

**LOUISIANA PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE HEARINGS DIVISION**

**DOCKET NUMBER U-35753**

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

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*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.*

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**FINAL RECOMMENDATION OF THE  
ADMINISTRATIVE LAW JUDGE**

The findings and conclusions recommended by the administrative law judge in this proceeding are contained within the Draft Order following this cover page.

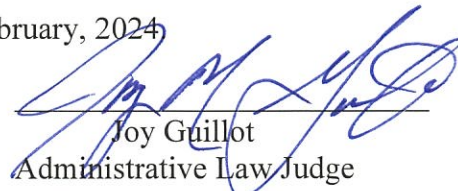
This Recommendation is being issued and forwarded to the Commissioners pursuant to Rule 56 of the Rules of Practice and Procedure of the Louisiana Public Service Commission. The Recommendation will be considered and voted on by the Commissioners at an upcoming monthly Commission meeting.

All parties are advised to familiarize themselves with the Commission's Rules of Practice and Procedure, including provisions within Rule 56 which permit parties to request (within five working days of issuance of the Final Recommendation) the opportunity to present oral argument at the Commission meeting at which this Recommendation will be considered. Copies of the Rules of Practice and Procedure of the Louisiana Public Service Commission are available at the Commission's web page: <http://www.lpsc.louisiana.gov>.

All parties are further advised that they may ascertain whether this Recommendation will be considered at the Commission's next monthly meeting by accessing the Commission's web page at <http://lpsc.louisiana.gov> and "clicking" on **Official Business** to view the Agenda for the Commission's upcoming monthly meeting. Alternatively, parties may obtain this information by calling the Commission's Administrative Hearings Division at either of the following telephone numbers:

**(225) 219-9417 or (800) 256-2397.**

Baton Rouge, Louisiana, this 2nd day of February, 2024

  
Joy Guillot  
Administrative Law Judge

cc: Official Service List

*Louisiana Public Service Commission  
Administrative Hearings Division  
602 N. Fifth Street Galvez Building, 11<sup>th</sup> Floor  
Post Office Box 91154  
Baton Rouge, Louisiana 70821-9154  
Telephone (225) 219-9417*

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**FINAL RECOMMENDATION OF THE  
ADMINISTRATIVE LAW JUDGE**

**DRAFT ORDER**

*Overview*

In this proceeding, Cleco Power LLC (“Cleco”) and Southwestern Electric Power Company (“Swepeco”) (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.

Parties to the proceeding are Cleco, Swepco, Commission Staff, 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. 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”). The Mining Orders are discussed in detail below.

## **Background**

Dolet Hills was a lignite-fired generating plant located in north Louisiana. Swepco and Cleco jointly own the plant, along with two minority owners. Cleco operates Dolet Hills, with joint oversight provided by an Operating Committee comprised of representatives of Cleco 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”).

Dolet Hills was operated in two separate Regional Transmission Organizations as Cleco is a member of the Midcontinent Independent Transmission Operator, Inc. Regional Transmission Organization (“MISO”) and Swepco is a member of the Southwest Power Pool Regional Transmission Organization (“SPP”). Both MISO and SPP allow designations as either “must-run”

or “self-commit,” which indicates the unit runs irrespective of price.<sup>1</sup> Due to its 52-hour startup time<sup>2</sup>, the Companies chose to operate Dolet Hills as must-run / self-commit.<sup>3</sup> Must run / self-commit is one of the options a generating unit operator has in committing their unit. Dolet Hills was not required to be designated as must run / self-commit.

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 Swepeco. 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

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<sup>1</sup> Sisung Direct (Public) at 45.

<sup>2</sup> Transcript (5/9/23) at 37.

<sup>3</sup> Transcript (5/8/23) at 62; Transcript (5/9/23) at 36-37.

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 Swepeco and Cleco 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.<sup>4</sup>

### ***Procedural History***

On October 6, 2020, Cleco and Swepeco filed a Joint Application (“First Application”), in accordance with Order No. U-30975<sup>5</sup>, requesting that the Commission: (i) determine that it is prudent, based on economic, environmental, operational, and other factors, to permanently cease mining operations at the Oxbow Mine; (ii) permit the Applicants to close the Mines; (iii) permit the ratemaking treatment of the expenses associated with the cessation of mining at the Oxbow Mine and the closure of the Mines, including a deferral of the costs resulting from the accelerated depreciation and amortization of the assets used to operate the Mines; and (iv) authorize expedited

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<sup>4</sup> Mr. Bourg points out in his Direct Testimony that the Companies sought to shorten the 2026-time requirement in their Second Application, one month after Dolet Hills had been deactivated. Bourg Direct at 4.

<sup>5</sup> Order No. U-30975, Cleco Power LLC and Southwestern Electric Power Company, ex parte. In re: *Joint Application of Cleco Power LLC and Southwestern Electric Power Company for: (I) Authorization to Enter into a Proposed Agreement with North American Coal to Purchase the Permit, Leases, and Reserves Associated with the Oxbow Mine; (II) Authorization to Include the Permit, Leases, and Reserves in Jurisdictional Rate Base and Related Rate Making Treatments; and (III) Expedited Treatment.*

treatment. Attached to the First Application were the testimonies of Brian Bond, Dennis Meyer, Mark Becker, Michael Baird, and Robert Cleghorn. The First Application was published in the October 16, 2020 edition of the Commission's Official Bulletin. Timely interventions were filed by PCA and Cabot. AAE filed a Petition for Intervention Out of Time on December 3, 2020, which was granted after no party filed opposition to the request.

The Tribunal issued a Notice of Assignment and Notice of Status Conference on November 5, 2020; however, the status conference was subsequently rescheduled at the unopposed request of Commission Staff. The initial status conference on the matter was held on February 5, 2021, at which time a subsequent status conference was scheduled.

At the Commission's March 17, 2021 Business and Executive Session, the Commission ordered<sup>6</sup> 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."<sup>7</sup>

Subsequent status conferences were held on March 18, 2021 and March 25, 2021. A procedural schedule was established at the March 25, 2021 status conference. On August 10, 2021, at the unopposed joint request of the Applicants, the procedural schedule was continued without

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<sup>6</sup> Order No. U-35753, 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.*

<sup>7</sup> Mr. Sisung explained that pending final Commission action in this proceeding, the difference between actual fuel costs and the \$60/\$20 million limits would be booked by each Company to a regulatory asset for accounting purposes only. Sisung Direct (Public) at 4.

date and a status conference was scheduled for September 30, 2021. On September 22, 2021, Demco filed a Notice of Participation as an Interested Party. At the September 30, 2021 status conference, the parties agreed to file status updates into the record to keep the Tribunal updated on the proceeding. On November 1, 2021 and November 29, 2021, the Applicants filed letters updating the Tribunal on the status of the docket.

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 and Swepeco'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.<sup>8</sup> On December 22, 2021, the Commission Staff counsel issued a Notice notifying the parties of the expanded scope of the proceeding. The expanded docket was

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<sup>8</sup> Commission's Business and Executive Session, Minute Entry No. 19, November 17, 2021.

published in the December 23, 2021 edition of the Commission's Official Bulletin. Timely interventions to the expanded docket were filed by International Paper and Sierra Club.

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 in connection with the retirement of Dolet Hills and authorize certain proposals of Cleco related to fuel costs and production operations and maintenance ("O&M") expense, and authorize certain ratemaking treatment specific to Swepeco 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. Attached to the Second Application were the testimonies of Robert LaBorde, Maile Murray, Eric Fletcher, Robert Cleghorn, Thomas Brice, and Tiffany Day.

On February 7, 2022, the parties filed another status update with the Tribunal. On March 3, 2022, the Applicants filed a Joint Motion to Adopt Proposed Procedural Schedule. The Tribunal subsequently granted the Joint Motion and a procedural schedule was established. On July 19, 2022, the procedural schedule was amended at the unopposed request of the Commission Staff. On August 1, 2022, Commission Staff filed the Direct Testimonies of Lane Sisung and Jonathan Bourg, and International Paper and PCA filed the Direct Testimony of Maurice Brubaker. On September 23, 2022, Cleco filed the Rebuttal Testimony of Robert Cleghorn and Swepeco filed the Rebuttal Testimonies of Thomas Brice, Mark Becker, Brian Bond, Dennis Meyer, Jason Stegall, and Tiffany Day.



On November 2, 2022, the Applicants filed a Motion to Modify Procedural Schedule that was unopposed by the parties. The motion was granted and the Tribunal modified the procedural schedule. On January 18, 2023, EP2 requested to be added to the docket as an Interested Party. On March 6, 2023, the procedural schedule was again modified at the unopposed request of the Applicants. On March 9, 2023, the Applicants filed a Notice of Deposition. On April 13, 2023, the Applicants filed an Unopposed Motion to Modify Procedural Schedule, and on April 14, 2023, the Applicants filed a Motion to Withdraw Prior Motion to Modify Procedural Schedule and to Set Status Conference. The Tribunal granted the April 14, 2023 motion and scheduled a status conference for the same day. At the April 14, 2023 status conference, the remaining procedural schedule was modified.

On April 20, 2023, Cleco, Swepeco, Commission Staff, PCA, International Paper, Cabot, Sierra Club, and AAE filed the Pre-Hearing Statement Containing Order of Witnesses and List of Uncontested and Contested Issues. On April 27, 2023, Pre-Hearing Briefs were filed by Cleco, Swepeco, Commission Staff, and PCA - International Paper (“PCA-IP”).<sup>9</sup> On May 8, 2023, Sierra Club filed a letter stating that they took no position on the contested issues and would not attend the hearing. A hearing was held on May 8-9, 2023. On June 9, 2023, a Notice of Availability of Transcript and Notice of Post-Hearing Briefing Schedule was issued. On June 27, 2023, Swepeco filed an Unopposed Motion to Reset Post Hearing Briefing Deadlines, which was subsequently granted. Post-hearing briefs were filed on August 7, 2023 by Cleco, Swepeco, Commission Staff, and PCA-IP. Post-hearing Reply Briefs were filed on August 28, 2023 by Cleco, Swepeco, Commission Staff, and PCA-IP.

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<sup>9</sup> PCA and International Paper were represented by the same counsel and filed joint Briefs.

The Administrative Law Judge issued a Proposed Recommendation on November 28, 2023. On December 7, 2023, the Applicants filed an Unopposed Motion to Modify the Procedural Schedule, which was granted. On December 27, 2023, Cleco, Swepco, Commission Staff and PCA-IP filed their Exceptions to the Proposed Recommendation. On January 5, 2024, Swepco filed an Unopposed Motion to Reset Deadline to Reply to Exceptions to Proposed Recommendation, which was granted. On January 19, 2024, Cleco, Swepco, Commission Staff and PCA-IP filed their Replies to the Exceptions to the Proposed Recommendation.

### ***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 applicable to the instant proceedings. In Mining Order 1 (2001), the Commission approved the replacement of the mining company and provided for a benchmarking formula that guaranteed minimum lignite cost savings to Louisiana ratepayers. In Mining Order 2 (2008), the Commission revised the benchmarking formula and provided an end date for the benchmarking formula. In Mining Order 3 (2009), the Commission approved the

acquisition of the lignite mine known as the Oxbow Mine and provided that the Companies were authorized to recover all prudently incurred costs through their respective fuel adjustment clauses or formula rate plans. Mining Order 3 also stated that the Companies shall commit to continue the operation of the Dolet Hills and the Mines so that they will be used and useful and in the public interest through at least 2026, with the provision that the Companies could apply to the Commission to shorten that time requirement. Mining Order 3 further stated that all provisions of Mining Order 1 and Mining Order 2 that “have not been explicitly changed by, or are not inconsistent with this Order approving the Settlement shall remain in full force and effect.”

### ***Prudence Standard***

Mining Order 3 provides, in part, that

All prudently incurred lignite production costs of DHLIC, including, but not limited to: depreciation, carrying cost, management fee, operations and maintenance expense, insurance, taxes, reclamation accrual, and prudently incurred post production costs, will be recovered in the respective Company’s LPSC FAC.

In 1991, the Louisiana Supreme Court addressed the prudence standard in *Gulf States Utilities Co. v. Louisiana Pub. Serv. Comm'n*, 578 So.2d 71 (La. 1991). The Court explained that the prudent investment standard is one of the principles used by ratemaking bodies to determine how much of a utility’s investment in a particular plant should be included in its rate base, ultimately to be borne by the utility’s ratepayers. The Court explained that to meet the standard, “the utility must demonstrate that it ‘went through a reasonable decision-making process to arrive at a course of action and, given the facts as they were or should have been known at the time, responded in a reasonable manner.’”<sup>10</sup> According to the Court, “the focus in a prudence inquiry

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<sup>10</sup> 578 So.2d at 85 citing *Re Cambridge Electric Light Co.*, 86 P.U.R. 4<sup>th</sup> 574 (Mass. D.P.I. 1987).

is not whether a decision produced a favorable or unfavorable result, but rather, whether the process leading to the decision was a logical one, and whether the utility company reasonably relied on information and planning techniques known or knowable at the time.”<sup>11</sup> In *Gulf States Utilities Co. v. Louisiana Pub. Serv. Comm'n*, 689 So. 2d 1337, 1346 (La. 2/25/97), the Court explained that there is no requirement of “some conscious knowledge” of wrongdoing for a finding of imprudence.

In 1999, in *Entergy Gulf States, Inc. v. Louisiana Public Service Comm.*, 726 So. 2d 870 (La. 1999), the Louisiana Supreme Court considered the prudence standard in the context of a fuel adjustment clause case. In that proceeding, the Court stated that “when the Commission conducts a fuel adjustment clause review, the Company must demonstrate that it acted prudently in incurring fuel costs, including any replacement power costs.”<sup>12</sup> The burden of proof is on the utility, which must “demonstrate that it went through a reasonable decision making process to arrive at a course of action and, given the facts as they were or should have been known at the time, responded in a reasonable manner.”<sup>13</sup> And, finally, “[i]f the Company fails to carry its burden, it will be saddled with those replacement costs.”<sup>14</sup> Therefore, in this proceeding, if the Applicants fail to carry their burden, they will be saddled with the damage caused by the imprudent actions.

### *Issues*

In the Pre-Hearing Statement, the parties outlined what issues they considered uncontested and contested. They are as follows:

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<sup>11</sup> 578 So.2d at 85 citing *Metzenbaum v. Columbia Gas Transmission Corp.*, Opinion No. 25, 4 FERC 161,277.

<sup>12</sup> 726 So. 2d at 876.

<sup>13</sup> 726 So. 2d at 873, citing *Gulf States Utilities Co. v. Louisiana Public Service Comm.*, 578 So. 2d 71, 85 (La. 1991).

<sup>14</sup> 726 So. 2d at 876.

### Uncontested Issues

1. Whether the Applicants should be relieved of their obligation pursuant to Mining Order 3 to maintain the operation of the Mines until at least 2026.
2. Whether the Applicants should be relieved of their obligation pursuant to Mining Order 3 to maintain the operation of the Dolet Hills until at least 2026.

### Contested Issues

1. Whether the May 31, 2001 Lignite Mining Agreement, executed by Cleco, Swepeco, and Dolet Hills Lignite Company (“DHLC” or the “Miner”) (as amended and restated on December 29, 2009), was approved by the Commission, in accordance with Paragraph 13 of the Term Sheet and Paragraph 1 of Mining Order 1.
2. Whether the Commission’s Mining Orders authorize direct recovery of all ongoing costs incurred by DHLC / the Miner for the operations of the Mine.
3. Whether the Applicants prudently operated and dispatched Dolet Hills.
4. Whether certain or any costs related to the fuel provided to Dolet Hills, which were partially recovered from ratepayers beginning in 2019, should be recoverable from ratepayers, and, if so, determining the appropriate method of recovery of those costs.
5. Whether any Plant costs associated with Dolet Hills beginning in 2019 should be recovered from ratepayers, and if so, determining the appropriate method of recovery of those costs.
6. Whether the amount of Dolet Hills to be recovered through securitization should include the net book balance of Dolet Hills as of the retirement less any post-retirement depreciation and Dolet Hills O&M recovered in rates up to the point of securitization.
7. Whether the Commission should allow recovery of any carrying charge for Dolet Hills after its retirement on December 31, 2021, and, if so, at what amount and the time and manner of recovery.

### ***Summary of Parties Positions***

#### Swepeco

In this proceeding, the Applicants are seeking a Commission determination that the retirement of Dolet Hills and the Mines was prudent and in the public interest for the benefit of customers, and for the recovery of the costs associated therewith. Swepeco contends that in 2020, in light of changing circumstances and considerations, economic analyses confirmed that the

operation of Dolet Hills and the Mines until 2026 was no longer prudent. Swepeco states that on April 24, 2020, it and Cleco jointly notified Commission Staff that they decided to close Dolet Hills and the Mines. Swepeco points out that Commission Staff concurred with the decision that Dolet Hills and the Mines should cease operation prior to the previously established target date of 2026. Swepeco argues that because the prudence of the retirement of Dolet Hills and the Mines is no longer contested, the remaining issues in this proceeding relate to ratemaking and recovery of the costs associated with Dolet Hills and the Mines. Further, Swepeco asserts that Commission Staff has conceded that the only remaining issues related to operations were related to the period beginning on January 1, 2019, until plant operations ceased on December 31, 2021. Swepeco alleges that all of the lignite mining-related costs are prudent and properly recoverable.

#### Cleco

According to Cleco, this proceeding was initiated after Swepeco and Cleco, the co-owners of Dolet Hills, determined that it was prudent and in the public interest to retire Dolet Hills and its associated lignite mines. Cleco points out that no party to this proceeding disputes that Cleco and Swepeco made a correct and appropriate decision to retire Dolet Hills in 2021 instead of 2026. Cleco contends that the cost recovery for Dolet Hills and the Mines is governed by the Commission's Mining Orders issued in 2001, 2008, and 2009. Cleco asserts that the cost recovery mechanism established by these Orders has never before been disputed, and Cleco has abided by them for lignite cost recovery for the past 22 years. Cleco argues that the Commission Staff now seeks to ignore or rewrite the Commission Mining Orders and disallow the recovery of \$217 million in direct costs of fuel from the Miner already paid by Cleco and legally owed by Cleco

under the terms of the Lignite Mining Agreement, a contract that was approved by the Commission pursuant to the procedures specified in the 2001 Order.

#### Commission Staff

Commission Staff states that Swepeco and Cleco should be relieved of the obligation to keep open Dolet Hills and the Mines until 2026, however, costs of \$217 million for Cleco and \$55 million for Swepeco related to fuel provided to Dolet Hills (production costs or mine costs) should not be recoverable from ratepayers. Further, Commission Staff argues, that as to Dolet Hills, there should be a “return of” and not a “return on” the stranded asset. Commission Staff argues that Swepeco and Cleco are not guaranteed recovery from ratepayers for costs related to fuel provided to Dolet Hills, and have not met their burden to establish they should be allowed to recover such costs from ratepayers. Commission Staff asserts that the Fuel Adjustment Clause charges sought by Swepeco and Cleco, to be passed through to ratepayers from 2019 forward, are exorbitantly high and do not produce just and reasonable rates.

#### PCA-IP

Packaging Corporation of America and International Paper Company (collectively “PCA-IP”) object to Swepeco and Cleco’s recovery from ratepayers of excess fuel costs and what otherwise would be stranded costs of the Mines resulting from imprudent operation and dispatch of Dolet Hills leading up to its early retirement, including the decision to continue to mine lignite for delivery to Dolet Hills without regard for the price of the lignite or economics of the dispatch of Dolet Hills. 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.

### ***Findings of Fact***

1. Dolet Hills was a 650 MW baseload unit fired by lignite and located in DeSoto Parish, Louisiana. Cleghorn 2020 Direct at 4.
2. Dolet Hills was a "mine mouth" operation with the source of the lignite located immediately adjacent to the power plant. Cleghorn 2020 Direct at 4.
3. Two mines supplied the lignite for Dolet Hills - initially the Dolet Hills Mine and subsequently the Oxbow Mine. Meyer 2020 Direct at 7-8.
4. Dolet Hills entered commercial operation on April 25, 1986. Cleghorn 2020 Direct at 4.
5. Dolet Hills is owned 50% by Cleco, 40% by Swepco, and 10% by two minority owners. Cleghorn 2020 Direct at 4.
6. The Ownership, Construction, and Operating Agreement ("The Station Agreement") provides the terms and conditions under which Cleco operates Dolet Hills. It was executed on November 13, 1981. Cleghorn 2020 Direct at 5.
7. Cleco operates Dolet Hills, with joint oversight provided by an Operating Committee comprised of representatives of Cleco and Swepco. Sisung Direct (Public) at 16.
8. According to the Station Agreement, the scheduling of Dolet Hills was to be a decision made by the Operating Committee. Sisung Direct (Public) at 17.
9. Dolet Hills was operated in two separate Regional Transmission Organizations as Cleco is a member of the MISO and Swepco is a member of the SPP. Bourg Direct at 3.
10. Dolet Hills was dispatched as a must-run / self-commit unit in MISO/SPP. Transcript (5/8/23) at 62, 110; Transcript (5/9/23) at 36-37.
11. Must run is the equivalent of a self-commit status of self in SPP. Must run or self-commit are options a generating unit operator has in committing their unit. Transcript (5/9/23) at 14-15.



12. Dolet Hills was not required to be designated as must run or self-commit. Transcript (5/9/23) at 36-37.
13. Before 2001, the mining of lignite for the Dolet Hills plant was conducted by the Dolet Hills Mining Venture, an independent third-party miner. Sisung Direct (Public) at 19.
14. In 2001, the Commission approved the replacement of the then-existing miner with a new mining company, Dolet Hills Lignite Company (the "Miner"), an affiliate of Swepeco. Sisung Direct (Public) at 19; Mining Order 1.
15. The original Lignite Mining Agreement among Cleco, Swepeco, and the Miner was entered into after Mining Order 1 when the Miner took over the obligations and rights to deliver lignite to Dolet Hills. Sisung Direct (Public) at 19.
16. In 2009, the Commission approved the acquisition of a lignite mine known as the Red River Mine-Oxbow Reserve ("Oxbow Mine"). Mining Order 3.
17. The Oxbow Lignite Company is a partnership between Cleco and Swepeco. The Oxbow Lignite Company was the purchaser of the Oxbow Mine and Cleco and Swepeco each contributed 50% of that purchase. Sisung Direct (Public) at 18.
18. The Amended and Restated Lignite Mining Agreement, dated December 2009, among Cleco, Swepeco, and the Miner, provides the terms and conditions under which the Miner provides lignite mining services, including operation of the Oxbow Mine, to Cleco and Swepeco, for purposes of providing the lignite used to fire generation at the Dolet Hills generating facility. Cleghorn 2020 Direct at 5.
19. Starting in 2017, the cost of lignite increased significantly at the Oxbow Mine. Fletcher 2022 Direct at 5-6.
20. For Cleco, the \$/MWh cost of the lignite flowed through the FAC increased from \$87.20/MWh in 2018 to \$131.16/MWh in 2019. Sisung Direct (Public) at 47.
21. For Swepeco, the \$/MWh cost of the lignite flowed through the FAC increased from \$85.97/MWh in 2018 to \$102.84/MWh in 2019. Sisung Direct (Public) at 47.
22. Dolet Hills began seasonal dispatch in 2019. Its seasonal dispatch period was June – September unless called upon by the SPP or MISO. LaBorde Direct at 9.
23. For Cleco, the \$/MWh cost of the lignite flowed through the FAC increased from \$153.16/MWh in 2020 to \$345.29/MWh in 2021. Sisung Direct (Public) at 47.<sup>15</sup>

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<sup>15</sup> In the Proposed Recommendation, Finding of Fact Number 23 contained a typographical error. It stated Swepeco, when it should have stated Cleco.

24. For Swepeco, the \$/MWh cost of the lignite flowed through the FAC increased from \$191.22 in 2020 and \$309.75/MWh in 2021. Sisung Direct (Public) at 47.
25. On April 24, 2020, Swepeco and Cleco provided written notice to the Commission of the cessation of mining operations at the Oxbow Mine. On October 6, 2020, Swepeco and Cleco filed an application to seek Commission authorization to close the Mines. Brice 2022 Direct at 6.
26. Using Generally Accepted Accounting Principles (“GAAP”), when Swepeco and Cleco decided to close the Mines it resulted in accelerated depreciation and amortization expenses that were allocated among a lower amount of lignite, and which drove up the cost of fuel for Dolet Hills. Stegall Rebuttal (Public) at 13; Cleghorn 2020 Direct at 11.
27. Swepeco recognized that the accelerated depreciation and amortization expenses were being included in its lignite inventory value and being expensed as fuel when the lignite was consumed, but these costs had no bearing on unit dispatch. Stegall Rebuttal (Public) at 13.
28. On September 2, 2021, Swepeco submitted correspondence to the Commission confirming its Notice of the planned retirement of Dolet Hills at the end of 2021. Brice 2022 Direct at 6.
29. On December 31, 2021, Dolet Hills was retired. Brice 2022 Direct at 6.

### *Analysis*

Dolet Hills was a 650 MW baseload unit fired by lignite and located in DeSoto Parish, Louisiana. It was a "mine mouth" operation where the source of the lignite was located immediately adjacent to the power plant. The plant is owned 50% by Cleco, 40% by Swepeco, and 10% by two minority owners. In 1981, Cleco and Swepeco executed the Station Agreement, which authorized Cleco to have the sole and exclusive right to operate the plant. The Station Agreement also established an Operating Committee that was composed of one representative from Cleco and one representative from Swepeco. According to the Station Agreement, the scheduling of Dolet Hills was to be a decision made by the Operating Committee.

Originally, the mining of the lignite was conducted by the Dolet Hills Mining Venture, an independent third-party miner. In 2001, the Commission approved the replacement of the then-

existing miner with a new mining company, Dolet Hills Lignite Company (the “Miner”), an affiliate of Swepeco. Thereafter Cleco, Swepeco, and the new Miner executed the Lignite Mining Agreement, which controls the rights and obligations of the Miner for delivery of the lignite for use at Dolet Hills. Upon delivery of the lignite from the Mines, the Miner invoices and collects payments for the lignite deliveries from Swepeco and Cleco.<sup>16</sup>

Three Commission orders pertain to Dolet Hills and the Mines. In Mining Order 1, the Commission approved the replacement of the previous miner with a new mining company. Mining Order 1 also provided for a benchmarking formula that guaranteed minimum lignite cost savings to Louisiana ratepayers. In Mining Order 2, the Commission approved a revision to the benchmarking formula, as the formula failed to properly reflect the costs that would have been incurred under the old mining contract, thus causing the Companies to defer such large amounts of fuel costs that it was unlikely that those deferrals would ever be collected. Mining Order 2 dictated that the benchmarking formula would end on April 30, 2011, after which, the Companies would flow through their lignite costs as provided and conditioned in the Commission’s Fuel Adjustment Clause (“FAC”) General Order<sup>17</sup>. Mining Order 2 also allowed Swepeco and Cleco to collect their existing deferral balances, including interest.<sup>18</sup> In Mining Order 3, the Commission approved the acquisition of the lignite mine known as the Oxbow Mine. Mining Order 3 provided that the Companies were authorized to recover all prudently incurred costs through their respective fuel adjustment clauses or formula rate plans, and the costs of the Oxbow Mine permit, leases, and

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<sup>16</sup> Sisung Direct (Public) at 19.

<sup>17</sup> The Commission’s General Order dated November 6, 1997, Docket No. U-21497 - *Louisiana Public Service Commission, ex parte. In re: Development of standards governing the treatment and allocation of fuel costs by electric utility companies.*

<sup>18</sup> Cleco’s deferral balance was \$25,683,171 and Swepeco’s Deferral Balance \$5,999,903. See Attachments and Supporting Testimony to Uncontested Stipulated Settlement in U-29797.

reserves shall be recovered through base rates. It also stated that all prudently incurred lignite production costs of the Miner “will be recovered in the respective Company’s LPSC FAC.” Further, the benchmarking requirements were discontinued. Mining Order 3 stated that the Companies shall commit to continue 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, with the provision that the Companies could apply to the Commission to shorten that time requirement. Mining Order 3 further stated that all provisions of Mining Orders 1 and 2 that had not been explicitly changed would remain in full force and effect.

#### Recovery of Costs

The Commission’s FAC General Order provides standards for the treatment of fuel costs by investor-owned and cooperative electric generation utility companies. The Order is designed to assess the appropriateness of the inclusion of specific costs through the fuel adjustment clause. The Order provides a listing of specific costs that are includable and excludable. Some of the costs from Dolet Hills and the Mines might be excluded from recovery through the fuel adjustment clause. However, Mining Order 1 specifically states that “the Commission will grant an exception to the FAC General Order to the extent any provision of the Term Sheet may allow specific costs to be recovered by the Companies through their Fuel Adjustment Clauses that are not provided for recovery in the FAC General Order.” Further, Mining Order 1 states that the Companies shall be permitted to recover the costs associated with the Lignite Mining Agreement in their FACs (Ordering Paragraph 2). Mining Order 2 states that the Companies may flow through their lignite costs through the FAC (Ordering Paragraph 7). Mining Order 3 states that the Companies were authorized to recover all prudent costs through their respective FACs (Ordering Paragraphs 1 and

5). Mining Order 3 specifically states that all prudently incurred lignite production costs of the Miner will be recovered in each Company's FAC. (Ordering Paragraph 5).

The Mining Order 3 specifically stated that only prudently incurred lignite production costs will be recovered through the FAC process. The FAC General Order states that it is the Commission who conducts the audit of the fuel adjustment filings for each electric utility, and it is the Commission that determines whether the costs passed through the fuel adjustment clause were reasonable and prudent.<sup>19</sup> The electric utilities do not determine on their own whether the costs passed through the fuel adjustment clause were reasonable and prudent, as this is determined in the Commission's FAC audit process. Since 2001, Cleco<sup>20</sup> and Swepco<sup>21</sup> have submitted their lignite production costs to the Commission for recovery through the process outlined in the FAC General Order. This history of compliance indicates that the Companies were aware that recovery of the lignite production costs could only be accomplished through the process outlined in the FAC General Order. Swepco and Cleco have pointed out that there were no disallowances in their FAC audits prior to 2019, however each FAC audit is its own investigation and thereby has its own results. As colloquially stated, past performance does not guarantee future results.

The Parties presented as a contested issue the question of whether the Mining Orders authorize direct recovery of all ongoing costs incurred by the Miner for the operations of the Mine (Contested Issue No 2). **Based upon the analysis above, it is determined that the Mining Orders provide a method for recovery of the lignite production costs of the Miner ("Dolet**

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<sup>19</sup> Section VI(A) of the Commission's General Order dated November 6, 1997.

<sup>20</sup> 2001-2002 in LPSC Docket No. U-26994; 2003-2008 in LPSC Docket No. U-30955; 2009-2013 in LPSC Docket No. X-33325; 2014-2015 in LPSC Docket No. X-33972; 2016-2017 in LPSC Docket No. X-34765; and 2018-2019 in LPSC Docket No. U-35522;

<sup>21</sup> 2003-2004 in LPSC Docket No. U-22327 Sub E; 2005-2013 in LPSC Docket No. U-33322; 2014-2015 in LPSC Docket No. U-34110; 2016-2018 in LPSC Docket No. U-35173; and 2019-2020 in LPSC Docket No. X-36125.

**Hills Lignite Company”) but not direct approval of those costs. Approval of the lignite production costs is done through the process outlined in the FAC General Order. Therefore, the Mining Orders do not authorize direct recovery of the costs incurred by the Miner for the operations of the Mines and instead provide the method for the utilities (Swepco and Cleco) to present those costs for recovery from the ratepayer using the process outlined in the FAC General Order.**

### Prudence

The FAC General Order states that “each electric utility has the burden of proving that the costs passed through its fuel adjustment mechanism were prudently incurred, produced just and reasonable rates, were necessary to the provision of electric service, and were eligible for recovery through the fuel clause.”<sup>22</sup> Without addressing any affiliate issues<sup>23</sup>, the FAC General Order requires that Swepco and Cleco have the burden of proving that the fuel costs from the Mines for Dolet Hills passing through the fuel adjustment mechanism were prudently incurred, and produced just and reasonable rates. Additionally, the Courts have held that in a fuel adjustment clause review, the burden of proof is on the utility to show it acted prudently in incurring the fuel costs.<sup>24</sup> To show prudence the Companies must demonstrate that they went through a reasonable decision-making process to arrive at a course of action and, given the facts as they were or should have been known at the time, responded in a reasonable manner.

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<sup>22</sup> Section VI(B) of the Commission’s General Order dated November 6, 1997.

<sup>23</sup> The Miner is an affiliate of Swepco. The FAC General Order requires that if “an electric utility incurs fuel, purchased power, or other costs from an affiliated party and seeks to recover those costs through the fuel clause mechanism” the utility must provide certain information, and “the utility is only allowed the lower of actual cost or market for costs incurred through an affiliated party. Some exceptions to this are the direct cost of fuel purchased from a non-affiliated party and the direct cost of fuel purchased from the affiliated party at the lower of cost or market with the cost of the affiliated party determined in the same manner as if the electric generation utility incurred the costs directly. Section IV(S) of the Commission’s General Order dated November 6, 1997.

<sup>24</sup> *Entergy Gulf States, Inc. v. Louisiana Public Service Comm.*, 726 So. 2d 870 (La. 1999)

Swepeco argues that no party in this proceeding has questioned the prudence of specific mining operations, mining engineering, or mining decisions, or cited any specific examples of mining operations or decisions to assert that the Miner was imprudent. According to Swepeco, the only issue left is whether or not the costs to operate Dolet Hills and provide fuel for its operation during 2019-2021 were prudent and reasonable, in light of the circumstances and considerations at the time. Swepeco contends that the evidence confirms that it was prudent in its operations.

Cleco contends that no party disputes the prudence of the decision to retire Dolet Hills and the Mines. Cleco points out that neither Commission Staff nor PCA-IP has identified a single item of cost incurred by the Miner as imprudent, instead, Commission Staff compared the cost to dispatch Dolet Hills to the market cost of energy and PCA-IP improperly compared the cost to dispatch Dolet Hills to Cleco's solid fuel-fired generating units at the Rodemacher units.

According to the Companies, the Lignite Mining Agreement controlled that the Miners' costs be in accordance with GAAP. Under GAAP, when the Companies decided to close the Mines early, it resulted in accelerated depreciation and amortization expenses that were then allocated among a lower amount of lignite. Due to the accelerated depreciation and amortization expenses that were allocated among the lower amount of lignite, the cost of fuel for Dolet Hills increased noticeably. For Cleco, the \$/MWh cost of the lignite flowed through the FAC increased from \$87.20 per MWh in 2018 to \$131.16 per MWh in 2019 to \$153.16 per MWh in 2020 to \$345.29 per MWh in 2021. For Swepeco, the cost increased from \$85.97 per MWh in 2018 to \$102.84 per MWh in 2019 to \$191.22 per MWh in 2020 to \$309.75 per MWh in 2021. According to PCA-IP witness Mr. Brubaker, the cost of the lignite escalated over the 2017-2020 time frame from around

\$4 per MMBtu to over \$13 per MMBtu. All of this resulted in the cost of generation from Dolet Hills escalating from about \$30 per MWh in 2019 to \$92 per MWh in 2021.<sup>25</sup>

Commission Staff argues that the reason that Dolet Hills was forced to run with imprudent, above-market cost lignite was solely for the purpose of the Companies desire to recover the stranded cost of the Mines. Commission Staff contends that had the Companies offered Dolet Hills economically, the existing inventories of fuel would not have had to be burned, and the Companies would not have had to take further deliveries of lignite at imprudent, above-market cost.<sup>26</sup> Commission Staff points out that Cleco stated that “[d]ue to the high cost per ton associated with the fuel source lignite, a must run status was required to dispatch and subsequently recover costs associated with reducing and ceasing mining operations.”<sup>27</sup> Commission Staff further points out that Swepeco stated that “[i]n order for all mine closure costs to be recovered, Swepeco must burn all the lignite from the Dolet Hills Mine and collect all the under recovered fuel balance.”<sup>28</sup>

Commission Staff also argues that an agreement between the parties (the Lignite Mining Agreement) does not mean the regulator approves a specific accounting method, nor does it bind the regulator to apply the accounting method chosen by the parties. Commission Staff contends that it is settled law that accounting approaches do not dictate rate-making and that commissions are organized to ensure that accounting concerns are subordinated to regulatory methods.<sup>29</sup>

PCA-IP argues that by continuing to mine and burn lignite from the Oxbow Mine at Dolet Hills after the cost of lignite escalated substantially, Cleco imprudently operated and dispatched

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<sup>25</sup> Brubaker Direct (Public) at 2.

<sup>26</sup> Sisung Direct (Public) at 41.

<sup>27</sup> Sisung Direct (Public) at 45 citing Commission Staff Data Request 6-34.

<sup>28</sup> Sisung Direct (Public) at 45 citing Commission Staff Data Request 3-27.

<sup>29</sup> Citing *S. Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 352 So.2d 964, 981 (La.1977), *Town of Norwood, Mass. v. FERC*, 53 F.3d 377, 379 (D.C. Cir.1995), and D. Wirick, & J. Gibbons, *Generally Accepted Accounting Principles for Regulated Utilities: Evolution and Impacts*, 117 (1994).



Dolet Hills to incur fuel costs paid to the Miner that were materially above the alternatively available cost for power, resulting in significant excess fuel costs being imposed on its customers. PCA-IP asserts that the Companies dispatch of Dolet Hills sought to burn and monetize the mined lignite as fuel costs, rather than address the lignite inventory as a stranded cost.

The Companies dispatched Dolet Hills as a must-run unit from 2013 through 2021.<sup>30</sup> Dolet Hills was dispatched from an incremental cost perspective, not an average cost perspective.<sup>31</sup> Swepeco witness Jason Stegall explained that Swepeco offers its available generating units into the energy markets based on each unit's incremental variable energy costs. Incremental variable costs represent the variable costs necessary to produce the next unit of output.<sup>32</sup> Incremental energy costs for any generating unit do not include fixed costs.<sup>33</sup> Mr. Stegall testified that for Dolet Hills the entire fuel invoice was not included in incremental variable costs because those costs were not avoidable.<sup>34</sup> He further testified that, from an economic standpoint, those costs (total fuel costs) shouldn't be included in the decision to commit a unit.<sup>35</sup> Commission Staff witness Mr. Sisung contended that Dolet Hills was not dispatched at Dolet Hill's incremental cost but instead at the Mines incremental cost.<sup>36</sup>

According to Mr. Cleghorn, by dispatching Dolet Hills as must-run, Dolet Hills was \$108.4 million more expensive to operate than the other power options available in the market.<sup>37</sup> Mr. Cleghorn confirmed that had Cleco not dispatched Dolet Hills as must-run, the cost of lignite

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<sup>30</sup> Transcript (5/8/23) at 62.

<sup>31</sup> Transcript (5/8/23) at 64.

<sup>32</sup> Stegall Rebuttal at 12.

<sup>33</sup> Transcript (5/9/23) at 21.

<sup>34</sup> Transcript (5/9/23) at 24.

<sup>35</sup> Transcript (5/9/23) at 24.

<sup>36</sup> Transcript (5/9/23) at 201.

<sup>37</sup> Transcript (5/8/23) at 67.

would not have been included on customers' bills through the fuel cost adjustment, and the lignite would have been sitting there to be recovered as a stranded asset.<sup>38</sup> Mr. Cleghorn testified that had Dolet Hills not been self-scheduled (i.e. must run / self-commit), "the buildup of inventory costs would likely have resulted in only isolated dispatch of the unit - most notably, during the winter ice storms in 2021. The stranded inventory balance of lignite fuel inventory would have been approximately \$320 million upon the retirement of [Dolet Hills] (\$37 million for the 2019 beginning balance, plus the \$285 million of deliveries for 2019-2021, less \$2 million used during the winter storms.)"<sup>39</sup> It was Cleco's understanding, as expressed by Mr. Cleghorn, that the Mining Orders guaranteed recovery of the lignite costs.<sup>40</sup> He further stated that by dispatching Dolet Hills as must-run it reduced the amount of stranded costs.<sup>41</sup>

To determine whether the Companies' actions were prudent, the Commission must determine whether the actions taken by Swepeco and Cleco from 2019 to 2021 were based on a reasonable decision-making process to arrive at a course of action and, given the facts, as they were or should have been known at the time, and whether they responded in a reasonable manner. The FAC General Order only allows recovery of fuel costs that were prudently incurred and produced just and reasonable rates. From 2018 to 2021 the cost of the lignite flowed through the fuel adjustment clause increased from \$85.97 / \$87.20 per MWh to \$309.75 / \$345.29 per MWh. From 2017 to 2020 the cost of the lignite escalated from around \$4 per MMBtu to over \$13 per MMBtu. From 2019 to 2021 the cost of generation escalated from \$30 per MWh to \$92 per MWh. The Companies were aware that their use of "incremental variable energy costs" to make dispatch

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<sup>38</sup> Transcript (5/8/23) at 74.

<sup>39</sup> Cleghorn Rebuttal at 35-36.

<sup>40</sup> Transcript (5/8/23) at 68-70.

<sup>41</sup> Transcript (5/8/23) at 83.

decisions at Dolet Hills did not include fuel costs, which were dramatically escalating at the time. From 2019 to 2021 the total “all in” costs of production exceeded the revenues.<sup>42</sup> During this period, Dolet Hills was \$108.4 million more expensive to operate than the other power options available in the market. Had Dolet Hills not been scheduled as a must-run unit during this period, the stranded inventory balance of lignite fuel inventory would have been approximately \$320 million upon the retirement of Dolet Hills. By dispatching Dolet Hills as must-run, and using the remaining lignite, it reduced the amount of stranded costs. It was Swepeco and Cleco’s position that the Mining Orders guaranteed recovery of the fuel costs from ratepayers.<sup>43</sup> Cleco admitted that due to the high cost per ton of lignite, a must-run status was required to dispatch and subsequently recover costs associated with reducing and ceasing mining operations.<sup>44</sup> Swepeco admitted that for all of the mine closure costs to be recovered, Swepeco must burn all the lignite from the Mines and collect all the under-recovered fuel balance.<sup>45</sup>

In 2019 the \$/MWh cost of the lignite had increased from \$87.20 per MWh to \$131.16 per MWh (for Cleco) and \$85.97 per MWh to \$102.84 per MWh (for Swepeco). This was already a sizable price increase. In 2019 the stranded inventory balance of lignite fuel inventory was only \$37 million. The cost of generation was approximately \$30 per MWh. At that point, in 2019, Swepeco and Cleco did not opt to take Dolet Hills off of must-run status. The mitigation efforts done by Swepeco and Cleco were to put Dolet Hills into seasonal dispatch – operating from June through September – and reducing the number of draglines at the Mines down to one.<sup>46</sup>

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<sup>42</sup> Transcript (5/8/23) at 110.

<sup>43</sup> Transcript (5/8/23) at 48, 68, and 70.

<sup>44</sup> Sisung Direct (Public) at 45 citing Commission Staff Data Request 6-34.

<sup>45</sup> Sisung Direct (Public) at 45 citing Commission Staff Data Request 3-27.

<sup>46</sup> Meyer 2020 Direct at 14; Cleghorn 2022 Direct at 15; and Transcript (5/8/23) at 112.

Keeping Dolet Hills in a must-run status resulted in Dolet Hills being \$108.4 million more expensive to operate than the other power options available in the market. The cost of lignite being flowed through the fuel adjustment clause continued to increase dramatically in price until it was \$345.29 per MWh for Cleco / \$309.75 per MWh for Swepeco; an additional \$285 million of lignite fuel inventory being delivered; and the cost of generation escalating to \$91 per MWh. Swepeco and Cleco's decision-making in opting to keep Dolet Hills in must-run status was to burn all the lignite from the Mines and collect the fuel balance even when the resulting rates were no longer just and reasonable. Swepeco and Cleco's decision-making at the time was based on their belief that the Mining Orders guaranteed recovery of the lignite production costs if processed through the fuel adjustment clause. No such "guaranteed recovery" existed for a stranded asset.

The Parties presented as a contested issue the question of whether Swepeco and Cleco prudently operated and dispatched Dolet Hills (Contested Issue 3). Based on the testimony and evidence provided, the Companies actions in operating and dispatching Dolet Hills and the Mines from 2019 to 2021 were not based on reasonable decision-making processes to arrive at a course of action, and, given the facts as they were or should have been known at the time, the Companies failed to respond in a reasonable manner. **Accordingly, Swepeco and Cleco's actions in operating and dispatching Dolet Hills and the Mines from 2019 through 2021 were imprudent.**

#### Result of Imprudence

According to the Louisiana Supreme Court, the burden of proof is on the utility to demonstrate it acted prudently, and if they fail to carry that burden they are saddled with the damage caused by the imprudent actions.<sup>47</sup> Both Commission Staff and PCA-IP are recommending

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<sup>47</sup> 726 So. 2d at 873 - 876.

a disallowance of the imprudent, above-market costs resulting from Cleco and Swepeco's actions. Commission Staff maintains that the recovery of mine-related costs of \$217 million for Cleco and \$55 million for Swepeco should not be allowed. PCA-IP urges the Commission to disallow recovery by Cleco of at least \$228 million in imprudent costs.

Commission Staff asserts the dramatic increases in the cost of fuel for Dolet Hills caused marginal costs to operate the unit to increase significantly above the cost of market energy in both MISO and SPP beginning in 2019.<sup>48</sup> Therefore, Commission Staff recommends that beginning in 2019 a disallowance of the imprudent, above market costs. However, Commission Staff does recognize that there needs to be a cost to ratepayers to replace the power Dolet Hills provided.

Commission Staff's proposed Cleco calculations<sup>49</sup> are:

	Dolet Hills Cost Flowed through FAC	Avoided Load Cost when must offered	January 2019 Inventory Balance	Total Recommended Disallowance
2019	\$69,817,890	(\$14,535,645)	(\$36,932,954)	\$18,349,291
2020	\$55,203,935	(\$7,045,959)	\$	\$48,157,975
2021	\$171,490,297	(\$20,968,640)	\$	\$150,521,657
Total	\$296,512,121	(\$42,550,244)	\$(36,932,954)	<b>\$217,028,923</b>

Commission Staff's proposed Swepeco calculations<sup>50</sup> are:

	Dolet Hills Cost Flowed through FAC	Avoided Load Cost when must offered	January 2019 Inventory Balance	Total Recommended Disallowance
2019	\$54,581,686	(\$14,938,427)	(\$29,915,831)	\$9,727,428
2020	\$61,523,077	(\$7,382,738)		\$54,140,339
2021	\$154,625,245	(\$50,916,900)		\$103,708,346
Total	\$270,730,008	(\$73,238,065)		\$167,576,112
Louisiana Jurisdictional Portion				33.00%
				<b>\$55,300,117</b>

<sup>48</sup> Sisung Direct (Public) at 47.

<sup>49</sup> Sisung Direct (Public) at 48-49.

<sup>50</sup> Sisung Direct (Public) at 51.

Commission Staff points out that their recommended disallowances are greater than the regulatory asset balances, and therefore recommends that recovery of the regulatory asset balances be denied and disallowance amounts in excess should be recorded as a regulatory liability and amortized over the amortization periods proposed (20 years for Cleco and 5 years for Swepeco). Swepeco's total regulatory asset balance is \$82,056,911, with the Louisiana jurisdictional portion being \$31,026,331.<sup>51</sup> Cleco's regulatory asset balance is \$111,490,297.<sup>52</sup>

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.<sup>53</sup> PCA-IP clarified in its Exceptions to the Proposed Recommendation that the \$128 million in excess fuel costs is specific to Cleco.

Cleco argues against Commission Staff's use of MISO market prices for the 2019-2021 time frame as the MISO construct did not exist in Louisiana during the time of the 2001 Mining Order 1 and the 2009 Mining Order 2. Further, Cleco points out that there is no spot market for

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<sup>51</sup> Day Direct, Exhibit TAD-1R

<sup>52</sup> Cleghorn 2022 Direct at 6.

<sup>53</sup> Brubaker Direct (Public) at 6.

lignite, and mine-mouth operations are the only feasible way to fuel a generating facility with lignite. Swepeco contends that Commission Staff's use of total fuel costs and the LMP Load Zone price estimate is not a valid comparison when actual SPP Market offers and sales rely solely on incremental costs. Swepeco argues that Commission Staff and Intervenors have not cited any controlling precedent that supports their assertion that any fuel costs for a particular plant above what Commission Staff deems to be an annual average must be disallowed.

According to Commission Staff's calculations, Cleco's excess fuel costs, as calculated using power from the power markets for 2019-2021, was \$217,028,923.<sup>54</sup> Commission Staff clarified that its calculations were the difference between what was paid by the Applicants to the Miner for the lignite, less what replacement power could be purchased for, less the costs of the allowed fuel inventory on hand.<sup>55</sup> According to Cleco witness Mr. Cleghorn, by dispatching Dolet Hills as a must-run, Dolet Hills was \$108.4 million more expensive to operate than the other power options available in the market.<sup>56</sup> Cleco asserted that that there is no spot market for lignite and mine mouth operations are the only feasible way to fuel a generating facility with lignite.

Had Dolet Hills not been imprudently run from 2019-2021, Cleco's next reasonable alternative resource would have been the Rodemacher units. Comparing the cost of operating Dolet Hills to the cost of operating other Cleco units, in particular the Rodemacher units, shows the additional costs incurred in the continued operation.<sup>57</sup> According to Mr. Brubaker, Dolet Hill's excess fuel costs, when compared to Cleco's next highest cost generation (the Rodemacher units)

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<sup>54</sup> Sisung Direct (Public) at 48-49 - The cost of replacement power was calculated by referencing every hour the unit was designated as a must run for all three years and calculating the MW associated with that hour times Cleco's load zone LMP in MISO.

<sup>55</sup> Commission Staff's Exceptions to ALJ Recommendation at 5.

<sup>56</sup> Transcript (5/8/23) at 67.

<sup>57</sup> Brubaker Direct (Public) at 2, 5

for 2019-2021, were roughly \$128 million.<sup>58</sup> Cleco made arguments in the Exceptions to the Proposed Recommendation that some portions of the lignite production costs were avoidable / unavoidable and therefore provide a basis for calculating a disallowance. However, no evidence and /or discussion was provided at hearing to support this distinction in costs. To support its argument, Cleco points to a “Dolet Lignite Mining Summary,”<sup>59</sup> which lists costs. Nonetheless, the exhibit itself has no distinctions on what costs could be avoidable or unavoidable. **Accordingly, based on the analysis above, Cleco is disallowed \$128 million for fuel costs related to Dolet Hills.**

According to Commission Staff’s calculations, Swepeco’s excess fuel costs, as calculated using power from the power markets for 2019-2021, was \$167,576,112.<sup>60</sup> No evidence was provided at hearing for Swepeco’s next reasonable alternative resource that could be used to calculate the excess fuel costs. Swepeco and Commission Staff oppose any opening of the evidentiary record to allow for information regarding fuel costs.<sup>61</sup> As Swepeco pointed out in its Reply to Exceptions to the Proposed Recommendation, this matter has been pending for over three years and the parties have had ample opportunities to present such information. Since Swepeco acted imprudently in operating Dolet Hills, they are saddled with the damage caused by the imprudent actions. As the parties failed to provide information for Swepeco’s next reasonable alternative resource which could be used to calculate Swepeco’s excess fuel costs, the only calculations remaining in the evidentiary record are those provided by Commission Staff.

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<sup>58</sup> Brubaker Direct (Public) at 6.

<sup>59</sup> Cleghorn Rebuttal, Exhibit JRC-9.

<sup>60</sup> Sisung Direct (Public) at 49-51 - The cost of replacement power was calculated by referencing every hour the unit was must-run by Cleco and calculating the MW associated with that hour times Swepeco’s load zone LMP in SPP.

<sup>61</sup> Commission Staff Response to Exceptions to ALJ Recommendation at 3; Swepeco Reply to Staff’s and PCA-IP’s Exceptions to the Proposed Recommendation at 8.



**Accordingly, Swepeco is disallowed \$167,576,112, with the Louisiana jurisdictional portion being \$55,300,117.**

The parties presented as a disputed issue whether certain or any costs related to the fuel provided to Dolet Hills, which was partially recovered from ratepayers beginning in 2019, should be recoverable from ratepayers, and, if so, determining the appropriate method of recovery of those costs. (Contested Issue 4) **Based on the analysis above, the costs related to the fuel provided to Dolet Hills which was partially recovered from ratepayers beginning in 2019 is not recoverable from ratepayers. Cleco's disallowance total is \$128,000,000.** Cleco will not recover costs related to the fuel provided to Dolet Hills which was partially recovered from ratepayers and will refund \$128 million to ratepayers. (Cleco's regulatory asset balance was \$111,490,297.) **Swepeco disallowance total is \$167,576,112, with the Louisiana jurisdictional portion being \$55,300,117.** Swepeco will not recover costs related to the fuel provided to Dolet Hills which was partially recovered from ratepayers and will refund \$55,300,117 to Louisiana ratepayers. (Swepeco's total regulatory asset balance is \$82,056,911, with the Louisiana jurisdictional portion being \$31,026,331.)

#### Costs of the Dolet Hills Power Plant

Dolet Hills retired on December 31, 2021 and, at that time, both Cleco and Swepeco had a net book balance recognized for the plant. When an asset is retired before the end of its projected useful life, then there will be a remaining balance, measured as the difference between the asset's gross plant balance and the amount of accumulated depreciation that has been recorded before retirement. This net book balance for assets that are no longer used and useful is commonly

referred to as “stranded costs.”<sup>62</sup> Swepeco and Cleco stopped recording depreciation expense as of December 31, 2021, however, the depreciation expense continued to be reflected in rates.<sup>63</sup>

The parties presented as contested issues:

- (Contested Issue 5) Whether any plant costs associated with Dolet Hills beginning in 2019 should be recovered from ratepayers, and if so, determining the appropriate method of recovery of those costs;
- (Contested Issue 6) Whether the amount of Dolet Hills to be recovered through securitization should include the net book balance of Dolet Hills as of the retirement less any post-retirement depreciation and Dolet Hills O&M recovered in rates up to the point of securitization; and
- (Contested Issue 7) Whether the Commission should allow recovery of any carrying charges for Dolet Hills after its retirement on December 31, 2021, and, if so, at what amount and the time and manner of recovery.

It was the Commission Staff’s understanding that Cleco proposed a three-step process that would start with rate recovery before securitization. Cleco’s recovery proposal before securitization includes recovery of both the stranded costs associated with Dolet Hills and a portion of the regulatory asset. For Dolet Hills, Cleco proposes that it continue its recovery as currently reflected in rates until the securitization is finalized. Cleco would then securitize the stranded costs of Dolet Hills and any remaining amount of the regulatory asset. Post-securitization, Cleco would reduce its rates to remove the revenue requirement associated with Dolet Hills.<sup>64</sup> Swepeco argues

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<sup>62</sup> Sisung Direct (Public) at 8.

<sup>63</sup> Bourg Direct at 5.

<sup>64</sup> Sisung Direct (Public) at 31-32

that the issue has already been settled in Commission Order No. U-35441, in which the Commission approved recovery of the status quo level of recovery for Dolet Hills through a Retirement Rider.

Generally, Commission Staff supports that the stranded net book value of Dolet Hills is a recoverable amount, provided that to protect against double recovery, the amount is offset by any depreciation and O&M expense that has been recovered on those assets in rates after the date that the Companies ceased recognizing that expense.<sup>65</sup> Commission Staff states that there is no disagreement on the amount of costs incurred related to Dolet Hills, however, there is disagreement on how those costs should be reflected in rates. Further, Commission Staff contends that the Companies should be allowed a “return of” and not a “return on” the stranded asset.

Commission Order No. U-35441 provides that, for Swepco, costs for Dolet Hills will be recovered in a Retirement Rider. 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.” Order No. U-35441 then explains that Dolet Hills “costs to be recovered through the Retirement Rider as per this Term Sheet are subject to review in Docket No. U-35753 and the Parties reserve all rights to recommend changes it may deem necessary or appropriate in Docket No. U-35753.” Therefore, for Swepco, this proceeding may review any costs that are to be included in the Retirement Rider, however once included in the Retirement Rider the costs will be recovered at “the jurisdictional rate base at the Company’s authorized overall rate of return on a

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<sup>65</sup> Bourg Direct at 10.

levelized basis.” In this proceeding there was no dispute regarding any cost associated with the actual plant (Dolet Hills).<sup>66</sup> **Accordingly, Swepeco’s portion of the Dolet Hills plant costs, not including the fuel costs previously discussed, will be recovered in the Retirement Rider, in accordance with Commission Order No. U-35441.** Nothing in this decision is intended to allow Swepeco authorization for double recovery of plant costs associated with Dolet Hills.

**Cleco’s portion of the net book value of Dolet Hills, minus the depreciation and O&M expense already recovered in rates, for the years 2019 through 2021 will be recovered from ratepayers through the base rate tariffs in place during those years as Dolet Hills was not retired until December 31, 2021.**

After December 31, 2021, Dolet Hills became a stranded asset as it was no longer used and useful. Commission Staff does not dispute that the costs incurred by the Companies as of December 31, 2021 were prudently incurred costs, but the Commission Staff believes that any future costs associated with decommissioning and demolition of Dolet Hills should be evaluated by the Commission to ensure that they are prudently incurred. Commission Staff contends that the stranded cost should be recorded as a regulatory asset to be recovered over an amortization period that extends for the same period as the original stranded asset would have been recovered; however, that regulatory asset should not be included in rate base to receive a return on that asset. Cleco is requesting that the recovery of remaining Dolet Hills costs beginning in 2022 should be recovered utilizing securitization.

Commission Staff argues that the amount to be securitized should include the net book balance of Dolet Hills as of the retirement date less any post-retirement depreciation and Dolet

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<sup>66</sup> Commission Staff’s disallowance was fuel related, and PCA-IP’s disallowances were fuel and Mine related.

Hills O&M recovered in rates up to the point of the securitization. Cleco contends the amount of Dolet Hills to be recovered through securitization should be based on the estimated GAAP net book value of the assets at the time of securitization, along with estimated Dolet Hills closure costs and remediation costs for the Mines through 2025. Further, Cleco points out that there has been no change in the financing of Dolet Hills upon its retirement and therefore it should continue to recover carrying costs as an offset to the reduction in depreciation and O&M for Dolet Hills until such time as securitization is complete.

**For Cleco, costs associated with Dolet Hills, including decommissioning and demolition, beginning in 2022 until securitization, will not be recovered from ratepayers in base rates. For Cleco, costs associated with Dolet Hills and future costs associated with decommissioning and demolition of Dolet Hills should be recorded as a regulatory asset. This regulatory asset is eligible for securitization. The amount of Dolet Hills to be recovered through securitization will include the net book balance of Dolet Hills as of the retirement less any post-retirement depreciation and O&M already recovered in rates up to the point of securitization.**

Cleco argues that it should be allowed to continue recovering carrying charges since there has been no change in the financing of Dolet Hills upon its retirement. This issue was not thoroughly briefed or argued by any party. **Given the limited nature of these costs, and the lack of a strenuous objection to them, Cleco will be allowed to continue to recover carrying costs until such time as the Commission approves securitization. This is not intended to change or set Commission policy with regard to cost recovery on an asset that is no longer used and useful. Further, if securitization is unreasonably delayed or an alternative recovery mechanism is employed, the Commission may revisit this issue.**

**All costs eligible for securitization not already reviewed in this proceeding should be evaluated by the Commission to ensure that they are prudently incurred.**

The Lignite Mining Agreement

The Companies argue that it is essential to recognize that the fixed costs of the Mines could not be avoided and they are contractual obligations to the Miner under the Lignite Mining Agreement. The Companies argue that the Lignite Mining Agreement was approved by the Commission in Mining Order 1. The 2001 Lignite Mining Agreement and 2009 Amended and Restated Lignite Mining Agreement were each executed by Cleco, Swepco, and the Miner. Neither the Commission nor Commission Staff are parties to, or signatories of, either of the Lignite Mining Agreements.

The Parties presented as a contested issue the question of whether the 2001 Lignite Mining Agreement (“LMA”), executed by Cleco, Swepco, and Dolet Hills Lignite Company (“DHLC” or the “Miner”) (as amended and restated on December 29, 2009), was approved by the Commission, in accordance with Paragraph 13 of the Term Sheet and Paragraph 1 of the 2001 Order (Contested Issue 1).

Mining Order 1 orders that

As soon as it is executed, the Lignite Mining Agreement will be provided to Special Counsel and the Commission's consultants for review, along with any closing documents or other documents requested for this review. Special Counsel is directed to bring to the Commission's attention any inconsistency with the Term Sheet.

The 2001 Lignite Mining Agreement was provided to the Commission Special Counsel for review.<sup>67</sup> The Companies argue that the 2001 Lignite Mining Agreement was approved by the

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<sup>67</sup> Cleghorn Rebuttal Testimony Exhibits 5-7.

Commission because Swepeco and Cleco complied with the process provided in Mining Order 1. The 2001 Lignite Mining Agreement did comply with the requirements set forth in Mining Order 1.

According to the Term Sheet which the Commission approved in Mining Order 1, the “LMA and/or related documents will provide for an initial term until December 31, 2002, with automatic renewals through 2011.”<sup>68</sup> Cleco, Swepeco, and the Miner “amended and restated” the Lignite Mining Agreement in December 2009.<sup>69</sup> There is no evidence in the record of the proceeding that the 2009 Amended and Restated Lignite Mining Agreement was provided to Special Counsel and/or the Commission's consultants for review as soon as it was executed. Hence the 2009 Amended and Restated Lignite Mining Agreement cannot be considered “approved by the Commission” because it was not provided to Special Counsel and the Commission's consultants for review as soon as it was executed.

Swepeco argued in its Exceptions to the Proposed Recommendation that Mining Order 3, which approved of the acquisition of the Oxbow Mine, did not contain a requirement that the 2009 Amended and Restated Lignite Mining Agreement be submitted for approval. Swepeco is correct that Mining Order 3 does not require approval of any lignite mining agreement, in fact, Mining Order 3 doesn't mention a lignite mining agreement at all. Mining Order 3 does order that all provisions of Mining Orders 1 and 2 “that have not been explicitly changed by, or are not inconsistent with this Order approving the Settlement shall remain in full force and effect,” and Mining Order 1 requires the Lignite Mining Agreement be consistent with the Term Sheet, and be provided to Special Counsel and Commission's consultants. Accordingly, amending and changing

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<sup>68</sup> Term Sheet for the Dolet Hills Mining Proposal Attached to Mining Order 1, Paragraph 6.

<sup>69</sup> Baird 2020 Direct, Exhibit 1.

the Lignite Mining Agreement referenced in Mining Order 1 would still need review by Special Counsel and the Commission's consultants so that Special Counsel could bring to the Commission's attention any inconsistency with the Term Sheet.

It is further noted that much of what is contained in the 2001 Lignite Mining Agreement and the 2009 Amended and Restated Lignite Mining Agreement was not part of the Commission-approved Term Sheet and was instead confected between the parties (i.e. Cleco, Swepco, and the Miner). While the 2001 Lignite Mining Agreement was reviewed by Commission Special Counsel for inconsistencies, the 2009 Amended and Restated Lignite Mining Agreement was not and therefore there are no guarantees that the 2009 Amended and Restated Lignite Mining Agreement is consistent with the Term Sheet or that there are not any additional significant clauses. The 2009 Amended and Restated Lignite Mining Agreement was introduced into evidence, however, the 2001 Lignite Mining Agreement was not presented into the evidentiary record of the proceeding. Hence, the Commission is unable to determine whether the 2009 Amended and Restated Lignite Mining Agreement is substantially similar or dissimilar to the original 2001 Lignite Mining Agreement.

**The May 31, 2001 Lignite Mining Agreement, executed by Cleco, Swepco, and Dolet Hills Lignite Company did comply with Mining Order 1 in that it was provided to Special Counsel and the Commission's consultants for review as soon as it was executed. The Amended and Restated Lignite Mining Agreement, dated December 29, 2009, was not explicitly approved by the Commission via Commission order, was not reviewed by Special Counsel or Commission Staff for inconsistencies, and was not provided to the Commission as soon as it was executed. Accordingly, the Amended and Restated Lignite Mining**



**Agreement, dated December 29, 2009, was not approved by the Commission and violates Mining Order 1.**

***Conclusions***

The Administrative Law Judge's Recommendation was considered at the Commission's [DATE] Business and Executive Session.

[PLACEHOLDER FOR COMMISSION VOTE]

Based upon the reasoning above, **IT IS HEREBY ORDERED THAT:**

1. Swepco and Cleco are relieved of their obligation pursuant to Commission Order No. U-30975 to maintain the operation of the 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 until at least 2026.
3. The May 31, 2001 Lignite Mining Agreement, executed by Cleco, Swepco, and Dolet Hills Lignite Company did comply with Mining Order 1 in that it was provided to Special Counsel and the Commission's consultants for review as soon as it was executed. The Amended and Restated Lignite Mining Agreement, dated December 29, 2009, was not explicitly approved by the Commission via Commission order, was not reviewed by Special Counsel or Commission Staff for inconsistencies, and was not provided to the Commission as soon as it was executed. Accordingly, the Amended and Restated Lignite Mining Agreement, dated December 29, 2009, was not approved by the Commission and violates Mining Order 1.
4. The Mining Orders provide a method for recovery of the lignite production costs of the Miner ("Dolet Hills Lignite Company") but not direct approval of those costs. Approval of the lignite production costs is done through the process outlined in the FAC General Order. Therefore, the Mining Orders do not authorize direct recovery of the costs incurred by the Miner for the operations of the Mines and instead provide the method for the utilities (Swepco and Cleco) to present those costs for recovery from the ratepayer using the process outlined in the FAC General Order.
5. Swepco and Cleco's actions in operating and dispatching Dolet Hills and the Mines from 2019 to 2021 were not based on reasonable decision-making processes to arrive at a course of action, and, given the facts as they were or should have been known at the time, the Companies failed to respond in a reasonable manner. Accordingly, Swepco and Cleco's actions in operating and dispatching Dolet Hills and the Mines from 2019 through 2021 were imprudent.

6. Due to their imprudence, Cleco and Swepeco are responsible for disallowances for certain fuel costs related to Dolet Hills. Therefore, the costs related to the fuel provided to Dolet Hills which was partially recovered from ratepayers beginning in 2019 is not recoverable from ratepayers. Cleco's disallowance total is \$128,000,000. Cleco will not recover costs related to the fuel provided to Dolet Hills which was partially recovered from ratepayers and will refund \$128 million to ratepayers. Swepeco's disallowance total is \$167,576,112, with the Louisiana jurisdictional portion being \$55,300,117. Swepeco will not recover costs related to the fuel provided to Dolet Hills which was partially recovered from ratepayers and will refund \$55,300,117 to Louisiana ratepayers.
7. Swepeco's portion of the Dolet Hills plant costs, not including the fuel costs previously discussed, will be recovered in the Retirement Rider, in accordance with Commission Order No. U-35441. Nothing in this decision is intended to allow Swepeco authorization for double recovery of plant costs associated with Dolet Hills.
8. Cleco's portion of the net book value of Dolet Hills, minus the depreciation and O&M expense already recovered in rates, for the years 2019 through 2021 will be recovered from ratepayers through the base rate tariffs in place during those years as Dolet Hills was not retired until December 31, 2021.
9. For Cleco, costs associated with Dolet Hills, including decommissioning and demolition, beginning in 2022 until securitization, will not be recovered from ratepayers in base rates. For Cleco, costs associated with Dolet Hills and future costs associated with decommissioning and demolition of Dolet Hills should be recorded as a regulatory asset. This regulatory asset is eligible for securitization. The amount of Dolet Hills to be recovered through securitization will include the net book balance of Dolet Hills as of the retirement less any post-retirement depreciation and O&M already recovered in rates up to the point of securitization.
10. Given the limited nature of these costs, and the lack of a strenuous objection to them, Cleco will be allowed to continue to recover carrying costs on Dolet Hills Power Plant until such time as the Commission approves securitization. This is not intended to change or set Commission policy with regard to cost recovery on an asset that is no longer used and useful. Further, if securitization is unreasonably delayed or an alternative recovery mechanism is employed, the Commission may revisit this issue.
11. All costs eligible for securitization not already reviewed in this proceeding should be evaluated by the Commission to ensure that they are prudently incurred.

**BY ORDER OF THE COMMISSION**  
**BATON ROUGE, LOUISIANA**  
«Form.SignatureDate»

*/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

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BRANDON M. FREY  
SECRETARY

**Service List for U-35753  
as of 2/2/2024**

**Commissioner(s)**

Eric Skrmetta

Foster L. Campbell

Mike Francis

Craig Greene

**LPSC Staff Counsel**

Justin Bello, LPSC Staff Attorney

**LPSC Staff**

Donnie Marks, LPSC Utilities Division

Robin Pendergrass, LPSC Auditing Division

## **LPSC Consultant**

R. Lane Sisung

201 St. Charles Avenue, Suite 4240

New Orleans, LA 70170

Email: lane@sisung.com

Fax: (504)544-7701; Phone: (504)544-7724

Paul Thomas Chastant III

201 St. Charles Avenue, Ste. 4240

New Orleans, LA 70170

Email: paul@sisung.com

Fax: (504)544-7701; Phone: (337)298-1693

Julie Viviano

201 St. Charles, Ste 4240

New Orleans, LA 70170

Email: julie@sisung.com

Fax: (504)544-7701; Phone: (504)544-7700

Jonathan Bourg

201 St. Charles Avenue, Suite 4240

New Orleans, LA 70170

Email: jbourg@sisung.com

Fax: (504)544-7702; Phone: (504)544-7728

## **LPSC Special Counsel**

Patrick H. Patrick

400 Poydras Street, Suite 1680

New Orleans, LA 70130-3228

Email: ppatrick@patrickmillerlaw.com

Fax: (504)527-5400; Phone: (504)527-5455

Kristina Francis (Legal Secretary/Paralegal)

400 Poydras Street, Suite 1680

New Orleans, LA 70130

Email: kfrancis@patrickmillerlaw.com

Fax: (504)527-5456; Phone: (504)527-5400

Pierre V. Miller II

400 Poydras Street, Suite 1680

New Orleans, LA 70130

Email: pmiller@patrickmillerlaw.com

Fax: (504)527-5456; Phone: (504)527-5400

## **Applicant :**

### **Cleco Power LLC**

Daniel T. Pancamo

Phelps Dunbar, LLP

365 Canal Street, Ste 2000

New Orleans, LA 70130-6534

Email: dan.pancamo@phelps.com

Fax: (504)568-9130; Phone: (504)566-1311

Richard E. Matheny  
Phelps Dunbar LLP  
365 Canal Street, Suite 2000  
New Orleans, LA 71030  
Email: richard.matheny@phelps.com  
Fax: (504)568-9130; Phone: (504)566-1311

Nathan G. Huntwork  
Phelps Dunbar LLP  
365 Canal Street, Ste. 2000  
New Orleans, LA 70130-6534  
Email: nathan.huntwork@phelps.com  
Fax: (504)568-9130; Phone: (504)566-1311

Collin Buisson  
Phelps Dunbar, LLP  
365 Canal Street Suite 2000  
New Orleans, LA 70130-6534  
Email: Collin.Buisson@phelps.com  
Fax: (504)568-9130; Phone: (504)566-1311

Harry A. Rosenberg  
Phelps Dunbar LLP  
365 Canal Street, Suite 2000  
New Orleans, LA 70130-6534  
Email: harry.rosenberg@phelps.com  
Fax: (504)568-9130; Phone: (504)566-1311

**Applicant :**

**Southwestern Electric Power Company**

Jonathan P. McCartney  
Wilkinson Carmody & Gilliam  
400 Travis Street, Suite 1700,  
Shreveport, LA 71101  
Email: jmccartney@wcglawfirm.com  
Fax: (318)221-3705; Phone: (318)221-4196

Gemma Zuniga  
Wilkinson, Carmody & Gilliam  
400 Travis Street, Suite 1700  
Shreveport, LA 71101  
Email: gzuniga@wcglawfirm.com  
Fax: (318)221-3705; Phone: (318)221-4196

Bobby S. Gilliam  
Wilkinson Carmody & Gilliam  
400 Travis Street, Suite 1700  
Shreveport, LA 71101  
Email: bgilliam@wcglawfirm.com  
Fax: (318)221-3705; Phone: (318)221-4196

**Intervenor :**

**Cabot Corporation**

David L. Guerry  
David L. Guerry, APLC  
3080 Svendson Drive  
Baton Rouge, LA 70809  
Email: dlguerry@dlguerry.com  
Fax: ; Phone: (225)229-6328



**Intervenor :                   Packaging Corporation of America and  
International Paper Company**

Carrie R. Tournillon  
Kean Miller, LLP  
400 Convention Street, Suite 700 (70802)  
P. O. Box 3513  
Baton Rouge, LA 70821  
Email: [carrie.tournillon@keanmiller.com](mailto:carrie.tournillon@keanmiller.com)  
Fax: (225)388-9133; Phone: (225)387-0999

Randy Young  
Kean Miller, LLP  
400 Convention Street, Suite 700 (70802)  
Post Office Box 3513  
Baton Rouge, LA 70821-3513  
Email: [Randy.Young@keanmiller.com](mailto:Randy.Young@keanmiller.com)  
Fax: (225)388-9133; Phone: (225)387-0999

**Intervenor :**

**Alliance for Affordable Energy**

Logan Atkinson Burke  
Alliance for Affordable Energy  
4505 S. Claiborne Avenue  
New Orleans, LA 70125  
Email: Logan@all4energy.org  
Fax: (504)313-3478; Phone: (504)208-9761

Sophie Zaken  
Alliance for Affordable Energy  
4505 S. Claiborne Avenue  
New Orleans, LA 70125  
Email: regulatory@all4energy.org  
Fax: (504)313-3478; Phone: (504)208-9761

Jessica Hendricks  
Alliance for Affordable Energy  
4505 S. Claiborne Ave  
New Orleans, LA 70125  
Email: jessica@all4energy.org  
Fax: (504)313-3478; Phone: (504)208-9761

**Intervenor : Packaging Corporation of America**

Ronald L. Williams  
Williams Bradbury, P.C.  
802 W.Bannock St., Ste. 900 (83702)  
Post Office Box 388  
Boise, ID 83701  
Email: ron@williamsbradbury.com  
Fax: ; Phone: (208)344-6633

Katherine King  
400 Convention Street, Suite 700  
Baton Rouge, LA 70802  
Email: Katherine.King@keanmiller.com  
Fax: (225)388-9133; Phone: (225)382-3436

**Intervenor : Sierra Club**

Joshua Smith  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
Email: joshua.smith@sierraclub.org  
Fax: ; Phone: (415)977-5560

Lauren Hogrewe  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
Email: lauren.hogrewe@sierraclub.org  
Fax: (510)208-3140; Phone: (415)977-5560

**Interested Party : Dixie Electric Membership Corporation**

Thomas D. Gildersleeve  
Taylor, Porter, Brooks & Phillips, L.L.P.  
450 Laurel Street, 8th Floor  
P. O. Box 2471  
Baton Rouge, LA 70801  
Email: Tommy.Gildersleeve@taylorporter.com  
Fax: (225)346-8049; Phone: (225)387-2471

Taylor Dunne  
Taylor, Porter, Brooks & Phillips, L.L.P.  
450 Laurel Street, 8th Floor  
PO Box 2471  
Baton Rouge, LA 70821-2471  
Email: taylor.dunne@taylorporter.com  
Fax: (225)215-8707; Phone: (225)387-3221

**Interested Party : EP2 Consulting, LLC.**

Karen Haymon  
EP2 Consulting, LLC.  
P O Box 13604  
Alexandria, LA 71315-3604  
Email: karen@ep2consulting.com  
Fax: ; Phone: (318)290-7606