

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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PUBLIC REGULATION
COMMISSION
FILED

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IN THE MATTER OF SOUTHWESTERN)
PUBLIC SERVICE COMPANY'S APPLICATION)
FOR APPROVAL AND AUTHORITY TO (1))
ENTER INTO SEPARATE PURCHASED POWER)
AGREEMENTS WITH NEXTERA ENERGY)
RESOURCES' ROSWELL AND CHAVEZ COUNTY)
SOLAR FACILITIES; (2) RECOVER THE)
ASSOCIATED ENERGY COSTS THROUGH ITS)
FUEL AND PURCHASED POWER COST)
ADJUSTMENT CLAUSE; AND (3) ESTABLISH)
AND IMPLEMENT A SHARED SAVINGS)
MECHANISM,)
SOUTHWESTERN PUBLIC SERVICE COMPANY)
Applicant.)
_____)

Case No. 15-00083-UT

COALITION FOR CLEAN AFFORDABLE ENERGY
INITIAL BRIEF

INTRODUCTION

This case is an application by Southwestern Public Service Company ("SPS") to enter into two Long-Term Purchased Power Agreements ("LTPPAs") for the purchase of 140 MW (70 MW each) of energy from two solar facilities for a period of 25 years. (Amended Application, p. 1-2.) SPS is not seeking approval of the LTPPAs pursuant to the Renewable Energy Act, but is seeking approval of the LTPPAs as system resources because they are expected to result in lower costs to consumers. The Coalition for Clean Affordable Energy supports approval of the LTPPAs. The Utility Division Staff ("Staff") also supports approval of the LTPPAs. Staff Ex. 1, Carrara Direct, p. 22. The Attorney General did not take a position on the reasonableness of

the PPAs. AG Ex. 1, Crane Direct, p. 15. Occidental Permian Ltd. (“OPL”) opposes approval of the PPAs.

I. STANDARD FOR APPROVAL

SPS is seeking approval of the LTPPAs pursuant to 17.9.551 NMAC, Prior Approval of Purchased Power Agreements (“Rule 551”). Under that rule, an electric utility must obtain prior approval from the Commission before becoming irrevocably obligated under a long-term PPA (defined as 5 years or more). 17.9.551.8.A NMAC. Rule 551 does not contain an explicit standard for approval. However, the rule requires that the utility make certain demonstrations, including “evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors.” 17.9.551.8.D(6). SPS witness Ms. Sakya testified that this is equivalent to a prudence standard. Tr. 8/5/2015, p. 21. The rule also requires SPS to provide information and evidence regarding the LTPPAs, its process for bid selection, and system and financial impacts. Ms. Delling, on behalf of the Utility Divisions Staff, testified about the various informational and evidentiary requirements contained in Rule 551. She did not identify any deficiencies in the filing. Staff Ex. 2, Delling Direct Testimony.

Under NMSA 1978 §62-6-4(A), the Commission “shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations ...and to do all things necessary and convenient in the exercise of its power and jurisdiction.” In addition, the Commission “may prescribe reasonable and adequate service regulations and standards of service rendered or to be rendered by any utility...” §62-6-19. The Public Utility Act requires that “[e]very rate made, demanded or received by any public utility shall be just and reasonable.” §62-8-1. Moreover, “[e]very public utility shall furnish adequate,

efficient and reasonable service.” §62-8-2. Thus, under the Public Utility Act, the Commission must assure that the LTPPAs will result in adequate, efficient and reasonable service at rates that are just and reasonable. Rule 551 provides the means for the Commission to exercise its statutory authority to assure that a LTPPA will result in utility service that is adequate, efficient and reasonable, at just and reasonable rates. In short, if SPS provides the information and evidence required by Rule 551, the Commission should approve the LTPPAs if they are consistent with SPS’s statutory obligations and will be in the public interest.

II. THE LTPPAs ARE LIKELY TO RESULT IN LOWER RATES TO CUSTOMERS, AND PROVIDE A HEDGE AGAINST INCREASING GAS PRICES

SPS is seeking approval of the LTPPAs in this case not because they are required by the Renewable Energy Act, but because they are expected to save money for SPS’s customers. SPS Ex. 5, Berg Rebuttal, p. 9. At the time the LTPPAs were executed by SPS, they were the lowest price utility scale solar energy PPAs in the country, and are still among the lowest. Tr. 8/5/2015, p. 57. SPS is estimating that over the term of the contracts, customers will save between \$11.5 million (Strategist) and \$104 million (Historical LMP), depending on the analysis used. SPS Ex. 5a, Berg Rebuttal (as corrected), p. 23. If energy savings alone are used in the calculations, customers are expected to save between \$11.5 million and \$50.4 million. If expected capacity savings are included in the estimates, SPS expects to save an additional \$54 million for each analysis, so the savings would be between \$65.5 million and \$104.4 million. Id.

The energy savings are expected to occur regardless of any capacity savings that may be attributable to the project. However, as testified to by CCAE witness Mr. Van Winkle, significant savings are likely to occur as a result of capacity benefits from the projects. CCAE Ex. 1, Van Winkle Direct, p. 4. Under SPP rules, if SPS obtains firm transmission service, then

the LTPPAs are expected to provide 70 MW of capacity credit, which will help meet SPS's capacity needs beginning in the 2018-2020 timeframe. SPS Ex. 5, Berg Rebuttal, p. 4. This additional capacity will provide \$54 million in benefits to the SPS system. In addition, the LTPPAs (1) will provide congestion relief in an area where SPS is experiencing a higher load growth than normal and is an isolated area of the SPP transmission system; (2) will provide economic development to New Mexico; and (3) may allow SPS to potentially meet its New Mexico renewable portfolio standard ("RPS") requirements in the future. SPS Ex. 5, Berg Rebuttal, p. 4. SPS submitted requests for firm transmission service for the PPAs to the SPP in February of 2015. SPS Ex. 4, Berg Direct, p. 23. Preliminary results of SPS's transmission service study show that the cost of upgrades to obtain firm transmission will be \$952,000. Thus, for a cost of less than \$1 million in transmission upgrades, SPS's customers could experience capacity benefits of \$54 million attributable to the PPAs. It is CCAE's position that all of the potential benefits of the LTPPAs should be considered by the Commission in evaluating this application, including expected capacity benefits.

As pointed out by OPL, there is a risk that ratepayers will not be better off from the transactions. But based on SPS's gas price projections, there is an even greater risk that if the transactions are NOT approved, rates will be higher than they otherwise would have been. As testified to by Mr. Berg, natural gas prices are not symmetrical – they are skewed to the right, meaning that there is more potential for them to go up than down. Tr. 8/5/2015, p. 84. This transaction provides a 25 year hedge against this potential, for a very small part of the SPS system. Id., see also Tr. 8/5/2015, p. 73. Given this potential, and the best information currently available to SPS regarding future gas prices, it would be imprudent for SPS not to enter into the transactions.

III. ANY REPORTING REQUIREMENTS MUST BE FOR COMPLIANCE AND NOT BE FOR THE PURPOSE OF HINDSIGHT REVIEW OF THE PRUDENCE OR REASONABLENESS OF THE PPAs.

In his recommendations, Staff witness Mr. Carrara outlined two reporting requirements he believes should be considered (recommendations 3 and 4). Staff Ex. 1, Carrara Direct, p. 22. The first recommendation is that “SPS should be required every five years (after commercial operation) to file a report in this docket with the Commission, supported by evidence and testimony, that provides information of whether or not the LTPPAs have provided a net displaced energy cost savings in the preceding period. SPS should be ordered to include the effects, if any, resulting from the wind PPAs approved in NMPRC Case No. 13-00233-UT in its analysis. Additionally, SPS should also address the impact that the LTPPAs and the wind PPAs have on the economic/uneconomic amounts calculated for the SunEdison PPAs.” CCAE is opposed to this reporting requirement unless it is substantially modified.

First of all, if there is a report, it should just be a compliance report. There should be no requirement that it be “supported by evidence and testimony.” Normally, the filing of evidence and testimony triggers a proceeding with a hearing, with parties asserting due process rights such as the right of cross-examination. There would be no purpose served by triggering such a proceeding, and it would be inappropriate to use the proceeding to take a retrospective look at the transaction for the purpose of reviewing its reasonableness. Mr. Carrara recognizes that this would be inappropriate. Tr. 8/5/2015, p. 238.

Second, if there is a report, it should report on all the costs and benefits resulting from the LTPPAs, and not be limited to only the “net displaced energy cost savings” in the preceding period. The evidence in this case indicates that there may be substantial capacity cost savings resulting from the transaction if firm transmission is arranged. Any report should also include

these capacity related costs and benefits. In addition, the evidence in this case indicates that this transaction will result in lower carbon emissions, increased jobs and other economic benefits to New Mexico. Any report should also include these items.

Third, if there is a report, it should not include the wind PPAs approved in Case No. 13-00233-UT. That is a separate case, and this current proceeding isn't the proper docket to request a compliance report regarding transactions in that case. Such a request could be made by filing a pleading to reopen that docket to consider a compliance filing, or could be done through a rulemaking.

Fourth, if there is a report, CCAE does not know what purpose would be served by requiring SPS to address the impact that the LTPPAs have on the economic/uneconomic amounts calculated for the SunEdison PPAs. The SunEdison transaction has already been approved, and if this current proposed transaction is approved, it is unclear what the purpose of this reporting requirement would be. SPS Ex. 2, Sakya Rebuttal, p. 15. CCAE is not opposed to a requirement that in future LTPPA filings, SPS provide information regarding how the future LTPPA will affect the economic/uneconomic allocation of the SunEdison costs.

Fifth, CCAE is concerned that the Commission should not impose a reporting requirement that will not be useful for any purpose. While some of the information may be nice to have, it's not at all clear what purpose the report will serve, other than to inappropriately use the information to second-guess decisions that have already been made.

In sum, regarding this reporting requirement, CCAE is not opposed so long as the report is only a compliance report, and is not in testimony form, so long as it reports on all costs and benefits resulting from the PPAs and is not limited to only energy cost savings, and so long as it is clear that the report will not be used to re-examine the transactions if they are approved in this

proceeding.

The second reporting requirement recommended by Mr. Carrara is that “SPS be required to submit a report in this docket once the SPP has made a determination regarding transmission service. SPS should be required to explain SPP’s determination, detail the capital cost, annual revenue requirement and cost per kWh to SPS of all the options available to it, and justify, through supporting evidence and testimony, SPS’s preferred option.” As with the first reporting requirement, CCAE opposes this condition unless it is substantially modified. The report should be a compliance report, and should not be in the form of “evidence and testimony” designed to trigger a proceeding and hearing. The Commission does not normally investigate or require prior approval of minor transmission upgrades done in the normal course of business, and should not set a precedent that would automatically trigger a proceeding for such business decisions, in this case or any other.

In sum, regarding the second reporting requirement, CCAE would not be opposed to a compliance reporting requirement that provides the information set forth in Rule 551.8(D)(3) as outlined in the Rebuttal Testimony of Ms. Sakya, 45 days following the SPP results in its Aggregate Facility Study. SPS Ex. 2, Sakya Rebuttal, p. 16. CCAE also believes that SPS should be required to report on any decisions it makes regarding the purchase of RECs from the facility, and provide prior notice of any intent to relinquish its right of first refusal to purchase RECs from the facility.

CONCLUSION

CCAЕ supports approval of the proposed LTPPAs. Based on the best information available, the transactions can be expected to provide benefits to SPS’s customers, with respect to both energy and capacity savings. In addition, the LTPPAs will provide economic

development benefits in New Mexico and will reduce carbon emissions. CCAE does not oppose a condition of reporting requirements, so long as they are modified as discussed above.

Respectfully submitted,

COALITION FOR CLEAN AFFORDABLE ENERGY

Handwritten signature of Charles F. Noble in cursive, underlined.

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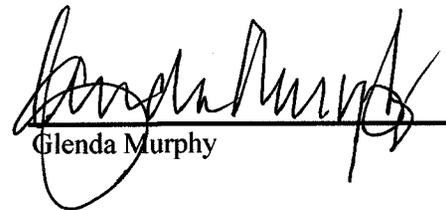
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