

147 FERC ¶ 61,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER14-1225-000
ER14-1225-001

ORDER ACCEPTING AND SUSPENDING PROPOSED
TRANSMISSION REVENUE REQUIREMENT, AND
ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(April 1, 2014)

1. On January 30, 2014, as supplemented on January 31, 2014, Southwest Power Pool, Inc. (SPP) filed with the Commission proposed revisions (January 30 Filing) to its Open Access Transmission Tariff (Tariff) to implement a stated transmission service rate to accommodate the recovery of revenue requirements for SPP member Lea County Electric Cooperative, Inc. (Lea County) to be included in the Southwestern Public Service Company (Southwestern) Zone 11 pricing zone under the Tariff.¹ In this order, we accept the proposed Tariff changes for filing, suspend them for a nominal period, to become effective April 1, 2014, as requested, subject to refund, and establish hearing and settlement judge procedures, as discussed below.

I. Background

2. SPP is a Commission-approved regional transmission organization (RTO). SPP administers transmission service pursuant to its Tariff over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SPP has 75 members and serves more than six million customers over a 370,000 square mile area.² Rates for transmission service to load located within the SPP region are based on the annual transmission revenue requirement for the host zone within which the load is located. Attachment H (Annual Transmission Revenue Requirement for Network

¹ See Appendix A for the eTariff designations.

² January 30 Filing at 2.

Integration Transmission Service) of SPP's Tariff sets out the annual transmission revenue requirements for each pricing zone for network service, and Attachment T (Rate Sheet for Point-To-Point Transmission Service) contains the rates for point-to-point transmission service, based on the annual transmission revenue requirement in Attachment H. Although transmission owners control the filing of rate changes for their host zones, SPP is responsible for making filings with the Commission to incorporate any such rate changes into its Tariff.³

3. SPP states that it submitted the January 30 Filing at the direction of Lea County, a cooperative nonprofit membership corporation providing service to approximately 11,750 customers in New Mexico and Western Texas.⁴ Lea County owns a transmission and distribution system, located within the Southwestern control area, consisting of approximately 307 miles of 69 kV transmission lines, 45 miles of 115 kV transmission lines, and approximately 3,845 transmission poles.⁵ In February 2013, Lea County executed SPP's Membership Agreement with the intention of becoming a transmission owning member of SPP and transferring functional control of Lea County's limited transmission facilities—namely, a single looped transmission circuit, comprising 32.41 miles of 115 kV non-radial transmission lines, along with three transmission-level substations and equipment connected to those 115 kV lines (collectively, the 115 kV Looped Transmission Circuit).⁶

II. January 30 Filing

4. In its filing, SPP submitted, on behalf of Lea County, revised tariff sheets, supporting worksheets, calculations and testimony necessary to support Lea County's requested annual transmission revenue requirement of \$462,556. Specifically, SPP revised Attachment H, section I (General Requirements), Table 1 to: (1) specify the revenue requirements to be included as Line 11c in the Zone 11, Southwestern Zonal annual transmission revenue requirement; and (2) include a reference to the Rates and Revenue Requirements File on the SPP website, which contains the allocations for annual transmission revenue requirements consistent with the methodology established in the SPP Tariff.⁷ SPP also proposes to revise Attachment T to add Lea County to the

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ *Id.* at 4-5.

Southwestern rate sheet for point-to-point transmission service.⁸ SPP states that the Commission previously has approved similar modifications to the Tariff to accommodate zones that include multiple owners.⁹

5. In addition, SPP proposes to amend Attachment W (Index of Grandfathered Agreements) of the SPP Tariff to include two grandfathered agreements for Lea County: (1) Generation Interconnection Agreement entered into by Lea County and LCEC Generation, LLC, dated April 23, 2013; and (2) Generation Interconnection Agreement entered into by Lea County and Wildcat Wind, LLC dated March 27, 2012.¹⁰ SPP states that these agreements are treated comparably to the grandfathered agreements of other transmission owners that have previously joined SPP.¹¹

6. SPP requests that the Commission accept the proposed revisions to the SPP Tariff without suspension or hearing effective April 1, 2014.¹² SPP states that, in the event that the Commission accepts Lea County's rates to become effective as part of the SPP Tariff but sets the filing for hearing, Lea County agrees to refund any difference between the rates proposed in the January 30 Filing and the rates ultimately determined by the Commission to be just and reasonable.¹³

III. Notice of Filing and Responsive Pleadings

7. Notice of SPP's January 30 Filing and the January 31, 2014 supplement, was published in the *Federal Register*, 79 Fed. Reg. 7655 (2014) and 79 Fed. Reg. 7656 (2014), respectively, with interventions and protests due on or before February 20, 2014 and February 21, 2014, respectively. Timely motions to intervene were filed by Lea

⁸ *Id.* at 5.

⁹ *Id.* (citing *Southwest Power Pool, Inc.*, Docket No. ER10-273-000 (Jan. 11, 2010) (unpublished letter order), and *Southwest Power Pool, Inc.*, 120 FERC ¶ 61,297 (2007)).

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 5.

¹² *Id.* at 5-6 (SPP notes that in the event the Commission determines further proceedings are necessary in order to complete its evaluation of Lea County's annual transmission revenue requirement, Lea County has agreed to allow its annual transmission revenue requirement to be treated as accepted, subject to refund with interest at Commission interest rates).

¹³ *See id.* at n.21; *id.* at Exhibit 1, Direct Testimony of Gary L. Hurse at 10.

County, Tri-County Electric Cooperative, Inc., and Occidental Permian Ltd. Xcel Energy Services Inc. (Xcel Energy) filed a timely motion to intervene, comments and a limited protest. On March 10, 2014, Lea County filed a motion for leave to file an answer and answer to the protest. On March 25, 2014, Xcel Energy filed a motion for leave to answer and answer to Lea County's answer. Western Farmers Electric Cooperative (Western Farmers) filed a motion to intervene out of time and comments.

8. In its limited protest, Xcel Energy agrees with Lea County that the 115 kV Looped Transmission Circuit qualifies for inclusion as Transmission Facilities under Attachment AI of the SPP Tariff.¹⁴ Xcel Energy supports Lea County's commitment to refund the difference, if any, between the proposed stated rate and the rate ultimately determined to be just and reasonable.¹⁵ Xcel Energy also states that it supports Lea County's decision not to seek a margin based on patronage capital,¹⁶ "so as to eliminate any potential concerns associated with patronage capital payable to members of Lea County, and not to SPP Network Customers."¹⁷ However, in light of the likelihood that future stated or formula rates proposed by electric cooperatives may seek to include patronage capital, Xcel Energy requests that the Commission develop policy guidelines and analyses for determining a just and reasonable debt service coverage and time interest earned ratio to be used for transmission rate recovery purposes.

9. Xcel Energy protests two aspects of the January 30 Filing. First, Xcel Energy asserts that Lea County has not justified the applicability of a 40.14 percent load allocation factor to certain operations and maintenance (O&M) accounts.¹⁸ Xcel Energy contends that "the proxy for allocating O&M costs associated with the Lea County 115 kV Looped Transmission Circuit should be based on the net or gross transmission plant of the 115kV Looped Transmission Circuit to total Lea County transmission plant rather than a load-based allocator."¹⁹ Xcel Energy asserts that use of its proposed proxy would be consistent with the standard ratemaking allocation of transmission expenses.

¹⁴ Xcel Energy Limited Protest at 4.

¹⁵ *Id.* at 5 n.7 (citing *Southwest Power Pool, Inc.*, 142 FERC ¶ 61,135, at P 13 (2013)).

¹⁶ Patronage capital is excess revenue, after operating expenses and costs, returned to members of cooperatives.

¹⁷ Xcel Energy Limited Protest at 5 n.8 (citing January 30 Filing at Exhibit 2, Direct Testimony of Bernard Cevera (Cevera Testimony) at 7).

¹⁸ *Id.* at 6-7.

¹⁹ *Id.*

Second, Xcel Energy requests that SPP and Lea County confirm that SPP will credit point-to-point revenues pursuant to section 34.1 of the SPP Tariff.²⁰ Xcel Energy explains that section 34.1 of SPP's Tariff exempts Zone 11 (Southwestern's rate zone) from crediting point-to-point revenues because Southwestern's formula rate incorporates a crediting mechanism. Xcel Energy argues that Lea County should not be exempt from section 34.1 of the SPP Tariff unless, similar to Southwestern, it intends to credit future SPP point-to-point revenues.

10. Xcel Energy adds that it will withdraw its limited protest if Lea County agrees to: (1) replace its load-based O&M cost allocator with a transmission plant allocator; (2) confirm it will credit SPP point-to-point revenues; and (3) adjust its proposed annual transmission revenue requirement accordingly.²¹

11. In its answer, Lea County asserts that Xcel Energy's protest of the load-based allocator is unsubstantiated, and it argues that Xcel Energy improperly focuses on its own preferred allocator for O&M expenses, rather than supporting its claim that use of a transmission plant allocator "is standard rate making allocation of transmission expenses."²² Lea County contends that, in fact, there is no prescribed "standard" as Xcel Energy suggests. According to Lea County, it is well settled that a rate proposal "does not need to be perfect, or the most desirable way of doing things, it need only be just and reasonable."²³ Lea County asserts that Mr. Cevera did support his methodology. Specifically, Mr. Cevera explained that "it is reasonable and appropriate to develop a cost allocator tied to the overall system load served by the facilities in question because industry-wide cost of network transmission is allocated based on a load ratio share calculation."²⁴ Lea County adds that Mr. Cevera relied upon "the metered load served by those facilities" in developing such allocator. Thus, Lea County concludes that Mr. Cevera "adequately explained his methodology and resulting allocation factor, and [Xcel Energy] has not identified any errors in Mr. Cevera's work."²⁵

12. Lea County also challenges Xcel Energy's statement that, "the Commission approved a transmission plant allocator for Southwestern to recover of [*sic*] transmission

²⁰ *Id.* at 7-8.

²¹ *Id.* at 8.

²² Lea County Answer at 3-4.

²³ *Id.* at 4 (quoting *Entergy Servs., Inc.*, 116 FERC ¶ 61,275, at P 32 (2006)).

²⁴ *Id.* at 7 (citing Cevera Testimony at 6:6-9).

²⁵ *Id.*

O&M expense through the [Southwestern] Zone 11 pricing zone.”²⁶ Lea County points out that the case cited by Xcel Energy in support of this position was an order approving a settlement, the terms of which specifically provide that it “is inadmissible as evidence in any proceeding” and does not “constitute an admission by any Settling Party or a determination by the Commission, that any allegation or contention in these proceedings...is true or valid.”²⁷

13. Finally, Lea County asserts that Xcel Energy has not shown that the Tariff provision governing credits for point-to-point revenues applies to Lea County. According to Lea County, Xcel Energy cannot show that it is harmed by the absence of a point-to-point revenue crediting mechanism in Lea County’s proposal as there are no such point-to-point revenues to be credited.²⁸ However, in the interest of resolving this concern, Lea County voluntarily agrees that if it receives point-to-point revenues under the SPP Tariff, Lea County will not argue that it is exempt from section 34.1 of the SPP Tariff, and it will not object to SPP crediting such revenues in a manner consistent with that provision of the SPP Tariff.

14. In its answer, Xcel Energy asserts that Lea County’s focus on whether Xcel Energy has justified the use of an alternative transmission plant allocator is misplaced.²⁹ Rather, Xcel Energy maintains that the real issue is whether Lea County has justified its proposed load-based allocator under section 205 of the Federal Power Act (FPA). Xcel Energy contends that Lea County has not met this burden, arguing that Lea County has provided no supporting citations or legal authority for its assertions that the load-based allocator is consistent with cost causation and industry practice.³⁰ Xcel Energy also disputes Lea County’s conclusion that, because Xcel Energy did not contest Mr. Cevera’s testimony that Lea County’s proposed load-based allocator is used industry-wide, it must have agreed with this conclusion. In its response, Xcel Energy expressly states that such an assumption is “inaccurate.”³¹ Similarly, Xcel Energy finds no merit in Lea County’s assertions that Xcel Energy did not allege any mathematical errors in Mr. Cevera’s work or dispute the accuracy of Mr. Cevera’s calculations in deriving the load-based

²⁶ *Id.* at 7-8 (quoting Xcel Energy Limited Protest at 7).

²⁷ *Id.* at 8 n.24 (citing *Xcel Energy Services, Inc.*, 129 FERC ¶ 61,193, at P 7 (2009)).

²⁸ *Id.* at 9-10.

²⁹ Xcel Energy Answer at 2.

³⁰ *Id.* at 3-4.

³¹ *Id.* at 4.

allocator.³² According to Xcel Energy, whether Mr. Cevera's calculations are mathematically correct or are based on accurate data does not necessarily mean that the resulting allocator is just and reasonable under section 205.

15. In its late-filed comments, Western Farmers requests that the Commission reject Xcel Energy's recommendation that the Commission develop policy guidelines and analyses for determining just and reasonable debt service coverage and time interest earned ratio factors to be used for transmission rate recovery as beyond the scope of this proceeding.³³ Western Farmers asserts that matters of patronage capital, including the determination of reasonable debt service coverage and time interest earned ratio, are rightly left to individual electric cooperatives to determine. Moreover, Western Farmers contends that patronage capital may be included in future stated or formula rates proposed by electric cooperatives, and this fact does not justify the development of Commission imposed policy guidelines and analyses at this time.

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,³⁵ the Commission will grant Western Farmers' late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁶ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by Lea County, Xcel Energy, and Western Farmers because they have provided information that assisted us in our decision-making process.³⁷

³² *Id.* at 4-5.

³³ Western Farmers Comments at 4-5.

³⁴ 18 C.F.R. § 385.214 (2013).

³⁵ 18 C.F.R. § 385.214(d) (2013).

³⁶ 18 C.F.R. § 385.213(a)(2) (2013).

³⁷ Western Farmers' late-filed comment is treated as an answer, because the pleading responds to Xcel Energy's limited protest.

B. Substantive Matters

18. As a non-jurisdictional rural electric cooperative utility, Lea County is not a public utility within the meaning of section 201 of the FPA;³⁸ therefore, Lea County is not within the Commission's jurisdiction under FPA section 205. However, the Commission does have jurisdiction under sections 205 and 206 of the FPA over the rates for transmission service provided by SPP, an RTO that is a public utility. The courts have made clear that when a non-jurisdictional transmission owner voluntarily joins an RTO and has its revenue requirement recovered as part of the RTO's rates, the Commission can examine the non-jurisdictional utility's revenue requirement to ensure that the RTO's rates will ultimately be just and reasonable.³⁹ Thus, we find that, based on judicial precedent, it is appropriate to apply the just and reasonable standard of FPA section 205 to SPP's revisions to its Tariff to implement Lea County's proposed stated rates for transmission service, including Lea County's annual transmission revenue requirement, in SPP's zonal rates. Our concern is focused on the justness and reasonableness of the proposed wholesale rates under SPP's Tariff. To determine the justness and reasonableness of these rates, we find that hearing and settlement judge procedures are appropriate, as discussed below.

19. SPP's proposed Tariff revisions raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement procedures ordered below. Our preliminary analysis indicates that SPP's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed revisions for filing, suspend them for a nominal period to become effective April 1, 2014, subject to refund, and establish hearing and settlement judge procedures.⁴⁰

³⁸ 16 U.S.C. § 824(e) (2012).

³⁹ See, e.g., *Pacific Gas & Elec. Co. v FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002); *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at PP 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

⁴⁰ We note that Lea County has voluntarily committed, in the event of further proceedings, to refund the difference between the proposed rate and the rate ultimately determined by the Commission to be just and reasonable from the effective date of the rate. We find that this commitment is consistent with other proposals wherein non-public utilities have committed to provide refunds when submitting their proposals for cost recovery for Commission review. See *City of Riverside, California*, 136 FERC ¶ 61,137, at P 27 (2011); *New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,240, at P 31 (2012). See also *Lively Grove Energy Partners, LLC*, 140 FERC ¶ 61,252, at P 47 n.59 (2012);

20. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.⁴¹ 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.⁴²

21. The Settlement Judge shall report to the Chief Judge and the Commission within 30 days of the date of this order 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.

22. Finally, we will reject Xcel Energy's request that the Commission develop policy guidelines and analyses for determining just and reasonable debt service coverage and time interest earned ratio factors to be used for transmission purposes as beyond the scope of this proceeding. We will continue to evaluate these costs on a case-by-case basis.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted for filing to become effective April 1, 2014, as requested, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) 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 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 SPP's

American Municipal Power, Inc., 141 FERC ¶ 61,073, at P 17 (2012) (establishing an effective date after the applicants submitted revised and superseding proposed revenue requirements in order to make explicit their refund commitment).

⁴¹ 18 C.F.R. § 385.603 (2013).

⁴² 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 and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

proposed Tariff revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) 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 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 days of the date of this order.

(D) Within 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 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) 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 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Docket Nos. ER14-1225-000 and ER14-1225-001

Southwest Power Pool, Inc.

FERC FPA Electric Tariff

Open Access Transmission Tariff, Sixth Revised Volume No. 1

[Attachment H, Attachment H Annual Transmission Revenue Requirement For ..., 29.0.0.](#)

[Attachment T SPS, Attachment T Southwestern Public Service Company, 5.0.0.](#)

[Attachment W, Attachment W Index of Grandfathered Agreements, 2.0.0.](#)