant retired. As to the return on the plant, Your Honor's recommendation allows that recovery through SWEPCO's retirement rider, which would allow recovery on at the Company's full WACC. It is assumed that the Your Honor intended the same thing when recommending that Cleco "can continue to recover carrying costs." On this point, it should be noted that Staff believes that this decision could be construed to set a policy previously not set by the Commission. So to the extent that Your Honor's recommendation was intended to

apply to Dolet Hills in isolation (and for potentially exceptional circumstances not stated), Staff asks for clarification that the outcome herein should not be construed as and is not intended to set any general policy or rule that “recovery on” is allowed as to an asset no longer used and useful.

Respectfully submitted,

/Patrick H. Patrick

Patrick H. Patrick

Pierre V. Miller II

Date: December 27, 2023

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