

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF SOUTHWESTERN)
PUBLIC SERVICE COMPANY'S)
APPLICATION FOR AUTHORIZATION)
OF LARGE CUSTOMER)
RENEWABLE*CONNECT PROGRAM)
AND TARIFF AND OTHER)
ASSOCIATED RELIEF,)**

CASE NO. 23-00__-UT

**SOUTHWESTERN PUBLIC SERVICE)
COMPANY,)**

APPLICANT.)

DIRECT TESTIMONY

of

JUSTIN L. SMILEY

on behalf of

SOUTHWESTERN PUBLIC SERVICE COMPANY

August 11, 2023

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

<u>Acronym/Defined Term</u>	<u>Meaning</u>
Commission	New Mexico Public Regulation Commission
FERC	Federal Energy Regulatory Commission
LGS-T	Large General Service – Transmission
kV	Kilovolts
MW	Megawatts
MWh	Megawatt-hour
O&M	Operations & Maintenance
PPA	Purchase Power Agreement
R*C or Renewable*Connect	Large Customer Renewable*Connect program
R*C-I	Renewable Connect Initial Phase
R*C-II	Renewable Connect Phase II
Roswell-Chaves Solar Facilities	Roswell-Chaves Solar Generation Facilities
REC	Renewable Energy Certificate
SPS	Southwestern Public Service Company a New Mexico corporation, and wholly-owned subsidiary of Xcel Energy Inc.
Xcel Energy	Xcel Energy Inc.

LIST OF ATTACHMENTS

<u>Attachment</u>	<u>Description</u>
Attachment JLS-1	Subscription Process Summary (Filename: Attachment JLS-1.docx)
Attachment JLS-2	Renewable*Connect Program Agreement (Filename: Attachment JLS-2.docx)

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1 **I. WITNESS IDENTIFICATION AND QUALIFICATIONS**

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

3 A. My name is Justin L. Smiley. My business address is 790 S. Buchanan Street,
4 Amarillo, Texas 79101.

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

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

9 **Q. By whom are you employed and in what position?**

10 A. I am employed by SPS as Director, Business Customer Relations.

11 **Q. Please briefly outline your responsibilities as Director, Business Customer
12 Relations for SPS.**

13 A. As the Director, Business Customer Relations, I am responsible for customer
14 relationship management, and I oversee policies related to service to SPS’s business
15 customers. I also develop and direct account management strategies to promote and
16 maintain customer satisfaction among SPS’s largest retail customers. Finally, I am
17 responsible for managing communications and SPS policies that directly affect
18 SPS’s business customers.

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1 **Q. Please describe your educational background.**

2 A. I have a Bachelor of Science degree in Electrical Engineering from Texas Tech
3 University in Lubbock, Texas.

4 **Q. Please describe your professional experience.**

5 A. I started my full-time role with Xcel Energy in 2003 as a Distribution Engineer,
6 where I designed electrical service extensions for customers and other
7 improvements to the electrical distribution system. I also held various positions
8 within the Distribution Engineer organization in the Texas South Plains region of
9 SPS.

10 In 2010, I joined the Transmission Substation Field Engineer department in
11 the Texas Panhandle region of SPS responsible for engineering, maintenance,
12 construction, and operations of transmission and distribution substations in the
13 Texas and New Mexico region. Following this, I transitioned into the role of Senior
14 Substation Operations & Maintenance (“O&M”) Operations Manager, where I lead
15 a staff of field crews performing transmission business unit Federal Energy
16 Regulatory Commission (“FERC”) and North American Electric Reliability
17 Corporation testing and compliance, Substation Operations, outage restorations,

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1 and replacement/upgrade of system assets. In May of 2022, I was promoted to my
2 current position as Director, Business Customer Relations.

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1 **II. PURPOSE, SUMMARY OF TESTIMONY, AND RECOMMENDATIONS**

2 **Q. What is the purpose of your direct testimony?**

3 A. My testimony provides support for SPS’s application to offer its proposed Large
4 Customer Renewable*Connect (“R*C”) program, which, as described in more
5 detail by SPS witness Brooke A. Trammell, is a voluntary renewable energy
6 subscription program designed for SPS’s large customers with a monthly peak
7 demand of at least 5 megawatts (“MW”) served monthly at 69 kilovolts (“kV”) and
8 greater at a single premise. My testimony provides background information
9 concerning customer interest in SPS’s proposal, including details around the
10 requests SPS has received from customers for this type of program. Specifically,
11 my testimony:

- 12 • identifies and explains the interest of large commercial and industrial
13 customers for a product that fits their unique needs and desires concerning
14 renewable energy, both in the near-term and longer-term; and
- 15 • explains the overall offer to the customer including different lengths of
16 contracts as well as how customers would register for the program.

17 **Q. Please summarize the conclusions reached in your testimony.**

18 A. As discussed further below, I conclude the following:

- 19 • SPS’s large commercial and industrial customers have requested the
20 development of a voluntary renewable energy purchase program and

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1 indicated sufficient interest to fully subscribe the initial phase of the R*C
2 program, referred to as R*C-I; and

3 • SPS's proposed subscription terms and process are reasonable and
4 appropriate.

5 **Q. Were Attachments JLS-1 through JLS-2 prepared by you or under your direct**
6 **supervision or control?**

7 A. Yes.

1 **III. CUSTOMER INTEREST AND DEMAND FOR THE R*C PROGRAM**

2 **Q. Why is SPS offering a large customer voluntary renewable energy product?**

3 A. SPS has received customer requests for a large commercial and industrial voluntary
4 renewable energy purchase program. This filing addresses those customers’
5 desires.

6 **Q. What are these large commercial and industrial customers requesting?**

7 A. Many large commercial and industrial customers have communicated to me and
8 SPS their desire to have a number of options to help them meet their individual
9 sustainability goals and directives. This group of customers has also indicated their
10 interest in clean energy resources that will facilitate their ability to achieve their
11 own respective carbon neutrality goals. To that end, in August of 2021, SPS
12 conducted a survey of customers in its Large General Service – Transmission
13 (“LGS-T”) customer class with 5 MW or more of monthly peak demand at a single
14 premise to gauge interest in a large customer voluntary renewable energy purchase
15 program. The following table summarizes the results of the survey with customer
16 identifying information removed.

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Table JLS-1

Customer ¹	Subscription Interest (MW)	Subscription Term Interest (Years)
1.	12	10
2.	10	20
3.	80	10
4.	7	5
5.	5-10	5
6.	80	20

The survey results are consistent with the informal indications from many of SPS's large commercial and industrial customers that they are interested in participation in the R*C program. Since the survey, SPS has continued to receive interest from its LGS-T customers in a voluntary renewable energy purchase program.

Q. Why is SPS proposing a large customer voluntary renewable energy purchase program instead of directing its large commercial and industrial customers to its existing voluntary renewable energy purchase program?

A. SPS's existing voluntary renewable energy purchase program, Solar*Connect, was specifically designed for residential and small commercial customers. Large commercial and industrial customers purchase large amounts of power. If a single

¹ SPS has removed specific customer names in accordance with NMSA 1978, § 62-18-11(A).

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1 program were developed to fit residential, small commercial, and large industrial
2 customers, the possibility exists that a single large industrial customer could sign
3 up for most or all of the program, taking all available energy from the program to
4 the exclusion of the other customers. Similarly, because these customers need such
5 large blocks of energy, if they were limited under the hypothetical one-size-fits-all
6 program to a block similar in size to what a residential or small commercial
7 customer may want, the program likely would not provide enough energy to be a
8 meaningful alternative for a large commercial or industrial customer. A very small
9 block of energy to one of these customers might change their total amount of energy
10 from renewable resources by only a fraction of a percent, and this would not be a
11 useful measure towards meeting their corporate goals.

12 **Q. What is the expected time frame for meeting the customer interest in this**
13 **program?**

14 A. As discussed by SPS witness Brooke A. Trammell, SPS is proposing a two-step
15 implementation of the R*C program. SPS is proposing to supply the initial program
16 phase, Renewable Connect Initial Phase (“R*C-I”), with the existing approximately
17 80 MW non-jurisdictional generating capacity associated with the solar generation
18 facilities underlying two purchased power agreements (“PPAs”) between SPS and

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1 Roswell Solar, LLC and Chaves County Solar, LLC (collectively referred to as the
2 “Roswell-Chaves Solar Facilities”).² Because the Roswell-Chaves Solar Facilities
3 are already operating, SPS could meet the commitment of this program
4 approximately a year after it is approved by the New Mexico Public Regulation
5 Commission (“Commission”) and all appropriate documents and contracts are in
6 place with the participating customers.

7 **Q. Is there interest in expanding the program beyond the non-jurisdictional**
8 **capacity of the Roswell-Chaves Solar Facilities?**

9 A. As discussed by Ms. Trammell, the R*C-I program phase is designed to enable
10 expedited implementation of the R*C program through the use of SPS’s existing,
11 non-jurisdictional solar resources located in New Mexico. However, a future
12 offering could allow for expansion of the program. Ultimately, if SPS’s customers
13 request program expansion and SPS can identify and acquire an appropriate
14 resource, there may be opportunities for SPS to develop and seek Commission
15 approval of a future Renewable*Connect program phase.

² The approximately 80 MW portion of the Roswell-Chaves Solar Facilities is “non-jurisdictional” because, as discussed by SPS witness Ms. Trammell, SPS has not received approval from either the Commission or the Public Utility Commission of Texas to treat this capacity as a system resource.

1 **IV. R*C-I PROGRAM DETAILS, LOGISTICS AND TERMS**

2 **Q. At its outset, how will SPS’s proposed R*C program be implemented?**

3 A. SPS will begin implementation of the R*C-I program phase, immediately following
4 the Commission’s final approval in accordance with the following timeline:

Implementation Phase	Duration
• Customer Notice Period	Seven (7) Calendar Days after Commission approval of the R*C program.
• Customer Evaluation Period	Thirty (30) Calendar Days after completion of the Customer Notice Period.
• Company Evaluation Period	Thirty (30) Calendar Days after the completion of Customer Evaluation Period.
• Customer Subscription Period	Sixty (60) Calendar Days after the completion of the Company Evaluation Period.

5

6 **Q. Please describe how SPS will notify eligible customers of their right to
7 participate in the R*C-I program phase.**

8 A. Within 7 calendar days of Commission final approval, SPS will send all eligible
9 customers a form to identify their interest in the R*C-I program phase. The
10 Program Interest Query Form will be delivered via email to the normal business
11 and operating contact for each eligible premises and shall include SPS’s

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1 Subscription Process Summary document, a copy of the Large Customer
2 Renewable*Connect Program Agreement, a copy of the form of the estimated R*C
3 Rate Rider for 2025,³ and a one bill cycle cost estimate for customer participation
4 at the applicable premises. The Program Interest Query Form will seek the
5 following information from eligible customers: name, premises number,
6 subscription term requested, MW energy desired, other associated program
7 information, and willingness to accept a lesser amount of energy if demand for
8 subscriptions exceeds available renewable energy supply for the program. A copy
9 of the proposed Subscription Process Summary document is included with this
10 testimony as Attachment JLS-1. A copy of the proposed Large Customer
11 Renewable*Connect Program Agreement is included as Attachment JLS-2.

12 **Q. Will there be a minimum participation level for subscribing customers?**

13 A. Yes. Subscribing customers will have the right to purchase a minimum 5 MW share
14 of the Roswell-Chaves Solar Facilities non-jurisdictional generating capacity. If
15 the customer desires above 5 MW, they could enroll in 1 MW blocks above the 5

³ As described in the testimony of SPS witness Ruth M.Sakya, SPS will file a compliance advice notice and R*C Rate Rider consistent with the Commission's final decision in this case with its annual RPS filing on July 1, 2024, which will: (1) be based upon the Commission-approved terms, conditions, and the R*C rate and credit calculation methodologies, updated to reflect the most current R*C cost and credit components; and (2) allow for implementation of the R*C-I program phase beginning in January 2025.³

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1 MW minimum. Because customers will enroll on a per-premise basis, any premises
2 to be enrolled in the program would have to have a minimum monthly peak of 5
3 MW.

4 **Q. Please explain the basis for SPS's proposed minimum subscription level.**

5 A. The proposed minimum subscription level is designed to limit the program's
6 applicability to SPS's large commercial and industrial customers who typically
7 have monthly peak demands greater than 5 MW. Additionally, breaking the non-
8 jurisdictional capacity of the Roswell-Chaves Solar Facilities, of approximately 80
9 MW, into larger blocks will help to reduce program administration costs by
10 preventing a significant number of small customers from taking minor portions of
11 energy driving up administration costs.

12 **Q. Will there be a maximum participation level for subscribing customers?**

13 A. Yes. For each premises, a customer can subscribe for a generation share no greater
14 than the annual peak at the premises for the most recent twelve-month period at the
15 time of subscribing.

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1 **Q. Will a subscribing customer’s monthly renewable energy allocation precisely**
2 **match their subscription level?**

3 A. No. Although customers will be subscribing to the R*C program based on an
4 overall generation share (per MW) of the Roswell-Chaves Solar Facilities non-
5 jurisdictional output, their monthly energy allocation (“MWh”) will be tied to the
6 Roswell-Chaves Solar Facilities’ actual monthly generation. This approach is
7 consistent with that taken in SPS’s existing Solar*Connect program and is done to
8 ensure that generation from the facilities supplying the R*C-I program will match
9 the subscribed demand (i.e., ensuring the program is not over-subscribed).
10 Additionally, this approach will allow SPS to precisely measure when the R*C
11 program is fully subscribed.

12 **Q. How will SPS determine a subscribing customer’s monthly R*C-I renewable**
13 **energy allocation?**

14 A. To determine a subscriber’s monthly renewable energy allocation, SPS will
15 multiply the customer’s subscription share percentage—i.e., the ratio of the
16 subscriber’s generation share (in MW) to the total non-jurisdictional generating
17 capacity of the Roswell-Chaves Solar Facilities (~80 MW)—by the actual monthly
18 non-jurisdictional output of the Roswell-Chaves Solar Facilities.

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1 **Q. Is it possible that a subscribing customer’s actual monthly energy usage will**
2 **be less than the customer’s R*C-I subscription level?**

3 A. Yes, it is possible that a portion of a subscriber’s monthly R*C-I renewable energy
4 allocation can go “unused” by the subscriber. For example, this could occur in
5 instances in which a subscribing customer’s load levels drop due to a facility being
6 off line for a short period of time for maintenance or repair. SPS witness Ruth M.
7 Sakya addresses how SPS will calculate the volume of unused energy in such a
8 month as well as SPS’s proposed rate to be applied to subscribed but unused energy.
9 Ms. Trammell discusses why it is appropriate to charge subscribing customers for
10 unused energy and the reasonableness of SPS’s proposed unused energy charge.

11 **Q. Will there be a minimum participation term for customers who elect to**
12 **participate in the R*C-I program phase?**

13 A. Yes. For R*C-I, SPS will offer contract terms of either 10 years or 16 years. The
14 16-year term offering is based on and tied to the remaining term of the Roswell-
15 Chaves Solar Facilities PPAs. Thus, going forward, the length of the offering will
16 adjust consistent with the remaining length of the resource PPAs.

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1 **Q. How long will eligible customers have to evaluate and remit their Program**
2 **Interest Query Forms to SPS?**

3 A. Customers will have 30 calendar days to remit the Program Interest Query Form
4 to SPS and the Xcel Energy Renewable Choice Program Manager via email to a
5 dedicated email account.

6 **Q. Please describe SPS's proposed evaluation period.**

7 A. SPS proposes a 30-day evaluation period to review customers' Project Interest
8 Query Forms. When evaluating customer interest requests, SPS will allocate
9 available capacity from the non-jurisdictional share of the Roswell-Chaves Solar
10 Facilities among interested customers (on a percentage basis) within reasonable
11 ranges. If subscription availability remains, SPS will allocate the remaining
12 generation capacity, on a pro-ratio (percentage basis) share. If more than one
13 customer requests subscription shares, SPS will give preference to customers who
14 have indicated a willingness to subscribe for the 16-year term.

15 After reviewing and evaluating all interested customers' participation
16 requests, SPS will inform those customers of their proposed subscription levels.

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1 **Q How long will customers that are selected to participate in the program have**
2 **to remit their executed participation agreement?**

3 A. Selected participants will have 60 days to remit their signed Commission-approved
4 participant agreement to the Renewable*Choice Program Manager.

5 **Q. Can a subscribing customer increase their R*C subscription level?**

6 A. In the event that the program is not fully subscribed during the initial enrollment
7 period, a first come, first served open enrollment process will then be initiated. At
8 this point, the level of broad awareness marketing will be calibrated to the amount
9 of subscriptions needed to fully subscribe the R*C program resources.

10 **Q. Will SPS maintain a waitlist if customer demand for the program exceeds**
11 **available generation?**

12 A. Yes. First, for subscribing customers who did not receive their full subscription
13 request, SPS will keep the customer's name and unfilled request on file. If
14 generating capacity becomes available, either through subscription termination or
15 the expiration of 10-year term subscriptions, that customer would be notified and
16 given 30 calendar days to subscribe to the program. If, at that point, they do not
17 wish to participate then, the next customer on the list will be notified and provided
18 the option to subscribe to the program.

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1 Second, SPS will maintain a waitlist for customers interested in
2 participating should SPS expand the R*C program in the future.

3 **Q. When will customers begin receiving the solar energy?**

4 A. Upon approval from the Commission, SPS will exercise the Renewable Energy
5 Certificate (“REC”) Option granted in the Roswell-Chaves Solar Facilities PPAs.
6 Under the PPAs, the Company must provide 12-months prior written notice of its
7 intent to begin purchasing the RECs for the remainder of the term of the
8 agreements. Once SPS begins receiving the RECs, subscribing customers will start
9 receiving the energy from the R*C-I program offering. The RECs associated with
10 the subscribed energy will will be retired on behalf of the customers.

11 **Q. Will a subscribing customer have an early termination option?**

12 A. Yes, a subscribing customer may terminate their participation prior to the
13 completion of the customer’s subscription term by providing SPS written notice at
14 least sixty (60) days before the desired termination (Early Termination Effective
15 Date). However, a subscribing customer who terminates participation will be
16 subject to a monthly termination fee. Ms. Trammell explains how the termination
17 fee will be determined and describes the circumstances in which the terminating
18 customer will be relieved of the obligation to pay the entire early termination fee.

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1 **Q. Will SPS also implement a marketing strategy for the R*C program?**

2 A. Yes. As noted above, upon program approval, SPS will notify all current New
3 Mexico LGS-T customers with a demand greater than 5 MW of their eligibility to
4 enroll in the R*C program. In addition, to promote subscriber acquisition and
5 facilitate reaching future eligible customers, SPS has included in the R*C-I charge
6 a nominal amount for annual marketing activities. These activities include
7 developing marketing materials, creating targeted advertising campaigns,
8 organizing events, and establishing partnerships with other organizations.

9 **Q. How would SPS address oversubscription of the program?**

10 A. The program is designed to prevent oversubscription—i.e., a situation in which SPS
11 would be obligated to supply more energy than is produced by the R*C program
12 resource. It is possible that, during a particular billing period, total R*C
13 subscription levels could exceed the energy generation from the Roswell-Chaves
14 Solar Facilities due to weather conditions or facility maintenance causing the solar
15 generating station to come off line or operate at a reduced capacity for a period of
16 time. However, as explained by Ms. Sakya, subscribing customers are billed each
17 month on a per MWh basis for their generation share or percentage of the Roswell-
18 Chaves Solar Facilities' output. Consequently, in a period in which R*C program

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1 subscription levels exceed resource supply, the available energy would be allocated
2 to subscribing customers on a pro-rata basis based on subscription size.

3 **Q. Please describe what will happen if the R*C program is undersubscribed.**

4 A. In the event that the R*C program is undersubscribed—i.e., a situation in which
5 SPS would be obligated to supply less energy through the R*C program than is
6 produced by the R*C program resource—SPS will be responsible, as it is today, for
7 the unsubscribed energy as discussed by Ms. Trammell. Ms. Trammell also
8 explains that any costs associated with SPS's obligation to purchase the non-
9 jurisdictional portion of the Roswell-Chaves Solar Facilities' solar energy output
10 that are not borne by subscribing customers will not be passed on to non-
11 subscribing customers.

12 **Q. Please summarize your testimony.**

13 A. As discussed above, I conclude that: (1) SPS's customers have requested and
14 indicated sufficient interest in the proposed R*C program to justify and fully
15 subscribe the R*C-I program phase; (2) the terms and conditions of SPS's R*C
16 program are reasonable; and (3) the proposed subscription process for the R*C-I
17 program phase is reasonable.

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- 1 Q. Does this complete your testimony in this case?
- 2 A. Yes.

New Mexico Large Customer Renewable*Connect Subscription Process

Step 1: Letter of Intent/Request for Participation

Within 7 calendar days of the New Mexico Public Regulation Commission's final written and non-appealable order approving the Renewable*Connect ("R*C") program, SPS shall send a form via email to all customers eligible to participate in the program in order to identify customer interest.¹ This Program Interest Query Form will be delivered via email to the documented business and operating contact for each eligible premises and shall include a copy of the Large Customer R*C Program Customer Service Agreement, a copy of the form of the R*C Rate Rider tariff, and a projected monthly cost estimate for the premises. The Program Interest Query Form will seek the following information from eligible customers: name, premises number, subscription term requested, megawatt subscription level desired, other associated program information, and confirmation of the customer's willingness to accept a lesser amount of energy if subscriptions exceed available renewable energy supply for the program.

Customers shall have 30 calendar days to remit their completed Program Interest Query Form to SPS and the Xcel Energy R*C Program Manager via a program specific email to be established and included in the notification document.

Step 2: Evaluation of Requests for Participation

After the above-noted 30-calendar day period for eligible customers to submit their Program Interest Query Forms, SPS will begin its review and evaluation of the interested customers' participation requests. This evaluation period will last no more than 30 calendar days. After completion of its evaluation, SPS will issue an email notifying all applicants of their selection for participation in the R*C program and their proposed subscription size. Selected participants will then have 60 calendar days to remit the Commission-approved signed participant agreement to the SPS R*C Program Manager.

When evaluating customer interest requests, SPS will allocate available energy from the R*C program resource on a pro-ratio share among interested customers (on a percentage basis) within reasonable ranges. If subscription availability remains, SPS will allocate the remaining energy, on a pro-ratio (percentage basis) share. If more than one customer requests subscription shares, SPS will give preference to customers who have indicated a willingness to subscribe for the longest available subscription term.

Step 3: Unsubscribed Energy/Waiting List

If the program is not fully subscribed during the initial enrollment period, a first-come, first-served open enrollment process will then be initiated. In this event, the level of broad awareness marketing will be calibrated to the amount of subscriptions needed to fully subscribe the R*C program resources.

¹ Only a small number of customers are eligible, and all of these customers are assigned an SPS account manager. As a result, mass marketing is not necessary.

If that demand outweighs available resources, a waiting list will be established by the SPS R*C Program Manager. If additional subscription capacity becomes available, it will be allocated based on priority order in the listing. Should SPS expand the R*C program in the future, it would trigger a new call for customer participation and SPS would establish a new review process and prioritization ranking for those projects following the methodology described in Step 1 & Step 2 above.



Large Customer Renewable*Connect Program Agreement

This Large Customer Renewable*Connect Program Agreement (the “Agreement”) is entered into on XX/XX/20XX (the “Agreement Date”) by and between Southwestern Public Service Company, a New Mexico corporation (“the Company”) and _____ (“Customer”) (individually “Party” and together, “Parties”). The “Effective Date” of Agreement will begin on the Agreement Date. Except as otherwise provided for herein, capitalized terms shall have the meanings set forth in the Large Customer Renewable*Connect Rate Rider (the “R*C Rate Rider”), as defined below.

1. **General terms.** The Company agrees to sell, and the Customer agrees to buy energy generated from a Renewable*Connect Resource for the Company’s Large Customer Renewable*Connect program (“R*C Program”). The Company will retire renewable energy credits associated with the purchased energy in the Western Renewable Energy Generation Information System on behalf of Customer. The purchase and sale shall be subject to this Agreement and the terms and conditions of service as specified in the Company’s retail rate tariffs for electric service, including the R*C Rate Rider on file with the New Mexico Public Regulation Commission (“NMPRC”), as the same may be changed from time to time. A copy of the R*C Rate Rider, is available from the Company’s website at [Rate Books | Xcel Energy](#).¹ Should the R*C Rate Rider be modified by order of the NMPRC, this Agreement shall be controlled by and interpreted in conformance with such modifications. In the event of any conflict between the terms of this Agreement and the R*C Rate Rider, the R*C Rate Rider shall prevail.

2. **Subscription premises.** The Customer’s premises to which the Subscription Share shall apply is as follows.²

“Premises Address”	City	State	Customer	Premises ID

3. **Customer Representations, Warranties and Covenants.** Customer hereby makes the following representations and warranties to Company:
 - a) Customer warrants that the person signing this Agreement on behalf of Customer is

¹ https://www.xcelenergy.com/company/rates_and_regulations/rates/rate_books

² As defined in the R*C Rate Rider, a customer’s Renewable*Connect Allocation reflects the of percentage of the Renewable*Connect Resource’s actual generation that a subscriber has signed up for, measured in megawatt-hours (MWh).

individually authorized and competent to sign this Agreement and to bind Customer to the terms hereof;

- b) The Premises Address is the location at which Customer receives retail electric service from company; and,
- c) Customer represents as the date hereof, and warrants and covenants throughout the Term, that for the Premises Address it is and will be a retail electric service customer of Company and the Premises Address shall at all times be within the Company's electric service territory

4. Subscription Share and Charges. The Customer has chosen to purchase a (___) MW share of the energy generated from the Renewable*Connect Resource ("Subscription Share"). Each month the Company will use the Customer's Subscription Share to determine the customer's Renewable*Connect Allocation, which reflects the percentage of the Renewable*Connect Resource's actual monthly generation that a subscriber has signed up for, measured in megawatt-hours (MWh). A customer's monthly bill for energy purchased through the R*C Program will be calculated by multiplying the customer's monthly Renewable*Connect Allocation by the Renewable*Connect Charge, and then offsetting that amount by the Renewable*Connect Credit.

- a) Customer has the right to purchase a minimum 5 MW Subscription Share. If the Customer desires a Subscription Share above 5 MW, Customer may enroll in 1 MW blocks above the 5 MW minimum.
- b) For each premises, the Customer's Subscription Share can be no greater than the annual peak for the most recent twelve-month period at the premises at the time of subscribing.

5. Term. Customers have the option to select either a ten (10) or sixteen (16) year subscription term. The Customer has chosen a ___ year subscription term.

6. Early Termination Fee. The Customer may elect to terminate this Agreement and service under the R*C Rate Rider prior to the completion of the Customer's subscription term ("Early Termination") by providing the Company written notice at least sixty (60) days before the desired termination ("Early Termination Effective Date"). In the event of an Early Termination, the Customer shall pay the Company an Early Termination Fee.

- a) The Early Termination Fee will reflect all costs and credits associated with the renewable energy that was to be delivered to the customer during the remainder of the Term. From the Early Termination Effective Date until the end of the remaining months of Customer's subscribed Term, Customer shall pay on a monthly basis all charges associated with Customer's Renewable*Connect Allocation as calculated pursuant to Paragraph 4.
- b) Customer will not be obligated to pay the Early Termination Fee under the

circumstances defined in the R*C Rate Rider.

- c) Company will attempt to mitigate Customer's Early Termination Fee in accordance with the R*C Rate Rider.
 - d) In addition to the obligation to pay the Early Termination Fee, Customer shall retain any obligation it incurs prior to the Early Termination Effective Date.
 - e) If Customer later wishes to resume service under the R*C Rate Rider, Customer will be required to reapply for a new Subscription, and participation shall be subject to eligibility.
7. **Subscription Assignability.** This Agreement may be assigned or deemed assigned as follows. If the Customer is no longer the owner or authorized operator of the premises to which the Subscription Share applies, (i) the new owner or authorized operator of the premises may assume this Agreement in writing, in which case, this Agreement will be deemed assigned by the Customer with no further signature or other action required by the Customer, or (ii) the Company may deem this Agreement terminated (without requirement of notice) if the new owner or authorized operator of the premises does not take the actions in the foregoing clause (i) within a reasonable time, as determined by the company, but no less than thirty (30) days. If the new owner or authorized operator of the premises does not assume this Agreement, Customer shall, upon the request of the Company in its sole discretion, make any payments required in accordance with Paragraph 6.
8. **Customer Relocation Outside of Company Service Territory.** If the Customer moves outside of the Company's certificated service territory and the Customer has not met its obligations under this Agreement, the Customer's participation in the Program will be terminated and the Customer shall pay to the Company the Early Termination Fee as calculated pursuant to Paragraph 6.
9. **Customer Increase in Subscription Share.** Based on the availability of energy from the Renewable*Connect Resource, the Company may make available to Customers the opportunity to increase its Subscription Share at any point during the Term. An amendment to this Agreement is necessary to memorialize any increase in the Customer's Subscription Share.
10. **Unused Energy.** Unused Energy is calculated as the difference between Customer's monthly Renewable*Connect Allocation in MWh and the Customer's metered usage (on a per-premises basis). The treatment and any charges associated with Unused Energy is defined in the R*C Rate Rider.
11. **Termination by Company.** The Company may, in its sole and absolute discretion, terminate this Agreement at any time if (i) the Renewable Connect Resource or any portion thereof do(es) not perform pursuant to the Company's agreement(s) for the Renewable*Connect Resource or (ii) the Company terminates the Program.
12. **Force Majeure.**

- a. “Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance:
 - i. is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and
 - ii. which by exercise of due diligence and foresight could not reasonably have been avoided, including acts of God; sudden action of the elements such as floods, earthquakes, hurricanes, or tornados, lightning, fire, ice storms, smoke or other particulates from volcanoes; sabotage; vandalism beyond that which could reasonably be prevented; terrorism; war; riots; explosion; blockades; insurrection; except as set forth in subsection

(e) below, labor strikes, slowdowns or labor disruptions (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); actions or inactions by any governmental authority with proper jurisdiction over the Parties or the Agreement (“Governmental Authority”) taken after the date hereof (including the adoption or change in any rule, Applicable Law or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority, provided, however, that Force Majeure shall not include:

 - (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this Agreement;
 - (b) acts or omissions of a third party, unless such acts or omissions are themselves excused by reason of Force Majeure;
 - (c) mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment unless such breakdown or condition was itself caused by an event of Force Majeure;
 - (d) changes in market conditions; or
 - (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions limited to the Company, Company’s Affiliates, or any third party employed by the Company.
- b. Company may also declare a Force Majeure event if:
 - i. An owner of a Renewable Connect Resource materially breaches the purchase power agreement (“PPA”) between such owner and Company, governing the acquisition of energy from such resource; or,

- ii. The Company declares an event of default, as defined in the PPA, against the owner of a Renewable*Connect Resource.
- c. Applicability of Force Majeure.
1. Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:
 - i. the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;
 - ii. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - iii. the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
 - iv. when the non-performing Party can resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.
 2. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.
 3. Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its applicable Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) day period, for such additional time as it, at its sole discretion, deems appropriate if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

13. Default.

- a. A Party is in default (“Default”) hereunder if that Party (the “Defaulting Party”) or its affiliate does any of the following (each an “Event of Default”):
 - i. breach any of its material obligations herein and not cure within thirty days of written notice of such breach;
 - ii. if any representation or warranty made by it herein proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts to make such representation and warranty correct and not misleading within 30 days of written notice.
 - b. Remedies. Upon an Event of Default by a Party, the other Party (the “Non-Defaulting Party”) may terminate this Agreement. The Non-Defaulting Party may, except as otherwise specifically provided herein, pursue each remedy provided for under this Agreement in addition to every other remedy provided for herein or available at law or in equity.
 - c. **LIMITATION ON DAMAGES.** THE DEFAULTING PARTY’S LIABILITY WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT, ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING FOR LOSS OF BUSINESS OPPORTUNITY OR PROFITS, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEN.
14. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of New Mexico.
15. **Disputes.** If any disputes arise concerning this Agreement, including but not limited to enforcement of any term or condition of the Agreement, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover its reasonable attorney fees, expenses and costs of such action from the non-prevailing Party. Each Party hereby irrevocably and unconditionally waives any right to a trial by jury for the resolution of any dispute arising under this Agreement. Failure of either Party to enforce any term or condition of this Agreement shall not constitute a waiver of that term or condition or of any other term or condition of this Agreement.
16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed original, but all constitute one and the same instrument. The Parties agree that a facsimile copy of a signature will be deemed original and binding.
17. **Relationship of the Parties.** Except as otherwise specifically provided herein, this Agreement

is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.

18. **Agreement Subject to Laws and Regulations.** This Agreement and the rights and obligations of the parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.
19. **Severability.** In the event any words, phrases, clauses, sentences or other provisions in this Agreement are found to be invalid or violate any applicable law, such offending provision or provisions shall be ineffective to the extent of such violation without invalidating the remainder of this Agreement, and the remaining provisions of this Agreement shall be construed consistent with the intent of the parties hereto as closely as possible, and the Agreement, as reformed, shall be valid, enforceable and in full force and effect.
20. **Survival.** This Agreement will continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.
21. **Waiver, Amendment.** None of the terms or conditions of this Agreement may be amended or waived except in writing and signed by the Parties. The Parties agree that no waiver, amendment, or modification of this Agreement will be established by conduct, custom, or course of dealing. The failure of a Party to require performance of any provision of this Agreement will not limit such Party's right to seek such performance later. Similarly, a Party's waiver of its rights with respect to any Default or any other matter arising in connection with this Agreement will not be considered a waiver with respect to any subsequent Default or matter.
22. **Indemnification.** Customer shall indemnify, defend, and hold Company, its employees, agents, successors, assigns, subsidiaries and affiliates harmless against all claims, demands, liens, lawsuits, judgments or actions of whatsoever nature made by others arising from or out of any event, circumstance, act or incident arising out of the Parties' obligations under this Agreement.

As a qualified Southwestern Public Service Company, I have read, understand, and agree to the terms of the Agreement set forth above:

For the Customer:

Company Name

Signature

Date

Printed Name and Title

For Southwestern Public Service Company,
a New Mexico Corporation, d/b/a Xcel Energy:

Signature

Date

Printed Name and Title