BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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| IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NO. 256, | ) | Case No. 15-00296-UT |
| SOUTHWESTERN PUBLIC SERVICE COMPANY, Applicant. | ) | |

**JOINT MOTION FOR LEAVE TO REPLY TO SPS'S AND STAFF'S RESPONSES TO JOINT MOTION TO DISMISS SPS'S PROPOSED INCREASES TO RATE NO. 59**

Vote Solar and Coalition for Clean Affordable Energy ("Joint Movants"), by and through counsel and in accordance with Rule 1.2.2.12(C)(1)(d) NMAC, respectfully move the New Mexico Public Regulation Commission ("Commission") for an order granting Joint Movants leave to reply to Southwestern Public Service Company's ("SPS" or "the Company") Response to Joint Motion to Dismiss SPS's Proposed Increases to Rate No. 59 ("SPS's Response") and Staff's Response to the Joint Motion to Dismiss SPS's Proposed Increases to Rate 59 ("Staff's Response"). In support of this Motion, Joint Movants state the following:

1. Joint Movants' Motion to Dismiss SPS's Proposed Increases to Rate No. 59 and Supporting Brief ("Motion to Dismiss") requested that the Commission dismiss SPS's request to increase energy charges under Rate 59 because the Company (i) failed to meet its prima facie burden for the proposal, (ii) failed to comply with the Commission's filing and notice requirements, and (iii) seeks to recover costs that are not authorized by statute.

2. In its Response, SPS first argues that the Company has met its initial burden of proof with respect to its request to increase Rate 59, citing various materials in the Application. SPS Resp. at 4-5. Prior to the filing of the Motion to Dismiss, in discovery, SPS identified one

tab of a workpaper and a section of one witness's testimony as the support for the Company's proposed revisions to Rate 59. Exhibit 1, Mot. to Dismiss. SPS relies on additional materials in its Application to argue that it made a prima facie case for the proposed Rate 59 increase. SPS Resp. at 6-9. Joint Movants should have an opportunity to reply to this new justification.

3. Next, SPS's Response argues that the Joint Movants' notice requirement argument is predicated on the assumption that Rate 59 customers constitute a separate "rate class." SPS Resp. at 9-10. Joint Movants should be permitted to reply and clarify that they did not make that assumption and that no such assumption is needed to trigger the notice requirements in Rule 17.1.2.10(C).

4. Joint Movants should also be permitted to reply to SPS's suggestion that the requirements of the governing statute might only apply to approval of original rate riders, and not to its request to implement a new rate rider that reflects increased energy charges. SPS Resp. at 4. Joint Movants did not anticipate this argument in their Motion because it is inconsistent with the plain language of the statute. NMSA 1978, § 62-13-13.2(A) (requiring the Commission to "give due consideration to . . . the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected customer rate riders go into effect").

5. Finally, in addition to the request to increase the Rate 59 energy charges, SPS proposes to change the Rate 59 methodology by changing the energy to which the charges apply. Staff Resp. ¶ 6. Staff agrees that SPS's rate increase request should be denied in light of the Company's failure to meet its initial burden of proof, but also seeks dismissal of SPS's proposal to change the methodology. Staff Resp. ¶¶ 5, 7. Similarly, SPS argues that the Rate 59 methodology change and rate increase should be considered as a package. SPS Resp. at 3. Joint

Movants should be permitted to reply to Staff's and SPS's arguments, given that Joint Movants did not place the methodology change at issue in their Motion to Dismiss the rate increase.

6. Movants' reply brief is included as Attachment A to this Motion.

7. Movants have notified the other parties in this case of this Motion. Staff, the Attorney General, and OPL state they do not oppose the Motion for Leave to Reply; SPS opposes the Motion. Joint Movants are unaware of other parties' positions.

WHEREFORE, Joint Movants request that the Commission grant them leave to Reply to SPS's and Staff's Responses to the Joint Motion to Dismiss SPS's Proposed Increase to Rate No. 59.

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# Attachment A

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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| IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NO. 256, | ) | Case No. 15-00296-UT |
| SOUTHWESTERN PUBLIC SERVICE COMPANY, Applicant. | ) | |

**REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS SPS'S PROPOSED INCREASES TO RATE NO. 59**

## I. Introduction.

Joint Movants moved to dismiss SPS's proposed increase to Rate 59 because the Company failed to support its proposed increases to Rate 59 in its Application, violated the Commission's notice and filing requirements, and seeks to recover rates that are not authorized by statute. SPS's failure to make a prima facie showing and follow the rules frustrates the Commission's transparent and fair ratemaking process. SPS's Response relies on a mix of new allegations and immaterial citations in an attempt to rebut some of Joint Movants' arguments. Further, SPS entirely ignores the plain statutory language governing approval of utility rate riders for distributed generation ("DG") customers.

SPS correctly states that "New Mexico law requires that in evaluating a motion to dismiss, all facts asserted in SPS's direct testimony and supporting documents are assumed to be true." SPS Resp. at 5. Dismissal is appropriate here precisely because SPS's direct testimony and supporting documents do not include factual assertions that, assumed true, would demonstrate that its request to increase Rate 59 is just and reasonable and consistent with the authorizing

statute. SPS contends that the Motion to Dismiss relies on the standard for review that applies to evidence presented at an evidentiary hearing. *Id.* at 9. This argument has no merit. The Joint Movants urge the Commission to dismiss the proposed increase to Rate 59 because of SPS's "total failure to allege [matters] essential to the relief sought." Mot. to Dismiss at 8 (internal citation omitted); *see also Las Luminarias v. Isengard,* 1978-NMCA-117, ¶ 3.

Staff, in its Response, supports the Motion to Dismiss the Rate 59 rate increase on the grounds that SPS has failed to meet its burden of proof. Staff Resp. at ¶ 5. However, Staff also asks the Commission to dismiss the other portion of SPS's revised Rate 59 proposal, the methodology change, on the same grounds. Staff Resp. at ¶ 7. The methodology change, if approved, would eliminate SPS's current practice of applying the Rate 59 charges to monthly excess kilowatt-hours that DG customers do not use on-site, but instead sell to the Company at avoided-cost rates. SPS now asks the Commission to consider both Rate 59 changes as a package. SPS Resp. at 3. However, SPS included no such request in its direct case and there is nothing in the Application that indicates that any part of the rate increase was calculated to offset decreased collections under the methodology change.

Essentially, the methodology change fixes an error in SPS's existing rate design: the Company would no longer apply a "standby" charge to kilowatt-hours that are above and beyond the energy the customers would have used and bought from SPS in the absence of their DG systems. It is in the public interest for the Commission to allow SPS to correct this error, or at least allow the proposal to go to hearing (at which point, SPS could attempt to prove that the methodology change is not proper in the absence of its requested rate increase). For this reason, Joint Movants did not place the methodology change at issue in their Motion to Dismiss.

## II. Like its Application, SPS's Response ignores the Company's burden to show that its new Rate 59 rate complies with NMSA 1978, section 62-13-13.2.

In their Motion, Joint Movants demonstrate that the Rate 59 rate increase must be dismissed because SPS has failed to make any showing in the Application to satisfy the section 62-13-13.2(A) requirements for interconnected customer rate riders. Lacking such a showing, SPS's Application is deficient. Case No. 10-00106-UT, Final Order Rejecting Advice Notices ¶ 5 (finding that "the Commission should reject PNM's Advice Notices and accompanying testimony as deficient" for not including evidence or arguments establishing prima facie case that the proposal was consistent with the relevant statute "and because PNM has failed to establish a prima facie case that its proposed rates are consistent with the [statute] and thus just and reasonable").

To start, the Commission should dismiss the proposed rate increase because the Application did not include evidence of "the reasonably determinable benefits to the utility system provided by new interconnected customers *during each three-year period after which new interconnected customer rate riders go into effect.*" NMSA 1978, § 62-13-13.2(A) (emphasis added) (providing for utility DG rate riders). SPS did not include any information in its Application related to the benefits of DG in the forthcoming three-year period, or for any period for that matter. The Commission has not considered the benefits DG customers provide to SPS since 2010. *See* Case No. 10-00196-UT, Final Order.[1] Rate 59 has been in effect for more

[1] The original Rate 59 was approved as part of SPS's renewable energy procurement plan proceeding and expired by operation of law at the conclusion of SPS's 2010 general rate case. NMSA 1978, § 62-13-13.2(A) ("a utility may seek approval of interconnected customer rate riders in the utility's renewable energy procurement plan filing before January 1, 2011, to be in effect until the conclusion of the utility's next general rate case"). The Company's 2010 general rate case concluded with a stipulation, and the Commission's decision did not mention Rate 59. Case No. 10-00395-UT, Final Order Adopting Am. Certification of Stipulation. Approval of the "stipulation does not constitute commission approval of or precedent regarding any principle or issue in the proceeding." 1.2.2.20(D) NMAC. The Commission's decision in SPS's 2012 general rate case did not mention Rate 59. Case No. 12-00350-UT, Final Order Partially Adopting Recommended Decision. No parties raised issues related to Rate 59 in that case.

than three years without the Commission's consideration of these benefits, and so any increase to the rates through a revised rate rider would be impermissible absent relevant information.

SPS acknowledges that Rate 59 is promulgated under the authority of section 62-13-13.2. SPS Resp. at 4. Yet in its Response, SPS merely recaps the history of Rate 59 and fails to offer *any argument* to demonstrate that its Application satisfies the burdens created by that statute's requirements for a showing. The Company cannot rely on a study from 2010 to support a rate hike in 2016 when the statute requires a showing at least every three years.[2] SPS has never—in its Application in this proceeding nor in any prior proceeding—provided information related to the benefits of DG to the Company in any subsequent three-year period after Rate 59 first took effect. Without such information, the Commission cannot lawfully approve an increase to Rate 59. Accordingly, the Commission should dismiss the proposed increase to Rate 59. The Commission cannot adopt an interpretation of section 62-13-13.2 that essentially strikes the words "during each three-year period" from the statute.

Moreover, SPS's Response did not attempt to identify any prima facie showing that would allow the Commission to assure the Rate 59 proposal does not recover costs that are duplicative of underlying rates, consider the costs of serving new DG customers, or find that the proposed increases would recover the costs authorized by statute—all also required by section 62-13-13.2(A). SPS may believe it does not bear the burden to do so because the Commission has approved prior versions of Rate 59. *See* SPS Resp. at 4 ("SPS seeks to change - not establish - the existing standby rate rider"). However, the requirements of section 62-13-13.2(A) apply

[2] While it is never appropriate for a utility to rely on stale information to justify an increase in rates under section 62-13-13.2, it would be particularly intolerable to rely on SPS's study in the 2010 proceeding because that study did not even forecast future benefits. Case No. 10-00196-UT, Recommended Decision of the Hr'g Examiner at 30 (explaining that SPS introduced a study that "incorporates *existing* benefits in the proposed Standby Rate Rider" and plans to conduct a future study of benefits related to "future program participation and development") (emphasis added).

whenever the Commission determines rates for a utility DG rate rider. Section 62-13-13.2 does not distinguish between establishing an original tariff and establishing a new revised tariff that supersedes a prior version of the rate, as SPS proposes in this proceeding. § 62-13-13.2; Appl., Proposed Tariff No. 5011.4 (Fourth Revised Rate No. 59, Canceling Third Rate No. 59).

## III. SPS's Response does not identify a prima facie case that the Company's proposed increase to Rate 59 is just and reasonable.

In its Response, the Company cites several portions of the Application in an attempt to find a prima facie showing for the reasonableness of the proposed increases to Rate 59. SPS Resp. at 6-9. These materials do not contain any statements that would show that the Rate 59 proposal is just and reasonable and, therefore, the Commission should dismiss the proposed increases. Staff agrees that "SPS has failed to meet its burden of proof to increase its energy charges under Rate 59 and therefore SPS's request should be denied." Staff Resp. ¶ 5.

SPS cites materials that fall into three categories. First, SPS relies on portions of its Advice Notice and Application that describe the magnitude of the proposed increases. SPS Resp. at 6 (describing the proposed Rate 59 tariff sheet in the Advice Notice); *id.* at 7-8 (listing Attachments RML-4 and RML-7); *id.* at 8-9 (discussing Schedules O-2 and O-3 to the Application). These materials show what SPS proposes, but do not justify the proposal. As the Joint Movants explained in their motion to dismiss, "[t]he mere filing of schedules and testimony in support of [a] rate increase is insufficient" because "[t]he Company must support its application by way of substantial evidence." *Re Gas Co. of N.M.*, Case No. 1440, Order on Cost of Capital and Revenue Requirements at 6; *see also Re Gas Co. of N.M.*, Case No. 2361, Final Order Approving Recommended Decision to Dismiss Proceeding at 35-36 (explaining that a utility cannot rely on some presumption of reasonableness).

Second, SPS cites the testimony of several witnesses that the Company characterizes as "discuss[ing] the increasing costs of providing production, transmission, and distribution capacity service to SPS's customers and explain[ing] that these expenses are reasonable and necessary." SPS Resp. at 7 (citing the testimony of Brad Baldridge, Kenneth Munsell, Alan Davidson, Evan Evans, and Ian Fetters). None of these witnesses mentions Rate 59. Their testimony may suggest that SPS's production, transmission, and capacity costs are reasonable. But they do not indicate that it is reasonable to recover those costs by increasing Rate 59. Accordingly, as Staff notes, "[t]here is no testimony in SPS's Application to support this request." Staff Resp. ¶ 5.

Finally, SPS cites materials that may bear a relationship to the Company's rationale for increasing Rate 59—but that relationship is not found in the Company's Application. First, SPS mentions the description of the proposed change to the application of Rate 59 in Richard Luth's testimony. SPS Resp. at 7. While SPS's Response states that this proposed change and the proposed increases to Rate 59 "should be considered as a package," *id.* at 3, neither the Application nor the Response explains what one has to do with the other. Second, the Response states that a workpaper titled "'Fixed Cost per kWh' in Attachment RML-8 sets out the standby rate calculation for each customer class to which the rate applies." *Id.* at 8. This statement is in SPS's Response, but not in the Company's Application. There is no testimony mentioning the workpaper or its calculations. The workpaper does not state its role in the development of SPS's proposed rates, and does not mention Rate 59.

As Staff correctly observed, "SPS does not provide an explanation or justification for . . . the increase in the energy charges. The Commission therefore has no basis to determine if the

new charges under Rate 59 are just and reasonable." Staff Resp. ¶ 7. The Commission should grant the Motion to Dismiss the proposed rate increases.

## IV. SPS's interpretation of the Commission's notice requirements ignores the plain language of the rule.

SPS's notice to ratepayers did not include any information about the proposed increase to Rate 59. Errata Notice and Order, Notice of Proceeding and Hr'g (Nov. 24, 2015). This failure is a violation of the Commission's notice requirements and grounds for dismissal of the Application. 17.1.2.10(C)(2) NMAC; 17.1.2.10(C)(4) NMAC; *see also* Mot. to Dismiss at 10-11.

In response, SPS argues that the Joint Movants' argument about SPS's notice violation is predicated on the "erroneous assumption that Rate 59 customers constitute a separate 'rate class.'" SPS Resp. at 10.[3] SPS is mistaken. SPS's notice violations are not predicated upon DG customers constituting a separate rate class. The Commission's notice requirements apply to any proposed "change in rates," and there is nothing in the text of Rule 17.1.2.10(C) that limits notice to changes that would affect an entire customer class. 17.1.2.10(C)(2) NMAC ("Every utility seeking a change in rates shall notify *affected* customers of the pendency of the application for new rates.") (emphasis added); *see also* 17.1.2.10(C)(2)(a) NMAC (requiring the notice to include "the amount of the change requested, in both dollar amounts and percentage change"). The Rule requires SPS to give notice to affected ratepayers of its proposed increases to Rate 59, like any other proposed change in rate. The rule is straightforward and has nothing to do with

[3] SPS also states that the Joint Movants ignore information in the Application and that "SPS's advice notice, testimony, attachments and rate filing package schedules were filed with the Commission and provide the specific information regarding the application of Rate 59 that the Joint Motion claims is absent from SPS's filing." SPS Resp. at 10. The Joint Movants cannot meaningfully reply to this argument because SPS has not indicated which materials provide the information that Rule 17.1.2.10(C) requires related to the proposed increases to Rate 59.

whether DG customers are a separate rate class. Allowing SPS to ignore notice requirements when rate changes do not affect an entire class would frustrate the purpose of the rule.[4]

In addition, SPS offered no defense or explanation for the Company's failure to include a concise statement showing the anticipated annual revenue impacts of the proposed Rate 59 increases, the number of affected customers in each class, and the impact on customers at class-average consumption, as required by 17.1.210.11(C) NMAC. *See also* Mot. to Dismiss at 10.

## V. SPS did not defend its proposal to recover costs through Rate 59 that are not authorized by statute.

In its Response, SPS does not attempt to show that the Rate 59 proposal would recover costs consistent with the tariff's authorizing statute: NMSA 1978, section 62-13-13.2. The statute authorizes utility rate riders only for the recovery of the costs of ancillary and standby services, § 62-13-13.2(A), and defines "ancillary and standby services" as services that, *inter alia*, "are required by or are a consequence of interconnecting distributed generation facilities to a utility's system." § 62-13-13.2(D)(1). In contrast, SPS's proposed Rate 59 tariff sheet includes charges for production, transmission, and distribution facilities. Appl., Proposed Tariff No. 5011.4. While the Company's Response notes that "[n]umerous SPS witnesses discuss the increasing costs of providing production, transmission, and distribution capacity service to SPS's customers," SPS Resp. at 7, none of SPS's witnesses' testimonies shows that all of these costs are for ancillary and standby services, as defined by section 62-13-13.2.

Rather than show consistency with the statute, SPS observes that the Commission allowed recovery of generation, transmission, and distribution costs through prior iterations of Rate 59. *See* SPS Resp. at 2. However, this does not address SPS's burden to make some

[4] SPS also notes that the Commission approved and issued the Company's proposed notice. SPS Resp. at 10. The notice to ratepayers was issued before either of the Joint Movants moved to intervene in this proceeding and no party raised these deficiencies to the Commission's attention.

showing in its Application that the new rate it is proposing under its Rate 59 proposal is just and reasonable. *See* Case No. 10-00106-UT, Final Order Rejecting Advice Notices ¶ 5 (rejecting a utility's advice notices and accompanying testimony for failing to establish a prima facie case that proposed rates were consistent with the authorizing statute and just and reasonable). SPS's burden does not depend on whether the Company is proposing an original tariff sheet or one that replaces rates the Commission has previously approved. NMSA § 62-8-7(A). A rider that recovers costs not authorized by statute is neither just nor reasonable.

The Commission has never considered the claim that SPS seeks to recover costs not authorized by statute. The only proceeding in which parties contested Rate 59 was Case No. 10-00196-UT. In that case, parties raised two unrelated issues in opposition to the original tariff. First, Sun Edison argued that the rider may duplicate costs that SPS recovers in its general rates for its demand-metered commercial and industrial customers.[5] Case No. 10-00196-UT, Final Order ¶ 5 (Dec. 23, 2010). Second, Sun Edison and Staff argued that further study was needed regarding the costs and benefits of DG. Case No. 10-00196-UT, Recommended Decision of the Hr'g Examiner at 25. The Commission did not hear an objection to Rate 59's improper cost recovery in Case No. 10-00196-UT, nor in any subsequent case involving proposed revisions to the rider. This does not mean that SPS may recover costs unlawfully through the proposed rider at issue in this case. *See* NMSA 1978, § 62-8-1 ("Every rate made, demanded or received by any public utility shall be just and reasonable.").

SPS incorrectly claims that in approving the original Rate 59 the Commission determined DG customers should bear an appropriate share of generation, transmission, and distribution

[5] Although a majority of Commissioners rejected that argument, SPS developed a separate standby rate for demand-metered customers "[t]o mitigate these concerns." *See* Direct Test. of Alice Jackson in Support of Uncontested Comprehensive Stipulation at 73:7-9, Case No. 10-00395-UT.

costs because these customers "are connected to SPS's system and take service from SPS." SPS Resp. at 7 (citing pp. 25-31 of the Recommended Decision in Case No. 10-00196-UT). The Commission made no such finding. SPS cites a portion of the Recommended Decision in which the Hearing Examiner describes SPS's proposal and analyzes Staff's and Sun Edison's specific arguments against the proposal. Even if the Commission agrees that DG customers should bear an appropriate share of the utility's fixed costs, it would not follow that such costs are recoverable under a section 62-13-13.2(A) rate rider.

For these reasons, SPS cannot rely on the Commission's approval of prior iterations of Rate 59 to defend its unlawful proposal in this case.

## VI. The Motion does not put SPS's proposal to change the Rate 59 methodology at issue.

In addition to increasing Rate 59 energy rates, SPS proposes to revise the methodology for calculating charges under Rate 59 by changing the kilowatt-hours to which the rates apply. Direct Test. of Richard M. Luth at 46, Table RML-2 ("Changes the application of the charge to customer usage provided by customer generation, whether directly from customer generation or as an offset to kWh delivered from the SPS system.").[6] Staff urges the Commission to dismiss both the proposed rate increase and methodology change because SPS has failed to meet its burden to support the proposed changes. Staff Resp. ¶ 7. Staff believes that dismissal of both proposals is in the public interest. *Id.*

[6] The description of the methodology change in SPS's Response is inconsistent with the proposed tariff language and the description in the Direct Testimony of Richard M. Luth. SPS's Response states, "SPS proposes to reduce the application of the tariff so that the rate applies only to the kWh generated by the customer's DG facility." SPS Resp. at 2. However, the Company's actual proposal is to apply the charge to certain energy "used directly from Customer's Distributed Generation, or applied as an offset to kWh delivered from SPS['s] distribution system." Appl., Proposed Tariff No. 5011.4 at 1 of 4 (defining Customer Usage).

However, the proposed methodology change actually corrects an error in SPS's current rate design, thus making this fix in the public interest.[7] There is no material in the Application and supporting testimony connecting the methodology change and rate increase, and SPS did not ask the Commission to consider the two proposals as a package in its Application. It is Joint Movants' belief that they are independent. This matter should go forward to the public hearing in this case so that the Commission may decide whether to adopt the methodology change on the merits.

Joint Movants do not dispute Staff's contention that SPS has failed to meet its burden in its Application for the methodology change (but note that it is at least described in the testimony of witness Luth). However, for the reasons stated above, Joint Movants did not put the methodology change at issue in the Motion that is before the Commission. Accordingly, the Commission is not required to dismiss it *sua sponte* (or on the suggestions in the Response Briefs). The purpose of the prima facie burden and notice requirements is to protect ratepayers from hidden impacts and ensure a fair ratemaking process. Case No. 2361, Final Order Approving Recommended Decision to Dismiss Proceeding at 36 ("A utility should not win a rate increase because others may not have picked up on a critical issue."). The purpose is not to protect a utility with complete information and abundant resources from its own errors and omissions. *Cf.* SPS Resp. at 11 ("if the notice is insufficient for the change in the kWh charge, then it must be insufficient for the proposed change to apply the kWh charge to fewer kWh").

[7] Currently, SPS applies a "standby" charge under Rate 59 to all the energy that a net-metered customer generates, including the "excess energy" that the Company purchases at avoided-cost rates. Tariff No. 5011.2 at 1-2 of 3 (assessing charge based on "Monthly Actual Production"); Tariff No. 3018.33 at 17 of 30 (providing for compensation at the rate set forth in Rate No. 4 for purchases from Qualifying Facilities for "excess kWh generated," which is the electricity generated by a small net-metered facility that exceeds the electricity supplied by the grid during a billing period). In other words, SPS is applying a standby charge to energy for which it has no obligation to "stand by."

Dismissing the Company's proposal to adjust its Rate 59 methodology to correct a longstanding ratemaking error would not protect ratepayers and would not promote the policies underlying the notice and burden requirements.

SPS urges that "[b]oth changes should be considered as a package" and "[e]ither both parts of SPS's proposed change should be considered or neither should be considered." SPS Resp. at 3. However, the Application does not indicate any connection between the two changes. Even in its Response, SPS does not reveal a logical connection for the Commission to infer between the two.

SPS also alleges in its Response that the net effect of the proposed changes to Rate 59 will reduce the costs customers will pay under Rate 59. *Id.* at 2. This allegation is not supported by the Company's application and cannot be taken as true. *Cf. RIO Grande Kennel Club v. City of Albuquerque*, 2008-NMCA093, ¶ 10 (quoting *Hovet v. Lujan*, 2003-NMCA-061, ¶ 8) ("In reviewing an order granting a motion to dismiss, we accept as true all facts properly pleaded."). This new allegation is merely a reminder of the type of analysis that is wanting in the Application.

Should the Commission disagree with Joint Movants and find that it should consider all proposed revisions to Rate 59 together, the Joint Movants respectfully request that the Commission grant the relief requested in Staff's Response.

**VII. Conclusion**

The Commission should dismiss SPS's proposed Rate 59 increase for the reasons set forth above and in the Joint Motion to Dismiss.

CONTINUED FOR SIGNATURE

Respectfully submitted this 4th day of April, 2016.

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**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

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| **IN THE MATTER OF SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPLICATION FOR REVISION OF ITS RETAIL RATES UNDER ADVICE NOTICE NO. 256,** | ) | |
| | ) | **Case No. 15-00296-UT** |
| **SOUTHWESTERN PUBLIC SERVICE COMPANY,** | ) | |
| **APPLICANT.** | ) | |

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that true and correct copies of the Joint Motion for Leave to Reply to SPS's and Staff's Responses to Joint Motion to Dismiss SPS's Proposed Increases to Rate No. 59 were sent as indicated on April 4, 2016 to the parties listed below.

**VIA E-MAIL:**

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