

# LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER U-37067

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE.

---

*Docket No. U-37067, In re: Evaluation of Southwestern Electric Power Company's decision to retire the Pirkey Power Plant pursuant to Commission Order No. U-36385-A.*

---

(Decided at the April 16, 2025 Business and Executive Session.)

## **ORDER**

### **I. Background and Procedural History**

On December 6, 2023, this proceeding was initiated by the Louisiana Public Service Commission ("LPSC" or "Commission") to evaluate the prudence of the decision by Southwestern Electric Power Company ("SWEPCO" or "the Company") to retire the Pirkey Power Plant ("Pirkey" or "the plant"), the operation of the plant in the year prior to its retirement, and the costs flowed through the Company's fuel adjustment clause ("FAC") as part of that operation for the years not previously subject to an LPSC audit. The Notice of Proceeding initiating this matter indicated that the docket was being opened pursuant to the terms of Order No. U-36385-A, which states:

The Commission will commence a separate proceeding to evaluate SWEPCO's decision to retire the Pirkey Power Plant, which was noticed by SWEPCO in Docket [No.] X-36614. This proceeding will review the prudence of the decision to retire the Pirkey Power plant, operation of the Pirkey Power Plant during the years prior to the unit's retirement, and the costs that were flowed through the Company's FAC as part of that operation for the years not previously subject to an audit period approved by an LPSC order.

The notice was published in the Commission's Official Bulletin No. 1312 dated December 8, 2023, for a 25-day intervention period. No interventions were filed during the intervention period or at any time thereafter.

In accordance with the procedural schedule, SWEPCO filed its Direct Testimony on July 12, 2024, Commission Staff filed its Direct Testimony on November 8, 2024, and SWEPCO filed its Rebuttal Testimony on December 13, 2024. After the completion of testimony, the parties executed an Uncontested Stipulated Settlement and subsequently filed the *Joint Motion to Schedule Uncontested Stipulation Hearing Pursuant to Rule 6* on March 7, 2025. A ruling was issued that same day, and a stipulation hearing was held on March 20, 2025.

## **II. Jurisdiction and Applicable Law**

The Commission exercises jurisdiction over common carriers and public utilities in Louisiana pursuant to Article IV, Section 21(B) of the Louisiana Constitution, which states:

“The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.”

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.

## **III. Uncontested Stipulated Settlement**

On February 28, 2025, SWEPCO and the Commission Staff entered into an Uncontested Stipulated Settlement, thereby resolving all issues in the docket. The terms of the Uncontested Stipulated Settlement are as follows:

1. The retirement of Pirkey on March 31, 2023 was reasonable and prudent.
2. In accordance with Commission Order No U-35441, SWEPCO will continue to recover the appropriate costs of Pirkey through the Commission-approved Retirement Rider at SWEPCO’s weighted average cost of capital until the remaining balance has been collected through rates, paragraph 3, which states SWEPCO shall:
  - a. Implement the Retirement Rider that will include recovery of the applicable depreciation, O&M, property taxes, all other operating expenses, and return on the jurisdictional rate base at the Company's authorized overall rate of return on a levelized basis. The rate base includes the remaining net book value plus obsolete materials and supplies and fuel inventories, if any, net of transfers and sales proceeds, plus demolition costs actually incurred minus accumulated deferred income taxes ("ADIT"), including, but not limited to, the ADIT for the remaining tax basis due to the abandonment loss deduction, plus other applicable revenue related cost components, and plus or minus true-ups to actual amounts.
3. Neither Party to this Uncontested Stipulated Settlement agrees on the prudence or imprudence of SWEPCO’s offering Pirkey into the SPP market from 2019 through 2023. However, as a settlement position, SWEPCO shall credit through its Fuel Adjustment Clause \$2,000,000 as part of the settlement of all issues in this matter.
4. SWEPCO has continued to comply with the Commission’s FAC order and all fuel costs to operate Pirkey and incurred by SWEPCO from January 1, 2019 - March 31, 2023 are deemed prudent and recoverable through SWEPCO’s FAC.
  - a. SWEPCO has continued to comply with the Commission’s 2006 Pirkey Order issued on March 28, 2006 in Docket Nos. U-23327, Subdocket B, and U-27107. All mining-related costs incurred through March 31, 2023 such as mine planning and development, mind, pond and road development and property reclamation are prudent and recoverable under the FAC.

5. The mine reclamation costs associated with Pirkey and the Sabine Mine were prudently incurred and shall continue to be recovered through the FAC:
  - a. The monthly collection shall increase from approximately \$30,717 per month to approximately \$147,666 per month beginning the first billing cycle after approval of this agreement, subject to true-up after the costs have been recovered.
  - b. Future reclamation costs after this review period (through March 2023) yet to be incurred shall be subject to the normal Commission FAC biennial reviews.
6. This settlement shall fully and finally resolve any and all issues in this proceeding related to Pirkey or any Sabine 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.
7. 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.
8. 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.

9. Except as expressly stated herein, this Stipulated Settlement has no precedential effect in any other proceeding and will be without prejudice to the right of any party to take any position in future proceedings. The terms of this Stipulation may not be used either as an admission of any sort or as evidence in any proceeding whatsoever, except to approve or enforce the terms of this Stipulation. All oral or written statements made during the course of settlement negotiations are governed by Louisiana Code of Evidence Article 408.

#### **IV. Commission Consideration**

This matter was considered at the Commission's April 16, 2025 Business & Executive Session. After discussion, on motion of Commissioner Campbell, seconded by Vice Chairman Skrmetta, and unanimously adopted, the Commission voted to approve the Uncontested Proposed Settlement filed into the record on March 7, 2025.

*This space is intentionally left blank.*

**IT IS THEREFORE ORDERED THAT:**

- 1. The Uncontested Stipulated Settlement filed into the record on March 7, 2025 is approved; and,
- 2. This order is effective immediately.

**BY ORDER OF THE COMMISSION**  
**BATON ROUGE, LOUISIANA**  
May 16, 2025



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

**BRANDON M. FREY**  
**SECRETARY**

/S/ MIKE FRANCIS  
**DISTRICT IV**  
**CHAIRMAN MIKE FRANCIS**

/S/ ERIC F. SKRMETTA  
**DISTRICT I**  
**VICE CHAIRMAN ERIC F. SKRMETTA**

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

/S/ DAVANTE LEWIS  
**DISTRICT III**  
**COMMISSIONER DAVANTE LEWIS**

/S/ JEAN-PAUL P. COUSSAN  
**DISTRICT II**  
**COMMISSIONER JEAN-PAUL P. COUSSAN**