



## Filing Receipt

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December 5, 2022

Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
Attention: Central Records

**Re: PUC Docket #53529 - Filing Correction**

Dear Sir/Madam :

Please note that I am re-filing item #75 in Docket 53529 as I erroneously filed only the odd pages of the document. I am filing the whole document to include all pages. We ask that you please void item # 75.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to be "NP" followed by a flourish.

**Nora M. Pendergrass**  
Paralegal to Todd Kimbrough

TFK:np

**PUC DOCKET NO. 53529**

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	
<b>LUBBOCK, ACTING BY AND</b>	<b>§</b>	
<b>THROUGH LUBBOCK POWER &amp;</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LIGHT, FOR AUTHORITY TO</b>	<b>§</b>	
<b>CONNECT THE REMAINING</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PORTION OF ITS LOAD WITH THE</b>	<b>§</b>	
<b>ELECTRIC RELIABILITY COUNCIL</b>	<b>§</b>	
<b>OF TEXAS AND FOR APPROVAL OF</b>	<b>§</b>	
<b>SETTLEMENT AGREEMENT</b>	<b>§</b>	

**GOLDEN SPREAD ELECTRIC COOPERATIVE, INC.’S  
REQUEST FOR PARTIAL APPROVAL OF THE NON-UNANIMOUS STIPULATION  
OR, IN THE ALTERNATIVE,  
OPPOSITION TO THE NON-UNANIMOUS STIPULATION**

Golden Spread Electric Cooperative, Inc. (“GSEC” or “Golden Spread”) has worked diligently with the other parties in this Docket in the effort toward settlement and stipulation. There is broad agreement on all but one issue—the allocation of the termination fee proceeds across Southwestern Public Service Company’s (“SPS’s”) wholesale transmission and production customers. This issue is not essential to Lubbock Power & Light’s (“LP&L’s”) move to the Electric Reliability Council of Texas (“ERCOT”) and should not have been included in the stipulation. In fact, but for this one issue, the non-unanimous stipulation filed by LP&L on November 28, 2022, could have been unanimous. The issue of how to allocate the termination fees paid by LP&L to SPS between transmission and production functions is not required for the Public Utility Commission of Texas (“PUCT” or “Commission”) to approve LP&L’s move to ERCOT, nor does it support a public interest finding of the transfer of LP&L’s remaining load to ERCOT. Indeed, LP&L should be indifferent to how SPS allocates the credit. The allocation affects only future customers of SPS and very few of those customers are parties in this case. Credits allocated to the production and transmission functions will later be allocated to SPS’s wholesale and retail customers, and the amounts included in each function significantly affect the credits that each of those customer groups will see. Allocation of the termination fees to SPS’s retail customers can and should be addressed by the PUCT in a future proceeding and not in this case.

For this reason, Golden Spread opposes the non-unanimous stipulation as filed and asks the Commission to approve the stipulation subject to the removal of all references to the termination fee allocation for SPS's wholesale customers. Specifically, Golden Spread respectfully requests the Commission approve the non-unanimous stipulation approving the settlement, with the following revisions:

**ARTICLE III—Terms of Stipulation**

D. The Signatories agree that the Regulatory Liability required above in Article III.C shall be allocated and credited as follows:

1.a. After FERC issues an order establishing the allocation of the Termination Payment between SPS's production and transmission functions, SPS shall promptly and timely request a retail Termination Payment credit rider as part of a comprehensive rate case reflecting the removal of the Remaining Load from SPS's jurisdictional allocation factors used to establish the base rates. The retail Termination Payment credit shall be calculated to provide customer credits using an amortization period no longer than three years for the Regulatory Liability, net of the initial amortization described in Article III.D.1.b below. SPS shall request that the retail Termination Payment credit rider begin on the same effective date as the rates requested in the comprehensive rate case. If the Commission does not approve rates reflecting the removal of the Remaining Load from SPS's jurisdictional allocation factors used to establish the base rates, the Termination Payment credit rider shall not be implemented. The Regulatory Liability, net of the initial amortization described in Article III.D.1.b below, shall accrue carrying charges using SPS's Commission-approved weighted-average cost of debt beginning with the effective date of the base rates approved in the first comprehensive rate case reflecting the removal of the Remaining Load from SPS's jurisdictional allocation factors used to establish the base rates.

1.b. Prior to the effective date of the retail Termination Payment credit rider described in Article III.D.1.a above, SPS shall initially amortize the Regulatory Liability using an amortization period that begins on the date SPS receives all or a portion of the Termination Payment and ends in ten years. The

Signatories agree that a ten-year amortization is reasonable in light of the uncertainty of a litigated outcome at the FERC of early termination of the Power Supply Agreement for the Remaining Load. Further, SPS shall cease this initial ten-year amortization of the Regulatory Liability on the effective date of rates pursuant to a comprehensive rate case reflecting removal of the Remaining Load from SPS's jurisdictional allocation factors used to establish base rates.

1.c. All Termination Payment related impacts to SPS's wholesale customers, who receive service pursuant to SPS tariffs on file at FERC, shall be addressed at FERC.

~~2. SPS shall allocate 88.92% of the Termination Payment proceeds, which amounts are the compensation by LP&L for power sales-related shifted costs, among its Texas, New Mexico, and FERC jurisdictions using the 12-CP production demand percentages for the 12 months ending the full calendar month preceding the Integration Date, excluding the Remaining Load.~~

~~3. SPS shall allocate 11.08% of the Termination Payment proceeds, which amounts are the compensation by LP&L for transmission-related shifted costs, among its Texas, New Mexico, and FERC jurisdictions using the 12-CP transmission demand percentages for the 12 months ending the full calendar month preceding the Integration Date, excluding the Remaining Load.~~

4. SPS shall calculate the Termination Payment credit rider as follows:

a. For the production portion of the retail Termination Payment credit rider, SPS shall allocate the credit among customer classes using the AED-4CP production demand allocators from the comprehensive rate proceeding reflecting the removal of the Remaining Load from SPS's jurisdictional allocation factors used to establish base rates.

b. For the transmission portion of the retail Termination Payment credit rider, SPS shall allocate the credit among customer classes using the AED-4CP transmission demand allocators from the comprehensive rate proceeding reflecting the removal of the Remaining Load from SPS's jurisdictional allocation factors used to establish base rates.

E. Signatories will not challenge the amount of the Termination Payment ~~seek a make-whole or other similar payment from LP&L at FERC.~~

**\*\*\* The rest of Article III remaining unchanged. \*\*\***

In the alternative, Golden Spread would ask for the express denial of the proposed termination fee allocation in its entirety. Golden Spread has no objection to LP&L's efforts to join ERCOT; however, the termination fee allocation embedded in the non-unanimous stipulation could materially and unjustly harm Golden Spread and is devoid of cost-based support. Because there is no need for additional fact finding underlying its request that the Commission not approve the proposed termination fee allocation, Golden Spread is not requesting a hearing in this proceeding.

**I. GOLDEN SPREAD REQUESTS APPROVAL OF THE NON-UNANIMOUS STIPULATION EXCLUDING THE PROPOSED TERMINATION FEE ALLOCATION.**

The proposed termination fee allocation across SPS's wholesale and retail production and transmission customers, which is expressly included in the non-unanimous stipulation, is not supported by facts, and it is not needed for the Commission to find the rest of the LP&L proposal to move load into ERCOT to be in the public interest. However, the allocation of the termination fee will have material effects on Golden Spread and SPS's other wholesale customers. Golden Spread is the only SPS wholesale customer who is a party to this Docket;<sup>1</sup> so, notably, no SPS wholesale customer supports the non-unanimous stipulation.

The non-unanimous stipulation includes SPS's proposed allocation of the termination payment such that 88.92% of the proceeds are assigned to SPS's generation/production functions and the remaining 11.08% is assigned to transmission functions.<sup>2</sup> The termination fee allocation was negotiated by SPS and LP&L without participation by Golden Spread or other affected parties

<sup>1</sup> Rebuttal Testimony of Wesley L. Berger at 14.

<sup>2</sup> See Non-Unanimous Stipulation at Art. III, §§ (D)(2)-(3). See also, Supplemental Direct Testimony of Joel Ivy at 10 (describing reliance on the settlement amount in Docket No. 47576 as the sole rationale for the allocation ratios).

and was embedded in the LP&L Application.<sup>3</sup> SPS propounds that the proposed allocation extrapolates from a black box settlement that the Commission approved in Docket No. 47576, which transferred money to SPS from LP&L.<sup>4</sup> That statement is a misrepresentation of the terms of that settlement because the Docket No. 47576 did not relate to production costs at all. Further, not only did Golden Spread neither support nor oppose that Docket No. 47576 settlement, but also any findings in that case are not binding on the parties or the Commission in this case. As Commission orders approving settlements traditionally do, the Order in Docket No. 47576 plainly states:

Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the agreement.<sup>5</sup>

Given that the proposed allocation rests solely on a black box settlement with differing issues and no actual cost-based data and given that the Commission expressly stated the referenced Order is not precedential, Golden Spread has opposed the SPS-proposed allocation throughout this proceeding.<sup>6</sup>

## **II. THE 89%/11% PRODUCTION TO TRANSMISSION ALLOCATION RATIO PROPOSED BY SPS SHOULD NOT BE APPROVED BY THIS COMMISSION.**

### **A. The 89%/11% Split Included in the Settlement is Arbitrary and Devoid of Cost-Basis.**

GSEC asks the Commission not to address the termination fee allocation issue in this Docket; however, if it does, then the allocation proposed by SPS must be rejected. SPS freely acknowledges that the proposed allocation of termination proceeds is not based in cost-based

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<sup>3</sup> *Application of the City of Lubbock, Acting By and Through Lubbock Power & Light, for Authority to Connect the Remaining Portion of Its Load with the Electric Reliability Council of Texas and for Approval of Settlement Agreement* ("Application") at Attachment DWM-3, p. 6. *See also*, Rebuttal Testimony of Wesley L. Berger at 8 ("Here, the Settlement Agreement submitted by LP&L in this proceeding arose out of confidential negotiations between SPS and LP&L regarding their rights and obligations under two separate agreements-a partial requirements power sales agreement and a transmission letter agreement -which had to be resolved for the transfer of LP&L's remaining load to ERCOT.") (emphasis added).

<sup>4</sup> *Application of the City of Lubbock Through Lubbock Power and Light for Authority to Connect a Portion of Its System with the Electric Reliability Council of Texas*, Docket No. 47576, Order (Mar. 15, 2018).

<sup>5</sup> *Id.* at Ordering Para. ¶ 22.

<sup>6</sup> *See, e.g.*, Direct Testimony of Natasha C. Henderson.

economics but is merely “one way” that the allocation might be set.<sup>7</sup> Moreover, the allocation does not rely on actual changes in production or transmission costs at all.<sup>8</sup> SPS states that the proposed termination fee allocation is algebraically derived from a non-cost-based settlement from a prior docket.<sup>9</sup> GSEC disagrees with that characterization and there is nothing to suggest the allocation is just and reasonable. SPS makes no quantified connection between termination of its wholesale power contract with LP&L and the actual relative impacts such termination has on SPS’s future production and transmission customers. Even in the context of a non-unanimous stipulation, the applicant retains the burden of proof, and it has not been met on this element.

The non-unanimous stipulation includes elements that will change rates imposed by SPS on its customers.<sup>10</sup> As the utility proposing rate effects through the non-unanimous stipulation, SPS has the burden of proving that the resulting rates are just and reasonable.<sup>11</sup> SPS has not met this burden. As a rate-regulated utility, SPS is obligated to have just and reasonable rates that are not unreasonably preferential, prejudicial, or discriminatory to particular customer classes.<sup>12</sup> For non-ERCOT utilities like SPS, the Public Utility Regulatory Act (“PURA”)<sup>13</sup> further clarifies that Commission-approved rates should be based on the actual cost of service.<sup>14</sup> The rates that result from the allocation proposed in the non-unanimous stipulation are not cost-based, are not just and

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<sup>7</sup> See Rebuttal Testimony of Wesley L. Berger at 11. See also, response to RFI GSEC 2-3. Cf. PURA § 36.051 (establishing cost-of-service ratemaking for electric utilities like SPS); PURA § 36.112 (requiring cost-based rates from non-ERCOT utilities, including SPS).

<sup>8</sup> See SPS Response to RFI GSEC 2-3 (“The settlement agreement between SPS and LP&L is not based on any underlying cost of service analysis.”). See also, Supplemental Direct Testimony of Joel Ivy at 10 (describing reliance on the settlement amount in Docket No. 47576 as the sole rationale for the allocation ratios).

<sup>9</sup> Rebuttal Testimony of Wesley L. Berger at 11-12.

<sup>10</sup> See Non-Unanimous Stipulation at Art. III, §§ (D)(4) (on SPS retail treatment of the issue); on allocation to wholesale customers.

<sup>11</sup> PURA § 36.006.

<sup>12</sup> PURA § 36.003.

<sup>13</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2021) (PURA).

<sup>14</sup> PURA § 36.112. Cf. SPS Response to RFI GSEC 2-3 (“The settlement agreement between SPS and LP&L is not based on any underlying cost of service analysis.”). SPS also has the burden of demonstrating to FERC that termination fee allocation proposal is cost-based, and just and reasonable and not unduly discriminatory. Section 201 of the Federal Power Act confers jurisdiction to FERC over the transmission of electric energy for resale in interstate commerce and the transmission facilities used for that purpose. 16 U.S.C. § 824. Section 205 of the Federal Power Act requires that all rates and charges made, demanded or received by any public utility for or in the connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful. 16 U.S.C. § 824d(a).



reasonable, and could unreasonably prefer SPS's production customers over SPS's transmission customers. If imposed on SPS's wholesale transmission customers, Golden Spread effectively would be subsidizing SPS's production customers by receiving too little of the fee credit.

B. SPS's Wholesale Transmission Rates, Which Will be Affected by the Allocation, Must Be Approved by FERC Regardless of Whether the Commission Addresses the Allocation or Not.

The parties seem to all acknowledge that FERC approval of the LP&L transition, including the termination fee allocation, is required because of its effect on wholesale customers.<sup>15</sup> Implicitly, the non-unanimous stipulation also recognizes that the New Mexico Public Regulatory Commission ("NMPRC") also will need to adjust New Mexico-jurisdictional SPS retail rates based on termination fee allocation.<sup>16</sup> As such, including the termination fee allocation in the non-unanimous stipulation does not resolve the issue. SPS has wholesale transmission customers outside of Texas who are not parties to this Docket.<sup>17</sup> It is not clear whether they received notice of this Docket,<sup>18</sup> yet the language of the non-unanimous stipulation expressly affects allocations to these wholesale customers just as it does Golden Spread. It is noteworthy that a section of SPS witness Wesley Berger's testimony is entitled "THE COMMISSION DOESN'T NEED TO ADDRESS DELINEATION OF THE TERMINATION PAYMENT(S) TO WHOLESALE CUSTOMERS."<sup>19</sup> The Commission should heed SPS's own words and remove references to SPS's wholesale customers from the termination fee allocation portions of the non-unanimous stipulation.

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<sup>15</sup> See Application at 9.

<sup>16</sup> See at Non-Unanimous Stipulation at Art. III, §§(D) 2-3 ("SPS will allocate 88.92% of the Termination Payment proceeds, which amounts are the compensation by LP&L for power sales-related shifted costs, among its Texas, New Mexico, and FERC jurisdictions based on the 12-CP production demand percentages for the 12 months ending the full calendar month preceding the payment date, excluding the Power Supply Agreement capacity amounts. ...SPS will allocate 11.08% of the Termination Payment proceeds, which amounts are the compensation by LP&L for transmission-related shifted costs, among its Texas, New Mexico, and FERC jurisdictions based on the 12-CP transmission demand percentages for the 12 months ending the full calendar month preceding the Payment Date, excluding the LP&L network transmission loads.") (emphasis added).

<sup>17</sup> Rebuttal Testimony of Wesley L. Berger at 12.

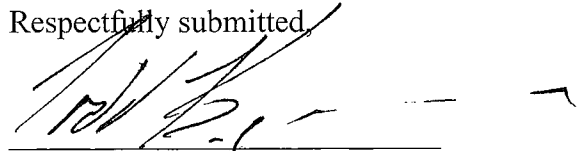
<sup>18</sup> See Application at 10 ("LP&L proposes two forms of notice of the Application: 1. Notice of this filing in the Texas Register; and 2. Notice to each party granted intervenor status in Docket No. 47576.")

<sup>19</sup> Rebuttal Testimony of Wesley L. Berger at 12 (formatting original).

### III. CONCLUSION

For the reasons detailed herein, GSEC respectfully urges the Commission to approve all elements of the non-unanimous stipulation *except* for the termination fee allocation or, in the alternative, to deny the termination fee allocation that is included in the non-unanimous stipulation.

Respectfully submitted,



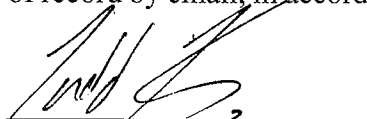
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ATTORNEYS FOR GOLDEN SPREAD  
ELECTRIC COOPERATIVE INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of December 2022, a true and correct copy of the foregoing document was served upon all parties of record by email, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
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Todd F. Kimbrough

