

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 THE PLANT X UNIT 1,) **CASE NO. 22-00286-UT**
PLANT X UNIT 2, AND CUNNINGHAM)
UNIT 1 GENERATING STATIONS AND)
AMEND THE ABANDONMENT DATE)
OF THE TOLK GENERATING)
STATION; AND (3) OTHER)
ASSOCIATED RELIEF,)
)
SOUTHWESTERN PUBLIC SERVICE)
COMPANY,)
)
APPLICANT.)**

DIRECT TESTIMONY

of

SUEDEEN G. KELLY

On behalf of

SOUTHWESTERN PUBLIC SERVICE COMPANY

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

<u>Acronym/ Defined Term</u>	<u>Meaning</u>
AGIS	Advanced Grid Intelligence & Security
CV	Curriculum Vitae
Commission	New Mexico Public Regulation Commission
EAP	Energy Assistance Program
ETA	Energy Transition Act
FERC	Federal Energy Regulatory Commission
IJA	Infrastructure Investment & Jobs Act of 2021
IRA	Inflation Reduction Act of 2022
PPA	Power Purchase Agreement
ROE	Return on Equity
RPS	Renewable Portfolio Standard
SPS	Southwestern Public Service Company, a New Mexico corporation
Xcel Energy	Xcel Energy Inc.

LIST OF ATTACHMENTS

<u>Attachment</u>	<u>Description</u>
SGK-1	Curriculum Vitae (<i>Filename: SGK-1.pdf</i>)

Case No. 22-00286-UT
Direct Testimony
of
Suedeem G. Kelly

1 **I. WITNESS IDENTIFICATION AND QUALIFICATIONS**

2 **Q. Please state your name, affiliation, and business address.**

3 A. My name is Suedeem G. Kelly. I am a lawyer practicing with the firm of Jenner &
4 Block LLP, where I serve as Chair of its Energy Practice. My business address is
5 1099 New York Avenue, N.W., Suite 900, Washington, DC 20001.

6 **Q. On whose behalf are you testifying in this proceeding?**

7 A. I am testifying on behalf of Southwestern Public Service Company, a New Mexico
8 corporation (“SPS”). SPS is a wholly-owned electric utility subsidiary of Xcel
9 Energy Inc. (“Xcel Energy”).

10 **Q. Please describe your background and professional experience in the energy
11 and utility industries.**

12 A. I hold a bachelor’s degree in Chemistry from the University of Rochester. I also
13 have a J.D. degree from Cornell Law School.

14 I served on the New Mexico Public Service Commission, first as a
15 Commissioner (1983-1984) and then as Chairwoman (1984-1986). I was
16 nominated by Presidents Bush and Obama to three terms as a Commissioner at the
17 Federal Energy Regulatory Commission (“FERC”) and served from 2003 through

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1 2009. During that time, FERC resolved approximately 7,000 disputes with
2 published decisions, and I personally authored 100 separate statements.

3 In addition to my experience as a regulator, I have served as regulatory
4 counsel for the California Independent System Operator Corporation, have engaged
5 in the private practice of energy law, and have taught courses on federal and state
6 energy law, utility regulation, administrative law, and legislative process at the
7 University of New Mexico School of Law, where I was a Professor of Law from
8 1986 until 2003. I continue to present, speak, and publish multiple times a year on
9 topics involving energy law, most commonly enforcement and regulation.

10 Attached hereto as Attachment SGK-1 is a true and correct copy of my
11 current Curriculum Vitae (“CV”).

12 **Q. Have you previously testified before any federal or state regulatory**
13 **commission?**

14 A. I submitted pre-filed written direct and rebuttal testimony before the New Mexico
15 Public Regulation Commission (“Commission”) on behalf of SPS in its most recent
16 New Mexico base rate proceeding, Case No. 20-00238-UT, as well as pre-filed
17 written rebuttal testimony in an earlier New Mexico base rate proceeding, Case No.
18 19-00170-UT. I have also testified on behalf of Exelon before the Maryland Public

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1 Service Commission, *In the Matter of the Merger of Exelon Corp. and Pepco*
2 *Holdings, Inc.*, No. 9361 (Md. Pub. Serv. Comm'n), and on behalf of Clean Line
3 before the Missouri Public Service Commission, *In the Matter of the Application*
4 *of Grain Belt Express Clean Line LLC*, Case No. EA-2016-0358 (Mo. Pub. Serv.
5 Comm'n). As described in my CV, I have also served as an expert witness in state
6 and federal court proceedings.

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1 SPS has developed an excellent track record of providing reliable service
2 and prompt deployment of transmission and distribution assets to bring new
3 industrial customers online, making SPS a significant contributor to economic
4 growth in New Mexico in a way that aligns with state and Commission policy.
5 Further, SPS has consistently met or exceeded New Mexico clean energy standards
6 and is poised to continue that leadership throughout this decade and beyond. SPS's
7 Steel for Fuel strategies involve investing in renewable infrastructure (i.e., dollars
8 that are recovered through base rates) to avoid or offset fuel costs and secure federal
9 tax credits for customers. This is a winning strategy for customers but requires
10 constructive cost recovery. Further, in order to progress through the aggressive
11 clean energy targets in New Mexico while reliably and affordably managing its
12 generation fleet transition, SPS must be financially secure. Consistent with this
13 view, I explain that commissions regularly consider the performance of a utility in
14 determining the appropriate ROE, and I explain why I support the ROE of 10.75%
15 recommended by SPS witness Dylan D'Ascendis.

16 **Q. What is the basis of your testimony?**

17 A. In addressing these topics, I have based my testimony on my experience as a state
18 and federal regulator, my professional knowledge of state and federal energy

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1 regulation, my understanding of SPS's performance, and my evaluation of SPS's
2 proposal in this case. Although I am a lawyer, I am providing this testimony as an
3 expert witness, not as counsel for SPS.

4 **Q. Is your opinion consistent with New Mexico and federal law?**

5 A. Yes. New Mexico law specifically recognizes that the development and extension
6 of public utilities' businesses directly affect the development, expansion of the
7 general welfare, and growth of the business and industry of the state.¹ It is also a
8 declared policy of New Mexico that the public interest reflects the interests of both
9 consumers and investors, and that rates must be sufficient to encourage and attract
10 capital and investment.² These standards are consistent with the legal standard
11 established by the U.S. Supreme Court, which has explained that a utility's "return
12 should be reasonably sufficient to assure confidence in the financial soundness of
13 the utility, and should be adequate, under efficient and economical management, to
14 maintain and support its credit and enable it to raise money necessary for the proper
15 discharge of its public duties."³

¹ See NMSA 1978, § 62-3-1(A)(3).

² See *id.* 62-3-1(B).

³ *Bluefield Water Works & Improvement Co. vs. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 693 (1923).

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1 **Q. What is your conclusion regarding the factors the Commission should consider**
2 **in setting an appropriate ROE for SPS in this proceeding?**

3 A. In setting SPS's ROE, it is appropriate and warranted for the Commission to
4 consider SPS's admirable performance in providing safe, reliable, and affordable
5 electrical service to its customers while advancing the State's policy initiatives. I
6 believe SPS's outstanding service and furtherance of New Mexico's public policy
7 goals provide additional support Mr. D'Ascendis's recommended 10.75% ROE,
8 which he arrived at through analyses of market factors.

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1 **III. COMMISSION CONSIDERATION OF PERFORMANCE**

2 **Q. How do utility regulators generally approach ratemaking proceedings?**

3 A. While statutory mandates may vary in their specifics among the states, there are
4 some generally applicable principles that govern utility regulation in the United
5 States. Utility regulators are tasked with ensuring that customers receive safe,
6 reliable service at just and reasonable rates. Public utility regulators often consider
7 utility performance in determining the allowable return, and this is widely
8 considered a best practice among regulators. Without considering a utility’s
9 performance, it would be extremely difficult to evaluate the value of the service
10 customers receive, and, as a result, it would be difficult to determine whether rates
11 are just and reasonable.

12 **Q. Is it appropriate for the Commission to consider SPS’s performance in setting
13 its ROE?**

14 A. Yes, it is appropriate for the Commission to consider SPS’s performance in setting
15 its ROE, both as a best practice of utility regulators generally, and as specifically
16 authorized under New Mexico law. The New Mexico Supreme Court has ruled that
17 the Commission may “properly consider in a rate proceeding, quality or inadequacy
18 of service in determining, under the facts and circumstances in each particular case,

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1 what is a fair, just and reasonable rate of return to the utility.”⁴ Recognition of
2 utility performance is a valuable tool in encouraging utilities to pursue particular
3 goals, including traditional performance-related goals and broader public policy
4 goals. Rewarding higher-performing utilities sets an example for lower-performing
5 utilities and encourages them to meet the same standards.

6 **Q. Should the Commission set utilities’ returns at the lowest possible level?**

7 A. No. As discussed above, the Commission’s responsibility in setting rates is much
8 broader than setting the lowest possible rates. Focusing only on near-term attempts
9 at reducing the revenue requirement would neglect to account for the value utilities,
10 and especially SPS, provide to their customers by ensuring reliable service,
11 fostering economic growth, and contributing to emissions reductions and other
12 public policy goals. It would also hamper a utility’s ability to continue to provide
13 value for customers and satisfy state policies going forward.

14 **Q. When you say traditional performance-related goals, what do you mean?**

15 A. Traditional performance-related goals address essential aspects of utility service,
16 such as customer service, system reliability, safety, rate stability, and other metrics

⁴ *Application of Gen. Tel. Co. of Sw.*, 98 N.M. 749, 758, 652 P.2d 1200, 1209 (N.M. 1982).
By way of note, in this case the Court ruled that the Commission may not, after-the-fact, reduce an ROE it otherwise deemed in the rate proceeding to be “just, fair, and reasonable.”

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1 related to the operation of the utility. Top-performing utilities employ new
2 technology and initiatives to continuously improve their achievement of traditional
3 performance-related goals and respond to changing conditions in their service
4 territory (for example, by using the latest information technology to prepare for
5 increased cybersecurity issues, thereby increasing resiliency).

6 **Q. When you say broader public policy goals, what do you mean?**

7 A. Broader public policy goals include those established in earlier regulatory
8 proceedings or by the state government, including, for example, emissions
9 reductions and renewable resource integration, grid modernization, economic
10 growth, and other emerging issues of concern to the public, including utility
11 customers. Utility regulators often consider such public policy goals in ratemaking
12 proceedings. It is often critical to deploy new technology and innovative initiatives
13 to achieve broader public policy goals (for example, utilizing utility-owned battery
14 storage facilities to build microgrids in order to pilot resilient technologies while
15 also enabling backup power for critical municipal emergency facilities).

16 **Q. How is utility performance typically considered by regulators in ratemaking**
17 **proceedings?**

18 A. There are a number of ways to consider utility performance in ratemaking
19 proceedings. Although the manner in which performance is measured and

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1 rewarded differs in every state, there are two primary approaches—quantitative and
2 qualitative.

3 Under a quantitative approach, the regulator identifies performance metrics
4 as well as baselines and performance targets for each metric, and the regulator
5 develops a mechanism (or applies a statutory mechanism) for rewarding good
6 performance (and perhaps penalizing poor performance) as measured relative to the
7 metric baseline and performance target. States such as Illinois, Hawaii, Rhode
8 Island, and New York use frameworks which include quantitative performance
9 assessment.⁵

⁵ See 220 ILCS 5/16-108.5 (establishing performance-based formula ratemaking mechanism for Illinois electric utilities that considers factors including reliability, billing accuracy, reductions in unaccounted-for energy and uncollectibles, and minority- and women-owned contracting); *In re Pub. Utils. Comm'n Instituting a Proceeding to Investigate Performance-Based Regulation*, HI PUC Docket 2018-0088, Order No. 36326 (May 23, 2019) (establishing revenue adjustment mechanisms, performance mechanisms, and other regulatory mechanisms for development in Phase 2); *Investigation into the Changing Electric Distribution System*, RI PUC Docket Nos. 4770 and 4780, Settlement Agreement (June 6, 2018) at 67–81 (implementing performance incentives for capacity saving, installed energy storage capacity, electric vehicles, electric heat, fleet electrification, and distributed generation interconnection time); *Proceeding on Motion of the Comm'n in regard to Reforming the Energy Vision*, NY PSC Case 14-M-0101, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (May 19, 2016) at 53–70 (requiring utilities to propose “earnings adjustment mechanisms” applicable to load factors, electric usage intensity, distributed resource interconnection timeliness, and achievement of clean energy standards, and permitting additional proposals for efficiency achievements, customer engagement, and arrearage reductions).

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1 Under a qualitative approach, the regulator evaluates rate case evidence to
2 derive a range of reasonably allowable ROEs. Then, in choosing an ROE within
3 that range for a utility, the regulator takes into account qualitative factors, including
4 for example, compliance with reliability standards, management efficacy, cost
5 control, level of rates, safety, and furtherance of public policy goals. If the utility
6 has performed positively relative to other utilities, or relative to its past
7 performance, the regulator chooses an ROE towards the high end of the reasonable
8 range; if not, the regulator chooses an ROE towards the lower end of the reasonable
9 range.⁶

10 **Q. Does considering utility performance in ratemaking proceedings benefit**
11 **customers?**

12 A. Yes. Considering a utility's performance in ratemaking benefits customers by
13 aligning the utility's interests with customers' interest in reliability, customer

⁶ See, e.g., *Milford Water Co.*, MA DPU Docket 17-107, Order (Aug. 31, 2018) (considering the utility's improved quality of service and customer relations as positive qualitative factors, and considering failure to follow directives related to affiliate transactions and the selection of rate case consultants as negative qualitative factors); see also *Potomac Elec. Power Co.*, DC PSC Case No. 1087, Order No. 16930, at 282 (Sept. 27, 2012) (explaining that a proposal to reduce the utility's ROE to the low end of the reasonable range was rejected because the utility had "substantially complied" with reliability standards); *Emera Maine*, ME PUC Docket No. 2015-00360, Order (Dec. 22, 2016) (setting the ROE at the low end of the identified reasonable range, based in part on record evidence of inefficient management resulting in poor service).

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1 service, and the availability of new technology such as distributed energy resources.
2 High-performing utilities also enable economic growth within their service
3 territory, which benefits customers by increasing the availability of jobs and other
4 economic opportunities. Rewarding good performance can also benefit customers
5 by allowing the utility to obtain credit at lower interest rates, reducing the cost of
6 future improvements.

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1 after storms. For example, during Winter Storm Uri in February of 2021,
2 curtailments in SPS's service territory were limited in scope and duration and were
3 ordered by the Southwest Power Pool, rather than being the result of SPS
4 performance. In a challenging operational environment, SPS managed deep
5 curtailments of gas supplies, quickly converted synchronous condensers at Tolka
6 back to generator mode, and ensured service continuity for customers.

7 In addition, SPS continues to make investments and improvements in its
8 system that enable it to quickly respond to distribution line extension requests. In
9 recent years, New Mexico has seen significant load growth. For example,
10 extending service to new oil fields often involves constructing new 10- to 15-mile
11 transmission lines as well as providing services to related residential and
12 commercial customers. Expanding SPS's system ensures that the system is ready
13 for future increases in load growth—a process that requires significant investment
14 and advanced planning. The ability for new customers to timely connect to reliable
15 electric delivery service is essential to the State's continued economic growth.
16 SPS's continued focus on system expansion and readiness to meet increasing
17 demand directly contributes to economic growth in New Mexico and investments
18 ensure the regions power grid will support the clean energy transition.

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1 **Q. How has SPS performed in terms of fulfilling broader public policy goals?**

2 A. SPS not only provides safe, reliable service at rates historically well below the U.S.
3 and New Mexico averages,⁷ but SPS has been at the forefront of achieving broader
4 public policy goals at both the state and national level.

5 SPS is a leader in integrating renewable and clean energy resources into its
6 generation portfolio. SPS continues to set an example for other New Mexico
7 utilities with its renewable generation, thereby contributing to the achievement of
8 New Mexico’s clean energy transition policy goals, as articulated in the New
9 Mexico Energy Transition Act (“ETA”).⁸ The ETA establishes a state policy goal
10 of encouraging the development of renewable energy resources through the use of
11 Renewable Portfolio Standards (“RPS”).⁹ SPS has exceeded its renewable
12 generation requirements under the New Mexico ETA, and it continues to lead utility
13 RPS achievement statewide. Currently, approximately 40% of SPS’s retail sales in
14 New Mexico are served by renewable energy,¹⁰ and SPS is well on its way to
15 achieving the ETA’s goal of 80% by 2040.

⁷ See Direct Testimony of SPS witness Adrian J. Rodriguez.

⁸ 1978 NMSA, §§ 62-16-1 to 62-16-10 (2019).

⁹ 1978 NMSA § 62-16-4(D) (2019).

¹⁰ Direct Testimony of SPS witness Brooke A. Trammell.

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1 At the national level, SPS is a leader in advancing the clean energy
2 transition by supporting policy measures such as the Infrastructure Investment &
3 Jobs Act of 2021 (“IIJA”) and the Inflation Reduction Act of 2022 (“IRA”).¹¹ In
4 addition, Xcel Energy has been working with the Treasury Department and Internal
5 Revenue Service on the implementation of clean energy tax incentives under the
6 Inflation Reduction Act. SPS has also made significant investments to ensure the
7 long-term resiliency of its system by making improvements in information
8 technology and cybersecurity, which align with the added focus on cybersecurity
9 under the IIJA¹² and the FERC’s recent proposed rule encouraging cybersecurity
10 investment.¹³ As FERC pointed out in a related white paper, the “electric
11 transmission grid has many components that are vulnerable to cyber-attacks . . .
12 preventing or minimizing adverse impacts to energy infrastructure systems is
13 crucial for maintaining a reliable energy system.”¹⁴

¹¹ See Xcel Energy Sustainability Report 2021, Public Policy, available at: <https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Sustainability%20Report/2021%20SR/2021-Public-Policy-SR.pdf>

¹² Pub. L. 117-58, 135 Stat. 429.

¹³ See 180 FERC ¶ 61,189.

¹⁴ FERC, Cybersecurity Incentives Policy White Paper at 3-4, Docket No. AD20-19-000, (June 2020), available at: <https://www.ferc.gov/sites/default/files/2020-06/notice-cybersecurity.pdf>.

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1 It is also notable that SPS has voluntarily built its generation portfolio using
2 a blend of power purchase agreements (“PPAs”) along with company-owned
3 projects, as discussed in more detail below. This further underscores the need for
4 supportive recovery and ratemaking frameworks for SPS. As discussed by SPS
5 witness Patricia Martin, the Commission should be evaluating ROE, capital
6 structure, and overall cost of capital decisions in the context of a utility’s economic
7 capital structure since rating agencies always recognize off-balance sheet debt like
8 PPA payment obligations.

9 **Q. Does SPS have any other notable initiatives that contribute to both traditional**
10 **performance goals and broader public policy goals?**

11 A. Yes, SPS has been working to enhance grid reliability, distributed generation, and
12 information sharing with customers through the Advanced Grid Intelligence and
13 Security (“AGIS”) initiative.¹⁵ AGIS is a long-term, strategic initiative to transform
14 SPS’s distribution system into an intelligent and highly automated system. The
15 AGIS initiative is expected to benefit customers by enhancing grid visibility and
16 creating the infrastructure to support and actualize advanced grid technologies,
17 including the bi-directional flow of energy. The program will enable SPS to

¹⁵ See Direct Testimony of Brooke A. Trammell in Docket No. 22-00178-UT.

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1 provide additional customer programs to promote the use of renewable energy,
2 distributed generation, and optimized demand-side management technology.

3 **Q. Have any of SPS's investments reduced customer costs?**

4 A. Yes. SPS's significant investments in wind facilities not only helped SPS lead the
5 clean energy transition, but they also are offsetting high fuel costs by reducing the
6 amount of fuel needed to meet customers' energy needs. The availability of wind
7 facilities is particularly valuable when gas prices are high, as they are currently. As
8 demonstrated by Ms. Trammell, fuel savings from wind facilities are projected to
9 offset approximately \$96 million of fuel costs in the Test Year (represented by the
10 green bar on the far right of the chart).

11 SPS's investment in company-owned generation provides it with the unique
12 ability to pass along these savings to its customers—another example of SPS
13 serving both the traditional performance-related goal of rate stability and the
14 broader public policy goal of increasing its renewable generation portfolio.

15 **Q. How has SPS's performance contributed to economic growth in New Mexico?**

16 A. As mentioned above, SPS has made investments to ensure prompt deployment of
17 safe and reliable electric service, allowing SPS to contribute to New Mexico's
18 economic growth and keep up with the resulting increase in demand for new

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1 service, especially in counties in which oil and gas development continue to
2 expand. Since its last rate case, SPS has invested more than \$448 million in New
3 Mexico infrastructure—including upgrading its distribution and transmission
4 systems, expanding renewable energy generation, and facilitating local economic
5 development—to support the state’s growth and meet customer demand, which has
6 helped generate job growth and increased local and state tax revenues.¹⁶ These
7 increased tax revenues, in turn, have contributed to a surplus in the State’s budget.
8 In short, because of its continued investments, SPS’s electric services have
9 contributed to the economic success of its customers and southeastern New Mexico.

10 **Q. What is the impact of SPS using both PPAs and company-owned generation**
11 **in its portfolio?**

12 A. SPS has voluntarily built its generation portfolio using a blend of PPAs along with
13 company-owned projects. Selecting between these approaches to secure electric
14 supply for its customers, rather than mechanically taking one approach or the other
15 in all instances, demonstrates SPS’s commitment to delivering cost-effective,
16 reliable electricity for its customers. This is particularly so when you consider that

¹⁶ Direct Testimony of Brooke A. Trammell.

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1 PPA's create risk for SPS and its shareholders. SPS does not earn any return under
2 traditional ratemaking on PPAs, even though SPS must obtain regulatory approval
3 for these contracts, and SPS's credit rating calculations are negatively impacted by
4 the inclusion of PPAs in rating agency determinations of SPS's debt. Providing
5 SPS and its investors with its requested return of 10.75% in recognition of this
6 additional risk that it takes on in pursuit of cost-effective, reliable service is
7 consistent with: (1) setting utility returns commensurate with utility risks; and (2)
8 rewarding and incentivizing utilities' use of customer-centric considerations in
9 planning and performance.

10 **Q. How does SPS's performance compare to others in the industry?**

11 A. SPS continues to excel when compared to others in the utility industry and its
12 performance should serve as an example to other utilities in New Mexico and across
13 the country. SPS provides safe, reliable service while leading the clean energy
14 transition by integrating renewable and clean energy resources into its generation
15 portfolio – going above and beyond what is required of it under the ETA. As part
16 of its forward-looking commitment to reliability and sustainability, SPS is working
17 tirelessly to address not only the current needs of its customers, but it is also
18 assessing the future needs of its customers and the grid.

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1 V. **THE COMMISSION SHOULD RECOGNIZE SPS'S CONTINUED**
2 **EXCELLENT PERFORMANCE**

3 **Q. What is your conclusion regarding the proper ROE for SPS?**

4 A. It is my opinion that the Commission should approve an ROE of 10.75% to: (1)
5 encourage investments that ensure the distribution system and generation mix
6 promote resiliency and meet customer demand in an economical manner that is
7 consistent with climate and environmental policy goals, (2) recognize and reward
8 SPS's safe, reliable service, and (3) compensate SPS and its investors for the risks
9 they face in meeting customers' needs and New Mexico's policy goals. As a policy
10 matter, a supportive regulatory environment is critical for SPS to continue its
11 industry-leading performance. It is my conclusion that SPS's excellent
12 performance justifies approval of 10.75%.

13 **Q. How does the current economic environment impact this analysis?**

14 A. The economic environment today is significantly different than what existed in
15 prior rate cases. Not only have fuel prices increased, but inflation has driven up the
16 cost of goods and services across nearly every industry. SPS has consistently
17 demonstrated empathy for its customers in this high-price environment by holding
18 down the costs under its control and by providing customer assistance programs to

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1 help offset the impact of fuel price increases and inflation on customers' bills. An
2 example of these efforts is SPS's proposed Energy Assistance Program ("EAP"),
3 which is described in more detail in the direct testimony of Ms. Trammell, that will
4 provide supplemental energy bill assistance to low-income households beyond
5 what is provided by New Mexico's Low-Income Home Energy Assistance
6 Program. If approved, the EAP's \$750,000 budget would be used to provide
7 income-based bill credits and forgive arrearages for the low-income customers.¹⁷
8 In addition, SPS has partnered with the Salvation Army to create an EnergyShare
9 program ahead of the winter heating season, which will allow customers to
10 contribute to an account used for direct pay customer assistance. SPS has also
11 proposed a percentage of bill program for income-qualified customers, which Xcel
12 Energy has successfully used in other jurisdictions. SPS has also engaged in
13 extensive direct outreach to customers to promote customer assistance programs
14 via social media, email, phone calls, and by mailing pre-filled applications for
15 customer assistance. This outreach has resulted in a significant increase in the
16 number of customers served by customer assistance programs.

¹⁷ Direct Testimony of Brooke A. Trammell.

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1 **Q. Why have rates increased from prior proceedings?**

2 A. The rates proposed in this proceeding reflect SPS's commitment to invest with a
3 long-term view of grid readiness, including to ensure that its system is prepared for
4 the transition to renewable energy generation. Thus, the increase in base rates is
5 due to SPS's capital investments to meet load growth and to expand renewable
6 energy integration, the additional cost of inflation, and costs precipitated by
7 changes in jurisdictional allocation. However, increases in the overall cost on
8 customer bills are primarily driven by the cost of fuel that is out of SPS's control,
9 and it should not reflect negatively on SPS.

10 **Q. How do utilities and customers benefit from the Commission recognizing**
11 **SPS's performance in this proceeding?**

12 A. A regulatory structure that recognizes and rewards utilities for providing high-
13 quality, cost-efficient service to their customers encourages the utility to continue
14 such behavior, better aligns the utility's goals with its customers' goals—and those
15 of the Commission, incentivizes performance by other utilities whose rates are
16 regulated by the Commission, and ensures that the utility and the customer share in
17 the success of the utility.

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1 **Q. If the Commission does not recognize excellent performance, what would be**
2 **the likely effects?**

3 A. Ignoring utility performance in ratemaking proceedings suggests that excellent
4 performance is not valued by the Commission. If a high-performing utility such as
5 SPS receives the same ROE as lower-performing utilities, there is little to motivate
6 the high-performing utility to maintain its efforts. It would also not encourage
7 lower-performance utilities to improve.

8 **Q. What are the benefits of recognizing excellent performance?**

9 A. Recognizing and rewarding SPS's excellent performance will benefit its customers,
10 advance New Mexico's policy goals, and encourage SPS to continue to exceed
11 statutory expectations. It will also allow SPS continued access to the capital it
12 needs, at the lowest possible cost, to continue to provide excellent service in
13 southeastern New Mexico.

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1

VI. CONCLUSION

2 **Q. What is your recommendation?**

3 A. I recommend that the Commission recognize SPS's excellent performance by
4 adopting the 10.75% ROE recommended by Mr. D'Ascendis.

5 **Q. Does this conclude your pre-filed direct testimony?**

6 A. Yes.

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 THE PLANT X UNIT 1,)
PLANT X UNIT 2, AND CUNNINGHAM)
UNIT 1 GENERATING STATIONS AND)
AMEND THE ABANDONMENT DATE)
OF THE TOLK GENERATING)
STATION; AND (3) OTHER)
ASSOCIATED RELIEF,)
)
SOUTHWESTERN PUBLIC SERVICE)
COMPANY,)
)
APPLICANT.)

CASE NO. 22-00286-UT

VERIFICATION

On this day, November 18, 2022, I, Suedeem G. Kelly, swear and affirm under penalty of perjury under the law of the State of New Mexico, that my testimony contained in Direct Testimony of Suedeem G. Kelly is true and correct.

/s/ Suedeem G. Kelly
SUEDEEN G. KELLY

SUEDEEN G. KELLY

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Washington, DC 20001
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EMPLOYMENT

Jenner & Block, LLP, Washington, DC
Partner and Co-Chair of Energy Practice (2017-Present)

Chosen by *Law360* - List of Ten Influential Women in Energy Law (2018); Jenner & Block Energy Practice chosen by *Law360* Five Top Energy Practices (2019)

Akin Gump Strauss Hauer & Feld LLP, Washington, DC Partner, and Chair of Energy Practice (2012-2017)

Chosen by *Metropolitan Corporate Counsel* as its cover story for January 2016; Chambers Global Ranked (2012-2016), energy electricity, regulatory and litigation; Recognized by *The National Law Journal* as 2015 Top 50 Regulatory & Compliance Trailblazers in environment, energy and law; Top Author, JD Supra Readers' Choice Award (2015).

Member, Board of Directors, **UIL Holdings**, New Haven, CT (2011 -2015)

Member, Board of Directors, **Access Midstream Partners**, Oklahoma City, OK (2010 -2015)

Member, Board of Directors, **Tendril**, Boulder, CO (2010-2012)

Patton Boggs LLP, Washington, DC Partner, 2010 -2012
Co-Chair of Energy Industry Practice

Federal Energy Regulatory Commission, Washington, DC Commissioner (2003 -2009)
Responsibilities included (1) making decisions in approximately 1300 cases each year involving electric and natural gas wholesale markets and interstate transmission, hydroelectric licensees and gas pipeline certificates, oil pipeline rates, electricity reliability, and enforcement; (2) maintaining relations with the U.S. Senate Energy and Natural Resources Committee and the U.S. House Commerce and Energy Committee, including testifying before the committees as required and following legislative developments; (3) maintaining relations with industry and market participants; (4) speaking publicly on energy industry developments and maintaining relations with the press; (5) co-chairing the Smart Grid Collaborative between FERC and the National Association of Regulatory Utility Commissioners; (6) managing the budget and staff of the Office of the Commissioner.

University of New Mexico School of Law, Albuquerque, NM
Professor of Law, 1986 - 2003

Taught Energy Law, Public Utility Regulation, Legislative Process and Administrative Law, and Administrative Practice. Served as Editor-in-Chief, Natural Resources Journal (1995-2000) (responsibilities included managing all aspects of the publication of four volumes of the Journal each year, its budget and administrative staff, and supervising the student editorial staff). Was the Lewis & Clark Law School Distinguished Visitor (1998) and was awarded the Susan and Ronald Friedman Faculty Excellence in Teaching Award (1995-96) and the Keleher & McLeod Professor of Law Award (1997-99).

Staff of U.S. Senator Jeff Bingaman, Washington, DC
Detail to the U.S. Senate Energy and Natural Resources Committee, 1999 (on leave from U. of NM)
Contributed to development of energy and hydroelectric licensing legislation.

California Independent System Operator, Folsom, CA Regulatory Counsel, 2000 (on leave from U. of NM)

CAISO operates much of California's transmission grid and dispatches interconnected generation, which was coordinated with the California Power Exchange until 2001. Responsible for learning and understanding the ISO's protocols and tariff provisions so as to be able to answer day-to-day legal questions. Worked on the regulatory proceeding involving the 70 unresolved issues remaining from the FERC's conditional certification of the ISO.

Modrall, Sperling, Roehl, Harris & Sisk, Albuquerque, NM
Attorney, 2001 - 2003 (on leave from U. of NM)

Responsibilities included creating and heading up the firm's public utility practice. Clients included independent power producers, water utilities, a local gas distribution company, and NM State University in its capacity as a large electricity customer.

Suede G. Kelly, Attorney-at-Law, Albuquerque, NM
Attorney, 1986 - 2001

Managed a part-time practice in federal and state energy and public utility law, representing private and publicly-owned clients in transactions, legislation, rulemakings and litigation concerning electric, gas and water utility certification, rates and service; electricity assets siting, financing, acquisitions and mergers; electric and gas industry restructuring; and doing business with electric and gas utilities.

New Mexico Public Service Commission, Santa Fe, NM
Chairwoman, 1984 - 1986.
Commissioner, 1983 - 1984.

Responsibilities included regulation of the state's electric, gas and water utilities; management of the agency, its budget and staff; and maintaining relations with the State Legislature, the Governor's Office, the industry, and the public.

New Mexico Office of the Attorney General, Santa Fe, NM
Attorney, Public Utilities Division, 1982 - 1983

Managed cases being litigated in New Mexico state courts and cases before the NM Public Service

Commission.

Luebben, Hughes & Kelly, Albuquerque, NM

Partner, 1978-1982

Managed a private law practice, representing clients in state and federal litigation and regulatory agency practice in utility, natural resources, energy and Indian law.

University of New Mexico Graduate School of Public Administration, Albuquerque, NM

Adjunct Faculty, 1979 - 1982

Taught Administrative Law.

Natural Resources Defense Council, Inc., Washington, DC

Attorney, 1977 - 1978

Law Clerk, 1975

Managed a case load involving environmental litigation in the federal courts, federal agency proceedings and federal legislative developments.

Ruckelshaus, Beveridge, Fairbanks & Diamond, Washington, DC

Associate Attorney, 1976 - 1977

Worked on cases in federal litigation, federal and state agency proceedings, and helped to advise clients regarding legislation. Matters involved environmental, commercial and constitutional law.

U.S. Environmental Protection Agency, Washington, DC

Law Clerk, 1974

Provided research regarding the Federal Water Pollution Control Amendments of 1972 and federal clean water policy.

EDUCATION

Cornell Law School, J.D., *cum laude*, 1976.

Cornell Law Scholarship; Delaware School Foundation Scholarship; International Law Journal Staff; Director, Cornell Legal Aid (responsible for managing the case load of the Family Division and supervising its student attorneys).

University of Rochester, B.A. in Chemistry, *With Distinction*, 1973.

Bausch & Lomb Science Award and Scholarship; President, University Women's Residence Assistants (responsible for managing women's residential assistance program and supervising the residence assistants).

PUBLICATIONS WITHIN THE LAST FIVE YEARS

To Ensure That Its Policies Support the Continued Development of Reliable and Resilient Transmission Infrastructure, FERC Should Discontinue Its Practice of Allowing Pancaked Complaints (Edison Electric Institute) (2018).

Escalating Threats to Infrastructure Confirm Our Need to Harden the Electric Grid (The Hill) (Oct. 30, 2017).

Episode 7: Mysterious Frontiers: The New FERC, Grid Geeks Podcast (August 9, 2017) (with host Alison Clements), available at <http://www.goodgrid.net/blog/2017/8/9/grid-geeks-podcast-episode-7>.

Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies, Lawrence Berkeley National Laboratory - Energy Analysis and Environmental Impacts Division (December 2016) (co-authored with Jeffery S. Dennis, Robert R. Nordhaus, and Douglas W. Smith), available at <https://www.energy.gov/sites/prod/files/2017/01/f34/Federal%20State%20Jurisdictional%20Split--Implications%20for%20Emerging%20Electricity%20Technologies.pdf>.

A FERC challenge: Opening up electricity markets to advanced energy technologies, UtilityDive.com (June 30, 2016) (co-authored with Arvin Ganesan), available at <https://www.utilitydive.com/news/a-ferc-challenge-opening-up-electricity-markets-to-advanced-energy-technol/421891/>.

SWORN TESTIMONY

Enable Mississippi River Transmission, LLC v. Linn Energy Holdings, et al., Adversary No. 16-6017, U.S. Bankruptcy Court for the Southern District of Texas Victoria Division. On behalf of Linn Energy Holdings, et al. (2022)

Bandera Master Fund LP, et al. v. Boardwalk Pipeline Partners LP, C.A. No. 2018-0372-JTL, Delaware Court of Chancery. On behalf of Boardwalk Pipeline Partners LP (2020-21).

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of its Retail Rates Under Advice Notice No. 292; (2) Authorization and Approval to Abandon its Plant X Unit 3 Generating Station; and (3) Other Associated Relief, No. 20-00238-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2021).

In Re: Extraction Oil & Gas, Inc. v. Grand Mesa Pipeline LLC, Case No. 20-11548 (CSS), U.S. Bankruptcy Court for the District of Delaware, Oct. 1, 2020. On behalf of Grand Mesa Pipeline LLC.

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of Its Retail Rates Under Advice Notice No. 282; (2) Authorization and Approval to Shorten the Service Life of and Abandon Its Tolk Generating Station Units; and (3) Other Related Relief, No. 19-00170-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2019)

In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity, No.EA-2016-0358 (Public Service Commission of the State of Missouri) On behalf of Grain Belt Express Clean Line LLC (2016)

Rockies Express Pipeline LLC v. U.S. Dep't of the Interior, Civilian Board of Contract Appeals, CBCA 3704 (1921)-REM. [REM denotes that the case was on remand from the U.S. Court of Appeals for the Federal Circuit.] On behalf of Rockies Express Pipeline LLC (2015-16)

In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc., No. 9361 (Public Service Commission of the State of Maryland). On behalf of Exelon Corporation (2015)

PROFESSIONAL ACTIVITIES

Member, Expert Advisory Board, Initiative on Climate Risk and Resilience Law, www.icrrl.org (2021-Present).

Member, Board of Directors, Advanced Energy Economy Institute (2020-Present)

Member, Advisory Board of Directors, American Wind Energy Association (2019-2020)

Member, Board of Advisors, Duke University Nicholas Institute (2018-Present)

Member, Dean's Advisory Council, Hajim School of Engineering, University of Rochester, Rochester, NY (2012 - 2020).

Rocky Mountain Mineral Law Foundation, Trustee (1988 - 1993, 2015 - 2017).

Member, Environmental Law Institute Leadership Council (2015 -2017).

Member, Advisory Board, The Perfect Power Institute, Chicago, IL (2011 – 2015).

Board Member, Charitable Foundation of the Energy Bar Association (2010 - 2013).

Member, Advisory Board, Gridquant, Columbus, OH (2013).

Member, Smart Grid Advisory Committee, National Institute of Standards and Technology (2010 - 2013).

Council Member, American Bar Association, Section of Administrative Law and Regulatory Practice (2010 - 2012).

Advisory Council, Women's Council on Energy and Environment, Washington, DC (2008 – 2012; Chair 2010 - 2012).

Council Member, American Bar Association, Section of Environment, Energy and Resources (2000 - 2003).

New Mexico Women's Bar Association (1991 - 2003).

Barrister, H. Vearle Payne American Inn of Court (1995 - 2003).

Board Member, Santa Fe Diocese Foundation (1999 - 2003).

Founding Board Member, Albuquerque Open Space Alliance (1996 - 1999).

N.M. Legislative Task Force on Management of the Middle Rio Grande Bosque (1993 - 1994).

American Association of Law Schools, Chair of the Executive Committee of the Legislation Section (1994 - 1995).

Border Research Institute of New Mexico State University, Member of the Advisory Committee on its studies (1992 - 1993).

The National Regulatory Research Institute, Ohio State University, Member of the Research Advisory Committee to the Board (1988 - 1992).

Board Member, New Mexico Bar Association, Natural Resources Section (1987 - 1992)

U.S. Consumer Product Safety Commission, Chair of its Advisory Council (1980 - 1981); Member (1979-1981).

U.S. National Air Quality Commission-Four Corners Region Study, Member of Advisory Committee (1979 - 1981).

N.M. Legislative Task Force, Federal Lands Action Group, (1979 - 1981).

Washington D.C. Council of Lawyers, Executive Board Member (1977 - 1978).

Member of the Bars of New Mexico and the District of Columbia; of the U.S. Courts of Appeal for the District of Columbia, 9th and 10th Circuits; and of the U.S. District Courts for the District of Columbia and New Mexico