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**PUC DOCKET NO. 46936
SOAH DOCKET NO. 473-17-3539**

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PUBLIC UTILITY COMMISSION
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**APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY FOR §
APPROVAL OF TRANSACTIONS §
WITH ESI ENERGY LLC, AND §
INVENERGY WIND DEVELOPMENT §
NORTH AMERICA LLC, TO AMEND A §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY FOR WIND §
GENERATION PROJECTS AND §
ASSOCIATED FACILITIES IN HALE §
COUNTY, TEXAS AND ROOSEVELT §
COUNTY, NEW MEXICO, AND FOR §
RELATED APPROVALS §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER

This Order addresses the application of Southwestern Public Service Company (SPS) to amend its certificate of convenience and necessity (CCN) number 30153 to acquire, construct, own, and operate a proposed wind-generation project in Hale County and a proposed wind generation-project in Roosevelt County, New Mexico. SPS's application also requested Commission approval of a purchased-power agreement with Bonita Wind Energy, LLC. All but two of the parties in this docket entered into an unopposed settlement agreement that resolves all issues between those parties; the remaining two parties did not join the settlement agreement, but do not oppose it. The application, as modified by the settlement agreement and this Order, is granted for the reasons and to the extent discussed in this Order.

I. Discussion

A. SPS's Application

SPS requested to amend its CCN to acquire, develop, and own two wind farms: a 478-megawatt (MW) wind farm with associated facilities located in Hale County, Texas (the Hale project) and a 522-MW wind farm with associated facilities located in Roosevelt County, New Mexico (the Sagamore project).¹

¹ Application at 1.

SPS will purchase the Hale County site from NextEra Energy Resources, LLC, which has secured the land rights and completed some preliminary site work.² SPS stated that the total cost of developing the Hale County wind farm is approximately \$769 million, including allowance for funds used during construction.³ SPS expects to have the Hale project in service no later than 2019 so that SPS will be able to receive 100% of the federal production tax credits available from the project.⁴ In a related transaction, as part of its application, SPS is proposing to enter into a 30-year purchased-power agreement with Bonita Wind Energy, LLC (the Bonita PPA), an affiliate of NextEra Energy Resources, for an additional 230 MW of wind-generation from an 80-MW wind farm in Crosby County, Texas and a 150-MW wind farm in Cochran County, Texas.⁵

SPS is purchasing the Sagamore project in New Mexico from Invenergy, LLC, which has acquired the land rights and completed some preliminary work.⁶ SPS stated that the total cost of developing the Roosevelt County wind farm is approximately \$865 million, and SPS expects to place the Sagamore project in service no later than the end of 2020 to allow SPS to receive 100% of the production tax credits from the project.⁷

SPS noted that it is not requesting the CCN amendment because of the inadequacy of existing service or the need for additional service.⁸ Instead, SPS proposes to develop and own the Hale and Sagamore projects to save SPS's Texas retail customers approximately \$1.6 billion in energy costs over their service lives, based upon certain assumptions of future events, costs, and prices.⁹ Based on those assumptions, SPS estimated that, if the Commission approved the Hale and Sagamore projects and the Bonita PPA, a typical bill for a residential customer using 1000 kilowatt-hours (kWh) per month would be reduced by \$2.37 per month, or 2.09%, in 2021.¹⁰

B. The Settlement Agreement

A settlement agreement was filed on February 27, 2018, and was signed by Commission Staff; SPS; the Texas Industrial Energy Consumers (TIEC); the Alliance of Xcel Municipalities

² *Id.* at 7.

³ *Id.*

⁴ *Id.* at 7–8.

⁵ *Id.* at 1–2.

⁶ *Id.* at 8.

⁷ *Id.*

⁸ Direct Testimony of Evan Evans, SPS Ex. 5 at 25:1–8.

⁹ *Id.* at 25:3–6.

¹⁰ *Id.* at 14:13–17.

(AXM); the Office of Public Utility Counsel (OPUC); the United States Department of Energy; Golden Spread Electric Cooperative, Inc.; Tri-County Electric Cooperative, Inc.; the Texas Cotton Ginners' Association; Mary Lutrick; and Larry Lutrick. The International Brotherhood of Electric Workers Local 602 and Lea County Electric Cooperative, Inc. did not join the settlement agreement, but do not oppose the settlement agreement.

The settlement agreement included certain provisions, including, but not limited to, a capital cost cap on the Hale and Sagamore projects,¹¹ a minimum-production guarantee regarding output from the Hale and Sagamore projects,¹² guarantee of savings determined from the ten-year tracking of costs and estimated savings relating to the Hale and Sagamore projects,¹³ and a commitment by SPS to credit customers with 100% of the production tax credits generated by the Hale and Sagamore projects.¹⁴

C. Additional Information

After reviewing the settlement agreement and accompanying supplemental testimony provided by SPS, Commission Staff, and TIEC, the Commission requested additional information regarding the settlement. The Commission also requested information on whether an analysis of the impact of the Tax Cuts and Jobs Act¹⁵ on the projected savings had been conducted.

SPS provided additional supplemental settlement testimony, which included modeling of the projected savings of the Hale and Sagamore projects and Bonita PPA under various assumptions. The supplemental settlement testimony demonstrated that, using SPS's expected inputs for capital costs, net-capacity factor, and a projected low cost of natural gas in its production-cost modeling, and incorporating the effects of the reduction in the corporate federal income tax rate from 35% to 21%, the projected savings to customers on a total company, net-present-value basis are approximately \$543 million.¹⁶ The supplemental settlement testimony also demonstrated that even in a worst-case scenario in which (a) the costs to construct the Hale and Sagamore project reach the cap on construction costs, (b) the output of the Hale and Sagamore

¹¹ Settlement Agreement, Joint Ex. 1 at 6–7.

¹² *Id.* at 7–9.

¹³ *Id.* at 9–11; SPS Ex. 28, Settlement Testimony of William Grant at 17:1–20:22.

¹⁴ Settlement Agreement, Joint Ex. 1 at 11.

¹⁵ Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

¹⁶ Supplemental Settlement Testimony of David Hudson, SPS Ex. 29 at 28:13–16; Attachment DTH-SS-4.

projects and the Bonita PPA is at the minimum 48% net-capacity factor, and (c) levelized gas prices are lower than expected in SPS's base case scenario, the projected savings to customers on a total company, net-present-value basis are approximately \$232 million.¹⁷ Based on a simple ratio of the projected savings of the base case \$543 million savings scenario and the worst-case \$232 million savings scenario, the typical residential customer using 1,000-kWh per month would save \$1.01 per month in the worst-case scenario.

D. Consideration of Statutory CCN Factors

SPS's application to amend its CCN to include the Hale and Sagamore projects is premised on the probable lowering of costs to consumers as set forth in Public Utility Regulatory Act¹⁸ § 37.056(c)(4)(E). In the settlement agreement, SPS agreed to four important conditions to protect customers. First, SPS agreed to impose a cap on capital costs of \$1,675 per kilowatt of installed wind generation, including an allowance for funds used during construction, on the construction costs for the Hale and Sagamore projects.¹⁹ Second, SPS agreed to guarantee the minimum output of the Hale and Sagamore projects at an annual net capacity factor of 48% for the purpose of calculating certain benefits.²⁰ Third, SPS has committed to credit customers with 100% of the production tax credits associated with the output generated by the Hale and Sagamore projects even if SPS receives no production tax credits associated with that output because of the Hale and Sagamore projects failure to qualify for the production tax credit.²¹ Fourth, SPS has agreed to compensate customers if the costs of the Hale and Sagamore projects exceeds the calculated savings to customers in the first ten years of operations for both the Hale and Sagamore projects combined. At the request of the Commission, SPS provided further economic modeling demonstrating that under various future assumptions, the Hale and Sagamore project are likely to result in savings to customers.

After considering the proposed factors set forth in PURA § 37.056(c), the Commission concludes that SPS has shown a probable lowering of costs to customers in the area, and SPS's application should be granted. To ensure an economic benefit to customers, the Commission

¹⁷ *Id.* at 13:14–14:11; Attachment DTH-SS-5.

¹⁸ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–58.032 (West 2016 & Supp. 2017), §§ 59.001–66.016 (West 2007 & Supp. 2017) (PURA)

¹⁹ Settlement Agreement, Joint Ex. 1 at 6–7.

²⁰ *Id.* at 7–9.

²¹ *Id.* at 11.

further concludes that SPS must comply with all the provisions of the settlement agreement and this Order.

The Commission adopts the following findings of fact and conclusions of law.

II. Findings of Fact

The Applicant

1. Southwestern Public Service Company (SPS) is incorporated under the laws of the State of New Mexico and is a wholly owned subsidiary of Xcel Energy, Inc.
2. SPS is a fully integrated utility that owns equipment and facilities to generate, transmit, distribute, and sell electricity in Texas and New Mexico.
3. SPS is authorized under CCN number 30153 to provide service to the public and to provide retail electric utility service within its certificated service area.
4. The New Mexico Public Regulation Commission regulates SPS's New Mexico retail operations.
5. The Federal Energy Regulatory Commission regulates SPS's wholesale electric operations.

The Application

6. On March 21, 2017, SPS filed an application requesting an amendment to its CCN to include two wind projects. As part of that application, SPS also sought Commission approval of a 30-year purchased-power agreement with Bonita Wind Energy, LLC, an affiliate of NextEra Energy Resources (the Bonita PPA). In addition, SPS requested Commission approval of certain principles related to the regulatory treatment of the wind farms. In support of the application, SPS included the direct testimony of 11 witnesses.
7. The first wind project requested to be included in SPS's CCN amendment is a 478-megawatt (MW) wind farm with associated facilities, including the land and land rights, located in Hale County, Texas (the Hale project).
8. SPS entered into the Bonita PPA for an additional 230 MW of wind generation from an 80-MW wind farm in Crosby County, Texas and a 150-MW wind farm in Cochran County, Texas as part of the transaction under which SPS acquired the Hale project.

9. The second wind project requested to be included in SPS's CCN amendment is a 522-MW wind farm and associated facilities, including the land and land rights, located in Roosevelt County, New Mexico (the Sagamore project).
10. The application did not include any transmission facilities.

Notice of the Application

11. On March 21, 2017, SPS provided, by first class mail, written notice of the application to (a) the county government of Hale County, Texas, the county in which the proposed Hale project will be located; (b) Golden Spread Electric Cooperative, Inc. and Lighthouse Electric Cooperative, Inc., the neighboring utilities within five miles of the proposed Hale project; (c) the cities of Abernathy and Petersburg, the Texas municipalities within five miles of the proposed Hale project; and (d) each landowner, as stated on the county tax rolls of Hale County, who will be directly affected by the requested CCN relating to the proposed Hale project. SPS also hand-delivered copies of the application to the Office of Public Utility Counsel (OPUC).
12. On March 21, 2017, SPS provided notice of the application to the Texas Parks and Wildlife Department (TPWD). SPS included a letter to TPWD giving an overview of the project along with a copy of the application.
13. On March 21, 2017, SPS served a copy of the application by hand delivery, by Federal Express, or by first class mail to all entities that were still parties to Docket No. 45524, SPS's most recent rate case, at the end of that docket.
14. In Order No. 1 issued on March 22, 2017, the Commission ordered Commission Staff to file a response to SPS's application, including comments on the sufficiency of the application and proposed notice, and propose a procedural schedule, and adopted the Commission's standard protective order.
15. On March 24, 2017, SPS published notice in the *Plainview Herald*, a newspaper of general circulation in Castro, Floyd, Hale, Lamb, and Swisher Counties.

16. On March 24, 2017, SPS published notice in the *Lubbock Avalanche Journal*, a newspaper of general circulation in Cochran, Crosby, Dawson, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry, and Yoakum Counties.
17. On March 25, 2017, SPS published notice in the *Amarillo Globe News*, a newspaper of general circulation in Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Curry, Dallam, Deaf Smith, Donley, Gray, Hale, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Quay, Randall, Roberts, Sherman, Swisher, and Wheeler Counties.
18. On April 4, 2017, SPS filed an affidavit attesting to proof of notice to the affected counties, utilities, municipalities, landowners, OPUC, the TWPD, and the entities who were parties to Docket No. 45524.
19. On April 5, 2017, SPS filed an affidavit attesting to the publication of notice in the *Plainview Herald*, *Lubbock Avalanche Journal*, and *Amarillo Globe News*.
20. On April 6, 2017, Commission Staff filed a recommendation on the sufficiency of the notice and application. Commission Staff recommended that the notice and non-ratemaking portions of the application be deemed sufficient. Commission Staff also proposed a procedural schedule.
21. In Order No. 2 issued on April 10, 2017, the Commission administrative law judge (ALJ) found the non-rate-making portions of SPS's application sufficient and materially complete, and also approved SPS's text and provision of notice and restyled this docket.
22. On April 11, 2017, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH).
23. On May 19, 2017, the Commission issued a preliminary order.
24. In SOAH Order No. 4 issued on May 30, 2017, the SOAH ALJ adopted the parties' agreed procedural schedule, found that certain issues should be certified to the Commission, and required parties to file an agreed list of issues to be certified to the Commission and a corresponding briefing schedule.
25. On May 31, 2017, SPS filed supplemental direct testimony.

26. On June 23, 2017, SPS filed an unopposed list of issues to be certified to the Commission. SPS also filed a revised proposed procedural schedule that was unopposed by the other parties to this docket.
27. In SOAH Order No. 9 issued on June 29, 2017, the SOAH ALJ adopted the revised procedural schedule.
28. In SOAH Order No. 10 issued on June 30, 2017, the SOAH ALJ certified 11 issues to the Commission.
29. The following parties were granted intervenor status in this proceeding: the Texas Industrial Energy Consumers (TIEC), Mary Lutrick, Larry Lutrick, Golden Spread Electric Cooperative, the Alliance of Xcel Municipalities (AXM), OPUC, Tri-County Electric Cooperative, Lea County Electric Cooperative, Inc., the United States Department of Energy, the Texas Cotton Ginners' Association, and the International Brotherhood of Electric Workers Local 602 (IBEW).
30. TPWD did not request to intervene or file comments in this proceeding.
31. On July 13, 2017, SPS, Commission Staff, OPUC, TIEC, and AXM filed briefs on the list of issues certified to the Commission.
32. On August 10, 2017, the Commission issued an order addressing the issues certified to the Commission by SOAH. With one exception (preliminary order issue number 17), the Commission declined to answer the issues certified, finding that the issues were issues of fact or policy that could not be appropriately addressed by the Commission before the development of a factual record at SOAH. With respect to preliminary order issue number 17, the Commission concluded that construction work in progress is the only mechanism permitting recovery of costs before their inclusion in rate base under Public Utility Regulatory Act (PURA) § 36.054. The Commission also concluded that issues relating to affiliate transactions are more appropriately addressed in a subsequent rate proceeding.
33. On August 10, 2017, the Commission issued a supplemental preliminary order in which it excluded issues relating to affiliate transactions from this docket.

34. On October 2, 2017, OPUC, AXM, TIEC, Golden Spread Electric Cooperative, and Tri-County Electric Cooperative filed direct testimony. The Texas Cotton Ginners' Association and IBEW filed statements of position.
35. On October 9, 2017, Commission Staff filed direct testimony.
36. On October 23, 2017, SPS filed rebuttal testimony.
37. On October 23, 2017, TIEC filed cross-rebuttal testimony.
38. On November 3, 2017, SOAH held a prehearing conference.
39. On November 6, 2017, SOAH convened the hearing on the merits, which was abated day-to-day to allow parties additional time to engage in settlement discussions.
40. In Order No. 18 issued on November 14, 2017, the SOAH ALJ requested a status report.
41. On November 30, 2017, SPS filed a status report in which it reported that the parties had reached a settlement agreement in principle and would file a further status report if the parties had not filed an agreement and accompanying documents by December 15, 2017.
42. SPS filed additional status reports on December 15, 2017, January 5 and 26, 2018, and February 6 and 20, 2018.
43. Commission Staff; SPS; TIEC; AXM; OPUC; the United States Department of Energy; Golden Spread Electric Cooperative, Inc.; Tri-County Electric Cooperative, Inc.; the Texas Cotton Ginners' Association; Mary Lutrick; and Larry Lutrick entered into an agreement that settled the issues identified in that agreement.
44. IBEW and Lea County Electric Cooperative, Inc. did not sign, but do not oppose the agreement.
45. On February 27, 2018, the signatories to the agreement filed the agreement with the Commission.
46. On March 2, 2018, SPS filed testimony in support of the agreement.
47. On March 2, 2018, Commission Staff and TIEC each filed testimony in support of the agreement.

48. On March 2, 2018, SPS filed a motion to admit evidence in support of the agreement and to remand the case to the Commission.
49. In SOAH Order No. 19 issued on March 6, 2018, the SOAH ALJ admitted evidence, remanded this case to the Commission, and dismissed the SOAH docket. The evidence admitted is listed in two attachments to SOAH Order No. 19 and consists of 55 exhibits from seven parties and one joint exhibit.
50. On March 21, 2018, the New Mexico Public Regulation Commission approved SPS's request for approval of a New Mexico CCN for the Hale and Sagamore project and approved the Bonita PPA.
51. On April 19, 2018, SPS filed a motion to admit SPS exhibit 29, the supplemental settlement testimony of David Hudson on behalf of SPS and TIEC exhibit 5, the affidavit of Jeffry Pollock of TIEC.
52. The Commission opened the record and admitted without objection from any party SPS exhibit 29 and TIEC exhibit 5 at the April 27, 2018 open meeting.

Description of the Facilities to be Included in SPS's CCN

53. The Hale project is a 478-MW wind farm with associated facilities located in Hale County, Texas, including land and land rights. The Hale project will consist of approximately 239 Vestas-America Wind Technology, Inc. turbines.
54. SPS will construct the necessary infrastructure to serve the Hale project, such as access roads, energy collection cable systems, and collection system substations.
55. The estimated costs of the Hale project is approximately \$769 million, including an allowance for funds used during construction (AFUDC).
56. SPS expects to place the Hale project in service no later than 2019.
57. The Hale project must be in commercial operation by the end of calendar year 2020 to receive 100% of the production tax credits.
58. The Sagamore project is a 522-MW wind farm with associated facilities located in Roosevelt County, New Mexico, including land and land rights. The Sagamore project will consist of approximately 261 Vestas-America Wind Technology, Inc. turbines.

59. SPS will also construct other infrastructure necessary to serve the Sagamore project.
60. The estimated cost of the Sagamore project is approximately \$865 million, including AFUDC.
61. SPS expects to place Sagamore in service no later than year-end 2020.
62. The Sagamore project must be in commercial operation by the end of calendar year 2020 to receive 100% of the production tax credits.
63. SPS's application included an economic analysis of the Hale project, Sagamore project, and Bonita PPA, which SPS asserts shows net savings to customers.

The Settlement Agreement

64. The settlement agreement includes a cap on capital costs for the Hale and Sagamore projects, a minimum-production guarantee regarding output from the Hale and Sagamore projects, a commitment to credit customer with 100% of production tax credits even if either project fails to qualify for those credits, and a guarantee of savings determined from the ten-year tracking of costs and estimated savings relating to the Hale and Sagamore projects that the Commission finds are necessary for the Commission to approve SPS's requested CCN amendment, and other provisions detailed in the agreement.

Fuel Costs and Production Tax Credits

65. When commercial operation begins for both the Hale and Sagamore projects, SPS will offer the energy produced by each project into the Southwest Power Pool (SPP) integrated marketplace and will credit eligible fuel expense with the Texas retail portion of the associated sales revenues.
66. Except for the first 60 days of commercial operation of each of the Hale and Sagamore projects, SPS will credit Texas retail customers through eligible fuel expense with the Texas retail portion of the production tax credits, including an income tax gross up, resulting from the electricity generated by each of the Hale and Sagamore projects.
67. For the first 60 days of commercial operation of each of the Hale and Sagamore projects, SPS will retain the Texas retail portion of the production tax credits, associated with generation from each of the Hale and Sagamore projects. SPS will not include in the

deferred-tax asset described in finding of fact 91 any of the production tax credits it retains that are associated with generation during the first 60-day period of commercial operation of each of the Hale and Sagamore projects.

Capital Cost Cap

68. For Texas retail ratemaking purposes, SPS agreed that, in the first rate case in which the Hale project is first included in rate base, the gross plant-in-service amount for the Hale project to be includable in SPS's rate base will not exceed \$1,675 per kilowatt installed on a total company basis. This \$1,675 per kilowatt amount is 102.5% of \$1,634 per kilowatt, which was the average installed cost presented in SPS's application for the Hale and Sagamore projects combined. The cap of \$1,675 per kilowatt includes AFUDC, all costs for generation interconnections assigned by SPP, any necessary new transmission and distribution equipment, and any necessary upgrades to existing transmission or distribution equipment. For SPS's initial rate case seeking inclusion of the Sagamore project, the combined total of the gross plant-in-service amount for the Sagamore project plus the gross plant-in-service amount for the Hale project that was included in the initial Hale project rate case, will not exceed on average \$1,675 per kilowatt installed on a total company basis, including AFUDC, all costs for generation interconnections assigned by SPP, any necessary new transmission and distribution equipment, and any necessary upgrades to existing transmission or distribution equipment.
69. After the Hale project or the Sagamore project is first included in rate base, if a future event causes a portion of the capacity of either the Hale or Sagamore project, or both projects, to be removed from Commission-established Texas retail rate base, causing the initial gross plant-in-service cap on capital costs per kilowatt to be exceeded for the remaining portions of the capacity of the Hale and Sagamore projects that are still included in SPS's Texas retail rate base, then for the portion of such project that remains and that is subject to allocation to the Texas retail jurisdiction, SPS has agreed to reduce prospectively the amount of the gross plant-in-service in rate base, to conform to the cost cap of \$1,675 per kilowatt described in finding of fact 68, and adjust its rates for its Texas retail jurisdiction accordingly. The adjustment to reduce the value of the gross plant-in-service for the remaining portion of the capacity included in rate base to the \$1,675 cost cap described in

finding of fact 68 shall include a corresponding adjustment to accumulated depreciation and deferred taxes, and will not include adjustments to remove additions (e.g., interim additions) that have occurred after the respective initial rate cases for the Hale project and the Sagamore project are completed.

70. SPS agreed that the cap on capital costs is not obviated or subject to waiver or excused based on events of force majeure or due to any change of law.
71. The cap on capital costs set forth in finding of fact 68 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers.

Minimum-Production Guarantee

72. SPS has agreed to track the combined annual energy output from the Hale and Sagamore projects.
73. SPS has agreed to guarantee the minimum output of the Hale and Sagamore projects at an annual 48% net-capacity factor, starting for each of the Hale and Sagamore projects with the beginning of the first calendar year after commercial operation. SPS has agreed to keep a running annual balance of actual generation and net-capacity factors for the Hale and Sagamore projects.
 - a. For calendar years one through four:
 - i. if the production for the preceding calendar year is below a 48% net-capacity factor, SPS will credit to fuel expense the grossed-up production tax credits not generated due to the Hale and Sagamore projects' underproduction, as well as the additional energy costs incurred due to the Hale and Sagamore projects' underproduction, based upon a redispatch of SPS's owned or controlled thermal system resources with and without the Hale and Sagamore projects (underproduction credits); and
 - ii. to the extent that average annual production for the life of the projects at the end of calendar year four exceeds a 53.7% net-capacity factor, SPS will be allowed to use the production above an average annual production of 53.7% during calendar years one through four to recapture credits, if any, given for

calendar years one through three for production below a 48% net-capacity factor (recapture charges).

- b. Starting for calendar year five and for each subsequent calendar year:
 - i. if the average annual production for the preceding three-calendar-year period is below a 48% net-capacity factor, SPS will credit to fuel expense the grossed-up production tax credits not produced because of the Hale and Sagamore projects' underproduction, as well as the additional energy costs incurred because of the Hale and Sagamore projects' underproduction based on a redispatch of SPS's owned or controlled thermal resources, with and without the Hale and Sagamore projects (also underproduction credits); and
 - ii. to the extent that the average annual calendar year production for the life of the Hale and Sagamore projects to date exceeds a 53.7% net-capacity factor, SPS may use the production above an average annual production of 53.7% during those calendar years to recapture credits, if any, given for earlier periods for production below a 48% net-capacity factor (also recapture charges).
- 74. The calculation of any underproduction credits and recapture charges will be subject to the Commission's review as discussed in finding of fact 76. There will be no carrying costs on any underproduction credit or recapture charges. For each of the Hale and Sagamore projects, the minimum-production guarantee described in finding of fact 73 expires 25 years from the date the applicable project is declared to be in commercial operation.
- 75. SPS agreed that it will not offer output of the Hale or Sagamore projects into the SPP integrated marketplace (or any successor market) at a price that is below the marginal cost of the Hale or Sagamore projects.
- 76. SPS agreed to make an informational filing by May 15 of each year that reports the production level for the prior annual period or three-year period, as applicable, and the calculation of any underproduction credit or recapture charges. The filing will be in native format and include work papers, but no pre-filed testimony. SPS agreed to record any underproduction credit or recapture charges in its cumulative fuel under- or over-recovery

balance entry, which is made in May, the same month as the annual informational filing. Any person with a justiciable interest, as well as OPUC and Commission Staff, may object to and propose adjustments to SPS's calculation in response to SPS's annual informational filing. If there are no objections to SPS's calculation in response to SPS's annual informational filing, then any person with a justiciable interest, as well as OPUC and Commission Staff, may object to and propose adjustments to SPS's calculation in the first fuel reconciliation proceeding covering the time period in the calculation.

77. SPS agreed that the minimum-production guarantee is not obviated or subject to waiver or excused based on events of force majeure or due to changes in law.
78. The minimum-production guarantee set forth in finding of fact 73 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers.

Ten-Year Tracking of Costs and Estimated Savings

79. SPS has agreed to guarantee that its Texas retail customers will realize savings from the Hale and Sagamore projects during the first ten years of each project's operation. SPS will on an annual basis compare the cost of each project to the savings calculated in the manner described in this finding of fact.
 - a. The cost of each project will be the amount collected from Texas retail customers, including a return on and of the capital investment and the expenses attributable to these projects, and will include AFUDC, all costs for generation interconnections assigned by SPP, any necessary new transmission and distribution equipment, and any necessary upgrades to existing transmission or distribution equipment.
 - b. The savings from each project will be calculated by summing the following amounts:
 - i. the grossed-up value of the production tax credits credited to Texas retail customers, including amounts for production tax credits actually received by SPS and any underproduction credits for production tax credits to Texas retail customers resulting from SPS's minimum-production guarantee in finding of fact 73 even if

either project does not qualify for production tax credits as provided in finding of fact 89;

ii. the dollar amount of renewable energy credits to Texas retail customers attributable to the sale of excess renewable energy credits generated by each project; and

iii. a calculation of the Texas retail portion of estimated fuel savings achieved by each project based upon a redispatch of SPS's owned or controlled thermal system resources with and without each project, irrespective of whether those thermal units would actually have been redispatched to replace the output of either project.

c. The calculation of costs and savings will be performed on an annual basis and will include the costs and savings of a project only if it has been declared commercially operational, but such costs and savings will be included only for the first ten years of each project's operations. Because the Hale project is scheduled to become commercially operational before the Sagamore project, the calculation of costs and estimating savings will initially only include those amounts from the Hale project, then will include those amounts from both projects during the time that both projects are within their first ten years of operation, and finally, after the end of the first ten years of operation of the Hale project, will only include the amounts from the Sagamore project.

d. SPS's calculation of costs and estimated savings for Texas retail customers will be subject to review by any person with standing, and, any such person may request that the Commission review those calculations.

e. Any refund to customers is subject to Commission review and approval.

80. SPS has agreed to track the costs and estimated savings for each project, as calculated in findings of facts 79, for the first ten years of each project's operation.

81. The first ten years of each project's operation starts on the date the project is declared to be in commercial operation and ends on the day before that date ten years later.

82. A project is in commercial operation on the date specified by SPS in its letter to SPP that the project has commenced commercial operation and that specification will signify that the project has begun generating electricity, excluding any electricity generated during a trial period. The date specified in that letter will be after (1) the wind turbine or circuit of wind turbines has been commissioned by the turbine manufacturer; (2) the wind turbine or circuit of wind turbines is capable of generating electricity for sale; and (3) the wind turbine or circuit of wind turbines is functionally visible to and can be curtailed by the SPP.
83. In its letter to SPP, SPS will declare all wind turbines for an entire wind project to be in commercial operation on the same date so there is one commercial operation date for each wind project. If any wind turbine or circuit of wind turbines at either project is not included in the certified letter to SPP for that wind project, but begins commercial operations after December 31, 2020, the commercial operation date for such wind turbine or circuit of wind turbines will be the commercial operation date stated in the certified letter to SPP for that wind project.
84. It is appropriate that SPS file with the Commission a copy of its letter to SPP for each project specifying the date each project began commercial operation.
85. SPS has agreed to compensate Texas retail customers if, in the first ten years of operations for the Hale project or the Sagamore project, the cost of one or both projects, as appropriate, exceeds the calculation of estimated savings as provided in finding of fact 79.b. The reasons that cost may exceed estimated savings is irrelevant to this obligation to compensate Texas retail customers in the amount that costs exceed the calculated savings.
86. The mechanism by which savings associated with the calculation set forth in findings of fact 79 through 85 would be returned to Texas retail customers is as follows: After the ten-year period has concluded, SPS will file an application with the Commission that will contain SPS's calculation of the costs and estimated savings for customers in a compliance docket. If this calculation demonstrates that a refund is due to customers, SPS's application will include a request that a refund be provided as a rate rider.

87. SPS agreed that the calculation and mechanism set forth in findings of fact 79 through 85 are not obviated or subject to waiver or excused based on events of force majeure or due to any change in law.
88. SPS's agreement to return to Texas retail customers any estimated net costs as set forth in findings of fact 79 through 84 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers and to ensure that savings accrue to Texas retail customers.

Production-Tax-Credit Commitment

89. SPS has agreed to credit customers with 100% of the production tax credits related to the actual output generated by turbines placed in service at the Hale and Sagamore projects after December 31, 2020 even if SPS receives no production tax credits associated with that output due to the Hale or Sagamore projects' failure to qualify for the production tax credit. Except as provided in finding of fact 79, SPS is not guaranteeing against any reduction in the value Congress assigns to production tax credits for income tax purposes or any elimination by Congress of the production tax credits.
90. The production-tax-credit commitment set forth in finding of fact 89 is reasonable and necessary to find that the proposed Hale and Sagamore projects show a probability of lowering of costs to customers.

Deferred-Tax Asset

91. In future rate cases in which a final order is issued before December 31, 2025, it is appropriate that SPS be allowed to include in rate base the actual end-of-test-year balance of unused production tax credits, if any, associated with the Hale and Sagamore projects. It is also appropriate that any unused production tax credits included in rate base earn a return at the weighted average cost of capital set for that rate case. It is appropriate that in rate cases in which a final order is issued after December 31, 2025 that SPS not be allowed to include unused production tax credits in rate base.
 - a. The end-of-test year balance under finding of fact 91 is the end of the twelve-month period used for determining SPS's cost of service.

- b. The unused production tax credits included in rate base under finding of fact 91 will not include the production tax credits that SPS retains for the initial 60-day period as stated in finding of fact 67.
- c. The term *unused production tax credits* means production tax credits that SPS or the Xcel Energy consolidated group are unable to use to offset taxable income on their federal income tax return. Both SPS and the Xcel Energy consolidated group have agreed to use the production tax credits associated with generation from the Hale and Sagamore projects as rapidly as allowed under the Internal Revenue Code and treasury regulations. Unused production tax credits shall include only actual production tax credits and shall not include any underproduction credits identified in finding of fact 73 or any payments for guaranteed savings identified in finding of fact 89.

Production Tax Credits through Fuel

- 92. Except as allowed under finding of fact 67, SPS has agreed to refund to customers, as a credit through fuel, the grossed-up production tax credits associated with generation from the Hale and Sagamore projects.
- 93. Good cause exists to grant SPS an exception to 16 Texas Administrative Code (TAC) § 25.236 to the extent necessary to allow the grossed-up production tax credits to flow through fuel, or to develop an alternative method for refunding the production tax credits to customers.

Renewable-Energy Credits

- 94. 100% of the Texas retail jurisdictional portion of the margins from the sale of renewable energy credits or renewable energy certificates generated from the Hale and Sagamore projects after the first 60 days following each project's commercial operation date will be credited to SPS's Texas retail customers through base rates.

Consideration of Statutory CCN Factors

- 95. The Hale and Sagamore projects are not being proposed to meet a need for additional service or because of the inadequacy of existing service.

96. The Hale and Sagamore projects are not being built for their capacity value, although they may ultimately be deemed by SPP to have some capacity value.
97. The proposed CCN amendment will not cause interference with or adversely affect other electric utilities serving the proximate area.
98. There will be no major effect on SPS's financial position as a result of the investment in the Hale and Sagamore projects, if SPS receives timely recovery of the construction costs and the ongoing operating costs of the Hale and Sagamore projects.
99. There is a relatively sparse population surrounding the Hale project.
100. There are no recreational, park, or historic sites in proximity to the Hale project.
101. The Hale project will not detrimentally affect community values, recreational and park areas, historical and aesthetic values, or the environmental integrity of the surrounding area.
102. It is appropriate that SPS use the United States Fish and Wildlife Service's *Land-Based Wind Energy Guidelines* (2012) to support pre-construction monitoring, construction, and operations.
103. It is appropriate that SPS, before beginning construction of either project, undertake additional field studies to assess the presence or absence of protected species and, if a protected species is discovered, use sound management practices during construction and operation to minimize adverse effects to those species.
104. It is appropriate that SPS use sound management practices to minimize the potential impacts to threatened or endangered species to ensure compliance with the Endangered Species Act, and will consult with the United States Fish and Wildlife Service or the TPWD should any federally or state-listed species be observed during construction.
105. It is appropriate that SPS apply its bird and bat conservation strategy and post-construction monitoring to minimize impacts to wildlife in the area of the Hale project.
106. It is appropriate that SPS use qualified individuals to conduct field assessments of the project site to identify water resources, cultural resources, potential migratory bird issues, and threatened or endangered species habitat that may be impacted as a result of the project.

107. If SPS identifies additional permits that are necessary, it is appropriate that SPS consult with appropriate agencies to obtain all necessary environmental permits and comply with the relevant permit conditions during construction and operation of the Hale project.
108. It is reasonable and necessary for the Commission to order SPS to comply with the statements made in its application to preserve the environmental integrity of the area.
109. The Sagamore project will be located in the State of New Mexico, and SPS did not address factors regarding community values, recreational and park areas, historical and aesthetic values, or the environmental integrity of the surrounding area for the Sagamore project in this application.
110. Because the Sagamore project is in New Mexico and the New Mexico Public Regulation Commission has reviewed and approved that project, it is reasonable for the Commission not to address factors regarding community values, recreational and park areas, historical and aesthetic values, or the environmental integrity of the surrounding area for the Sagamore project.
111. SPS proposed to amend its CCN to include the Hale and Sagamore projects as an investment for the economic benefit of its customers.
112. Using SPS's expected inputs for capital costs, net-capacity factor, and a projected low cost of natural gas in its production-cost modeling, and incorporating the effects of the reduction in corporate federal income tax rate from 35% to 21%, the projected savings to retail customers on a total company, net-present-value basis is approximately \$543 million.
113. Using SPS's worst-case scenario in which costs to construct the Hale and Sagamore project reach the cap on construction costs, the output of the Hale and Sagamore projects and the Bonita PPA is at the minimum 48% net-capacity factor, and levelized gas prices are lower than expected in SPS's base case, the projected savings to customers on a total company, net present value basis is approximately \$232 million.
114. The cap on capital costs for the Hale and Sagamore projects, SPS's guarantee of a minimum output of the Hale and Sagamore projects at an annual 48% net-capacity factor, SPS's commitment to credit customers with 100% of the production tax credits associated with

the output generated by the Hale and Sagamore projects even if SPS receives no production tax credits associated with that output because of the Hale and Sagamore projects' failure to qualify for the production tax credit, and SPS's agreement to compensate customers if the costs of the Hale and Sagamore projects exceeds the estimated savings to customers in the first ten years of operations for both the Hale and Sagamore projects, as set forth in finding of fact 79, are necessary to lower cost to Texas retail customers.

III. Conclusions of Law

1. SPS is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).
2. SOAH exercised jurisdiction over this proceeding in accordance with PURA § 14.053 and Texas Government Code § 2003.049.
3. This docket was processed in accordance with the requirements of PURA, chapter 2001 of the Texas Government Code (the Administrative Procedure Act), and Commission rules.
4. SPS provided notice of the application in accordance with PURA § 37.054, 16 TAC §§ 22.52(a) and 22.55.
5. The agreement, as construed by this Order, is a just and reasonable resolution of all issues it addresses, is supported by a preponderance of the credible evidence in the record, and is consistent with the relevant provisions of PURA and Commission rules.
6. SPS's application, as modified by the settlement agreement and this Order, meets the applicable requirements of PURA §§ 37.056 and 37.058 regarding generation CCN amendments.
7. The Hale and Sagamore projects, subject to the customer benefits and protections provided by the settlement agreement and this Order, are necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a).
8. The provisions of finding of fact 91 are subject to a municipality's exercise of its ratemaking jurisdiction as a regulatory authority under PURA § 33.001 and subchapter B of chapter 33.

9. The application may be approved without a hearing under the Administrative Procedure Act and Commission rules.
10. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. Southwestern Public Service Company's application, as modified by the settlement agreement and this Order, is approved.
2. SPS's CCN number 30153 is amended to include the acquisition of land and associated land rights, construction, ownership, and operation of the proposed Hale project and proposed Sagamore project, but does not include any transmission facilities.
3. SPS shall credit to the portion of eligible fuel expense allocable to Texas retail customers the Texas retail portion of sales revenues from the Hale and Sagamore projects.
4. As described in findings of fact 68 through 69, SPS shall not include gross plant-in-service amounts in rate base in the initial rate cases combined for the Hale and Sagamore projects greater than \$1,675 per kilowatt of installed capacity, including AFUDC, generation interconnections costs assigned by SPP, any necessary new transmission and distribution equipment, and any upgrades to existing transmission or distribution equipment, as provided in this Order.
5. SPS shall adjust its rate base to conform to the \$1,675 per kilowatt cost cap if a portion of the Hale or Sagamore projects, or both projects, is removed from SPS's Commission-established Texas retail rate base, as provided in this Order.
6. SPS shall track the energy output from both the Hale and the Sagamore projects.
7. SPS shall credit to the portion of eligible fuel expense allocable to Texas retail customers the Texas retail portion of sales revenues from the Hale and Sagamore projects.

8. SPS shall credit to the portion of eligible fuel expense allocable to Texas retail customers the Texas retail portion of the production tax credit, including a gross-up for income tax, associated with the Hale and Sagamore projects, except for the first 60-day period of commercial operation for each project.
9. SPS shall file with the Commission a copy of its letter to SPP for each project specifying the date each project began commercial operation within ten days after delivering the letter to SPP.
10. If SPS fails to meet the 48% net-capacity factor as required by this Order, then SPS shall credit to the portion of eligible fuel expense allocable to Texas retail customers the Texas retail portion of the production tax credit, including a gross-up for income tax, not generated because of underproduction of either project as provided by this Order and the additional energy costs incurred due to that underproduction as provided in this Order.
11. SPS shall not offer output from either project into the SPP marketplace at a price below the marginal costs of that project.
12. SPS shall make an informational filing with the Commission on May 15 of every year to report of the production level of the projects and any underproduction credits or recapture charges as provided by this Order.
13. SPS shall track and report the costs of and savings from the projects calculated in accordance with this Order and if the costs exceed the savings under that calculation, SPS shall compensate Texas retail customers by crediting to the portion of eligible fuel expense allocable to Texas retail customers the Texas retail portion of the net cost increase as provided by this Order.
14. SPS shall file an application with the Commission containing SPS's calculation of and savings from the projects, as calculated in accordance with this Order. If this calculation demonstrates that a refund is owed to SPS's customers, SPS's application shall include a request that a refund be provided as a rate rider.
15. SPS shall credit to Texas retail customers 100% of the production tax credits related to the actual output of the Hale and Sagamore projects as provided by this Order.

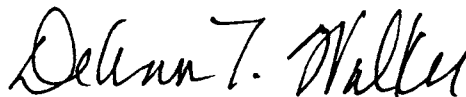
16. Any rate proceeding in which the Commission issues its order before December 31, 2025, SPS may include in rate base the actual end-of-test-year balance of unused production tax credits associated with the Hale and Sagamore projects, which may earn a return at SPS's weighted cost of capital set in the rate proceeding, as provided by this Order. SPS may not include the production tax credits retained by SPS for the initial 60-day period of commercial operation of each project and may not include any underproduction credits or any production tax credits credited even though a project did not qualify for production tax credits, as provided by this Order.
17. SPS shall file in Docket Number No. 48344, *Compliance Docket for Docket No. 46936 (Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy LLC and Invenergy Wind Development North America LLC to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals)* any filings or information required by the terms of this Order or the settlement agreement.
18. SPS's request for a good cause exception to 16 TAC § 25.236 is granted. SPS is authorized to refund to customers, as a credit through fuel, the grossed-up production tax credits associated with generation from the Hale and Sagamore projects as provided by this Order and the terms of the settlement agreement.
19. SPS shall credit to Texas retail customers through base rates 100% of the Texas retail jurisdictional portion of the margins from the sale of renewable energy credits generated from the Hale and Sagamore projects.
20. In the event SPS encounters any archeological artifacts or other cultural resources during construction of the Hale project, SPS shall cease work immediately in the vicinity of the resource and report the discovery to the Texas Historical Commission (THC) and take action as directed by the THC.
21. SPS shall use sound management practices to minimize the potential impacts to migratory birds and threatened or endangered species to ensure compliance with the Endangered Species Act, and shall consult with the United States Fish and Wildlife Service or the Texas

Parks and Wildlife Department should any federally or state-listed species be observed during construction.

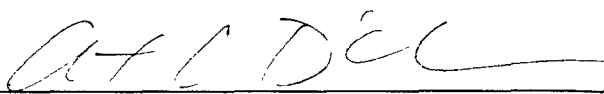
22. SPS shall follow the guidelines published by the United States Fish and Wildlife Service, *Land-Based Wind Energy Guidelines* (2012) in constructing the Hale project.
23. SPS shall apply its bird and bat conservation strategy and post-construction monitoring to minimize impacts to wildlife in the area of the Hale project.
24. SPS shall use qualified individuals to conduct field assessments of the project site to identify water resources, cultural resources, potential migratory bird issues, and threatened or endangered species habitat that may be impacted as a result of the project.
25. If SPS identifies additional permits that are necessary, SPS shall consult with appropriate agencies to obtain all necessary environmental permits and comply with the relevant permit conditions during construction and operation of the Hale project.
26. SPS shall comply with each provision of the settlement agreement.
27. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and shall not be regarded as binding holding or precedent as to the appropriateness of any principle or methodology that may underlie the agreement.
28. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 25th day of May 2018.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER

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