

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER U-35753-A

CLECO POWER LLC AND SOUTHWESTERN ELECTRIC POWER COMPANY, EX
PARTE.

Docket No. U-35753, 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.

(Decided at the April 19, 2024 Business and Executive Session.)

ORDER

I. Background and Procedural History

In this proceeding, Cleco Power LLC (“Cleco Power”) and Southwestern Electric Power Company (“SWEPCO”) (collectively, “Applicants” or the “Companies”) initially sought Louisiana Public Service Commission (“Commission” or “LPSC”) approval for the closure of the Oxbow Mine, that the closure of the Oxbow Mine was prudent, and certain ratemaking treatments of the expenses associated with the cessation of mining at the Oxbow Mine and the closure of the Oxbow Mine. The Commission thereafter expanded the proceeding to include whether the Applicants’ decision to retire the Dolet Hills Power Station (“Dolet Hills” or “DHPS”) was prudent. The expansion of the docket also included modifications and/or adjustments to the ratemaking recovery of Dolet Hills costs. Subsequently, the Applicants filed a second application in the proceeding seeking a Commission determination whether it was prudent and in the public interest to retire Dolet Hills permanently. The second application also sought Commission authorization to undertake all actions necessary or appropriate to effectuate the retirement and certain ratemaking treatment. The following Parties intervened in this matter: the Alliance for Affordable Energy (“AAE”), Packaging Corporation of America (“PCA”), Cabot Corporation (“Cabot”), International Paper Company (“International Paper”) and Sierra Club. Dixie Electric Membership Corporation (“Demco”) and EP2 Consulting (“EP2”) participated as Interested Parties.

Dolet Hills was a lignite-fired generating plant located in north Louisiana. SWEPCO and Cleco Power jointly own the plant, along with two minority owners. Cleco Power operates Dolet Hills, with joint oversight provided by an Operating Committee comprised of representatives of Cleco Power and SWEPCO. It was a “mine mouth” operation with the source of the lignite located immediately adjacent to the power plant. Two mines supplied the lignite for Dolet Hills - initially the Dolet Hills Mine and subsequently the Oxbow Mine (collectively, the “Mines”).

Originally, the mining of lignite for Dolet Hills was conducted by the Dolet Hills Mining Venture, an independent third-party miner. In 2001, the Commission issued Mining Order 1, in which the Commission approved a Term Sheet that provided for the replacement of the then-existing miner with a new mining company, the Dolet Hills Lignite Company (“DHLC” or the “Miner”), an affiliate of SWEPCO. The Term Sheet also provided for guaranteed minimum lignite cost savings to Louisiana ratepayers of at least 2% of the “would have been” price of the former mining company (the “benchmarking formula”). In 2008, the Commission issued Mining Order 2, in which the Commission revised the benchmarking formula and dictated that the benchmarking formula would end on April 30, 2011. Mining Order 2 also stated that the Companies would continue to economically operate Dolet Hills through 2016, and established reporting requirements to enable the Commission to monitor costs and deferrals on an ongoing basis. In 2009, the Commission issued Mining Order 3, in which the Commission authorized the acquisition of a lignite mine known as the Red River Mine-Oxbow Reserve (“Oxbow Mine”). Mining Order 3 discontinued the benchmarking requirements and stated that the Companies should commit to continuing the operation of Dolet Hills and the Mines so that they will be used and useful and in the public interest through at least 2026. The Companies were not precluded from shortening the 2026 time requirement, based upon continued operation no longer being prudent, considering economic, environmental, operational, or other similar factors.

In October 2020, the Companies instituted this proceeding seeking Commission approval to close the Oxbow Mine and defer certain accelerated Mine closing costs and related ratemaking treatments. In March 2021, the Commission ordered that SWEPCO and Cleco Power each establish a regulatory asset for their respective shares of the lignite production costs. In November 2021, the Commission directed that the scope of the current proceeding be expanded to include a review of the decision to retire Dolet Hills, including whether such decision was prudent, and modifications to the ratemaking recovery of the Dolet Hills costs. Thereafter, in January 2022, the Companies filed their second application addressing the retirement of Dolet Hills.

At the Commission’s March 17, 2021 Business and Executive Session, the Commission ordered that the Applicants each establish a regulatory asset for their respective shares of the lignite production costs that exceeded \$150 per ton and that “the amount collected for 2021 by Cleco Power through its FAC shall not exceed \$60 million in ... and further provided that the amount collected for 2021 by SWEPCO through its FAC shall not exceed \$20 million in total.” Further,

the Order stated that “these regulatory assets may be used for accounting purposes only. This accounting order constitutes neither allowance nor disallowance of recovery.”

At the Commission’s November 17, 2021 Business and Executive Session, the Commission issued a directive to expand the scope of the proceeding to include a review of Cleco Power and SWEPCO’s decision to retire Dolet Hills, including whether such decision was prudent. The directive further stated that the expansion included:

modifications to the ratemaking recovery of the DHPS costs being considered in Dockets U-35441 (SWEPCO) and considered and deferred by agreement in U-35299 (CLECO), as appropriate and necessary, to: a) reflect disallowances resulting from the Commission’s decision on the prudence of the decision to retire in 2021, if any; b) ensure that ratemaking recovery properly reflects on a going forward basis changes in the actual operating expenses and the actual net book value or regulatory asset and the remaining tax basis at retirement; c) consider ratemaking adjustments and/or mechanisms that would potentially reduce the effects on customers while ensuring recovery of prudent costs and d) ensure that the joint application filed by SWEPCO and CLECO adequately addresses these issues to be decided in the Docket U-35753 proceeding.

The directive also explained that any deferral of issues from other dockets was not a finding of prudence of the status quo level of recovery and it would be subject to review and potential modification, including refunds. Additionally, the directive explained that upon retirement the depreciable asset may need to be converted to a regulatory asset for regulatory accounting purposes only.

On January 31, 2022, the Applicants filed a Joint Application (“Second Application”) in the proceeding requesting that the Commission: (i) determine that it is prudent and in the public interest, based on economic, environmental, operational, and other factors, to permanently retire Dolet Hills as of December 31, 2021; (ii) authorize the Applicants to retire Dolet Hills and to undertake all actions necessary or appropriate to effectuate such retirement; (iii) authorize certain ratemaking treatment specific to Cleco Power in connection with the retirement of Dolet Hills and authorize certain proposals of Cleco Power related to fuel costs and production operations and maintenance (“O&M”) expense, and authorize certain ratemaking treatment specific to SWEPCO in connection with the retirement of Dolet Hills; (iv) consider this Application in connection with the Joint Application of the Applicants currently pending in this proceeding; and (v) authorize expedited treatment.

After discovery and the filing of direct and rebuttal testimony, a hearing was held on May 8-9, 2023. Administrative Law Judge (“ALJ”) Guillot issued a Proposed Recommendation on November 28, 2023. On December 27, 2023, Cleco Power, SWEPCO, Commission Staff and

PCA-IP filed their Exceptions to the Proposed Recommendation. On January 19, 2024, Cleco Power, SWEPCO, Commission Staff and PCA-IP filed their Replies to the Exceptions to the Proposed Recommendation. On February 2, 2024, ALJ Guillot issued a Final Recommendation.

Subsequent to the issuance of the Final Recommendation, the Parties negotiated uncontested proposed settlements, thereby resolving all issues in this docket as to both Cleco Power and SWEPCO. On April 15, 2024, the Parties filed a Joint Motion for Consideration by the Commission pursuant to Rule 57 and Approval of Uncontested Proposed Settlements. This motion was considered at the Commission's April 19, 2024 Business & Executive Session.

II. Jurisdiction and Applicable Law

Pursuant to the Louisiana Constitution, Article 4, Section 21, the Commission shall regulate all common carriers and public utilities, and adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties. La. R.S. 45:1163(A)(1) provides that the Commission shall exercise all necessary power and authority over any electric light, heat, power, or other local public utility "for the purpose of fixing and regulation the rates charged or to be charged by and service furnished by such public utilities." La. R.S. 45:1176 provides that the Commission shall investigate the reasonableness and justness of all contracts entered into by public utilities, and shall have the power to disallow any expense under such contracts as the Commission may find to be unjust or unreasonable.

Three Commission Orders are pertinent to the instant proceeding: Commission Order No. U-21453, U-20925 (SC) and U-22092(SC) (Subdocket G), issued May 31, 2001, ("Mining Order 1"), Commission Order No. U-29797, issued December 5, 2008, ("Mining Order 2"), and Commission Order No. U-30975, issued September 30, 2009 ("Mining Order 3") (collectively, the "Mining Orders").

III. Uncontested Proposed Settlements

The Parties entered into two Uncontested Stipulated Settlements, with Cleco Power and SWEPCO respectively, thereby resolving all issues in the docket. The terms of the Uncontested Stipulated Settlement relative to Cleco Power are as follows:

1. Cleco Power shall provide customers with a \$100 million benefit associated with the plant, rate base and regulatory assets. Cleco Power will provide this benefit to customers by writing down its regulatory asset value by \$40 million and refunding a total of \$60 million - \$20 million per year over the summer months of July, August, and September in 2024, 2025, and 2026 as more fully discussed below.
2. Cleco Power will further reduce its requested securitization amount by \$15 million, reflecting updated estimates for demolition and remediation. The total securitization amount will thus

be \$305 million. Additional costs beyond the \$305 million incurred will be booked to a regulatory asset for recovery over five years from incurrence.

3. The amount authorized for recovery in this proceeding shall be recovered by Cleco Power utilizing a securitization financing, and such amount is referred to herein as the "Securitization Principal Amount." For the avoidance of doubt, the Securitization Principal Amount has been reduced by \$40 million of the \$100 million total customer benefit. The parties agree to exercise commercially reasonable, good faith efforts to obtain a financing order from the LPSC by no later than September 1, 2024 and thereafter to close the securitization financing as expeditiously as possible following the issuance of the financing order.
4. As provided in paragraph 1 above, \$60 million of the total \$100 million shall be credited on customers' bills (\$20 million per year over three years 2024, 2025, and 2026). The credits shall be made and appear as on customers' bills for the months of July, August, and September, 2024, 2025, and 2026 (averaging approximately \$7 million each month). The credit shall be allocated to all of Cleco Power customer classes based on the LPSC jurisdictional secondary, primary and transmission voltage fuel revenue from July 2021 through June 2022. The rates established shall be credited on customer bills in July, August, and September 2024, 2025, and 2026. Any over or under disbursement of the credit as of October 2026 shall be included as a component of fuel costs for the operations month of December 2026 and be included in the secondary, primary and transmission voltage fuel rates billed in February 2027.
5. Upon the closing of the securitization financing, Cleco Power will provide customers with a surcredit on the unamortized accumulated deferred income tax ("ADIT") balance associated with Dolet Hills Power Station and the associated mine costs at Cleco Power's weighted average cost of capital. The initial ADIT balance will be approximately \$59 million upon completion of the securitization financing, which would amount to a surcredit of approximately \$5.5 million in year one. The annual surcredits shall be calculated on actual Dolet Hills Power Station-related ADIT balances net of amortization over the term of the securitization period. The securitization revenue requirement and the ADIT surcredit will be allocated to customer classes based on the most current annual base revenue forecast. Calculation of customer, demand and energy charges for each class shall be similar to those utilized for determining rates under Cleco Power's currently effective Rider IICR.
6. From and after September 1, 2024, Cleco Power shall accrue a carrying charge as an additional regulatory asset — DHPS Carrying Charge. The carrying charge shall be based on the amounts of the Dolet Hills regulatory assets subject to securitization at Cleco Power's WACC (approximately \$2.2 million per month). The accrual of carrying charges shall terminate on or before January 31, 2025 regardless of the status of the securitization financing. Notwithstanding the foregoing, Cleco Power may seek the Commission's authorization to extend the carrying charges beyond January 31, 2025, if the securitization financing is delayed by unforeseen circumstances beyond Cleco Power's control. By agreeing to this additional language, the parties do not also agree in advance to the position that they will take as, if, and when any such extension is sought by Cleco Power. Thus, any party may or may not object to any extension sought by Cleco Power, in such party's discretion, should circumstances arise in which Cleco Power seeks such an extension. Cleco Power will recover the balance of the regulatory asset — DHPS Carrying Charge through Cleco Power's Rider IICR mechanism over one year.
7. No later than 90 days after receipt of the securitized funds, the difference in the securitized amount, less the actual securitization costs and the regulatory assets for the mine and the plant, will be invested in a restricted interest bearing account. The interest earned each year shall be credited to customers utilizing Rider IICR. In conjunction with this annual credit, Cleco Power will provide a report to the Commission showing all activity in the restricted account, including interest earned on the account and any charges to the account.

I. GENERAL PROVISIONS

1. The Commission order issued in this proceeding shall be effective immediately upon its date of issuance.
2. Unless specifically stated herein, this Settlement shall have no precedential effect in any future proceedings, and shall be without prejudice to the right of any party to take any position in

future proceedings, or appeals therefrom.

3. The parties believe that the Settlement as a whole should be approved by the Commission and that it is in the public interest or otherwise have no objection to this Settlement.
4. This Settlement will be effective upon approval by the Commission. The parties agree to request the approval of this Settlement by the Commission at the April 2024 Business & Executive Meeting.

The terms of the Uncontested Stipulated Settlement relative to SWEPCO are as follows:

1. SWEPCO and CLECO are relieved of their obligation pursuant to Commission Order No. U-30975 to maintain the operation of the Dolet Hills and Oxbow Mines ("Mines") until at least 2026.
2. SWEPCO and CLECO are relieved of their obligation pursuant to Commission Order No. U-30975 to maintain the operation of the Dolet Hills Power Station ("DHPS") until at least 2026.
3. The retirement of DHPS and the Mines on December 31, 2021, was reasonable and prudent.
4. SWEPCO shall not collect \$25 million of the total costs deferred in the Dolet Hills regulatory assets for the Dolet Hills Power Station and Mines. This disallowance shall consist of a one-time \$11 million reduction in the deferred fuel balance for the Mines and a one-time \$14 million reduction to the costs of the DHPS recovered through the Retirement Rider approved in Order No. U-35441.
5. SWEPCO shall be authorized to recover the remaining Dolet Hills fuel regulatory asset balance (net of the \$11 million reduction required by paragraph 4) through a deferred fuel charge, over a three-year period beginning on the 1st billing cycle of the month following Commission Approval, with interest as set forth in the 1997 Fuel Adjustment Clause (FAC) General Order.
6. SWEPCO's portion of the Dolet Hills Power Station costs not including the fuel costs previously discussed (and net of the \$14 million reduction required by paragraph 4), will be recovered in the Retirement Rider, in accordance with Commission Order No. U-35441.
7. This settlement shall fully and finally resolve any and all issues in this proceeding related to Dolet Hills Power Station or Mine expenses and recovery, and all other issues addressed in this Stipulation. This settlement and Joint Stipulation and Term Sheet shall not constitute or be cited as precedent in any other proceeding.
8. The Settling Parties represent and agree that, except as specifically otherwise provided here:
 - (a) This Joint Stipulation and Term Sheet represents a negotiated settlement for the purposes of settling all issues which were raised relating to these proceeding.
 - (b) Each of the undersigned counsel of record affirmatively represents that he or she has full authority to execute this Joint Stipulation and Term Sheet on behalf of their client(s).
 - (c) None of the signatories hereto shall be prejudiced or bound by the terms of the Joint Stipulation and Term Sheet in the event the Commission does not approve this Joint Stipulation and Term Sheet nor shall any of the Settling Parties be prejudiced or bound by the terms of this Joint Stipulation and Term Sheet should any appeal of a Commission order adopting this Joint Stipulation and Term Sheet be filed with the courts.
 - (d) Nothing contained herein shall constitute an admission by any Settling Party that any allegation or contention in these proceedings as to any of the foregoing matters is true or valid and shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding.
 - (e) The Settling Parties agree that the provisions of this Joint Stipulation and Term Sheet are the result of extensive negotiations, and the terms and conditions of this Joint Stipulation and Term Sheet are interdependent. The Settling Parties agree that settling the issues in this

Joint Stipulation and Term Sheet is in the public interest and, for that reason, they have entered into this Joint Stipulation and Term Sheet to settle among themselves the issues in this Joint Stipulation and Term Sheet. This Joint Stipulation and Term Sheet shall not constitute nor be cited as a precedent nor deemed an admission by any Settling Party in any other proceeding except as necessary to enforce its terms before the Commission, or any state court of competent jurisdiction, nor admissible in any further judicial or regulatory proceeding. The Commission's decision, if it enters an order consistent with this Joint Stipulation and Term Sheet, will be binding as to the matters decided regarding the issues described in this Joint Stipulation and Term Sheet, but the decision will not be binding with respect to similar issues that might arise in other proceedings. A Settling Party's support of this Joint Stipulation and Term Sheet may differ from its position or testimony in other dockets. To the extent there is a difference, the Settling Parties are under no obligation to take the same position as set out in this Joint Stipulation and Term Sheet in other dockets.

9. Non Severability. The Settling Parties agree that the agreements contained in this Joint Stipulation and Term Sheet have resulted from negotiations among the Settling Parties and are interrelated and interdependent. The Settling Parties hereto specifically state and recognize that this Joint Stipulation and Term Sheet represents a balancing of positions of each of the Settling Parties in consideration for the agreements and commitments made by the other Settling Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt the terms of this Joint Stipulation and Term Sheet in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), this Joint Stipulation and Term Sheet shall be void and of no force and effect, and no Settling Party shall be bound by the agreements or provisions contained herein. The Settling Parties agree that neither this Joint Stipulation and Term Sheet nor any of the provisions hereof shall become effective unless and until the Commission shall have entered an Order approving the terms and provisions as agreed by the parties to this Joint Stipulation and Term Sheet and such Order becomes final and non-appealable.

IV. Commission Consideration

This matter was considered at the Commission's April 19, 2024 Business & Executive Session. On motion of Commissioner Skrmetta, seconded by Commissioner Greene, and unanimously adopted, the Commission voted to assert its original and primary jurisdiction and take the matter up pursuant to Rule 57.

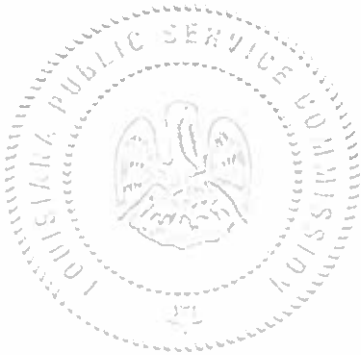
After discussion, on motion of Commissioner Skrmetta, seconded by Commissioner Greene, and unanimously adopted, the Commission voted to accept the Uncontested Proposed Settlement filed into the record on April 15, 2024.

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IT IS THEREFORE ORDERED THAT:

1. The Uncontested Stipulated Settlements filed into the record on April 15, 2024 are hereby accepted; and,
2. This order is effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
May 16, 2024



A handwritten signature in black ink, appearing to read "Brandon M. Frey".

BRANDON M. FREY
SECRETARY

/S/ MIKE FRANCIS
DISTRICT IV
CHAIRMAN MIKE FRANCIS

/S/ DAVANTE LEWIS
DISTRICT III
VICE CHAIRMAN DAVANTE LEWIS

/S/ FOSTER L. CAMPBELL
DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/S/ ERIC F. SKRMETTA
DISTRICT I
COMMISSIONER ERIC F. SKRMETTA

/S/ CRAIG GREENE
DISTRICT II
COMMISSIONER CRAIG GREENE