

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF SOUTHWESTERN PUBLIC )  
SERVICE COMPANY’S APPLICATION FOR: (1 )  
REVISION OF ITS RETAIL RATES UNDER )  
ADVICE NOTICE NO. 312; (2) AUTHORITY TO )  
ABANDON ITS PLANT X UNIT 1, PLANT X UNIT )  
2, AND CUNNINGHAM UNIT 1 GENERATING )  
STATIONS AND AMEND THE ABANDONMENT )  
DATE OF TOLK GENERATING STATION; AND )  
(3) OTHER ASSOCIATED RELIEF )**

**Docket No. 22-00286-UT**

**FINAL ORDER ADOPTING CERTIFICATION OF STIPULATION**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (“Commission”) upon the filing by Southwestern Public Service Company (“SPS”) of its *Application for Authority to Change Rates and for Other Approvals and Authorization and Advice Notice No. 312* (the “Application”) and the Contested Comprehensive Stipulation (“Stipulation”) entered into by SPS, the Utility Division Staff of the New Mexico Public Regulation Commission (“Staff”), the Office of the Attorney General of New Mexico (“OAG”), Occidental Permian Ltd. (“OPL”), Louisiana Energy Services, LLC d/b/a URENCO USA (“LES”), Federal Executive Agencies (“FEA”), COG Operating, LLC (“COG”), New Mexico Large Customer Group (“NMLCG”), Sierra Club, and Walmart, Inc. (“Walmart”) (collectively, the “Signatories”).

The Commission hereby adopts the Certification of Stipulation issued on September 6, 2023 (“Certification of Stipulation”) in its entirety, for the reasons discussed below.

**JURISDICTION AND PROCEDURAL BACKGROUND**

1. The Commission has jurisdiction over this matter pursuant to Section 62-6-4 NMSA (1978).
2. On November 18, 2022, SPS filed its Application requesting that the Commission authorize: an increase in its base rate charges for the New Mexico retail jurisdiction by \$77,636,954; the retirement and abandonment of SPS’ Plant X Unit 1, Plant X Unit 2, and

Cunningham Unit 1 Generating Stations in 2023; the amendment of the retirement and abandonment date of Tolk Generating Station from 2032 to 2028; and all other approvals, authorizations, and variances that the Commission determines are necessary for SPS to effectuate and implement the relief requested in this case.

3. In conjunction with filing this Application and on the same date, SPS filed Advice Notice No. 312 and the associated rate schedule. Under the Public Utility Act, the proposed rates in Advice Notice No. 312 would have become effective on December 18, 2022, unless the Commission suspended the proposed rates by that date.

4. On November 30, 2022, the Commission issued an *Initial Order Suspending Advice Notice No. 312 and Appointing Hearing Examiners* that suspended the proposed rates filed by SPS for a period of nine months commencing on December 19, 2022.

5. On December 23, 2022, the Hearing Examiner issued the Procedural Order setting a procedural schedule in this case. The Procedural Order also required any stipulation to, at a minimum, identify the following cost of service components to apply following issuance of a final order: depreciation rates; return on equity; tax unadjusted weighted average cost of capital; and annual amortization amount for each amortized item in the cost of service. The Procedural Order included the following term regarding consideration of a stipulation, “the Hearing Examiner may refuse to consider the stipulation or condition consideration of the stipulation on the stipulating parties’ agreement to toll the running of the suspension period for the period of time beginning with the commencement of the parties’ settlement negotiations and ending with final Commission action on the stipulation.”<sup>1</sup> SPS moved to have this provision of the Procedural Order removed.

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<sup>1</sup>December 23, 2023 Procedural Order, Paragraph L.  
Case No. 22-00286-UT  
Final Order Adopting Certification of Stipulation

SPS' request was denied, and the tolling provision remained in the Procedural Order.

6. On December 27, 2022, SPS filed a *Motion to Permit Interlocutory Appeal to Obtain Further Commission Guidance on Tolling of Suspension Period* ("the Motion") which requested that the Hearing Examiner enter an order authorizing a limited appeal to the Commission of the "tolling" provision of the December 23, 2022 Procedural Order. SPS conceded that the tolling provision of the Procedural Order merely states that the Hearing Examiner "may" condition consideration of a stipulation on tolling of the suspension period and that the order did not state that tolling would necessarily be required. However, SPS believed that tolling of the suspension period would be required should the parties submit a stipulation for consideration by the Hearing Examiner and the Commission due to the Hearing Examiner's statements set out in the Procedural Order.

7. On January 11, 2023, the Motion was denied by operation of law and pursuant to Commission Rule 1.2.2.31(B)(5) NMAC, which deems a motion for interlocutory appeal from rulings of the presiding officer denied if the presiding officer does not issue an order ruling on the motion within fifteen (15) days.

8. On January 17, 2023, SPS filed an *Appeal of the Hearing Examiner's Denial of Motion to Permit Interlocutory Appeal to Obtain Further Commission Guidance on Tolling of Suspension Period*.

9. On February 1, 2023, the Commission issued an *Order Denying Interlocutory Appeal* reasoning that the issue of tolling was premature and there was no actual issue that was ripe for determination because the conditions that would result in the possible tolling had not yet occurred, and the parties may not be able to agree upon a settlement.

10. On March 10, 2023, a *Joint Motion for an Extension of the Suspension Period and*  
Case No. 22-00286-UT  
Final Order Adopting Certification of Stipulation

*Procedural Schedule (“Joint Motion”)* was filed by Staff and Intervenors LES, FEA, OPL, and NMLCG (“Joint Movants”). The Joint Motion requested a three-month extension of the original nine-month suspension period to fully analyze SPS’s proposed changes to the original application by conducting discovery, and to allow time for the Joint Movants to incorporate the results of the analyses and discovery into their testimony and recommendation.

11. On March 22, 2023, in response to the Joint Motion, the Commission found good cause to extend the suspension period by one month to October 19, 2023, and ordered the Hearing Examiner to issue a new procedural order. The Hearing Examiner revised the date due for filing a Stipulation from May 8, 2023, to May 17, 2023. SPS subsequently filed an unopposed motion for an extension of time to file stipulation by one business day to May 18, 2023, which the Hearing Examiner granted.

### **The Stipulation**

12. On May 18, 2023, SPS filed the Stipulation on behalf of the Signatories which is attached as Exhibit 1 to the Certification of Stipulation, including Exhibits A, B, C, and D. The base rate revenue increase by class and revenue proof is reflected in Exhibit A to this Stipulation (“Exhibit A”). The rate tariffs and all other stipulated tariff changes are provided in Exhibit B to this Stipulation (“Exhibit B”). Depreciation rates are provided in Exhibit C to this Stipulation (“Exhibit C”). Reconciliation statements are provided in Exhibit D to this Stipulation (“Exhibit D”). The Stipulation explains that SPS’s initial Application requested a base rate revenue requirement increase of \$ 77,636,954, and that, in response, staff and other parties recommended a base rate revenue requirement adjustment ranging from a \$ 2.8 million decrease to a \$36.9 million increase. Article I of the Stipulation provides that the Signatories agree that SPS should be authorized to implement an increase in New Mexico retail base rate revenues of \$33,000,000.

13. The Signatories assert that the Stipulation resolves and settles all issues in this case. The Coalition for Community Solar Access (“CCSA”) took no position on the Stipulation and the Coalition for Clean Affordable Energy (“CCAЕ”) and Western Resource Advocates (“WRA”) opposed the Stipulation. CCAЕ was the only party that filed a Statement in Opposition to the Stipulation. The Statement in Opposition was filed on May 18, 2023.

14. The public hearing on the Stipulation was held on June 20-28, 2023.

15. On September 6, 2023, the Certification of Stipulation was issued, which accepted the Stipulation.

16. On September 15, 2023, CCAЕ filed its Exception to the Certification of Stipulation. CCAЕ excepted to the Certification of the Stipulation which: (1) allows SPS to operate Tolk over 2,400 GWh per year and allows SPS to recover O&M costs for operating Tolk over 2,400 GWh per year.; (2) removes SPS’s NOx allowance costs in excess of \$110,000; (3) allows for the cost recovery for the extension of the depreciable life of Nichols; and (4) allows for SPS’s withdrawal of the Electric Affordability Program (“EAP”). CCAЕ argues that allowing Tolk to operate over 2,400 GWh per year up to 4,000 GWh per year violates the “reasonable and consistent” progress requirement of the Renewable Energy Act (“REA”), that the increased use of Tolk will deplete the water in the SPS owned-aquifer used in the operation of Tolk, and that allowing Tolk to collect O&M costs associated with the increased operation will not incentivize SPS to reduce use of Tolk and that the costs are too attenuated. CCAЕ argues that the NOx allowance cost cap in excess of \$110,000 should not be lifted because this cost cap, in addition to other regulations, are in place to restrict NOx emission, and that SPS did not properly account for the cost of NOx in the to justify collecting those costs through an FPPCAC. CCAЕ argues that SPS should be required to show updated bids for renewable energy and storage prior to cost recovery associated with extending

the lives of Nichols. Lastly, CCAE argues that good cause exists to authorize a low-income program that would offer reprieve to New Mexico's populations experiencing the highest form of energy burden. CCAE urged the Commission to modify the Certification of the Stipulation to: (1) not allow SPS to recover O&M costs for operating Tolk over 2400 GWh per year; (2) to maintain the current \$110,000 cap on NOx cost recovery; (3) to require SPS to show updated bids for renewable energy and storage prior to cost recovery for the extension of the life of Nichols; and (4) to modify the stipulation to incorporate the EAP as initially proposed.

17. On September 18, 2023, SPS filed a Response in Opposition to CCAE's Exceptions to Certification of Stipulation. In response to CCAE exceptions regarding the O&M costs for operating Tolk over 2,400 GWh per year. SPS argues that the REA requires a utility to reduce carbon emissions year-over-year until 2045. SPS additionally claims that testimony presented during the public hearing demonstrated that the early retirement of Tolk will move SPS forward toward the REA's goals and that the self-commitment requirements of the Stipulation could further reduce carbon emissions. In response to CCAE's exceptions regarding the availability of water, SPS claims that it has conducted its own study regarding water availability. SPS states that CCAE failed to provide any evidence to demonstrate that denying SPS recovery of incremental O&M expenses would resolve the exception raised by CCAE. SPS also claims that there was no evidence presented to support CCAE's claim that SPS will likely operate below 2,400 GWh per year. In response to CCAE's exceptions regarding NOx allowance costs, SPS argues that CCAE has provided no basis for its position and does not dispute that NOx allowance costs are reasonable and necessary for SPS to operate its generating units to serve customers. In response to CCAE exceptions regarding Nichols Generating Stations, SPS points to that evidence was presented during the public hearing that the extension of the Nichols unit would allow SPS to meet its reserve

margin requirement within the Southwest Power Pool and ensure that SPS will have the capacity to provide safe and reliable service to its customers. Lastly, in response to CCAE's exception regarding the EAP, SPS refers to New Mexico Supreme Court Precedent stating that the Commission does not have the authority to implement social programs through the rate-making process and any such program would violate Section 62-8-6 NMSA.<sup>2</sup>

### **FINDINGS AND CONCLUSIONS**

18. The Commission adopts the Certification of Stipulation in its entirety. The Stipulation is the product of serious bargaining among capable, knowledgeable parties, and does not violate any important regulatory principle or practice. After considering the terms negotiated in the Stipulation and CCAE's Exceptions, we agree with the Certification of Stipulation that, on balance, the Stipulation is in the public interest and will result in fair, just and reasonable rates.

19. CCAE was only one of two parties that opposed the Stipulation, and the only party to file exceptions. All other parties either jointly moved to accept the Stipulation or did not oppose it.

20. We note that CCAE's Exceptions to the Certification of Stipulation largely align with CCAE's Statement in Opposition filed into this case prior to a public hearing in the matter. The issues raised by CCAE were thoroughly addressed during the public hearing and ultimately rejected in the Certification of Stipulation. We agree with those findings.

21. In response to CCAE's Exceptions regarding the increased operation of Tolk up to 4,000 GWh per year over a shortened timespan. The Commission finds that the early retirement of Tolk will produce savings for ratepayers as the fixed O&M costs of keeping the plant open from

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<sup>2</sup> SPS Response citing *Mountain States Legal Found. v. N.M. Corp. Comm'n*, 1984-NMSC-086, ¶¶ 1, 6-7, 101 N.M. 657.

2029 to 2032 will be avoided. There are also interim savings contemplated in the Stipulation. Specifically, Tolk may be offered into the market and will be dispatched when it is economical to do so, as determined by the Southwest Power Pool (“SPP”). Furthermore, Sierra Club testified that there are some uncertainties regarding environmental regulations, and retiring Tolk early reduces the exposure to those uncertainties.<sup>3</sup> Accordingly, the Commission does not see a basis for rejecting the O&M costs up to 4,000 GWh per year as contemplated in the Stipulation.

22. Related to the Tolk operation are CCAE’s exceptions regarding the lifting of the NOx allowance cost cap. The Commission finds that there is support in the record to adopt this term of the Stipulation, including but not limited to, testimony brought forth by Sierra Club. As discussed above, there are various regulations that limit NOx emissions to which SPS is subject. Regarding the costs associated with NOx, the Stipulation contemplates recovery of NOx costs through FPPCAC, a concept that is not novel to the Commission. Implicit in an FPPCAC is compliance with Commission Rule 17.9.550 NMAC which includes a prudency review at the Commission's discretion.

23. In response to CCAE’s exceptions regarding Nichols, the Commission finds that there is insufficient evidence in the record to adopt CCAE’s exceptions in the matter.

24. In response to CCAE’s exceptions regarding the EAP, the Commission agrees with the reasons for the rejection of CCAE’s argument in this matter as stated in the Certification of Stipulation.

25. The Commission finds that the statutory standard of ‘just and reasonable’ involves a balancing of the investor and the consumer interest.<sup>4</sup> As the New Mexico Supreme Court stated in

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<sup>3</sup> Tr. at 672:24 - 674:21

<sup>4</sup> *State v. Mountain States Tel. & Tel. Co.* NMSA 1950-NMSC-055 ¶39.

Case No. 22-00286-UT

Final Order Adopting Certification of Stipulation



*State v. Mountain States Tel. & Tel. Co.* NMSA 1950-NMSC-055 ¶39. The Commission is not bound to the use of any single formula or combination of formulae in determining rates; the rate-making function involves the making of pragmatic adjustments, and it is the end result reached, not the method employed, which is controlling.<sup>5</sup>

26. The Commission finds that it should adopt the Certification of Stipulation in its entirety because the record contains a preponderance of the evidence that is sufficiently credible to support a finding that the Stipulation is in the public interest and is fair, just, and reasonable.

27. Pursuant to Procedural Rule 1.2.2.20(D) NMAC, approval of this Stipulation does not constitute commission approval of or the setting of precedent regarding any principle or issue in the proceeding.

**IT IS THEREFORE ORDERED:**

A. The findings of fact and conclusions of law and decretal paragraphs contained in the Certification of Stipulation are ADOPTED, APPROVED, and ACCEPTED as orders of the Commission.

B. The Certification of Stipulation is ADOPTED, APPROVED, and ACCEPTED in its entirety.

C. Any matter not specifically ruled on during the hearing or in the Final Order is disposed of consistently with this Final Order

D. This Order shall be effective immediately.

E. This docket will remain open until November 3, 2023, to allow the Commissioners the opportunity to submit concurring opinions into this docket, if so desired.

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<sup>5</sup> *PNM v. NMPRC*, 2019-NMSC-012 ¶10, (citing *Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm'n*, 1977-NMSC-032, ¶ 70, 90 N.M. 325, 563 P.2d 588).

F. A copy of this Order shall be e-mailed to all parties on the attached Certificate of Service if their e-mail addresses are known, or by regular mail only if their e-mail addresses are not known.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 19<sup>th</sup> day of October, 2023.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

*/s/ Gabriel Aguilera, electronically signed*  
**GABRIEL AGUILERA, COMMISSIONER**

*/s/ James F. Ellison, Jr., electronically signed*  
**JAMES F. ELLISON, JR., COMMISSIONER**

*/s/ Patrick J. O'Connell, electronically signed*  
**PATRICK J. O'CONNELL, COMMISSIONER**



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 STATIONS AND AMEND THE ABANDONMENT )  
 DATE OF TOLK GENERATING STATION; AND )  
 (3) OTHER ASSOCIATED RELIEF )**

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**CERTIFICATE OF SERVICE**

I CERTIFY that on this date I served upon the individuals listed below, via email only, a true and correct copy of the foregoing *Final Order Adopting Certification of Stipulation*.

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**DATED** this 19<sup>th</sup> day of October, 2023.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**/s/ LaurieAnn Santillanes, electronically signed**  
**LaurieAnn Santillanes, Law Clerk**