

147 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Golden Spread Electric Cooperative, Inc.

Docket No. EL13-78-000

v.

Southwestern Public Service Company

Golden Spread Electric Cooperative, Inc.

Docket No. EL12-59-000  
(consolidated)

v.

Southwestern Public Service Company

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES

(Issued June 19, 2014)

1. On July 19, 2013, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed a complaint against Southwestern Public Service Company (SPS) pursuant to sections 201, 206, and 306 of the Federal Power Act (FPA)<sup>1</sup> and Rule 206 of the Commission's regulations.<sup>2</sup> The complaint alleges that the rate of return on common equity (ROE) input values of (1) 10.25 percent for the formula rate applicable to the Replacement Power Sales Agreement (RPSA) between Golden Spread and SPS, and (2) 10.77 percent for the formula rate applicable to SPS's annual transmission revenue requirement in both the Xcel Energy, Inc. (Xcel) Open Access Transmission Tariff (OATT) and the Southwest Power Pool, Inc. (SPP) OATT, are not just and reasonable. Golden Spread contends that the base ROE input values for both the RPSA and the SPS transmission formula rate should be reduced to 9.15 percent. The complaint also includes a "conditional complaint" against SPP from which Golden Spread takes transmission service under the SPP OATT. In this order, we establish hearing and settlement judge

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<sup>1</sup> 16 U.S.C. §§ 824, 824e, 825e (2012).

<sup>2</sup> 18 C.F.R. § 385.206 (2013).

procedures, set a refund effective date of July 19, 2013, and consolidate this proceeding with Docket No. EL12-59-000 for purposes of settlement, hearing, and decision. We also dismiss the conditional complaint against SPP.

## **I. Background**

2. Golden Spread purchases energy and capacity from SPS pursuant to the RPSA, which commenced on April 20, 2012, and will continue for a term of seven years.<sup>3</sup> The cost-based RPSA has a formula rate that contains a 10.25 percent ROE, which was established by a black box settlement in Docket No. ER06-274-003.<sup>4</sup> The settlement provided that this ROE could be changed by filings made with the Commission pursuant to sections 205 or 206 of the FPA. Moreover, the RPSA contains language regarding the rights of the parties to seek unilateral modification of the rates, terms, and conditions pursuant to section 205 or 206 of the FPA.<sup>5</sup>

3. Golden Spread takes Network Integration Transmission Service under the SPP OATT, with rates for service calculated pursuant to the formula rate for SPS as set forth in the Xcel OATT.<sup>6</sup> The ROE formula rate input used to determine SPS's annual transmission revenue requirement, and ultimately the charges applicable to Golden Spread's transmission service, is 11.27 percent. This formula rate consists of a base ROE of 10.77 percent and a 50 basis point adder to reflect SPS's membership in SPP. The transmission formula rate was established by settlement in Docket No. ER08-313, *et al.*<sup>7</sup> The settlement reserved the parties' rights to seek changes to the negotiated ROE through filings made with the Commission pursuant to sections 205 and 206 of the FPA.

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<sup>3</sup> Golden Spread Complaint at 10.

<sup>4</sup> *See Golden Spread Cooperative Inc., et al.*, 123 FERC ¶ 61,054 (2008) (approving the settlement). The settlement established a formula rate for service under a then-existing power sales agreement between SPS and Golden Spread that expired on April 19, 2012. The RPSA was negotiated as part of that settlement and under its terms the rates in effect immediately prior to the commencement of service under the RPSA were to be carried forward to the RPSA.

<sup>5</sup> Golden Spread Complaint at 10.

<sup>6</sup> *Id.*

<sup>7</sup> *See Xcel Energy Services, Inc.*, 132 FERC ¶ 61,170 (2010) (approving the settlement).

4. On April 20, 2012, Golden Spread filed a complaint,<sup>8</sup> supported by a discounted cash flow (DCF) analysis, alleging that the ROEs in both the RPSA and SPS's transmission formula rate are unjust and unreasonable, and that a just and reasonable base ROE for both is now 9.15 percent.<sup>9</sup> On July 19, 2013, one day before the expiration of the 15-month maximum refund period for the April 2012 Complaint, Golden Spread filed the instant complaint.

## II. The Complaint

5. Golden Spread contends that SPS's ROEs are excessive and that a DCF analysis performed by its expert witness is consistent with Commission precedent and shows that, based on the most recent relevant market data, a just and reasonable ROE for SPS is 9.15 percent. Golden Spread states that the existing 10.25 percent ROE for the RPSA and 10.77 percent ROE for the transmission formula rate are 110 and 162 basis points, respectively, above what is acceptable under the FPA's just and reasonable standard.<sup>10</sup>

6. Golden Spread states that its expert's DCF analysis followed the Commission's established methodology<sup>11</sup> and produced a national proxy group of 18 companies, with a range of returns from 6.37 percent to 11.51 percent. Golden Spread asserts that the proxy group was selected using screening criteria that the Commission has applied in previous cases.<sup>12</sup> Of the resulting 18 companies in the proxy group, Golden Spread states that its

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<sup>8</sup> Golden Spread, Complaint, Docket No. EL12-59-000 (April 2012 Complaint).

<sup>9</sup> Golden Spread's 9.15 percent figure in Docket No. EL12-59-000 was the median of a zone of reasonableness from 7.51 percent to 10.79 percent.

<sup>10</sup> Golden Spread Complaint at 11.

<sup>11</sup> *Id.* at 12 (citing *S. Cal. Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070 (2000); *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 (2010), *aff'd*, 139 FERC ¶ 61,042 (2012); *Golden Spread Elec. Coop. Inc. v. Sw. Pub. Serv. Co.*, Opinion No. 501, 123 FERC ¶ 61,047 (2008)).

<sup>12</sup> *Id.* at 12-13. Golden Spread applied the following criteria: electric utilities that (1) are covered by Value Line; (2) have a Standard & Poors (S&P) corporate credit rating of A, A-, or BBB+, and a Moody's Investor Service, Inc. (Moody's) long-term issuer or senior unsecured rating of Baa1, Baa2, or Baa3; (3) have a Thomson Financial/IBES published analysts' consensus 5-year earnings per share growth rate; (4) are not engaged in any major merger activity, nor were they during the 6-month dividend yield analysis period; (5) paid dividends throughout the 6-month dividend yield analysis period, did not cut dividends during the prior year, and are expected to continue paying dividends; and (6) are covered by at least two generally recognized utility industry analysts.

expert eliminated one company due to its negative growth rate and its low-end result of 1.58 percent, explaining that this result is “illogical” because it is below the cost of comparably rated public utility debt.<sup>13</sup> Golden Spread explains that the proxy group produced a range of reasonableness from 6.37 percent to 11.51 percent, and that Golden Spread’s expert used the median of 9.15 percent (rather than the average or midpoint) because the median is the Commission’s strongly preferred approach in cases involving a single utility.<sup>14</sup>

7. Golden Spread acknowledges that the Commission often uses only S&P ratings, or indicates that either S&P or Moody’s is appropriate. However, Golden Spread asserts that using both provides a more representative group in this instance because the ratings from S&P and Moody’s are divergent. Golden Spread further states that without the Moody’s screen the proxy group would include two additional companies, but that one of those is not rated by Moody’s and the other has a Moody’s rating two notches above SPS’s.<sup>15</sup>

8. Golden Spread contends that it is not appropriate to apply the \$1 billion annual revenue screen in this case because SPS is a relatively small utility, with \$1.5 billion in gross revenues in 2012, and applying that screen would eliminate only one company, Allete, Inc. Golden Spread asserts that Allete, Inc. should be retained in the proxy group because it had revenues of \$961 million in 2012 and Value Line forecasts its 2013 revenues at over \$1 billion.<sup>16</sup>

9. Golden Spread argues that FPA section 206 does not require a showing that an existing ROE exceeds the high end of the zone of reasonableness. Golden Spread asserts that an ROE is not a range, it is a specific number,<sup>17</sup> and an existing ROE is not just and reasonable solely by virtue of falling within the zone of reasonableness. Golden Spread states that a point within the zone of reasonableness must be chosen to represent a just and reasonable ROE, and in this case that point is 9.15 percent. Golden Spread argues that it has made an appropriate showing that SPS’s ROEs in the RPSA and transmission

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<sup>13</sup> *Id.* at 13.

<sup>14</sup> *Id.* at 15-16 (citing *S. Cal. Edison. Co. v. FERC*, No. 11-1471, slip op. at 6-17 (D.C. Cir. May 10, 2013); *Pac. Gas & Elec. Co.*, 143 FERC ¶ 61,190, at P 41 (2013); *Pub. Serv. Co. of N.M.*, 143 FERC ¶ 61,227 (2013)).

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> *Id.* at 16 (citing *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038, at P 14 (2008)).

formula rate are unjust and unreasonable, and that the just and reasonable ROE is 9.15 percent.<sup>18</sup>

10. Golden Spread states that reducing the RPSA ROE and the transmission formula rate base ROE to 9.15 percent will have an impact of approximately \$1,760,000 per year—\$600,000 per year for the RPSA and \$1,160,000 per year for the transmission formula rate.<sup>19</sup> Golden Spread also asserts that, because the refund protection period in Docket No. EL12-59-000 will expire on July 20, 2013, a second complaint is necessary and consistent with the FPA and the Regulatory Fairness Act.<sup>20</sup> Golden Spread argues that the Commission has allowed multiple complaints challenging ROE when the complainant submits new facts and seeks a new refund effective date.<sup>21</sup>

11. Golden Spread asserts that SPS is the proper respondent to this complaint, but that Golden Spread has also filed a “conditional complaint” against SPP out of an abundance of caution. Golden Spread states that SPP is not an essential party and that the relief to Golden Spread should flow through the SPP OATT regardless of whether SPP is a respondent. Therefore, Golden Spread requests that the Commission rule that SPP is not a necessary party and dismiss the “conditional complaint.”<sup>22</sup>

12. Golden Spread requests that the Commission set a refund effective date of July 19, 2013, the date on which the complaint was filed.<sup>23</sup>

13. Golden Spread requests that the Commission expeditiously issue an order resolving the complaint and states that the complaint can be resolved via a paper hearing, without the need for protracted litigation.<sup>24</sup> Golden Spread also requests that the Commission consolidate the complaint with the April 2012 Complaint.<sup>25</sup>

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<sup>18</sup> *Id.* at 17-18.

<sup>19</sup> *Id.* at 19.

<sup>20</sup> *Id.* at 21-22.

<sup>21</sup> *Id.* at 20 (citing *Consumer Advocate Div. of the Pub. Serv. Comm’n of W.V. v. Allegheny Generating Co.*, 67 FERC ¶ 61,288, at 62,000 (1994)).

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.* at 22.

<sup>24</sup> *Id.* at 23.

<sup>25</sup> *Id.* at 26.

### **III. Notice of Filing and Responsive Pleadings**

14. Notice of the complaint was published in the *Federal Register*, 78 Fed. Reg. 46,332 (2013), with interventions, protests, and respondent's answer due on or before August 8, 2013.

15. Central Valley Electric Cooperative, Inc., Farmers Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Roosevelt County Electric Cooperative (collectively the New Mexico Cooperatives), and West Texas Municipal Power Agency filed timely motions to intervene. Tri-County Electric Cooperative, Inc. (Tri-County) filed a timely motion to intervene and comments in support of Golden Spread's complaint. On August 8, 2013, SPS filed an answer to Golden Spread's complaint.

16. On August 23, 2013, Golden Spread filed an answer to SPS's August 8 answer. On September 5, 2013, SPS filed an answer to Golden Spread's answer.

#### **A. SPS's Answer**

17. SPS states that Golden Spread has not met its burden of proof under FPA section 206 to provide sufficient evidence to make a *prima facie* case (1) that the current rate is unjust and unreasonable and (2) that the proposed rate is just and reasonable. SPS asserts that Golden Spread's position that the just and reasonable ROE for any given rate is not a range, but a number, and that that number is the median of the range of returns of the proxy group produced by Golden Spread's expert witness, is legally and factually without merit and should be rejected. SPS contends that, while not every ROE within the range of ROEs produced by a DCF analysis leads to just and reasonable rates, recent Commission precedent makes clear that ROE is not determined by simply taking the median value from a DCF analysis.<sup>26</sup> Instead, SPS argues that the Commission must analyze the facts of each case, including the ROE necessary to attract adequate investment and all relevant public interests, and that parties may present evidence to support any ROE within the zone of reasonableness.<sup>27</sup>

18. SPS contends that Golden Spread argues in the instant complaint for a strictly formulaic approach to establishing ROEs, despite the fact that Golden Spread's expert has previously attested that such an approach is inappropriate.<sup>28</sup> SPS explains that where

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<sup>26</sup> SPS August 8, 2013 Answer at 11-12 (August 8 Answer) (citing *Martha Coakley, Mass. Att'y Gen. v. Bangor Hydro-Elec. Co.*, 139 FERC ¶ 61,090 (2012)).

<sup>27</sup> *Id.* at 12.

<sup>28</sup> *Id.* at 13 (citing *Potomac-Appalachian Transmission Highline, L.L.C., J. Bertram Solomon Aff.*, Docket No. ER08-386-001, at 4 (filed Mar. 31, 2008)).

a utility is not of average risk relative to the proxy group, the utility's ROE must be adjusted to above the measure of central tendency of risk for the proxy group.<sup>29</sup> SPS contends that Golden Spread has failed to show that SPS has average risk relative to the proxy group Golden Spread's expert witness produced. Further, SPS asserts that its investment risks are higher than those of the proxy group as a whole because SPS is in a prolonged period of elevated capital investment that will significantly increase its total rate base and the ratings from Fitch and Moody's show that SPS's investment risks are higher than those of the proxy group as a whole.<sup>30</sup> Accordingly, SPS asserts that its ROE should have been placed at the upper end of the zone of reasonableness of the proxy group Golden Spread's expert produced, and the complaint should be dismissed because Golden Spread has failed to show otherwise.<sup>31</sup> SPS states that, contrary to Golden Spread's assertions, bond yields are expected to increase in the future and that long-term capital costs are anticipated to increase significantly as the economy recovers, and these factors provide further support for rejecting the complaint.

19. SPS states that rejecting the complaint is also warranted due to a number of public policy considerations. Specifically, SPS asserts that the uncertainty created by having to defend an existing ROE whenever an analysis like Golden Spread's shows a different cost of equity would likely deter investment by increasing the costs of obtaining capital.<sup>32</sup> SPS states that this concern is heightened for SPS because it is engaged in significant capital expenditures, it has a lower bond rating than other Xcel Energy subsidiaries, and Moody's recently downgraded SPS's senior unsecured credit rating due to the planned capital expenditures.<sup>33</sup> SPS argues that granting the complaint would provide a disincentive for SPS to invest in transmission infrastructure and would be contrary to the Commission's policies to facilitate necessary transmission expansion.<sup>34</sup>

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<sup>29</sup> *Id.* (citing *S. Cal. Edison Co.*, 136 FERC ¶ 61,074, at P 30 (2011); *Golden Spread Elec. Coop. v. Southwestern Pub. Serv. Co.*, 123 FERC ¶ 61,047, at P 63 n.127 (2008); *S. Cal. Edison Co.*, 92 FERC ¶ 61,070, at 61,266 (2000)).

<sup>30</sup> *Id.* at 14-15.

<sup>31</sup> *Id.* at 15.

<sup>32</sup> *Id.* at 17.

<sup>33</sup> *Id.* at 18.

<sup>34</sup> *Id.* at 18-19.

20. For the same reasons discussed above, SPS states that Golden Spread has also failed to satisfy the second prong of its burden, under FPA section 206, to show that its proposed ROE for SPS results in just and reasonable rates.<sup>35</sup>

21. SPS asserts that if the Commission does not reject the complaint, the Commission should set the complaint for hearing and settlement judge procedures,<sup>36</sup> and consolidate this proceeding with the proceeding in Docket No. EL12-59-000.<sup>37</sup> SPS contends that Golden Spread has not justified its request for expedited treatment of the complaint and the Commission should reject that request as inconsistent with the purposes of the Fast Track Procedures.<sup>38</sup>

#### IV. Discussion

##### A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Golden Spread's answer or SPS's September 5, 2013 answer and will, therefore, reject them.

24. We dismiss the conditional complaint filed against SPP. In doing so, we note that Golden Spread states in its complaint that it does not believe that SPP is an essential party to the complaint, and that it was only filing this conditional complaint against SPP "out of an abundance of caution," because the Commission has not issued definitive guidance on whether it is necessary to name the independent system operator as a party in a complaint.<sup>39</sup> Contrary to Golden Spread's assertion, the Commission has previously addressed this issue, finding that in an ROE complaint such as this one, the independent system operator is not a beneficiary to the ROE at issue, and that the transmission owners

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<sup>35</sup> *Id.* at 19.

<sup>36</sup> *Id.* at 19-21.

<sup>37</sup> *Id.* at 23.

<sup>38</sup> *Id.* at 22.

<sup>39</sup> Golden Spread Complaint at 5-6.

are the true parties in interest.<sup>40</sup> Accordingly, we dismiss the conditional complaint filed against SPP.

## **B. Substantive Matters**

25. We find that the complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we will set the complaint for investigation and a trial-type, evidentiary hearing under section 206 of the FPA, and we consolidate this proceeding and Docket No. EL12-59-000 for purposes of settlement, hearing, and decision.<sup>41</sup> We note that the Commission is issuing Opinion No. 531, the order on initial decision in Docket No. EL11-66-001, concurrently with this order.<sup>42</sup> In Opinion No. 531, the Commission is changing its practice for determining the ROE for public utilities. Accordingly, we expect the evidence and any DCF analyses presented by the participants in this proceeding to be guided by our decision in Opinion No. 531.

26. While the parties raise various arguments as to the propriety of allowing the complaint, the Commission has previously allowed successive complaints when presented with a new analysis.<sup>43</sup> In this case, Complainants have submitted a new DCF analysis with new, more current data in support of a proposed lower ROE.

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<sup>40</sup> *Martha Coakley, Mass. Att’y Gen. v. Bangor Hydro-Elec. Co.*, 139 FERC ¶ 61,090, at P 23 (2012).

<sup>41</sup> Concurrently with the instant order, the Commission is issuing an order in Docket No. EL12-59-000, setting that complaint for hearing and settlement judge procedures. *See Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 147 FERC ¶ 61,238 (2014).

<sup>42</sup> *See Martha Coakley, Mass. Attorney Gen., et al v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014).

<sup>43</sup> *See Consumer Advocate Div. of the Pub. Serv. Comm’n of W.V., et al. v. Allegheny Generating Co.*, 67 FERC ¶ 61,288, at 62,000 (1994) (*Allegheny Generating I*), order on reh’g, 68 FERC ¶ 61,207 (1994) (*Allegheny Generating II*); *Southern Co. Services, Inc.*, 68 FERC ¶ 61,231 (1994) (*Southern Co. I*), order on reh’g, 83 FERC ¶ 61,079 (1998) (*Southern Co. II*); *see also San Diego Gas & Elec. Co. v. Pub. Serv. Co. of New Mexico*, 85 FERC ¶ 61,414 (1998), reh’g denied, 86 FERC ¶ 61,253 (1999), reh’g denied, 65 FERC ¶ 61,073 (2001). *But see EPIC Merchant Energy NJ/PA, L.P. v. PJM Interconnection, LLC*, 131 FERC ¶ 61,130 (2010), reh’g denied, 136 FERC ¶ 61,041 (2011) (rejecting the “pancaked” complaint, by distinguishing it from the three other proceedings in this string citation).

27. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>44</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>45</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

28. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,<sup>46</sup> we will set the refund effective date at the earliest date possible, i.e., July 19, 2013, as requested.

29. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by June 30, 2015. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by April 30, 2016.

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<sup>44</sup> 18 C.F.R. § 385.603 (2013).

<sup>45</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

<sup>46</sup> See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning this complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date in Docket No. EL13-78-000, established pursuant to section 206(b) of the FPA, is July 19, 2013.

(F) Docket No. EL13-78-000 is consolidated with Docket No. EL12-59-000 for purposes of settlement, hearing, and decision.

(G) The conditional complaint filed against SPP is dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.