

150 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Southwestern Public Service Company

Docket No. ER15-949-000

ORDER ACCEPTING AND SUSPENDING FORMULA RATE FILING, AND
ESTABLISHING SETTLEMENT AND HEARING JUDGE PROCEDURES

(Issued March 31, 2015)

1. On January 30, 2015, Southwestern Public Service Company (SPS) filed revised versions of the individual production formula rate templates (Formula Rate Templates) and formula rate implementation procedures (Protocols) to six separate bilateral, long-term power supply agreements (Power Supply Agreements), under section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations.² In this order, we accept SPS's proposed revisions to the Formula Rate Templates and Protocols for filing, suspend them for five months, to become effective July 1, 2015, subject to refund, and set them for hearing and settlement judge procedures.

I. Background

2. SPS states that it is a wholly owned subsidiary of Xcel Energy Inc. (Xcel), a public utility holding company headquartered in Minneapolis, Minnesota. SPS notes that it is a member of the Southwest Power Pool, Inc. (SPP) regional transmission organization, and that the SPS system is located in the southwestern corner of the SPP region. SPS states that its service territory covers an approximately 50,000 square mile area in the panhandle of Texas and eastern New Mexico and extends over 400 miles from

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2014).

north to south and 200 miles from east to west. SPS asserts that it provides generation, transmission, and distribution service to over 383,000 customers.³

3. SPS explains that it provides wholesale power requirements service to the six Requirements Customers⁴ using SPS's electric generation resources, which include over 4,500 MW of electric generation capacity from power plants in Texas and New Mexico. In addition, SPS states that it purchases approximately 1,400 MW of generation capacity under long-term purchased power agreements.⁵ SPS observes that, with the start of the SPP Integrated Marketplace in March 2014, SPP is now the balancing authority and the Regional Reliability Coordinator for the region and oversees generation plant outages within its footprint, including planned outages of SPS's generating facilities, and SPS purchases wholesale energy from, and sells wholesale energy into, SPP's day-ahead energy market, its real time energy market, and its ancillary services markets.⁶

4. SPS states that it has supplied requirements service to the six Requirements Customers for many years, and currently only WTMPA purchases full requirements service from SPS, Golden Spread has transitioned to taking partial requirements service from SPS, and the New Mexico Cooperatives now purchase "load following requirements service" from SPS.⁷

5. SPS explains that it is modifying the Power Supply Agreements for each of the six Requirements Customers.⁸ SPS states that each change is being made either to the

³ SPS Transmittal at 4 (citing Evans Direct Testimony at 6).

⁴ The Requirements Customers are: Central Valley Electric Cooperative, Lea County Electric Cooperative, Farmers Electric Cooperative of New Mexico, and Roosevelt County Electric Cooperative (collectively, New Mexico Cooperatives); West Texas Municipal Power Agency (WTMPA); and Golden Spread Electric Cooperative, Inc. (Golden Spread).

⁵ *Id.* at 4 (citing Evans Direct Testimony at 6).

⁶ *Id.* (citing Evans Direct Testimony at 8).

⁷ *Id.* (citing Service Schedule B to SPS Rate Schedule No. 114).

⁸ *Id.* at 5. The six Power Supply Agreements are: Central Valley Electric Cooperative, Rate Schedule No. 114; Farmers Electric Cooperative of New Mexico, Rate Schedule No. 115; Lea County Electric Cooperative, Rate Schedule No. 116; Roosevelt County Electric Cooperative, Rate Schedule No. 117; West Texas Municipal

Formula Rate Templates or to the Protocols, which are attachments to the Power Supply Agreements.

6. SPS states that, under the Formula Rate Templates, each year SPS calculates various estimated per unit charges for the upcoming rate year (from July 1 to June 30) by populating the template with data from SPS's FERC Form No. 1 for the preceding calendar year, plus known and measureable adjustments to reflect certain changes expected to occur during the upcoming rate year. During the next year's true-up process, SPS asserts that the estimated charges are trued-up using actual cost data from the SPS FERC Form No. 1 covering the months service was actually provided. SPS explains that the Formula Rate Templates use SPS's costs measured on a total company basis as the inputs to the calculations. SPS states that, unless otherwise noted, the costs are total company costs (not costs specific to one or more of the Requirements Customers).

7. SPS notes that, although the Power Supply Agreements of the New Mexico Cooperatives and WTMPA are not identical, their Formula Rate Templates are identical. SPS states that, each year, these five templates are populated with the same SPS total-company information, and that they generate identical per unit rates, which are then applied to the separate billing determinants of each customer. SPS observes that there are some differences between these templates and the Golden Spread Template because Golden Spread was the first of SPS's full requirements customers to shift to a fixed level of service, and the processes were different.

8. SPS asserts that it is submitting revisions to the Formula Rate Templates and Protocols consistent with the Power Supply Agreements' allowance that SPS may file with the Commission pursuant to section 205 of the FPA to change the rates, terms, or conditions for the wholesale service provided under the agreements.

9. SPS explains that there are two principal reasons for the proposed revisions: (1) to ensure that demand costs are allocated using the same coincident peak (CP) by revising Golden Spread's formula rate template to reflect a 12 CP demand allocation consistent with the other five requirements customers; and (2) to update its depreciation rates based on a new depreciation study. Further, SPS proposes to revise other distinct components of the formula including the reclassification of the fuel inventory costs from a demand function to an energy function, the unblending of the Accumulated Deferred Income Taxes (ADIT) to reflect FERC-approved depreciation rates, the functionalizing of ADIT

Power Agency, Rate Schedule No. 137; and Golden Spread Electric Cooperative, Rate Schedule No. 135.

to production in Golden Spread's workpapers and the reduction of the stated post-employment benefits other than pensions (PBOP) expenses.⁹

A. Demand Cost Allocation Methodology

10. SPS states that it is modifying Golden Spread's Template to ensure that SPS's demand costs are allocated using the same CP methodology in all six Formula Rate Templates, i.e., the 12 CP method. SPS notes that the current Golden Spread Template also uses the 12 CP method, but contains a footnote stating, "The demand allocation methodology is subject to the litigated outcome in Docket No. ER06-274-003." SPS summarizes history of and ongoing litigation over the 12 CP issue.¹⁰ Relevant to the current proceeding, SPS explains that, in Docket Nos. EL05-19 and ER05-168, the Commission found on rehearing that, for a time period ending July 1, 2006, it was just and reasonable for SPS to allocate its demand costs using the 3 CP method.¹¹ In Docket No. ER06-274, the Commission also found that the record supported a finding that the 3 CP demand allocation methodology was appropriate for SPS during the locked-in time period at issue (i.e., beginning July 1, 2006).¹² In Docket No. ER08-749, SPS states that it filed changes to its rates, including a change to the 12 CP method, effective June 1, 2008.¹³ SPS asserts that the Commission found that the 12 CP method was just and reasonable, and denied Golden Spread's request for hearing. SPS claims that this leaves intact the finding that the 12 CP method is reasonable for SPS's full requirements customers, beginning June 1, 2008.¹⁴

⁹ SPS Transmittal at 2-3.

¹⁰ The ongoing litigation concerning the 12 CP issue is described at length in the relevant dockets, Docket Nos. EL05-19-000, ER05-168-000, ER06-274-000, ER08-749-000.

¹¹ *Id.* at 7-8 (citing *Golden Spread Elec. Coop., Inc. v. Southwestern Pub. Serv. Co.*, Opinion No. 501-A, 144 FERC ¶ 61,132 (2013)).

¹² *Id.* (citing *Southwestern. Pub. Serv. Co.*, 124 FERC ¶ 63,015 (2008), *order on initial decision*, 144 FERC ¶ 61,133 (2013) (Order on Initial Decision)). SPS notes that it filed timely requests for rehearing of Opinion No. 501-A and of the August 15, 2013 order in Docket No. ER06-274.

¹³ *Id.*

¹⁴ *Id.* at 8.

11. SPS states that the rates currently charged to all six Requirements Customers are calculated using the 12 CP method. With respect to the New Mexico Cooperatives and WTMPA, SPS asserts that the current use of the 12 CP method is the result of the Commission's orders in Docket No. ER08-749. SPS notes, with respect to Golden Spread, the current use of the 12 CP method is the result of a settlement between SPS and Golden Spread, which the parties filed with the Commission on December 3, 2007.¹⁵ SPS states that, among other things, that settlement provides that, effective July 1, 2008, the rates for SPS's service to Golden Spread would be determined by application of a cost-based formula rate. SPS states that it and Golden Spread agreed to the terms of the initial Template, which calculates SPS's System Peak Load on a 12 CP basis, and includes a footnote that states: "The demand allocation methodology is subject to the litigated outcome in Docket No. ER06-274-003." SPS states that, because the litigated outcome of Docket No. ER06-274-003 has not been reached, it has continued to calculate Golden Spread's rates using the 12 CP method.

12. SPS states that the current filing, separate and apart from the litigation described above, prospectively resolves the 12 CP issue. SPS asserts that, as explained in direct testimony, taking into consideration the full range of SPS's operating realities,¹⁶ including the Commission's historical system demand tests, SPS is a 12 CP utility based on data for years 2010 to 2014. SPS states that it is making this filing to ensure that, prospectively, all of the Requirements Customers are allocated demand costs using the 12 CP method. SPS asserts that its proposal is just and reasonable under section 205 of the FPA. SPS contends that it is a 12 CP utility, and to the extent a final Commission order in Docket No. ER06-274 finds that the 3 CP method of cost allocation should be used in the Golden Spread Template from a past date going forward, that result would impose a financial burden on SPS and would threaten the justness and reasonableness of SPS's rates. SPS argues that applying the 12 CP method to some of the Requirements Customers while applying the 3 CP method to other Requirements Customers will result in SPS under-recovering its wholesale production function revenue requirement. SPS estimates that, if Golden Spread were to take service under a formula rate in 2015 using the 3 CP method while the other five Requirements Customers take service under

¹⁵ *Id.* at 9 (citing Offer of Settlement and Settlement Agreement, Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Co., Docket Nos. EL05-19-000, ER05-168-000, and ER06-274-000 (Dec. 3, 2007) (2007 Settlement)).

¹⁶ *Id.* (citing *Carolina Power and Light Co.*, Opinion No. 19, 4 FERC ¶ 61,107, at 61,230 (1978), *modified on reh'g*, Opinion No. 19-A, 6 FERC ¶ 61,154 (1979), *reh'g denied*, 7 FERC ¶ 61,006 (1979), *affirmed sub nom. Electricities of North Carolina v. FERC*, 708 F.2d 783 (D.C. Cir. 1983)).

formula rates using the 12 CP method, then SPS would under-recover its annual production demand costs by approximately \$6.1 million.

13. SPS states that it modifies the Golden Spread Template by removing a footnote from Table 5 of the Template: “The demand allocation methodology is subject to the litigated outcome in Docket No. ER06-274-003.” In its place, SPS states that it is adding a new footnote, which states: “SPS is a 12 CP utility. To ensure consistency, this Table 5 (Tab A-3 PR) uses the same demand allocation methodology as is used in all of the SPS production formula rate templates for service to requirements customers.” As a result of this change, (i) from the effective date of this filing, demand costs under Golden Spread’s Template will be allocated using the 12 CP method, and (ii) starting on that same effective date, SPS’s use of the 12 CP method will no longer be subject to the litigated outcome in Docket No. ER06-274-003.

14. SPS proposes a related change to the Formula Rate Templates of the New Mexico Cooperatives and WTMPA. On Table 4 of each of these templates, SPS adds a footnote stating: “SPS is a 12 CP utility. To ensure consistency, this Table 4 (Tab A-3 FR Peak) uses the same demand allocation methodology as is used in all of the SPS production formula rate templates for service to requirements customers, including Golden Spread Electric Cooperative, Inc.”

15. As a result of these modifications, SPS states that demand costs under all six Power Supply Agreements will be allocated consistently using the 12 CP method. SPS requests that the Commission, in any order in this proceeding, establish a single CP method in all six of the Formula Rate Templates. SPS argues that it is 12 CP utility, and it cannot be both a 12 CP utility and 3 CP utility at the same time.

B. Depreciation Rates

16. SPS proposes to modify the depreciation rates used to calculate SPS’s depreciation expense pursuant to the Formula Rate Templates. SPS asserts that the current rates were established by a Commission-approved settlement in Docket No. EL89-50-000 in 1990.¹⁷ SPS states that a new depreciation study (Depreciation Study) was completed in January 2015. In addition, SPS states that a Production Dismantling Cost Study was prepared in November 2014 to evaluate the costs to dismantle SPS production facilities to determine production net salvage rates. SPS states that the studies and direct testimony support an increase in SPS’s depreciation rates for general assets. However, SPS notes that the net effect of the revised depreciation rates is to materially decrease the amount of

¹⁷ *Id.* at 11 (citing *Southwestern Pub. Serv. Co.*, Docket No. EL89-50-000 (Oct. 10, 1990) (delegated letter order)).

annual depreciation expense included in the production rates paid by the Requirements Customers.¹⁸ SPS also observes that the Depreciation Study analyzes annual production and general depreciation based on SPS's depreciable plant in service as of June 30, 2014. The new depreciation rates are based on average remaining life calculations and net salvage rates, derived using the Commission's longstanding precedent for Average Life Group straight-line depreciation.¹⁹

17. SPS states that its current wholesale depreciation rates were developed for three functional classes. SPS asserts that the current rates are: (1) 3.277 percent for Steam Production gas fired units (FERC Accounts 311- 316); (2) 3.337 percent for Steam Production coal fired units (FERC Accounts 311-316); and (3) 4.058 percent for Other Production (FERC Accounts 341-346).²⁰ SPS contends that the Depreciation Study uses a more precise approach, recommending a depreciation rate for each SPS generating unit and each 300-series account within the functional class.

18. SPS states that Appendix B to the Depreciation Study compares the proposed depreciation rates to the current depreciation rates for each of the pre-existing functional class to determine the overall effect of the new rates on depreciation expense, at the SPS total company level, recovered through the Formula Rate Templates.²¹ SPS states that the revised depreciation rates result in an estimated \$20.5 million reduction in annual depreciation expense for Steam Production plant²² and an estimated \$3.6 million reduction in annual depreciation expense for Other Production plant.²³ SPS notes that, although the revised depreciation rates for General Plant included in FERC Accounts 389 and 390 generate an increase in annual depreciation expense of approximately \$2.4 million at the total company level,²⁴ the net effect of the new

¹⁸ *Id.* at 12 (citing Perkett Direct Testimony at 17-18, 20-21; Evans Direct Testimony at 14).

¹⁹ *Id.* (citing Perkett Direct Testimony at 6-7).

²⁰ *Id.* (citing Perkett Direct Testimony 10-11).

²¹ *Id.* (citing Perkett Direct Testimony at 17-18, 20-21).

²² *Id.* at 13 (citing Perkett Direct Testimony at 17-18).

²³ *Id.* (citing Perkett Direct Testimony at 18).

²⁴ *Id.* (citing Perkett Direct Testimony at 20-21).

depreciation rates is to significantly reduce the amount of annual depreciation expense recovered through the Formula Rate Templates.

19. SPS explains that the revised depreciation rates will be included as part of the Protocols attached to each of the Power Supply Agreements. For the New Mexico Cooperatives and WTMPA, the existing depreciation rates stated in the Protocols are replaced with the new depreciation rates. For Golden Spread, the new depreciation rates are added to the Protocols.

C. Additional Modifications to the Formula Rate Templates

20. In addition to revising the demand cost allocation methodology and depreciation rates, SPS asserts that it is making discrete modifications to the Formula Rate Templates attached to the Power Supply Agreements. First, SPS states that it is modifying each Template to recover fuel inventory costs through the energy charge instead of the demand charge. SPS states that Commission precedent supports this change. SPS contends that, absent a “detailed analysis” showing “what portion of fuel inventory costs should be allocated on a demand basis,” fuel inventory costs should be allocated to the energy charge.²⁵ SPS states that it is modifying the allocation of fuel inventory costs in the Formula Rate Templates to recover these variable costs through the energy charge.²⁶

21. Second, SPS proposes to modify the Formula Rate Templates to “unblend” ADIT. SPS states that unblending ADIT will allow SPS to include ADIT in the Formula Rate Templates that has been calculated based on only the FERC-jurisdictional depreciation rates for SPS’s production and general plant assets.²⁷ SPS asserts that this change is necessary to synchronize the calculation of ADIT with the revised calculation of depreciation expense and accumulated reserves, which are now both calculated using Commission-jurisdiction depreciation rates, in the revised Formula Rate Templates. SPS claims that synchronization is required because the ratemaking purpose of ADIT is to ensure that the accelerated tax benefits are provided to customers over the approved book lives of SPS’s plant assets.²⁸ SPS states that using blended ADIT rates while

²⁵ *Id.* at 14 (citing *Carolina Power & Light Co.*, 4 FERC ¶ 61,107 at 61,231; *Arizona Pub. Serv. Co.*, 4 FERC ¶ 61,101, at 61,209-10 (1978)).

²⁶ *Id.* (citing *Northern States Power Co. (Wisconsin)*, 50 FERC ¶ 61,377, at 62,141 nn.22-23 (1990)).

²⁷ *Id.* at 15 (citing Perkett Direct Testimony at 23).

²⁸ *Id.* (citing Perkett Direct Testimony at 24).

depreciation rates are unblended does not match this tax benefit to production customers over the lives of the assets.

22. Third, SPS states that it is filing to functionalize ADIT to production in the Golden Spread template, to match the other five templates.²⁹ SPS argues that functionalizing ADIT results in a more precise allocation of ADIT to the associated functional plant.³⁰

23. Fourth, SPS proposes a fixed annual PBOP expense amount of \$206,844.³¹ SPS states that this is a reduction of \$2,384,100 from the annual PBOP expense amount currently included in the Formula Rate Templates.

24. SPS estimates that, on a total revenue basis, the revised Formula Rate Templates, when compared to the existing Formula Rate Templates, result in a rate reduction for each Requirements Customer, as shown in Exhibit No. SPS-13 (Estimated Revenue Impact of Filing).

D. Waiver Request

25. SPS requests waiver of the Commission's prior notice filing requirements under section 35.11 of the Commission's regulations,³² so that SPS's proposed changes may become effective on February 1, 2015. SPS states that, under the Protocols, this effective date will allow SPS to use the revised Formula Rate Templates and Protocols in the 2015

²⁹ *Id.* SPS states that ADIT is not functionalized when a company measures ADIT on a total company plant basis, without regard to the function of the plant, and then allocates a portion of this total ADIT amount to the function related to the service being provided. In contrast, SPS asserts, ADIT is described as "functionalized" when ADIT is measured directly in connection with the function of particular types of plant asset: production, transmission, distribution, and general. In a "functionalized" production formula, the amount of production-related ADIT is measured and assigned directly. An allocator is then used to allocate to production a portion of the general plant-related ADIT.

³⁰ *Id.* (citing Blair Direct Testimony at 13).

³¹ *Id.* at 16 (citing Blair Direct Testimony, Exhibit No. SPS-14 (PBOP Actuarial Report)).

³² 18 C.F.R. § 35.11 (2014).

Annual Update to establish new estimated charges effective July 1, 2015.³³ SPS asserts that Commission policy supports granting SPS's waiver request, because the overall effect of the rate change is a decrease in customer rates.³⁴ In the alternative, SPS requests that the Commission accept the filing, and allow the changes to take effect without suspension on April 1, 2015, or sixty-one (61) days after the date of filing.

26. SPS also requests waiver of the following sections of the Commission's regulations: sections 35.13(d)(1)-(2) (Period I and II data for Statements AA through BM); section 35.13(d)(5) (workpapers related to Period I and II data); and section 35.13(h) (cost-of-service statements).³⁵ SPS argues that good cause exists to grant these waivers and that detailed statements of SPS's cost of service are not needed because the currently effective Formula Rate Templates already calculate the rates for service on a formulaic basis and are trued-up each year to the Company's actual costs. SPS states that the Commission has routinely granted such waiver requests in similar proceedings where a party has proposed to implement or modify a formula rate.³⁶

II. Notice and Responsive Pleadings

27. Notice of SPS's filing was published in the *Federal Register*, 80 Fed. Reg. 7,743 (2015), with interventions and protests due on or before February 20, 2015. The New Mexico Cooperatives and Western Farmers Electric Cooperative filed timely motions to intervene. On February 20, 2015, Golden Spread filed a motion to intervene, protest, and

³³ SPS explains that, if so, in the 2016 Annual Update, the revised Formula Rate Templates and Protocols would be used to derive the actual charges, which trues-up the currently effective estimated charges to SPS's actual 2015 costs, giving effect to the revised Formula Rate Templates and Protocols back to February 1, 2015 (plus interest back to that date). SPS argues that granting the requested February 1, 2015 effective date will make this rate decrease effective sooner for each of the Requirements Customers.

³⁴ SPS Transmittal at 18 (citing *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*)).

³⁵ 18 C.F.R. §§ 35.13(d)(1)(2), (d)(5), and (h) (2014).

³⁶ SPS Transmittal at 19 (citing *Duke Energy Progress, Inc.*, 149 FERC ¶ 61,220, at P 77 (2014); *Pub. Serv. Co. of New Mexico*, 142 FERC ¶ 61,168, at P 29 (2013); *Southern California Edison Co.*, 136 FERC ¶ 61,074, at P 30 (2011); *Xcel Energy Servs. Inc.*, 122 FERC ¶ 61,098, at P 75 (2008); *American Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 41 (2007); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at PP 92-94 (2007)).

motion for partial maximum suspension hearing, and settlement judge procedures, and WTMPA filed a motion to intervene and comments. On March 9, 2015, SPS filed an answer to respond to Golden Spread's and WTMPA's filings.

III. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We accept SPS's answer as it provides information that assisted us in our decision-making process.

B. Substantive Matters

1. Protests and Comments

30. Golden Spread states that, despite the Commission's clear ruling in Opinion No. 501-A, SPS has not updated the Formula Rate Templates to allocate demand costs on a 3 CP demand allocation methodology. Golden Spread argues that SPS mischaracterizes its filing as a technical correction to its wholesale rates to protect itself from \$6.1 million of under-recovered annual production demand costs caused by Golden Spread's rate. Golden Spread argues that, in fact, SPS's filing is a new effort to prove it is no longer a 3 CP system. Golden Spread asserts that any under-recovery is a direct result of SPS's refusal to comply with the Commission's directive to utilize a 3 CP demand allocation methodology. Golden Spread argues that, if SPS utilized a 3 CP demand allocation methodology, Golden Spread's responsibility for demand costs will appropriately decrease while SPS will recover 100 percent of its demand costs from all its customers. In contrast, Golden Spread states, SPS's proposal would result in an overall rate increase to Golden Spread.³⁷

31. Golden Spread states that the Commission clearly stated in Opinion No. 501-A that "SPS continues to be a 3 CP utility" and that any departure from this precedent would require more than "a mere step or two in direction of a flatter curve."³⁸ Golden

³⁷ Golden Spread Protest at 5-7.

³⁸ *Id.* at 11-12 (citing Opinion No. 501-A, 144 FERC ¶ 61,132 at P 63).

Spread notes that in the Order on Initial Decision issued on the same day, the Commission explained that “the demand allocator established for SPS in the instant proceeding will apply to SPS’s partial requirements customers, including Golden Spread, until SPS seeks to change the demand cost allocator for its partial requirements customers.”³⁹ Golden Spread argues that the Commission also made clear that, in dismissing rehearing in Docket No. ER08-749, it found the 3 CP demand allocation methodology appropriate for the entire SPS system.⁴⁰ Golden Spread contends that SPS’s filing creates a false premise that the Commission found that SPS is a 12 CP system, when the exact opposite is true.⁴¹ Golden spread argues that these orders reflect the Commission’s most recent pronouncements of its precedent and policies. Golden Spread contends that any change from Commission precedent is a rate change and that, accordingly, any change in demand allocation methodology that results in a substantial increase in rates must be treated as a rate change.⁴²

32. Golden Spread argues that SPS inappropriately did not identify its proposal as a rate change. Golden Spread argues that SPS is incorrect in its assertion that it is not required to compare its proposal to past or alternative approaches; rather, Golden Spread states, there is no way to ignore precedent. Golden Spread notes that the Commission has previously stated on multiple occasions that “substantive ratemaking principles, such as demand cost allocation, once established for a particular company, should continue to be applied in subsequent cases unless there is a supervening change in circumstances or Commission policy requiring a different conclusion.”⁴³ Golden Spread argues that SPS has mischaracterized the filing by describing a financial burden which necessitates a change to Golden Spread’s rates, even though Golden Spread prevailed in the last round of litigation.⁴⁴

33. Golden Spread states that, in Docket No. ER08-749, SPS initially filed formula rate templates with a 3 CP demand allocation methodology, but later submitted an answer

³⁹ *Id.* at 12-13 (citing Order on Initial Decision, 144 FERC ¶ 61,133 at P 1 n.4).

⁴⁰ *Id.* at 13.

⁴¹ *Id.* at 15.

⁴² *Id.* at 13-14.

⁴³ *Id.* at 14 (citing Opinion No. 501-A, 144 FERC ¶ 61,132 at P 45; *Louisiana Power & Light Co.*, 14 FERC ¶ 61,075, at 61,128 (1981)).

⁴⁴ *Id.*

committing to use a 12 CP demand allocation methodology after affected wholesale customers filed protests. Golden Spread notes that, because the Commission had not yet issued Opinion No. 501, the Commission found that SPS would continue to assume the risk that Commission might later require SPS to continue to use a 3 CP allocator. Golden Spread argues that SPS has ignored the fact that its preferred demand cost allocation methodology has not prevailed and, with its proposal, shifts the economic burden of the Opinion No. 501-A ruling to Golden Spread.⁴⁵

34. Golden Spread argues that SPS has not met the required burden of proof to change its existing demand allocation rate design: to present a supervening change in circumstances or Commission policy requiring a different conclusion. Golden Spread states that SPS erred in analyzing only actual, historical monthly peak loads and only partially and selectively adjusting that historical data. Golden Spread argues that SPS should have developed a Period II test year, or similar data set, that reflects normal weather conditions and other expected future circumstances which affect fixed capacity costs. Golden Spread asserts that, while SPS's request for waiver of Period II filing requirements is consistent with Commission precedent regarding formula rates, such cost support is still relevant and SPS should still be required to include a projection of monthly peak demands. Golden Spread contends that only a forward-looking analysis will assure future characteristics of SPS support the proposed demand allocation method.⁴⁶

35. Golden Spread disagrees with SPS's assertion that 2011 and 2012 were abnormally hot and dry and that those years should not influence the decision of which demand allocation methodology is most appropriate. Golden Spread argues that Texas is "notoriously hot and dry" and that surrounding utilities and the Electric Reliability Council of Texas recognize this circumstance, using 4 CP demand allocation in their rates. Golden Spread argues that the data for one of SPS's metrics for proving that 2011 and 2012 were abnormally hot and dry, cooling degree days, are very variable. Golden Spread additionally argues that the years SPS thinks should have full weight in that dataset are too small a sample and not representative, particularly in the absence of a reasonable forward-looking projection. Golden Spread contends that none of the years in the dataset emphasized by SPS comes close to representing a typical load pattern for SPS.⁴⁷ Golden Spread also argues that, contrary to SPS's assertion, the hot and dry

⁴⁵ *Id.* at 16-17.

⁴⁶ *Id.* at 18-20.

⁴⁷ *Id.* at 20-22.

months in SPS's sample should receive more weight and contends that greater focus on these summers will in turn more strongly justify the use of a 3 CP demand allocation methodology.⁴⁸

36. Golden Spread states that it does not understand why SPS did not use a more robust set of data to support its proposal and asserts that data previously submitted to the Public Utility Commission of Texas (Texas Commission) in December 2013 provide an apparently reasonable, longer-term and recent projection of SPS's monthly peak demands. Golden Spread notes that the projections in that filing use 10 years' worth of historical data and argues that the monthly load pattern for the subject test year can be seen as much more peaked in the summer months than in the few years presented in SPS's current proposal to the Commission. Golden Spread states that, unlike the proposal before the Commission, SPS presented in the filing submitted to the Texas Commission a weather-normalized case and rationale for making certain projections related to peak load.⁴⁹

37. Golden Spread argues that SPS contradicts itself when it states that Sharyland Utilities, L.P. (Sharyland) load should not be included in analyzing which demand cost allocation methodology SPS should use, but then presents an analysis which includes Sharyland load. Golden Spread contends that SPS should not have presented both analyses, but only should have excluded Sharyland load, as Sharyland no longer purchases from SPS. Golden Spread states that, while SPS presents an analysis which recognizes recent historical changes to its customer base, SPS fails to account for forthcoming changes in its sales to Golden Spread. Golden Spread notes that its contract demand will drop from 500 MW to 300 MW in June of 2015, is scheduled to be reduced to 200 MW in June 2017, and will be reduced to zero before summer peak season in 2019.⁵⁰ Golden Spread contends that its historical demands used by SPS in its analysis should, at a minimum, be reduced to reflect a contract demand of 200 MW, arguing that any additional demand would unreasonably give the appearance of more "flatness" in SPS's customers' demand.⁵¹ Golden Spread argues that SPS additionally

⁴⁸ *Id.* at 23.

⁴⁹ *Id.* at 22.

⁵⁰ *Id.* at 23-24.

⁵¹ *Id.* at 24.

errs in its analysis by failing to account for the New Mexico Cooperatives' transition from full-requirements service to partial-requirements service.⁵²

38. Golden Spread argues that one must consider the total loads of SPS and its wholesale customers, including Golden Spread, to reveal the underlying seasonal nature of SPS's loads. Golden Spread asserts that the high degree of seasonality in SPS's load becomes quite apparent when the SPS's analysis includes Golden Spread's total loads within SPS's system. Golden Spread states that, while limited in duration, the study included in the filing to the Texas Commission clearly supports the continued use of the 3 CP demand allocation methodology.⁵³ Golden Spread argues that the seasonality of SPS's load is reflected in the actual demand Golden Spread places on SPS. Golden Spread states that it rarely uses its full contract demand in every month of the year, especially now that the SPP marketplace has become operational. Golden Spread argues that, if Golden Spread's actual CP demands on the SPS system were used in SPS's analysis, the true seasonality and 3 CP nature of SPS's system would become even more apparent.⁵⁴

39. Golden Spread argues that, even if the problems with SPS's analysis are ignored, the small and temporary changes calculated by SPS are not sufficient to justify a change from a 3 CP methodology to a 12 CP methodology. Golden Spread states that rate stability is an important consideration and that large changes should be accompanied by large changes in circumstances.⁵⁵

40. Golden Spread asserts that, in addition to flaws in SPS's calculated metrics, SPS's analysis also suffers in other areas. Golden Spread argues that SPS completely misses the point regarding reserve margins, stating that SPS should have considered planned or installed reserves and their planned maintenance requirements instead of actual operating reserves. Golden Spread argues that SPS is clearly not "maintenance saturated," which would have provided justification for use of the 12 CP methodology. Golden Spread contends that the data provided by SPS demonstrate that SPS is clearly able to schedule required maintenance in off-peak months. Golden Spread argues that, even if actual reserve margins in some off-peak months were lower than actual reserve margins in peak months, they would not have been inadequate or critical. Furthermore, Golden Spread

⁵² *Id.*

⁵³ *Id.* at 25-26.

⁵⁴ *Id.* at 26-27.

⁵⁵ *Id.* at 27.

contends, the adequacy of monthly reserves can only be determined from a comprehensive reliability analysis, which SPS has not provided.⁵⁶

41. Regarding unscheduled outage data presented by SPS, Golden Spread argues that the random nature of these outages prevents any meaningful conclusions from being drawn. Similarly, Golden Spread contends that, contrary to SPS's assertion, North American Electric Reliability Council (NERC) efforts to foster greater reliability in no way indicate what demand allocation methodology is reasonable for a particular utility nor that SPS should adopt a 12 CP methodology. Golden Spread states that the Commission has accepted similar arguments as determinative of the issue when used to support a change in demand allocation methodology.⁵⁷

42. Golden Spread argues that a change to a 12 CP demand allocation methodology necessitates a fresh look at whether SPS should bill Golden Spread for its actual contributions or contracted demand coincident with SPS's monthly peaks. Golden Spread states that contract demand allocation was reasonable when its contract was predicated on a 3 CP finding, given that it used most of this contract demand in the summer months; however, given SPS's proposal, Commission precedent dictates that this issue should be looked at anew.⁵⁸ Golden Spread states that, under the terms of its current agreement with SPS, it is restricted from purchasing up to the full contract capacity it is paying for if it does not have enough Qualified Retail Load. Golden Spread argues that while it is not contesting this resale restriction, this provision also distinguishes this contract from a freely tradable capacity and energy product and also highlights the need to reconsider whether contract demand allocation remains appropriate if the 12 CP methodology is ultimately accepted.⁵⁹

43. Golden Spread takes issue with SPS's revised depreciation rates. Golden Spread points out that a 2014 depreciation study submitted to the Texas Commission (Texas Commission Depreciation Study) analyzed the same 12-month period as the depreciation study submitted in this filing and "inexplicably" produced different depreciation rates of 2.5168 percent and 2.8231 percent, respectively.⁶⁰ Golden Spread argues that, since

⁵⁶ *Id.* at 27-28.

⁵⁷ *Id.* at 29 (citing *NV Energy, Inc.*, 144 FERC ¶ 61,105, at P 63 (2013)).

⁵⁸ *Id.* at 30-31 (citing *NV Energy, Inc.*, 144 FERC ¶ 61,105 at P 63; *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 588-91 (1945)).

⁵⁹ *Id.* at 31.

⁶⁰ *Id.* at 34.

depreciation rates are integral to the calculation of the proposed ADIT adjustments, it is “essential” that the depreciation rates be fully vetted to ensure that the correct ADIT adjustments are made.⁶¹ Golden Spread contends that, given the voluminous nature of the depreciation dismantling studies submitted in this filing, both the customers and the Commission need an opportunity to thoroughly review the two studies, including adequate discovery, in order to fully determine the reasonableness of the resulting depreciation and amortization rates.

44. In addition, Golden Spread argues that the computation of the proposed unblended ADIT may be flawed, as it causes a significant increase in the demand-related costs. Specifically, Golden Spread argues the change in ADIT under the formula rate template for Golden Spread reduced production demand-related ADIT from \$222.8 million to \$144.6 million. Golden Spread argues that, as a result, without consideration for offsetting impacts of the change to the depreciation rates, the resulting change on SPS’s return on investment and income taxes would increase approximately \$8.6 million for 2015.⁶²

45. Golden Spread believes that there are discrepancies in some balances under SPS’s proposed Table 19.1 used to compute the adjustments for unblending ADIT. Golden Spread explains that Table 19.1 is supposed to show the ADIT balances at December 31, 2012 and December 31, 2013, reflecting the unblending of the production plant and general plant related ADIT that were affected by the revised depreciation rates. However, Golden Spread asserts that this does not seem to be the case for all ADIT entries. For example, Golden Spread points out that Account 281-Electric Production (line 2), the unblended balance for December 31, 2013 of \$975,989 on Table 19.1 is the same as on Table 18. However, the December 31, 2012 balance on Table 19.1 appears to reflect unblending when compared to the corresponding balance in Table 18. Golden Spread argues that SPS needs to explain why there was no change to December 31, 2013 unblended balance for this ADIT and make any necessary correction. Finally, Golden Spread asserts that SPS’s filing is grossly deficient by failing to provide any supporting documentation for its unblending calculation.⁶³

⁶¹ *Id.* at 36.

⁶² *Id.* at 36-37.

⁶³ *Id.* at 38-39.

46. Golden Spread argues that SPS's ADIT documentation contains other discrepancies and, accordingly, requests that the Commission require that SPS provide detailed calculations that support its revised ADIT balances to permit the Commission and affected customers to review the calculations and make inquiries through discovery.⁶⁴

47. Golden Spread raises concerns with other aspects of the Formula Rate Templates as well. In particular, Golden Spread states that SPS's proposed changes to depreciation rates and unblending of ADIT, in reality, represent a significant net rate increase to Golden Spread, and calls into question whether other aspects of the Formula Rate Templates should also change. Golden Spread states that the use of selective adjustments to a formula rate is contrary to Commission precedent.⁶⁵ Golden Spread argues that the entire formula rate template must function to ensure that it produces just and reasonable charges. Golden Spread states that one such example of a further change to the Formula Rate Templates that is required to ensure a just and reasonable rate relates to the treatment of unfunded reserves. Golden Spread argues that, to prevent a utility from unjustly and unreasonably earning a return on this customer-contributed capital, these unfunded reserves should be treated as rate base credits or offset. Golden Spread asserts that SPS's Formula Rate Templates do not address unfunded reserves.

48. Golden Spread argues that the Commission should require that SPS identify all of its unfunded reserves and appropriately allocate each such reserve to the production function based upon the nature of the reserve (e.g., plant-related, labor-related, 100 percent production-related, other). Golden Spread contends that, in the absence of rate base credits for unfunded reserves, SPS's proposed formula rate will

⁶⁴ *Id.* at 39.

⁶⁵ *Id.* at 40 (citing *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,552 (1994) (“The Commission has an obligation to ensure the justness and reasonableness of the total rate and it would be improper to allow a utility to raise rates by selectively focusing only on particular elements of its costs, while avoiding scrutiny of other rate inputs”) and *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

over-recover its costs of providing transmission service and result in rates that are unjust and unreasonable.⁶⁶

49. Golden Spread further argues that additional components of the Formula Rate Templates may also require modification to conform to Commission precedent. Golden Spread states, for example, there are a number of elements of the Formula Rate Templates that were negotiated as part of the 2007 Settlement between SPS and Golden Spread that may also require further scrutiny. Golden Spread states that, if it is going to be allocated demand costs for its contract in off-peak months, even when it is not using any energy associated with generation it is paying for through demand charges (and SPS is reselling the energy), it should receive 100 percent of its load ratio share of the off-system sales energy margins earned by SPS from sale of energy from that same generation booked to Account 447 as a revenue credit. Golden Spread explains that, currently, as part of the 2007 Settlement, SPS and Golden Spread share such margins 25 percent/75 percent, and a change in demand cost allocation would dictate no sharing mechanism. Golden Spread observes that other aspects of SPS's rate schedule may also require changes to reflect Commission precedent in a manner that makes it consistent with a 12 CP demand allocation methodology and how SPS treats its other wholesale customers.⁶⁷

50. Golden Spread states that the Commission will accept rates, set them for hearing, and suspend rates for up to the maximum five-month period permitted by statute where its preliminary analysis demonstrates that the filing may be unjust and unreasonable or that it might run afoul of other statutory standards.⁶⁸

51. Golden Spread expresses concern regarding the prospective change in demand allocation methodology from the established 3 CP to the proposed 12 CP, and argues that it constitutes a significant rate increase to Golden Spread that SPS does not even quantify in its rate change analysis. Golden Spread argues that the change can cause Golden Spread's allocated demand costs to increase in excess of 10 percent of the total annual demand costs (approximately \$41.5 million) it pays to SPS. Golden Spread asserts that the depreciation rate and unblended ADIT issues are counterbalancing rate increases and decreases within the Formula Rate Templates, and other aspects, such as the unfunded

⁶⁶ *Id.* at 44.

⁶⁷ *Id.*

⁶⁸ *Id.* at 45 (citing *West Texas Utils. Co.*, 18 FERC ¶ 61,189, at 61,374 (1982) (*West Texas*)).

reserve or off-system sales margin credit issue, while unquantified at this juncture, will result in greater revenue credits.⁶⁹

52. Golden Spread states that the Commission, under section 205 of the FPA, has both: (1) broad discretion to preliminarily assess whether a rate proposal is excessive so as to warrant suspension, and (2) broad discretion to fashion appropriate remedies to allow certain changes to take effect at the earliest date possible, even granting the waiver of the 60 day prior notice requirement where justified.⁷⁰ Golden Spread notes that, in this case, different parts of the rate proposal call for different effective dates and different suspension periods under the FPA. Golden Spread states that it has no objection to the requested February 1, 2015 effective date requested by SPS, and notes that, once the concerns about depreciation rates and ADIT are resolved, permitting the earliest effective date would benefit consumers, including Golden Spread.

53. However, Golden Spread takes issue with SPS's requested waiver of prior notice requirements for its proposed change to the demand allocation methodology. Golden Spread argues that the Commission should suspend this proposed change for the maximum five month period permitted under the FPA, with such suspension commencing sixty (60) days from the date of filing. Golden Spread also requests that the Commission set for hearing all other aspects of the rate that bear on the determination of the proposed rate's justness and reasonableness.⁷¹

54. Golden Spread states that it also believes that many of the issues raised in its protest can and should be resolved through the use of settlement judge procedures, particularly those related to depreciation, ADIT and unfunded reserves. Therefore, Golden Spread requests that any hearing directed in this case be held in abeyance to facilitate negotiations among the parties.⁷²

⁶⁹ *Id.* at 45-46.

⁷⁰ *Id.* at 46 (citing *TC Ravenswood, LLC v. FERC*, 741 F.3d 112, 116 (D.C. Cir. 2013); *Exxon Pipeline Co. v. United States*, 725 F.2d 1467, 1474 (D.C. Cir. 1984)).

⁷¹ *Id.* at 47 (citing *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205; *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007); *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073 (2007); *Idaho Power Co.*, 115 FERC ¶ 61,281 (2006); *Michigan Elec. Transmission Co., LLC*, 113 FERC ¶ 61,343 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006); *Cambridge Elec. Light Co.*, 111 FERC ¶ 61,246 (2005); *Am. Transmission Co., LLC*, 105 FERC ¶ 61,388 (2003); *Northeast Utils. Serv. Co.*, 105 FERC ¶ 61,089 (2003)).

⁷² *Id.* at 48.

55. WTMPA urges the Commission to consider the impact on SPS's other customers if it denies SPS's request to establish a uniform allocation based on a 12 CP demand methodology to SPS's wholesale customers. Specifically, WTMPA comments that its contract with SPS currently uses a 12 CP methodology and will not be affected by SPS's proposal. However, WTMPA is concerned that SPS would seek to amend its contract, as well as other wholesale customers' contracts to conform to a 3 CP methodology, shifting a significant portion of the projected \$6.1 million under-recovery to WTMPA. WTMPA stresses that WTMPA is a 12 CP load and the use of a 12 CP methodology in the SPS power sales contract with WTMPA is most appropriate and urges the Commission to act to preserve the use of the 12 CP methodology in its power sales contract.⁷³

2. Answer

56. In response to Golden Spread's argument that the 3 CP cost allocation method should apply, SPS argues that it has demonstrated that it is a 12 CP utility. In response to Golden Spread's contention that, before SPS can revise its demand allocation method, SPS must show that a supervening change in circumstances or in Commission policy has occurred, SPS states that Golden Spread is incorrect about the showing SPS must make to change its demand cost allocation method. SPS asserts that, under section 205 of the FPA, SPS must show only "that its newly proposed tariff provisions are just and reasonable"⁷⁴ and section 205 does not require SPS to prove that the demand cost allocation method it is modifying is "unjust and unreasonable or that the new tariff provision are more just and reasonable than the old ones."⁷⁵ SPS contends that if there is a range of potentially reasonable outcomes with respect to a rate issue, then the utility's proposal, if just and reasonable, should be accepted, and nothing more is required by section 205 of the FPA.

57. SPS notes that applying a "supervening change" test to evaluate its proposal imposes a standard that is stricter than the requirements of section 205, and effectively imposes a section 206 burden on SPS. SPS claims that the difference in the statutory

⁷³ WTMPA Protest at 3-4.

⁷⁴ SPS Answer at 16 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 44 (2011), *reh'g denied*, 138 FERC ¶ 61,194 (2012), *review denied sub nom. New Jersey Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d. Cir. 2014)).

⁷⁵ *Id.* (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 at P 44; *New York Indep. Sys. Operator, Inc.*, 135 FERC ¶ 61,157, at P 30 (2011), *review denied sub nom. TC Ravenswood, LLC v. FERC*, 705 F.3d 474 (D.C. Cir. 2013)).

burden of proof between sections 205 and 206 of the FPA is so pivotal that approval of a rate change proposal can turn on whether the filing is submitted by the utility or by a complainant.

58. SPS states that, to the extent Opinion No. 501-A requires a different approach, the Commission should find here that Opinion No. 501-A's application of a supervening change test is inconsistent with section 205 and is not binding precedent. SPS states that, if SPS must show that a "supervening change" in fact or policy has occurred since the Commission's most recent orders on the issue of demand allocation on the SPS system, SPS has met this requirement. SPS states that the SPS system has changed significantly since the period (2001 to 2004) upon which the Commission initially approved the use of the 12 CP methodology in Opinion No. 501 and then reversed and approved the use of the 3 CP methodology in Opinion No. 501-A.⁷⁶ For example, prior to 2010, four requirements customers left the SPS system, and SPS stopped making long-term off-system sales. SPS states that after 2010 and during the historical time period analyzed, Sharyland Utilities' load left the SPS system entirely, and other requirements customers reduced their firm load under their Power Supply Agreements. For these reasons, SPS argues that its system load profile is remarkably different than it was during the time period considered in Docket Nos. EL05-19 and ER05-168 (consolidated). SPS observes that SPS has trended even more towards 12 CP during the past five years.

59. SPS states that it has experienced other relevant factual and policy changes, and these changes have caused the Commission and NERC to recognize the growing importance of year-round demands being placed on the electric system. In addition, SPS contends that over the past 10 years, and particularly over the past five years, SPS has been affected by the increasing regional nature of the SPP wholesale energy markets and SPP's authority with respect to generation outages.⁷⁷

60. SPS notes that, in its request for rehearing of Opinion No. 501-A, SPS argued that (i) the supervening change standard should not have been applied in Opinion No. 501-A, and (ii) in any event, SPS satisfied the supervening change standard in that case. In doing so, SPS's request for rehearing relied on some of the same policy changes that are addressed in its proposal. SPS asserts that many of these policy changes have continued to grow in importance since the time period at issue in Opinion No. 501-A.

⁷⁶ *Id.* at 18 (citing SPS Filing, Exhibit No. SPS-3 (Heintz Direct Testimony) at 23-24).

⁷⁷ *Id.* at 19 (citing SPS Filing, Exhibit No. SPS-3 (Heintz Direct Testimony) at 23-24).

61. SPS argues that Golden Spread's arguments regarding the appropriate demand allocation methodology are unavailing. SPS states that, in deciding whether a filing constitutes a rate increase, the controlling factor is a comparison between the customer's currently effective rate schedule and the proposed rate schedule.⁷⁸ SPS asserts that, where the Commission approves a rate schedule through an order that is final and non-appealable, the filed rate schedule unquestionably defines the status quo. SPS states that the currently effective formula rate templates of the New Mexico Cooperatives and WTMPA use the 12 CP cost allocation method and were approved in a final and non-appealable order. Under Golden Spread's interpretation, SPS observes that if it had filed this case on a 3 CP basis, then the demand allocator used in the formula rate templates of the New Mexico Cooperatives and WTMPA would have remained unchanged. SPS contends that Golden Spread's interpretation is patently incorrect.

62. SPS disputes Golden Spread's argument that SPS "assumed the risk" of a switch to the 3 CP method.⁷⁹ SPS argues that it "bound itself" only in the sense that SPS recognized that, by agreeing to submit a compliance filing using a lower return on equity (ROE) and using the 12 CP method, SPS would not be permitted to switch back, in that proceeding, and once again seek to implement a higher ROE or to use the 3 CP method. SPS contends that its "assumption of risk" did not affect SPS's ability to file a future rate case (such as this case) to implement a different demand allocator. Moreover, SPS claims that the Commission's order on the 2008 Rate Case did not rely on SPS's statement about assuming risks. SPS states that it filed its rates based on the 3 CP method but stated that it would switch to a 12 CP allocator "if the Commission found it just and reasonable."⁸⁰ SPS asserts that the Commission expressly found that "the use of a 12 CP demand allocator is just and reasonable for SPS's system."⁸¹

63. SPS states that the Commission's August 2013 order in Docket No. ER08-789, which included the statement that Opinion No. 501-A had found "that a 3 CP demand

⁷⁸ *Id.* at 21 (citing 18 C.F.R. pt. 35; *Pacific Gas and Elec. Co.*, 87 FERC ¶ 61,218, at 61,861 (1999), *reh'g dismissed*, 94 FERC ¶ 61,306 (2001); *NSTAR Electric Co.*, 120 FERC ¶ 61,027 (2007)).

⁷⁹ *Id.* (citing Golden Spread Protest at 17).

⁸⁰ *Id.* at 22 (citing *Southwestern Pub. Serv. Co.*, 123 FERC ¶ 61,225, at P 13 (2008), *reh'g dismissed*, 144 FERC ¶ 61,134 (2013)).

⁸¹ *Id.* (citing *Sw. Pub. Serv. Co.*, 123 FERC ¶ 61,225 at P 13).

cost allocation methodology is appropriate for the SPS system”⁸² did not reverse the May 2008 finding “the use of a 12 CP demand allocator is just and reasonable for SPS’s system.”⁸³ SPS states that Commission dismissed Golden Spread’s request for rehearing of the May 2008 order.

64. SPS states that, regardless of how the current state of affairs arose, the fact remains that there is a risk that SPS may be required to provide service to two different groups of wholesale power customers on the basis of two different cost allocation methods. SPS asserts that the instant filing involves a single filing that applies to all six Requirements Customers, and a finding that SPS is simultaneously a 12 CP utility and 3 CP utility cannot be justified in this case. SPS argues that the facts support the conclusion that SPS is a 12 CP utility.

65. SPS argues that it has satisfied the Commission’s requirements for allocating its demand costs on a 12 CP basis. SPS contends that Golden Spread has attempted to “set the bar higher” by claiming that SPS must demonstrate that a supervening change has occurred and that, even more, changes on the SPS system will persist for years.⁸⁴ SPS asserts that it submitted a *prima facie* case in support of each proposed change to the Formula Rate Templates and Protocols. SPS argues that the Commission does not impose a bright line-rule when analyzing demand cost allocation and that the case cited in Golden Spread’s protest does not control here. SPS states that although it did request summary disposition, its proposal provides the basis for the Commission’s acceptance.

66. SPS argues that five years of historical load data in its proposal is more than sufficient to assess whether the 12 CP demand allocation methodology is just and reasonable. SPS asserts that the use of this data fully complies with Commission precedent and replicates analyses relied on by the Commission in the past.⁸⁵ SPS argues that the Commission has permitted companies to use varying time periods for assessing a CP methodology and that five years of data is comfortably within the range of prior cases presented to the Commission.⁸⁶ According to SPS, Golden Spread’s contention that SPS

⁸² *Id.* (citing *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, Opinion No. 501-A, 144 FERC ¶ 61,132 at P 12).

⁸³ *Id.* (citing *Sw. Pub. Serv. Co.*, 123 FERC ¶ 61,225 at P 13).

⁸⁴ *Id.* at 23.

⁸⁵ *Id.* at 26 (citing Opinion No. 501-A, 144 FERC ¶ 61,132 at P 27 & nn.28-30).

⁸⁶ *Id.* (citing *Delmarva Power & Light Co.*, 17 FERC ¶ 63,044, at 65,248 (1981), *aff’d*, Opinion No. 185, 24 FERC ¶ 61,199, *reh’g denied*, Opinion No. 185-A,

should have submitted Period II or similar projections is equally unsupported and not required by the Commission.⁸⁷ SPS argues that Golden Spread eschews its prior position in Docket Nos. EL05-19 and ER05-168 (consolidated) that “when a projected test year is used” that projected test year data “may be reasonable” if it is available and “fully normalized,” and that, in the absence of projected test year data, “it is appropriate to consider several years of data.”⁸⁸

67. SPS asserts that it properly took into account the abnormal weather conditions that occurred in 2011 and 2012. SPS states that its historical system demand tests fully included these years and demonstrate that SPS is a 12 CP utility without consideration of abnormal weather conditions. SPS argues that, contrary to Golden Spread’s claims, it did not state that the data from its tests are unreliable.⁸⁹

68. SPS argues that each of Golden Spread’s arguments that SPS did not make necessary adjustments to SPS’s historical load data is misplaced. First, SPS states that it conservatively included only the amount of power Golden Spread scheduled on the day of SPS’s monthly production peak rather than Golden Spread’s fully contract demand each month, further supporting the conclusion that SPS is a 12 CP utility. Regarding Golden Spread’s assertion that SPS’s analysis should have reflected future changes in Golden Spread’s contract demand, SPS argues that, even if SPS’s 2014 historical load data is adjusted to reflect a 300 MW or 0 MW contract demand, its historical system demand tests would still demonstrate that SPS is a 12 CP utility. SPS argues that Golden Spread’s position, that Golden Spread’s actual load should be used SPS’s analysis rather than contract demand, may be interpreted that SPS’s transmission system assets – not its production assets – should be allocated on a 3 CP basis. SPS contends that this is wholly unrelated to how SPS’s wholesale production costs should be allocated, which should instead be allocated by evaluating firm wholesale power obligations. SPS states that

24 FERC ¶ 61,380 (1983) *review denied sub nom. Cities of Newark v. FERC*, 763 F.2d 533 (3d. Cir. 1985); *Illinois Power Co.*, 11 FERC ¶ 63,040 at 65,248-49 (1980), *aff’d*, 15 FERC ¶ 61,050 (1981), *reh’g denied*, 19 FERC ¶ 61,073 (1981); Opinion No. 501-A, 144 FERC ¶ 61,132 at P 54).

⁸⁷ *Id.* at 27 (citing *Duke Energy Progress, Inc.*, 149 FERC ¶ 61,220 at P 77).

⁸⁸ *Id.* (citing Exhibit No. GSL-1 (Responsive Testimony of Joe N. Linxwiler) at 17, lines 20-25, Docket Nos. EL05-19-002 and ER05-168-001 (consolidated) (filed March 3, 2006)).

⁸⁹ *Id.* at 27-28.

Golden Spread took the exact opposite position in Docket Nos. EL05-19 and ER05-168.⁹⁰

69. SPS contends that Golden Spread's criticism that SPS failed to take into account the operating realities of the SPS system fails to raise a material dispute with SPS's analysis. SPS maintains that it properly evaluated reserve margins as opposed to specifically operating or planning reserve margins.⁹¹ SPS also argues that failing to schedule maintenance during summer months does not mean that a utility is a 3 CP utility; rather, it is equally important to consider whether maintenance was scheduled in shoulder months. SPS argues that, because it did not schedule maintenance in fall shoulder months, it demonstrably considers more than just summer peak months in planning its maintenance schedule.⁹²

70. SPS argues that Golden Spread's reliance on *Central Power & Light* to demonstrate that demand costs should not be allocated on a total contract basis is misplaced. SPS states that *Central Power & Light* expressly addressed the use of the coincident peak method for allocating demand costs to full requirements customers, while simultaneously using partial requirements customers' contract demand to allocate their share of the demand costs. SPS states that the Commission found that using the partial requirements customers' contract demand was just and reasonable and that Central Power & Light Company's (Central Power & Light) obligation to supply capacity and energy to partial requirements customers is no less firm than that of full requirements customers.⁹³ SPS contends that, contrary to Golden Spread's characterization, the Initial Decision in *Central Power & Light* emphasized that Central Power & Light was obligated to be ready to serve the City of Brownsville (Brownsville) even if Brownsville scheduled less than its fully contract demand quantity.⁹⁴ SPS states that the same is true of its obligation to Golden Spread and that, while this obligation must be met pursuant to a power supply agreement, Golden Spread is free to buy energy elsewhere. SPS states that, under this power supply agreement, SPS cannot reduce its firm obligation; therefore, it would be

⁹⁰ *Id.* at 28-32.

⁹¹ *Id.* at 32 (citing Opinion No. 501-A, 144 FERC ¶ 61,132 at P 62).

⁹² *Id.* at 32-33.

⁹³ *Id.* at 33-34 (citing *Central Power & Light*, 47 FERC ¶ 61,339, at 62,165 (1989)). SPS also notes that the D.C. Circuit also affirmed this finding. *Id.* at 34 (citing *Cogeneration Ass'n of Cal. v. FERC*, 525 F.3d 1279, 1285 (D.C. Cir. 2007)).

⁹⁴ *Id.* (citing *Central Power & Light*, 40 FERC ¶ 63,040 at 65,163 (1987)).

inappropriate to allocate SPS's production demand costs based Golden Spread's decisions to switch between purchasing energy under its power supply agreement or SPP's Integrated Marketplace.⁹⁵

71. SPS argues that the Commission should dismiss Golden Spread's request for action in Docket Nos. EL05-19 and ER05-168 (consolidated) and Docket No. ER06-274. SPS argues that the prospective nature of its proposal renders Golden Spread's request irrelevant.⁹⁶

72. SPS contends that Golden Spreads concerns regarding differences between depreciation studies in this filing and Texas Commission Depreciation Study are baseless. SPS states that it tailored its depreciation studies to differences between the Commission and the Texas Commission. SPS states that discrepancies between depreciation reserves are explained by differences in Commission and Texas Commission depreciation rates. SPS also explains that the Commission and the Texas Commission determine net salvage value in significantly different ways. SPS notes that additional discrepancies may be explained by the lack of adjustments for retirements happening over the life of the plant in the Texas Commission Depreciation Study. SPS argues that jurisdictional differences are why utilities unblend depreciation rates and ADIT. SPS states that the Commission approved SPS's unblended depreciation rates and proposes to do the same with ADIT in this filing, ensuring that the tax impacts of depreciation are properly reflected in the Commission-jurisdiction rates.⁹⁷

73. In response to Golden Spread's question, why are several balances on Table 18 (showing unblended amounts) and Table 19.1 (showing blended amounts) the same, SPS states that, for these accounts, the depreciation or amortization rate is the same between jurisdictions, meaning there is nothing to unblend. In response to Golden Spread's other question regarding ADIT, why some amounts shown in Table 19.1 and Table 18 are the same whereas others are not, SPS clarifies that there should not have been a difference and that it inadvertently used amounts that were not the final FERC Form No. 1 amounts. SPS states that it identified another error in Table 19.1 and states that, if the Formula Rate Templates are accepted for filing, SPS would reflect these input corrections on the bills sent to the Requirements Customers.⁹⁸

⁹⁵ *Id.* at 35.

⁹⁶ *Id.* at 35-36.

⁹⁷ *Id.* at 36-38.

⁹⁸ *Id.* at 38-39.

74. SPS states that Golden Spread contends that the scope of this proceeding should include all of the unchanged components of the Formula Rate Templates, and SPS should carry the burden of demonstrating that those unchanged rate components continue to be just and reasonable under section 205 of the FPA. SPS argues that, contrary to Golden Spread's arguments, the general rule is that, when a utility submits a rate change, the utility does not bear the burden of demonstrating that the unchanged tariff provisions remain just and reasonable.⁹⁹ SPS states that Golden Spread's interpretation (that the normal practice with respect to formula rates is that each proceeding established to consider changes to specific components of a formula rate must address all of the unchanged components of that formula rate) relies heavily on *Cities of Batavia v. FERC*.¹⁰⁰ SPS explains that the Commission has found that, in contrast to the court's approach in *Cities of Batavia*, later court decisions "reveal a trend to limit the scope of what the Commission may consider in evaluating a proposed increase in rates under section 205."¹⁰¹ SPS further states that these cases explain that the Commission applies a case-by-case analysis to decide the proper scope of a proceeding initiated by a change to a specific formula rate component.¹⁰²

75. SPS argues that the specific changes it proposes are discrete and do not interact with other, unchanged components of the Formula Rate Templates in a way that raises a question about the justness and reasonableness of those preexisting rate components. SPS states that because its discrete Formula Rate Template changes are not integrally related to the Formula Rate Templates unchanged rate components, the Commission can "ensure the justness and reasonableness of the total rate"¹⁰³ by evaluating the specific changes SPS has proposed. SPS argues that the unchanged components of SPS's formula rates already have been determined to be just and reasonable, and that by reviewing the

⁹⁹ *Id.* at 9 (citing *Pub. Serv. Co. of N.Y. v. FERC*, 866 F.2d 487, 488 (D.C. Cir. 1989)).

¹⁰⁰ *Id.* (citing *Cities of Batavia v. FERC*, 672 F.2d 64 (D.C. Cir. 1982) (*Cities of Batavia*)).

¹⁰¹ *Id.* (citing *Boston Edison Co.*, 65 FERC ¶ 61,311, at 62,426 (1993), *reh'g denied*, 66 FERC ¶ 61,337 (1994)).

¹⁰² *Id.* (citing *Nat. Gas Pipeline Co. of America v. FERC*, 904 F.2d 1469, 1474 (10th Cir. 1990); *Boston Edison Co.*, 65 FERC ¶ 61,311 at 62,426; *Sw. Pub. Serv. Co.*, 145 FERC ¶ 61,281, at P 18 (2013)).

¹⁰³ *Id.* at 11 (citing *Boston Edison Co.*, 65 FERC ¶ 61,311 at 62,425-26).

reasonableness of the proposed revisions, the Commission can ensure that SPS's "total rate" under each Template is just and reasonable.

76. SPS also argues that Golden Spread's arguments regarding certain Template components are outside the scope of this proceeding. SPS criticizes Golden Spread for raising concerns about the way the Formula Rate Templates treat "unfunded reserves,"¹⁰⁴ even though Golden Spread does not claim that SPS's proposed Template and Protocol changes interact in a meaningful way with the issue of unfunded reserves. SPS states that the unfunded reserves issue is simply an unrelated aspect of the Formula Rate Templates that Golden Spread would like to change.

77. SPS observes that, in contrast, Golden Spread claims that SPS's proposal to use the 12 CP demand allocation method somehow raises a question about whether the Golden Spread Template should be revised so that Golden Spread receives a revenue credit equal to 100 percent of its load ratio share of the off-system sales energy margins SPS earns from the sale of energy "from that same generation booked to Account 447."¹⁰⁵ SPS responds that, although Golden Spread claims that the treatment of such margins is related to SPS's proposal to use the 12 CP method, there is no "interaction" between these two distinct aspects of the Formula Rate Templates.

78. SPS asserts that Golden Spread's argument amounts to the assertion that, if SPS is allowed to choose to change only particular components of the Formula Rate Templates, then Golden Spread should have the right to challenge any and all aspects of the Formula Rate Templates. SPS argues that in order to challenge unchanged and unrelated components of the SPS-Golden Spread Template, Golden Spread must file a complaint pursuant to section 206 of the FPA, which has done in the past.¹⁰⁶ SPS argues that expanding the scope of this case would punish SPS for voluntarily submitting a rate filing that results in a rate decrease. SPS claims that a company proposing a rate decrease should not be required under section 205 to carry the burden of proving that each unchanged component of its previously-approved formula rate remains just and reasonable, and imposing such a requirement here would discourage companies from filing to reduce customer rates.

¹⁰⁴ *Id.* (citing Golden Spread Protest at 41-43).

¹⁰⁵ *Id.* at 12 (citing Golden Spread Protest at 44).

¹⁰⁶ *Id.* (citing *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 150 FERC ¶ 61,052 (2015)).

79. SPS also contends that Golden Spread's concerns about unchanged rate components do not provide a basis to institute a section 206 investigation. SPS states that the "proponent of a change in an unchanged component of rates . . . bears the burden" under section 206.¹⁰⁷ SPS states that Golden Spread asserts, without basis and without specific details, that "other aspects of Golden Spread's rate schedule may also require changes."¹⁰⁸ SPS argues that this bare assertion is "too general and unsupported to warrant initiation of a [s]ection 206 investigation."¹⁰⁹ Moreover, SPS claims that Golden Spread's only specifically identified concerns, which address unfunded reserves and the treatment of margins on off-system energy sales, are unrelated to the changes filed by SPS. SPS contends that because Golden Spread's concerns satisfy neither the standard for opening a section 206 investigation nor the stricter standard for including its concerns in this case under section 205 the Commission should exclude from this proceeding Golden Spread's concerns about the Formula Rate Templates' unchanged rate components.

80. SPS argues that the Commission should reject Golden Spread's argument that there should be different effective dates for different aspects of SPS's proposal. SPS states that Commission precedent does not support the authorization of different effective dates for individual components of a single rate applicable to a single service, and that the Commission lacks the legal authority under section 205 of the FPA to make the rate decrease changes effective immediately while suspending the effectiveness of the rate increases, when the rate filing includes changes that increase the rate and other changes that decrease that same rate.¹¹⁰ SPS argues that, instead, the Commission's decision to suspend a rate filing is based on the overall change to the rate in question.¹¹¹ SPS states

¹⁰⁷ *Id.* at 13 (citing *Xcel Energy Servs. Inc.*, 121 FERC ¶ 61,284, at P 72 (2007)).

¹⁰⁸ *Id.* at 15 (citing *Int'l Transmission Co.*, 116 FERC ¶ 61,036, at P 35 (2006)).

¹⁰⁹ *Id.* (citing *Int'l Transmission Co.*, 116 FERC ¶ 61,036 at P 35).

¹¹⁰ *Id.* at 4 (citing *Transcontinental Gas Pipe Line Co., LLC*, 140 FERC ¶ 61,251, at P 30 (2012)).

¹¹¹ *Id.* (citing *West Texas*, 18 FERC ¶ 61,189 at 61,374 and stating that the Commission's suspension decision normally turns on whether a utility's "increased rates will be suspended for only one day instead of the five month maximum in those cases where [the Commission's] preliminary analysis indicates that no more than ten percent of the increase appears to be excessive.").

that the Commission has found that “[w]hen a utility proposes rates that are substantially excessive, the Commission suspends the proposed rate, and not just part of it.”¹¹²

81. SPS contends that the cases relied upon by Golden Spread involve the imposition of different effective dates for different services.¹¹³ In addition, SPS claims that the Commission rejected requests that “reduced reservation charges” for a service should be effective immediately while “increased usage charges” for the same service should be suspended for five months.¹¹⁴ SPS states that this is because “the reservation and usage components of the rate for a particular service are properly considered together as one filed rate charge for one rate increase for one service for purposes of calculating refunds.”¹¹⁵ SPS argues that the same reasoning applies in this proceeding because the proposed Template and Protocols changes would modify the SPS demand and energy charges for one service provided to the six Requirements Customers: wholesale power sales service.

82. SPS states that it currently provides wholesale requirements service to the New Mexico Cooperatives and WTMPA under rate schedules that were approved by the Commission through orders that are final and non-appealable. Moreover, SPS states that it currently provides wholesale requirements service to Golden Spread under a rate schedule that might be adjusted based on the litigated outcome of Docket No. ER06-274. SPS reiterates that, although it is subject to potential adjustment based on the litigated outcome in Docket No. ER06-274, the Golden Spread rate is calculated using the 12 CP method. SPS states that granting the requested February 1, 2015 effective date will make the rate decrease identified in its filing effective sooner for each of the Requirements Customers. SPS argues that Commission policy supports granting SPS’s waiver request, because the overall effect of the rate change is a decrease in customer rates.¹¹⁶ If the Commission denies this request for waiver of the prior notice requirements, SPS asserts that the Commission should allow the revised Templates to take effect without

¹¹² *Id.* (citing *Southern California Edison Co.*, 116 FERC ¶ 61,099, at P 18 (2006)).

¹¹³ *Id.* (citing *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,236, at PP 44-45 (2012); *Transcontinental Gas Pipe Line Co.*, 140 FERC ¶ 61,251 at P 28).

¹¹⁴ *Id.* at 5 (citing *Transcontinental Gas Pipe Line Co.*, 140 FERC ¶ 61,251 at P 30).

¹¹⁵ *Id.* (citing *Transcontinental Gas Pipe Line Co.*, 140 FERC ¶ 61,251 at P 30).

¹¹⁶ *Id.* at 6 (citing *Central Hudson*, 60 FERC ¶ 61,106 at 61,338).

suspension on April 1, 2015 because SPS's filing results in a rate decrease, and therefore no suspension is warranted under *West Texas*.¹¹⁷

83. SPS disputes Golden Spread's argument that, if its proposal were compared to rates calculated on a 3 CP basis, then that "change" in the demand cost allocator "can cause Golden Spread's allocated demand costs to increase in excess of 10 percent of the total annual demand costs[.]"¹¹⁸ SPS contends that the appropriate way to evaluate the effect of this rate filing on Golden Spread is to consider its overall effect on SPS's rate for wholesale power service. SPS argues that the proper starting point for this comparison is the rate currently being charged to the customer, even if that rate is subject to refund.¹¹⁹ SPS notes that a dispute over the rate effect of a filing does not preclude the Commission from waiving its prior notice requirements to the extent it finds good cause to grant such a waiver.¹²⁰

84. SPS observes that Golden Spread does not allege that the overall rate effect of SPS's filing is excessive under *West Texas* and does not base its specific allegations on its currently effective rate, and under *West Texas*, a nominal suspension is warranted, and the effective date of its Templates and Protocols should be no later than April 1, 2015. SPS states that for good cause, the Commission should waive its prior notice filing requirements and grant SPS's requested February 1, 2015 effective date.

85. SPS argues that WTMPA is incorrect in asserting that it will not be directly affected by SPS's proposal. SPS states that the proposed revisions to the Formula Rate Templates include a provision which ensures consistency in demand allocation methodology across the Requirements Customers. SPS states that, for this reason, the use of different demand allocation methodologies in different Formula Rate Templates would violate the proposed rate schedules. Thus, SPS states, if the Commission directed SPS to revise the Formula Rate Templates to use the 3 CP methodology, then all six templates would use the 3 CP methodology. SPS argues that its proposal to allocate demand costs

¹¹⁷ *Id.* (citing *West Texas*, 18 FERC ¶ 61,189 at 61,374).

¹¹⁸ *Id.* (citing Golden Spread Protest at 45).

¹¹⁹ *Id.* at 7 (citing *Pacific Gas & Electric Co.*, 87 FERC ¶ 61,218 at 61,861 (citing 18 C.F.R. § 35.13)).

¹²⁰ *Id.* (citing *NSTAR Electric Co.*, 120 FERC ¶ 61,027 at PP 57-58 & n.49).

on a consistent basis is just and reasonable and that the appropriate methodology considers SPS's system-wide physical characteristics.¹²¹

3. Commission Determination

86. SPS's proposed Formula Rate Templates and Protocols raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

87. Our preliminary analysis indicates that SPS's proposed Formula Rate Templates and Protocols have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept SPS's proposed Formula Rate Templates and Protocols for filing, suspend them for five months, to become effective July 1, 2015, subject to refund, and set them for hearing and settlement judge procedures.¹²²

88. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹²³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹²⁴ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief

¹²¹ *Id.* at 23-25.

¹²² In *West Texas*, 18 FERC ¶ 61,189, we explained that, when our preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in that order, we would generally impose a five-month suspension. In this proceeding, we find that the proposed rates may be substantially excessive.

¹²³ 18 C.F.R. § 385.603 (2014).

¹²⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/availjudge.asp>).

Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPS's proposed formula rate templates and protocols are hereby accepted for filing and suspended for five months, to become effective July 1, 2015, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning SPS's proposed formula rate templates and protocols. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a

procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.