

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN)
PUBLIC SERVICE COMPANY’S)
APPLICATION REQUESTING A)
DETERMINATION ON LOCATION)
APPROVAL OF TWO SOLAR FACILITIES, A)
BATTERY ENERGY STORAGE SYSTEM,)
AND A 230 KV TRANSMISSION)
GENERATION TIE LINE IN LEA COUNTY)
AND OTHER ASSOCIATED RELIEF,) **CASE NO. 24-00 ____ -UT**
)
SOUTHWESTERN PUBLIC SERVICE)
COMPANY,)
)
APPLICANT.)
)
)
)

APPLICATION

In accordance with Section 62-9-3 of the New Mexico Public Utility Act (NMSA 1978, §§ 62-3-1 *et seq.*, “PUA”) and New Mexico Public Regulation Commission (“Commission”) Rule 17.9.592 NMAC, Southwestern Public Service Company (“SPS”) requests:

- a) that, in light of existing uncertainty,¹ the Commission first resolve the threshold question presented in this matter of whether the capacity of the following three facilities should be aggregated to determine whether they collectively qualify as a “Large Capacity Plant” for purposes of Section 62-9-3 of the PUA (“Location

¹ As explained further herein, whether location approval is required in this matter turns on whether the capacity of the BESS is aggregated with the capacity of the SPS Solar Projects for purposes of determining whether the 300 MW threshold to qualify as a Large Capacity Plant is satisfied. In prior matters, the Commission has declined to aggregate battery storage with associated solar facilities for purposes of calculating the 300 MW threshold. *See infra* note 6 (citations to prior Commission orders). However, in those cases the Commission’s determination was made in the course of resolving a threshold question presented in a location approval application or was based on the limited facts presented. Accordingly, SPS files this location approval application but requests

Approval Statute”) and 17.9.592 NMAC (“Location Approval Rule”): (a) Cunningham 1 Solar, a 72 MW solar facility located at SPS’s existing Cunningham Generating Station; (b) Cunningham 2 Solar, a 196 MW solar facility located at SPS’s existing Cunningham Generating Station (collectively, “SPS Solar Projects”); and (c) Cunningham 1 Battery, a 36 MW battery energy storage system located at SPS’s existing Cunningham Generating Station (“BESS”);² and

(b) that, if the Commission does determine that the SPS Solar Projects and BESS collectively qualify as a “Large Capacity Plant” requiring location approval, the Commission issue an order:

- i. granting location approval of the SPS Solar Projects and BESS; and
- ii. granting location approval of the proposed 230/115-kV double circuit transmission (Gen-tie) line route and substation that will connect the SPS Solar Projects and BESS with SPS’s existing Cunningham Generation Substation (“Gen-Tie Line”) (the SPS Solar Projects, BESS, and Gen-Tie Line are collectively referred to herein as the “Projects”); and

the Commission make an initial determination on the question of whether the referenced facilities qualify as a “Large Capacity Plant.”

² SPS has requested that the Commission issue a Certificate of Public Convenience and Necessity (“CCN”) for these proposed projects in Case No. 23-00252-UT, which is currently pending before the Commission. *See Application of Southwestern Public Service Company Requesting: (1) Issuance of a Certificate of Public Convenience and Necessity to Construct and Operate Solar Generation and Battery Storage Projects and Associated Facilities; (2) Authorization of Related Ratemaking Principles Including Accrual of an Allowance for Funds Used During Construction; (3) Authorization to Abandon the Cunningham Unit 2 Generating Station; and (4) Other Associated Relief*, Case No. 23-00252-UT.

- (c) that the Commission issue a decision in this matter within 60 days after notice is given, if no protest is filed, or, if a protest is filed, within 90 days of the Commission's final decision in Case No. 23-00252-UT.

These approvals and authorizations are described in this Application and SPS's supporting pre-filed direct testimony concurrently filed with the Application.

I. JURISDICTION

1. SPS is a New Mexico corporation that owns, operates, and controls electric generation, transmission, and distribution plant, property, and facilities that provide retail electric service to portions of New Mexico and Texas, and electric energy and power to wholesale customers. SPS is a public utility in New Mexico as defined in PUA Section 62-3-3³ and is subject to the jurisdiction and authority of this Commission.

2. A certified copy of SPS's articles of incorporation is on file with the Commission.

3. SPS's principal office in New Mexico is located at 111 East Fifth Street, Roswell, New Mexico 88201, and its principal corporate office is located at 790 S. Buchanan Street, 7th Floor, Amarillo, Texas 79101.

4. SPS is a wholly owned subsidiary of Xcel Energy Inc. ("Xcel Energy"), which is a holding company under Federal Energy Regulatory Commission ("FERC") regulations adopted under the Public Utility Holding Company Act of 2005.⁴ Xcel Energy owns several electric and natural gas utility operating companies, a regulated natural gas pipeline company, and three electric transmission companies.⁵

³ PUA § 62-3-3(G).

⁴ 18 C.F.R. § 366.1.

⁵ Xcel Energy is the parent company of four utility operating companies: Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Public Service Company of

II. AUTHORIZED REPRESENTATIVES AND SERVICE OF DOCUMENTS

5. SPS's corporate representatives and attorneys who should receive all notices, pleadings, discovery requests and responses, and other documents related to this case are:

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Colorado, a Colorado corporation; and SPS. Xcel Energy's natural gas pipeline company is WestGas InterState, Inc. Through a subsidiary, Xcel Energy Transmission Holding Company, LLC, Xcel Energy also owns three transmission-only operating companies: Xcel Energy Southwest Transmission Company, LLC; Xcel Energy Transmission Development Company, LLC; and Xcel Energy West Transmission Company, LLC, all of which are currently regulated by FERC.

III. DESCRIPTION OF PROPOSED PROJECTS

6. In Case No. 23-00252-UT, which is currently pending before the Commission, SPS proposes to construct and operate the following Projects:

- a) Cunningham 1 Solar Project - a 72 MW solar facility located on 6,442 acres approximately 10 miles west of Hobbs, New Mexico in Lea County;
- b) Cunningham 2 Solar Project - a 196 MW solar facility located on the same 6,442 acres as the Cunningham 1 Solar Project;
- c) Cunningham 1 Battery - a 36 MW, four-hour BESS system that will be co-located on the Cunningham 1 Solar 6,442 acre site; and
- d) a 230-kV/115-kV double circuit transmission (Gen-tie) line that will connect SPS's existing Cunningham Generation Substation, located approximately 10 miles west of Hobbs, New Mexico, to the new Cunningham Solar Collector Substation, which is located approximately 10.5 miles northwest of Hobbs, New Mexico. The proposed transmission line is approximately 7.0 miles (37,117 feet) in length.

7. SPS expects to place the Projects in service on the following dates: Cunningham 1 Solar – April 1, 2026; Cunningham 2 Solar – April 1, 2027; Cunningham 1 Battery – April 1, 2026; and Gen-Tie Line – October 2025.

8. As discussed in detail in Case No. 23-00252-UT, the Projects are needed to meet capacity needs because SPS's service territory is experiencing material customer growth and economic development and resource adequacy requirements are evolving in the Southwest Power Pool, Inc. Those items, paired with the retirement of aging generation units that have served SPS customers for over 70 years, has created a capacity need on SPS's system.

IV. LOCATION APPROVAL REQUIREMENTS

9. Section 62-9-3 of the Public Utility Act (“Location Approval Statute) and Rule 17.9.592 (“Location Approval Rule”) require parties to obtain Commission approval of the location of generation facilities capable of operation at 300 MW or more (“Large Capacity Plants”) and the location of transmission lines that operate at 230 kV or more (“Large Capacity Transmission Lines”) and are connected to a Large Capacity Plant.

10. The Commission has previously declined to aggregate generating facilities and battery storage systems for purposes of requiring location approval.⁶ The SPS Solar Projects and BESS will only exceed 300 MW in capacity, and therefore will only qualify as a Large Capacity Plant, if the capacity of the BESS is aggregated with the SPS Solar Projects. Therefore, a threshold question that the Commission must resolve in this matter is whether the capacity of all three facilities should be aggregated, such that location approval is required.

11. Section 62-9-3(E) provides that the location of a Large Capacity Plant shall be approved “unless the commission finds that the operations of the facilities for which approval is sought will not be in compliance with all applicable air and water pollution control standards and regulations existing or will unduly impair system reliability.” Section 62-9-3(G) requires that a proposed location comply with land use requirements. Rule 17.9.592.9 NMAC implements the statute and establishes approval criteria.

⁶ *In the Matter of the Petition for Declaratory Order or, in the Alternative, Application of San Juan Solar Project, LLC for Determination of Right-of-Way Width for the San Juan Solar Gen-Tie*, Case No. 21-00154-UT, Order on Requirement for Location Approval for the San Juan Solar Project at ¶ 15 (Aug. 4, 2021); *see also In the Matter of the Joint Application of Atrisco Solar LLC and Atrisco Energy Storage LLC for Location Approval of the Atrisco Solar & Storage Facilities and Associated Transmission Facilities in Bernalillo Cnty., New Mexico Pursuant to NMSA § 62-9-3; and Right-of-Way Width Determination Pursuant to NMSA § 62-9-3.2*, Case No. 22-00161-UT, Final Order Adopting Recommended Decision with Modifications at 3 (“The Commission concludes that the energy-storage facilities Atrisco proposes are not generation facilities and therefore do not require location approval under Section 62-9-3.”) (Oct. 26, 2022).

12. Section 62-9-3(F) provides that the location of a Large Capacity Transmission Line shall be approved unless the location will unduly impair important environmental values or power system reliability.⁷ Section 62-9-3(G) provides that an application shall not be approved if it violates an existing state, county, or municipal land use statute or regulation unless the Commission finds the regulation is unreasonably restrictive. Rule 17.9.592.10 NMAC implements the statute and establishes criteria for the commission's approval of Large Capacity Transmission Lines.

13. Section 62-9-3(K) provides that the Commission may approve an application for location approval without a hearing if no protest is filed within 60 days of the date notice is given and requires the Commission to issue a decision within six months from the date an application is filed. However, Section 62-9-3(K)(3) provides that if a utility files an application for location approval of a transmission line while its application for a CCN is pending – which is the case here – the commission shall issue its order granting or denying the application for location approval within ninety days from the date the CCN application is approved. Section 62-9-3(L) allows the Commission to extend the deadline to approve the location of a transmission line for an additional nine months if necessary to determine whether the line will unduly impair important environmental values.

14. The SPS Solar Projects and BESS, individually, are not capable of operation at 300 MW or more. Therefore, they will not qualify as a Large Capacity Plant under Section 62-9-

⁷ Section 62-9-3(M) establishes that important environmental values include: (1) existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed location; (2) fish, wildlife and plant life; (3) noise emission levels and interference with communication signals; (4) the proposed availability of the location to the public for recreational purposes, consistent with safety considerations and regulations; (5) existing scenic areas, historic, cultural or religious sites and structures or archaeological sites at or in the vicinity of the proposed location; and (6) additional factors that require consideration under applicable federal and state laws pertaining to the location.

3 of the PUA or Rule 17.9.592.9 NMAC, and will not require location approval, unless the Commission determines in this matter that it is appropriate to aggregate the capacity of all three facilities for purposes of location approval.

15. If the Commission determines that the capacity of the facilities should not be aggregated, and are therefore not a Large Capacity Plant, then the Gen-Tie Line would not qualify as a Large Capacity Transmission Line under Section 62-9-3 of the PUA or Rule 17.9.592.10 NMAC and would not require location approval.

V. SPS'S REQUESTS

16. SPS first requests that the Commission issue a determination as to whether the capacity of the SPS Solar Projects and BESS should be aggregated for purposes of determining whether the facilities collectively qualify as a Large Capacity Plant requiring location approval. While, as noted above, prior Commission orders suggest that the capacity of the BESS should not be aggregated with the SPS Solar Projects, such that location approval would not be required in this matter, SPS has filed this location approval application because uncertainty exists in review of past Commission precedent.

17. In the event the Commission determines location approval is required under Section 62-9-3 of the PUA and Rule 592, SPS is providing in this application information that satisfies the Commission's location approval requirements and requests that the Commission grant location approval of the SPS Solar Facilities, BESS, and Gen-Tie Line.

18. SPS is providing direct testimony of the following witnesses, who demonstrate that the SPS Solar Facilities, BESS, and Gen-Tie Line satisfy the Commission's requirements for location approval should the Commission determine it is necessary:

- (a) Brooke A. Trammell, whose testimony: (i) provides an overview of SPS and the Projects; (ii) describes the location approval requirements and

identifies the witnesses who address each requirement; and (iii) establishes SPS's compliance with certain components of the Location Approval Statute and Rule, including regarding notice;

- (b) Sean L. Frederiksen, whose testimony: (i) describes the proposed route of the Gen-Tie Line and explains how the route was selected; (ii) describes land ownership, rights-of-way, and easements for the proposed route; and (iii) demonstrates that the Gen-Tie Line, SPS Solar Facilities, and BESS comply with land use requirements.
- (c) Mark Lytal, whose testimony: (i) describes the Gen-Tie Line and associated facilities, including the in-service date, circuit design, construction, and interconnection; (ii) discusses the ROW for the Gen-Tie Line; and (iii) provides information regarding the SPS Solar Facilities and BESS; and
- (d) Andrea R. McArdle, whose testimony: (i) demonstrates that the Gen-Tie Line will not unduly impair important environmental values; (ii) provides Biological, Cultural, and Environmental Reports regarding the Gen-Tie Line; and (iii) provides a Biological Technical Memorandum regarding the SPS Solar Facilities and BESS and demonstrates that those facilities will comply with air and water quality requirements.

19. SPS requests that the Commission issue a decision within 60 days after notice is given if no protest is filed, or if a protest is filed, within 90 days of the Commission's final order in Case No. 23-00252-UT. SPS expects to receive a decision in Case No. 23-00252-UT in June of 2024. SPS will issue a new Request for Proposals ("RFP") in July 2024 to procure resources identified during its recently approved Integrated Resource Plan, and it would be beneficial for SPS to know whether it is authorized to proceed with the SPS Self-Build Projects, including with respect to their location, prior to issuing the RFP.

VI. NOTICE

20. In accordance with the PUA and Rule 592, SPS will serve a copy of its filing on the Lea County Commission, the New Mexico Attorney General, the New Mexico Environmental Department and the New Mexico State Engineer. SPS will also serve a copy of its filing on the Lea County Soil and Water Conservation Districts, will post a copy of its Application and

supporting direct testimony on Xcel Energy's website for New Mexico filings available at https://www.xcelenergy.com/company/rates_and_regulations/filings, and will deposit a copy of its Application and supporting direct testimony at the public libraries located in the county seat for Lea County (i.e. Lovington (Lea County)), as well as the Hobbs Public Library (Lea County) for review and examination by interested persons.

21. SPS's proposed form of Notice is attached to the Application as Exhibit A.

WHEREFORE, SPS respectfully requests:

- (a) that the Commission issue an order determining whether the capacity of the SPS Solar Projects and BESS should be aggregated for purposes of the Location Approval Statute and Rule; and
- (b) if the Commission determines that the capacity of the SPS Solar Projects and BESS should be aggregated such that location approval is required, that the Commission issue an order:
 - a. granting location approval of the Gen-Tie Line and associated facilities; and
 - b. granting location approval of the SPS Solar Projects and BESS.
- (c) that the Commission issue a decision in this matter within 60 days after notice is given if no protest is filed, or if a protest is filed, within 90 days of the Commission's final decision in Case No. 23-00252-UT.

Respectfully submitted,

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