

**Response of SPS to the Preliminary Challenges of  
Golden Spread Electric Cooperative, Inc. and New Mexico Cooperatives**

December 19, 2022

On December 5, 2022, Golden Spread Electric Cooperative, Inc. (“GSEC”) and the New Mexico Cooperatives (“NMCs”) submitted Preliminary Challenges to the 2021 Transmission Formula Rate True-Up to Southwestern Public Service Company (“SPS”). Pursuant to Section 5.c of the Transmission Formula Rate Protocols, SPS hereby provides its response. Note that GSEC and NMC incorporated Preliminary Challenges #1 through #4 to apply to the 2023 Formula Rate Projection; similarly, SPS’s responses to Preliminary Challenges #1 through #4 are also applicable to GSEC’s and the NMCs’ objections to the 2023 Formula Rate Projection.

For ease of review, SPS restates each challenge below, followed by SPS’s response to each challenge.

**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

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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.]

**SPS RESPONSE TO PRELIMINARY CHALLENGE NO. 1:**

SPS disagrees the \$2,288,376 in revenues for retail electric service should be revenue credited in the transmission rate. In addition, as discussed below and in SPS's response to Preliminary Challenge No. 2, there is no basis for excluding any transmission plant associated with the retail electric service.

As a preliminary matter, it is incorrect to characterize the \$2,288,376 in payments as "associated with customer requests for network upgrades." SPS's response to GSEC-NMC 1-6 did not correct the GSEC and NMCs' characterization, but SPS's response does not represent agreement with this characterization. In fact, the payments were associated with agreements for electric service from SPS under SPS's retail electric service tariff.

The majority of the \$2,288,376 amount represents payments for retail loads connected at distribution-level voltages and for which no network upgrades were constructed. SPS explained in response to Information Request GSEC-NMC-2-4 that only one of its retail customers connected at transmission level voltage and that the \$170 million in network upgrades is associated with only that customer. As discussed further in response to Preliminary Challenge No. 2 below, the additional transmission service for the customer connected at transmission level voltage was approved by SPP, who followed the procedures of the SPP Open Access Transmission Tariff ("SPP OATT").

The contentions by GSEC and the NMCs regarding SPS's accounting for the payments of \$2,288,376 million are erroneous. The instructions to Account 442 state:

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**442 Commercial and industrial sales.**

A. This account shall include the net billing for electricity supplied to customers for commercial and industrial purposes.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available. Records shall be maintained also so as to show separately the revenues from commercial and industrial customers (1) which have demands generally of 1000 kw or more, and (2) those which have demands generally less than 1000 kw. Reasonable deviations above or below the 1000 kw demand are permissible in order that transfers of customers between the two classes during the year may be minimized

GSEC and the NMCs appear to misunderstand the nature of the associated retail service agreements under which the \$ 2.2 million in payments received by SPS were billed by SPS to its retail commercial and industrial customers. Under these electric service agreements, the customer pays a total charge for electricity that varies based on whether the customer meets certain minimum contractual revenues and/or volumes, and the pricing is based on the applicable SPS retail tariff rate for commercial or industrial service. Thus, these are not “payments for non-performance” or “payments for [customers] not meeting their contractual obligations”; rather, the customers paid the contractual price for service taken under the terms of the retail electric service agreements. Since the revenues for the retail contracts clearly meet the instructions of Account 442, they cannot be recorded in Account 456, which, as GSEC and the NMCs point out, is for “revenues derived from electric operations *not includible* in any of the foregoing accounts.” (emphasis added).

SPS is following its transmission formula rate template in its treatment of the costs. Account 442 is not an account that is revenue credited in the transmission formula rate.

In terms of the need for, and decision to construct, the network upgrades, the network upgrades were approved by SPP through the SPP transmission planning process. This is discussed further in response to Preliminary Challenge No. 2.

The “subsidization” arguments by GSEC and the NMCs are flawed. First, the inference drawn by GSEC and the NMCs that none of the retail load growth has materialized is wrong, as discussed further below in SPS’s response to Preliminary Challenge No. 2. Second, the network upgrades do provide benefits to wholesale customers in the zone, as also discussed further in the response to Preliminary Challenge No. 2. Third, the pricing for network integration transmission service under the SPP OATT provides for regional and zonal load ratio sharing of the costs of the transmission system. Under the theory advanced by GSEC and the NMCs, any divergence between a network customer’s expected network load and actual network load or network load from prior years could constitute a subsidization of that customer by other network transmission service customers. Thus, GSEC’s and the NMCs’ complaint is a collateral attack on the transmission pricing methodology under the SPP OATT and on FERC’s basic principles

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of pricing network transmission service.

***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.

***SPS RESPONSE TO PRELIMINARY CHALLENGE NO. 2:***

SPS does not agree to remove the \$170 million of transmission upgrades from the transmission formula. For the reasons set forth below, the arguments by GSEC and the NMCs are without merit and the \$170 million cost is appropriately included in the transmission revenue requirement.

The process that led to construction of the upgrades was entirely prudent. In this case,

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SPS had commitments through a retail service agreement from the “one retail customer” to purchase electric service from SPS pursuant to SPS’s retail electric service tariff. The transmission system impacts were studied by SPP under Attachment AQ of the SPP OATT. In its study (Delivery Point Assessment Study “DPA-2017-November-808”<sup>1</sup>), SPP identified that Reliability Upgrades would be required for the delivery point addition. Subsequently, the upgrades were included in the SPP Transmission Expansion Plan (“STEP”) and SPP issued a Notification to Construct (“NTC”) to SPS (SPP-NTC-21057) to build the necessary network upgrades. In addition, SPP and SPS executed amendments to SPS’s Network Integration Transmission Service Agreement to reflect the new delivery points associated with the retail customer, and the amendments were accepted by FERC in Docket No. ER18-2266-000.

There was no discrimination or undue preference provided to the retail customer, and, in any event, FERC’s policies on those matters do not govern SPS’s arrangements with its retail customers, which are subject to regulation by the New Mexico Public Regulation Commission and the Public Utilities Commission of Texas. As noted above, the decision to construct the network upgrades was made by SPP and was a result of the processes of the SPP OATT, which is administered by SPP, not SPS.

GSEC and the NMCs state that “[t]ransmission service to that customer never materialized,” and that the \$170 million in transmission upgrades “are not supporting any transmission service” but this is incorrect. In fact, the retail customer’s electric usage in 2021 exceeded 90% of the contractual minimum.

In addition, as SPS explained in response to Information Request GSEC-NMC 3-2(e), the network upgrades provided reliability benefits to the SPP transmission system. Moreover, the \$170 million investment was associated with upgrades to 345 kV facilities in SPP that were included in the STEP and, as such, are deemed to benefit the SPP grid. *See, e.g., Southwest Power Pool, Inc.*, 137 FERC ¶ 61,075 (2011). *See also W. Mass. Elec. Co. v. FERC*, 165 F.3d 922, 927 (D.C. Cir. 1999) (“[w]hen a system is integrated, any system enhancements are presumed to benefit the entire system”); *Otter Tail Power Co.*, 12 FERC ¶ 61,169 at 61,420 (1980) (“Given a finding that the system operates as an integrated whole, transmission costs have generally been rolled-in, absent a finding of special circumstances. The principal reason behind adoption of this methodology is that an integrated system is designed to achieve maximum efficiency and reliability at a minimum cost on a systemwide basis. Implicit in this theory is the assumption that all customers, whether they be wholesale, retail or wheeling customers, receive the benefits that are inherent in such an integrated system.”). *See also Niagara Mohawk Power Corp.*, 42 FERC ¶ 61,143 (1988) (FERC policy favors

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<sup>1</sup> This study is available on SPP’s OASIS.

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rolled-in pricing); *Mansfield Municipal Electric Department, et al., v. New England Power Co.*, 97 FERC ¶ 61,134 (2001) (same).

**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]'"<sup>1</sup> 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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**SPS RESPONSE TO PRELIMINARY CHALLENGE NO. 3:**

SPS disagrees with the proposal to exclude all CIAC-related ADIT and EDIT from the transmission formula rate template. SPS reiterates that it is following the terms of the transmission formula rate template. As SPS explained in response to GSEC-NMC 2-9:

SPS has included CIAC-related ADIT in rate base pursuant to the terms of SPS's currently effective Formula Rate. In the unpopulated template on file with and accepted by FERC, Line 67 (Total Account 190) of Worksheet D (Table 19) requires SPS to input its total balance for FERC Account 190 as shown in SPS's FERC Form 1 at "FF1, p 234, ln 18, col c." In the populated template provided as part of the 2021 True-Up, Total FERC Account 190 is on Line 114 of Worksheet D (Table 19). The FERC Form 1 reference includes CIAC-related amounts and so if SPS were to remove CIAC-related amounts from Worksheet D, SPS would be incorrectly applying its Formula Rate.

GSEC and the NMCs incorrectly interpret Section 3.d(i) of the Formula Rate Implementation Procedures. The statement in Section 3.d(i) applies to the development of the True-Up, but this statement does not permit changes to the specific provisions of the transmission formula rate template. Moreover, the statement does not permit SPS to update the formula rate template to reflect FERC's latest policy changes outside of appropriate filings under the Federal Power Act ("FPA").

The challenge of GSEC and the NMCs to the CIAC-related ADIT is not within the scope of a permissible challenge under the Annual Formula Rate Implementation Procedures. As stated in Section 8 of those Procedures, changes to the Formula Rate itself "may only be implemented as a result of a filing with FERC under Section 205 or 206 of the FPA." The challenge of GSEC and the NMCs attacks the formula rate, not the data inputs ("This is clearly a case of SPS' formula rate not being consistent with FERC's orders....").

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**GSEC-NMCs 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 RESPONSE TO PRELIMINARY CHALLENGE NO. 4:**

As SPS explained in response to Information Request GSEC-NMC 2-5b, the \$251,330 amount relates to a reserve of bad debt for contributions to transmission capital projects that had not yet been received as of the date of SPS's response. However, on December 15, 2022, SPS supplemented its prior response and explained that:

Since SPS has provided its original response, SPS has become aware the two debtors have paid the balances. Debtor one paid its balance on September 2, 2022, and Debtor two paid its balance on November 1, 2022. Since these balances were paid in 2022, FERC Account 566 expenses have been reduced by \$251,330.49 in 2022.

Since the \$251,330.49 amount was reversed in FERC Account 566 expenses in 2022, the concern identified in Preliminary Challenge # 4 has been addressed.

**GSEC-NMCs 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.

**SPS RESPONSE TO PRELIMINARY CHALLENGE NO. 5:**

With regard to internal labor costs pertaining to compromise settlements for employee discrimination cases, SPS has already addressed this issue: (1) in response to Information Request GSEC-NMC 1-20 (regarding the 2021 True-Up), SPS explained that there are no internal or external labor costs in the 2021 True-Up that pertain to

*Southwestern Public Service Company Attachment O - Transmission Formula Rate 2021 True-Up and Transmission Formula Rate 2023 Projection*

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compromise settlements for employee discrimination cases; and (2) in response to Information Request GSEC-NMC 1-16 (regarding the 2023 Projection), SPS explained that there are no internal or external labor costs in the 2023 Projection that pertain to compromise settlements for employee discrimination cases. SPS reaffirms its prior responses.