Southwestern Public Service Company ("SPS")

Attachment O - Transmission Formula Rate 2021 True-Up

and Transmission Formula Rate 2023 Projection

Preliminary Challenges of

Golden Spread Electric Cooperative, Inc. ("GSEC") and

New Mexico Cooperatives ("NMC")

December 5, 2022

SPS 2021 Transmission Formula Rate True-Up

Preliminary Challenge # 1: *Minimum guarantees paid by retail customers*

Based on the responses provided to Information Requests GSEC-NMC 1-6 and 2-3, SPS indicated that it received $2,288,376 in revenues for minimum guarantees associated with customer requests for network upgrades where load did not materialize and/or the contract was cancelled. SPS further confirmed that none of these revenues received in 2021 for minimum guarantees have been credited against the transmission revenue requirement in the 2021 True-Up. Because SPS elected to book these revenues to FERC Account 442 (Commercial and Industrial Sales), SPS argues that that "there is no mechanism in the transmission formula to allow for revenue crediting FERC Account 442 revenue in the transmission formula". The USofA states that Account 442 "shall include the net billing for electricity supplied to customers for commercial and industrial purposes." The payments by the customers were due to them not meeting the minimum requirements for full service under the minimum guarantees (i.e., there was no, or little electricity supplied to the customers). SPS constructed the transmission plant necessary to serve them resulting in the requirement of these payments for not meeting their contractual obligations. Therefore, these revenues should not be recorded to Account 442 as such revenues are not related to electric sales but to payments for non-performance. These revenues should have been recorded to Account 456 (Other Electric Revenues) as the USofA states that this account "shall include revenues derived from electric operations not includible in any of the foregoing accounts". Additionally, Account 456 is included in the transmission formula in Worksheet B which would provide the mechanism for including these revenues credits.

Furthermore, SPS has not justified its failure to credit these revenues in the transmission formula. These minimum guarantee payments from retail customers were associated with transmission service to delivery points where the underlying new transmission plant associated with the upgrades to accommodate service have been incorporated in transmission rate base. It is very likely that these new network upgrades would not have been made absent the request of SPS merchant function on behalf of the retail customers. Wholesale customers must now bear the burden for the costs of these additional facilities, with no offsetting revenues or loads to reduce the impacts on the resulting transmission rates and will have to subsidize the merchant customers that have not met the minimum guarantees.

The SPS Annual Formula Rate Implementation Procedures require the true up to be based on costs that are prudently and properly recorded on the books and records of SPS, including conformance with the USoA. See Sec 3.d.(i). The $2,288,376 should be included as a revenue credit to the transmission revenue requirement. Alternatively, the associated transmission plant should be removed entirely from the transmission formula until such time the applicable retail customer(s) begin to take transmission service and their loads are included at sufficient levels in the rate divisor as originally contemplated when the service was studied. [Note: Depending on the resolution of Preliminary Challenge # 2 below, the revenue credit may need to be reduced by $859,197 for the revenues associated with the customer requiring $170 million in transmission upgrades.]

Preliminary Challenge # 2: *$170 million of incremental transmission investments for retail load that did not materialize*

Based on the responses provided to Information Requests GSEC-NMC 2-4, 3-1 and 3-2, SPS indicated that it received $859,197 in revenues for minimum guarantees associated with one retail customer that required SPS to invest $170 million in transmission upgrades. Transmission service to that customer never materialized and did not appear to have any financial ramification other than a one-time payment of $859,107 minimum payment. SPS has not provided any information confirming whether the $170 million in transmission upgrades would have been constructed absent the request by the one retail customer. GSEC and NMC question whether the investments in these transmission facilities were prudently made given the inherent risks of the load not materializing. Furthermore, given the significant transmission investments required for the anticipated load with relatively minimal financial risks to the customer, was the determination to include these facilities in the transmission revenue requirement made in a non-discriminatory or preferential manner? SPS has provided no support for the inclusion of these costs in the revenue requirement as they are not supporting any transmission service.

The inclusion of these facilities in the transmission formula increases the annual revenue requirement in excess of $21 million, with GSEC incurring approximately $4.1 million and NMC incurring approximately $1.7 million in increased annual transmission costs. This is a material impact on both GSEC and NMC.

The SPS Annual Formula Rate Implementation Procedures require the True Up to be based on costs that are prudently and properly recorded on the books and records of SPS. See Sec 3.d.(i). The $170 million of transmission upgrades should be removed entirely from the transmission formula until such time the retail customer (or substitute customer(s)) begins to take transmission service and their loads are included at sufficient levels in the rate divisor as originally contemplated when the service was studied.

Preliminary Challenge # 3: *Contributions in Aid of Construction (CIAC)*

In data request GSEC-NMC 2-9, GSEC and NMC directed SPS to a recent FERC Order where the Commission found that SDG&E's inclusion of CIAC-related ADIT and EDIT in rate base is not just and reasonable and, therefore should be removed accordingly from formula rates (Order on Informational Filing dated August 15, 2022 (Docket No. ER22-527-000). In the *SDG&E* Order, the Commission cited several other prior orders that further support its finding, including in Ameren II where "the Commission held that 'neither the tax gross-up of CIAC nor the ADIT related to the tax gross-up of CIAC are allowed to be included in the [annual transmission revenue requirement],' and that '[b]oth of these items arise from non-operating contributions by individual transmission customers, and should have no bearing on the [annual transmission revenue requirement]'"[1] See para(s). 15 – 17.

In the response provided to Information Request GSEC-NMC 2-9, SPS claims that it "has included CIAC-related ADIT in rate base pursuant to the terms of SPS's currently effective Formula Rate" and "…and so if SPS were to remove CIAC-related amounts from Worksheet D, SPS would be incorrectly applying its Formula Rate". SPS' argument is flawed because Section 3.d.(i) of the SPS Annual Formula Rate Implementation Procedures stipulates that the True Adjustment shall "be based on costs that are prudently incurred and properly recorded on the books and records of SPS, including SPS's FERC Form No. 1 data, as applicable, for the most recently completed calendar year consistent with the USoA, ***FERC's orders establishing generally applicable transmission ratemaking policies***, and, to the extent specified in the Formula Rate, SPS's books and records kept in conformance with the FERC USoA, FERC accounting policies and practices, SPP's policies, and the SPP and Xcel Energy OATTs" (emphasis added) This is clearly a case of SPS' formula rate not being consistent with FERC's orders establishing generally applicable transmission ratemaking policies. So, if SPS does not properly implement the CIAC accounting guidance set forth in the *SDG&E* Order, SPS will indeed be incorrectly applying its Formula Rate.

For the reasons set forth above, SPS should exclude from the formula rate all CIAC-related ADIT and EDIT consistent with Commission policy and precedent.

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[1] *Ameren II*, 162 FERC 61,025 at P 38.

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Preliminary Challenge # 4: ***Bad debt related to CIACs***

Based on the responses provided to Information Requests GSEC-NMC 2-5b and 3-3, SPS indicated that it has included in Account 566 (Miscellaneous Transmission Expenses) $251,330 of bad debts associated with CIACs. For the same reasons set forth in the Preliminary Challenge # 3 above, hereto the CIAC-related bad debts should not be included in the formula rate.

SPS 2023 Transmission Formula Rate Projection

GSEC and NMC incorporate Preliminary Challenges #1 through #4, as necessary, to apply to the 2023 Formula Rate Projection. In addition:

Preliminary Challenge # 5: ***Accounting for Internal Legal Labor Costs***

In the document SPS provided, "10-2022---2023---SPS---Material Accounting Changes-Transmission", Page 2, Subpart (d), Accounting for Internal Legal Labor Costs, the Company states that it "changed the accounting for internal labor costs pertaining to compromise settlements for employee discrimination cases." In data request GSEC-NMC 1-20 of the 2021 True-up, GSEC and NMC specifically asked about this issue, and SPS responded that there were no such payments or expenses. SPS should remove all internal and external expenses pertaining to compromised settlements for employee discrimination cases from the 2021 True-up.