

149 FERC ¶ 61,177  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Southwest Power Pool, Inc.

Docket No. ER15-10-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued November 26, 2014)

1. On October 1, 2014, Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its open access transmission tariff (Tariff) under section 205 of the Federal Power Act<sup>1</sup> proposing to revise how interest is calculated on certain refunds and other payments. In this order, we accept SPP's proposed Tariff revisions, to be effective December 1, 2014.

**I. Background**

2. SPP is a Commission-approved Regional Transmission Organization (RTO).<sup>2</sup> SPP has 78 members including 15 investor-owned utilities, 11 municipal systems, 13 generation and transmission cooperatives, 6 state agencies, 11 independent power producers, 12 power marketers, and 10 independent transmission companies. SPP administers open access transmission service over more than 48,000 miles of transmission lines in eight states. SPP is a non-profit corporation.<sup>3</sup>

**II. Filing**

3. SPP proposes to modify how interest is calculated for refunds where customers' money is unused or over-collected, through Tariff revisions that would apply to the following situations. First, under SPP's Generator Interconnection Procedures, interconnection customers are required to pay deposits to SPP to fund interconnection studies as part of the interconnection process. If an interconnection request is withdrawn,

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> Transmittal at 1.

<sup>3</sup> *Id.*

SPP is required to refund unused study deposits with interest.<sup>4</sup> Second, under various interconnection study agreements, if there is a billing dispute, the party that owes money to the other party must pay the amount due with interest after resolution of the dispute.<sup>5</sup> Third, SPP's delivery point addition process requires that the customer pay study deposits, and this process includes provisions requiring refunds with interest similar to the provisions in the Generator Interconnection Procedures for interconnection studies.<sup>6</sup> Fourth, the Tariff provisions governing true-up payments associated with rescheduled generation or transmission maintenance require that the payments include interest.<sup>7</sup>

4. Under the Tariff, interest for these four types of payments is currently calculated pursuant to the interest rate defined by 18 C.F.R. § 35.19a(a)(2)(iii) (section 35.19a rate or method).<sup>8</sup> SPP represents that the current section 35.19a rate is 3.25%.<sup>9</sup> However, SPP claims that it earns only 0.05% on deposited funds. According to SPP, as a not-for-profit, revenue-neutral organization, SPP must recover in its charges the difference between these two interest rates. SPP recovers this shortfall from its transmission customers and members through the Tariff Administrative Charge. However, SPP claims that the transmission customers and members receive no benefit from this charge.<sup>10</sup>

5. SPP proposes to change the method for calculating these four types of interest payments so that it reflects the rate of interest that SPP actually accrues on the funds deposited in the separate, interest-bearing account in which SPP holds the funds (accrued interest method). SPP argues these changes are just and reasonable because they comply with the Commission's policy of requiring compensation to customers for the time-value of their money.<sup>11</sup> Moreover, SPP explains that the proposed revisions ensure that transmission customers and members are not burdened by costs from which they derive no benefit. SPP argues that the proposed changes are consistent with provisions that the

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<sup>4</sup> *Id.* at 6-7, discussing SPP Tariff Attachment V Section 3.6.

<sup>5</sup> *Id.* at 7, discussing SPP Tariff Attachment V, Appendices 2, 3, 3A, 4, 4A, and 5.

<sup>6</sup> *Id.* at 8-9, discussing SPP Tariff Attachment AQ.

<sup>7</sup> *Id.* at 5-6, discussing SPP Tariff Attachment U.

<sup>8</sup> Commission Rules of Practice and Procedure, 18 C.F.R. § 35.19a(a)(2) (2014).

<sup>9</sup> Transmittal at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3-4.

Commission has accepted for other RTOs and ISOs.<sup>12</sup> SPP notes that its proposed revisions were developed through a thorough stakeholder process, which included unanimous approval from its relevant committees.<sup>13</sup> SPP maintains that the Commission gives deference to provisions approved through an RTO stakeholder process.<sup>14</sup>

6. SPP requests that the changes become effective on December 1, 2014. For any deposits pending when the revisions are approved, SPP proposes the following treatments.

7. Attachment V Section 3.6: interest at the new interest rate will apply to any Interconnection Request withdrawal that occurs after the effective date. SPP contends that this is just and reasonable because the refund obligation does not arise until a withdrawal occurs. Consequently, SPP asserts, sufficient notice is provided.<sup>15</sup>

8. Attachment V, Appendices 2, 3, 3A, 4, 4A, and 5: interest at the new interest rate will apply to any study agreement executed on or after the effective date. SPP maintains that this is just and reasonable because parties executing such an agreement will be on notice of the new interest rate when executing the agreement.<sup>16</sup>

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<sup>12</sup> *Id.* at 4-5, nn.9-12 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027, at PP 57, 58 (2004) (*MISO*), *order on reh'g*, 109 FERC ¶ 61,085 (2004); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 (2008) (*CAISO I*); *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,070 (2012) (*CAISO II*); *Cargill Alliant, LLC v. N.Y. Indep. Sys. Operator, Inc.*, 101 FERC ¶ 61,147, at PP 1, 23 (2002) (*Cargill Alliant*); *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,106, at P 12 (2002)).

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 2, n.3 (citing *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283, at P 33 (2009); *New England Power Pool*, 105 FERC ¶ 61,300, at P 34 (2003); *Policy Statement Regarding Regional Transmission Groups*, 1991-1996 FERC Stats. & Regs., Regulations Preambles ¶ 30,976, at 30,872 (1993); *Pub. Serv. Comm'n of Wis. v. FERC*, 545 F.3d 1058, 1062-63 (D.C. Cir. 2008)).

<sup>15</sup> *Id.* at 9.

<sup>16</sup> *Id.* at 10.

9. Attachment U: interest at the new interest rate will apply to any true-up associated with charges billed after the effective date. SPP asserts that this is just and reasonable because it applies prospectively and provides parties with sufficient notice.<sup>17</sup>

10. Attachment AQ: interest at the new interest rate will apply to any delivery point change request submitted on or after the effective date. SPP argues that this is just and reasonable because it applies prospectively and provides parties with sufficient notice.<sup>18</sup>

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

11. Notice of SPP's filing was published in the *Federal Register*, 79 Fed. Reg. 61,073 (2014), with interventions and protests due on or before October 22, 2014. American Electric Power Service Corporation, on behalf of its affiliates Public Service Company of Oklahoma and Southwestern Electric Power Company, filed a motion to intervene. Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC filed a joint motion to intervene.

12. Western Farmers Electric Cooperative (Western Farmers) filed a motion to intervene and comments (Comments) in support of SPP's proposed revisions. The American Wind Energy Association (AWEA) and the Wind Coalition (TWC) jointly filed a protest under Rules 211 and 214 of the Commission's Rules of Practice and Procedure.<sup>19</sup> SPP filed an answer to AWEA/TWC's protest.

13. Western Farmers argues that SPP's proposed accrued interest method more accurately reflects current and projected interest rates that SPP, transmission owners, and market participants may expect on amounts deposited in interest-bearing bank accounts.<sup>20</sup> Western Farmers avers that the accrued interest method will help protect SPP members and customers from any uplift charges when the actual interest rate earned is less than the section 35.19a rate.<sup>21</sup>

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

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

<sup>19</sup> While AWEA/TWC submitted a protest, we note that neither organization moved to intervene in the proceeding pursuant to Rule 214(a)(3) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(3)(2014).

<sup>20</sup> Western Farmers October 22, 2014 Motion to Intervene and Comments at 3.

<sup>21</sup> *Id.*

14. AWEA/TWC urge the Commission to reject SPP's proposed Tariff revisions, arguing that the revisions are not just and reasonable, nor are they supported by evidence in the record.<sup>22</sup> AWEA/TWC contend that SPP has not supported its claim that SPP earns 0.05 percent on deposits.<sup>23</sup> AWEA/TWC add that, although the Commission has accepted the accrued interest methodology in other regions, doing so is not necessarily just and reasonable for the SPP region. According to AWEA/TWC, "... there is a range of what is just and reasonable rates and on this basis [the Commission] has applied different policies to different RTO regions and public utilities."<sup>24</sup> AWEA/TWC claim that the cases SPP cites are inapposite, silent on the specific issue of interest methodology, or involve a factually distinct situation.<sup>25</sup>

15. AWEA/TWC also argue that SPP has not shown that the customer impact of the Tariff Administrative Charge is significant, and it may be minimal.<sup>26</sup> Moreover, they argue that SPP has not shown that these customers do not receive a benefit from these charges.<sup>27</sup> In fact, AWEA/TWC suggest that customers benefit from market policies that support stronger transmission infrastructure and increased competition.<sup>28</sup>

16. AWEA/TWC maintain that the section 35.19a interest rate serves as a necessary administrative backstop to protect customers, by protecting customers from receiving too low an interest rate on funds over which customers lack control.<sup>29</sup> Additionally, AWEA/TWC argue that the section 35.19a interest rate should be retained because, when actual interest rates are higher than the section 35.19a rate, SPP has the potential to capture the difference as a "windfall" and pass the cost savings along to customers.<sup>30</sup>

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<sup>22</sup> AWEA/TWC October 22, 2014 Protest (Protest) at 2.

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

<sup>24</sup> *Id.* at 4.

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

<sup>26</sup> *Id.* at 4-5.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at PP 584-585 (2004)).

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.*

AWEA/TWC also believe that the section 35.19a interest rate properly strikes an administrative balance, harmonizes the interest of public utilities and customers, and provides a simple administrative process.<sup>31</sup> AWEA/TWC also complain that, due to recent changes in SPP's deposit policies, customers are required to provide larger deposits and provide them earlier in the process than was the case previously.<sup>32</sup> AWEA/TWC maintain that, for these deposits, customers often must use funds provided by equity or loans, which can be expensive to the customer; thus a lower interest rate than the section 35.19a rate may not properly compensate customers for their project financing costs.<sup>33</sup>

17. Additionally, AWEA/TWC request that, if the Commission accepts SPP's proposed revisions, the Commission prohibit SPP from applying the new interest method to deposits made before the effective date of the revisions. According to AWEA/TWC, customers who provided those deposits did so with the understanding that their deposits would be refunded with interest calculated at the section 35.19a interest rate, and "[t]he application of a new interest rate policy to these earlier-in-time provided funds would retroactively deprive customers of their expected benefits."<sup>34</sup> AWEA/TWC also urge that, in the event that the Commission accepts the filing, the Commission suspend its effectiveness for five months, subject to refund and the outcome of a hearing to address SPP's investment policies and actions.<sup>35</sup>

18. SPP responds that many of AWEA/TWC's arguments are irrelevant to the Commission's determination of whether SPP's section 205 filing is just and reasonable.<sup>36</sup> SPP argues that its proposal is just and reasonable because it balances SPP's obligation to compensate customers for the time-value of their money with its position as a not-for-profit, revenue-neutral entity.<sup>37</sup> It notes that the interest SPP pays under these provisions is supposed to provide customers with the time-value of their money, and not to subsidize

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

<sup>32</sup> *Id.* at 6-7.

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.* at 3-4.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> SPP November 10, 2014 Answer (Answer) at 2.

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

the risk of project development.<sup>38</sup> According to SPP, the accrued interest method is consistent with Commission precedent regarding similar proposals in other provisions of SPP's Tariff and in the tariffs of other, similarly-situated RTOs.<sup>39</sup> SPP adds that its proposal avoids the complications of both "shortfalls" and "windfalls."<sup>40</sup>

19. Additionally, SPP states that it follows a prudent investment policy under which it balances acceptable liquidity, preservation of capital, and maximization of yield.<sup>41</sup> SPP states these deposits are held in a separate, single interest bearing account that accrues interest at a rate close to what other banks offer on similar accounts.<sup>42</sup>

20. Finally, SPP asserts that its proposed effective dates are just and reasonable, because they are prospective, and therefore will not retroactively deprive customers of an expected benefit.<sup>43</sup> SPP also opposes setting the proposal for hearing, because SPP maintains that it involves a legal, not a factual, dispute.<sup>44</sup>

#### **IV. Commission Determination**

##### **A. Procedural Issues**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Notwithstanding AWEA/TWC's failure to move to intervene in this proceeding, we have considered their Protest in determining the outcome, pursuant to Rule 211(a)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211(a)(3) (2014).

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<sup>38</sup> *Id.* at 8-9 (citing *H.Q. Energy Servs. (U.S.) Inc. v. N.Y. Indep. Sys. Operator*, 113 FERC ¶ 61,184, at P 40 (2005), *order on clarification*, 114 FERC ¶ 61,059 (2006); *see also, e.g., Sw. Power Pool, Inc.*, 147 FERC ¶ 61,201, at P 71 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at P 167 (2012), *order on reh'g*, 139 FERC ¶ 61,253 (2012)).

<sup>39</sup> *Id.* at 2, 4-5.

<sup>40</sup> *Id.* at 10-11.

<sup>41</sup> *Id.* at 7.

<sup>42</sup> *Id.* at 7-8.

<sup>43</sup> *Id.* at 13-14.

<sup>44</sup> *Id.* at 15.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the SPP Answer because it has aided our consideration of this matter.

**B. Substantive Issues**

23. We will accept SPP's proposed revisions, under which Attachments U, V, and AQ of the Tariff will calculate interest at the rate SPP earned on the deposit in an interest-bearing account, rather than requiring use of the section 35.19a rate. Other provisions of SPP's currently-effective Tariff provide for SPP to pay accrued interest (and not the section 35.19a rate). These include section 7.3 of the Tariff<sup>45</sup> and Attachment Y, section III.2.e.ii.<sup>46</sup> Accepting SPP's proposed revisions aligns these provisions with other Commission-accepted provisions in SPP's Tariff.

24. We disagree with AWEA/TWC's contention that SPP has not explained why it earns only 0.05 percent on the deposits. SPP's Answer makes clear that SPP places the deposits in a separate bank account that protects liquidity for SPP to pay for studies and to make refunds. We find SPP's explanation to be reasonable.

25. Regarding AWEA/TWC's claim that some Commission precedent cited by SPP is inapposite,<sup>47</sup> as we explain in greater detail below, we agree that, while it is not directly on point (in that it does not reflect the Commission expressly finding the use of the rate earned on deposits in an interest-bearing account rather than the section 35.19a rate to be appropriate), it nonetheless supports SPP's position. Moreover, as discussed *infra*, some of the precedent cited by SPP but not criticized by AWEA/TWC also supports SPP's position.

26. Specifically, in *MISO*,<sup>48</sup> the Commission accepted MISO's proposal to change from the 18 C.F.R. § 35.19a(a)(2)(ii) interest rate to the same 18 C.F.R. § 35.19(a)(2)(iii) interest rate SPP is attempting to change from in the instant case. As AWEA/TWC point

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<sup>45</sup> See *Sw. Power Pool, Inc.*, 107 FERC ¶ 61,188, at PP 6, 17 (2004), see also SPP, Transmittal Letter, Docket No. ER04-658-000, at 4-5 (filed March 17, 2004) (describing how SPP will use the accrued interest method instead of the section 35.19a method for calculating interest).

<sup>46</sup> See *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,048, at PP 203, 205 (2014).

<sup>47</sup> See AWEA/TWC Protest at 4.

<sup>48</sup> *MISO*, 108 FERC ¶ 61,027, at PP 57, 58.

out, in *MISO*, the Commission did not adopt a rate other than the section 35.19a rate. However, the Commission also did not foreclose the possibility that a rate other than the section 35.19a rate could constitute a reasonable rate. Indeed, AWEA/TWC have conceded that there is a “range of what is just and reasonable.”<sup>49</sup>

27. Next, AWEA/TWC claim that *CAISO I* and *CAISO II* cited by SPP are of little value because, in those orders, the Commission did not discuss why changing from the section 35.19a rate to the accrued interest rate was just and reasonable. However, as SPP notes in its Answer,<sup>50</sup> in those orders the Commission did approve CAISO’s proposal to use accrued interest. In *CAISO I* and *CAISO II*, the Commission did not find that the accrued interest method would be just and reasonable in all cases, but did find it just and reasonable in those cases.

28. Finally, AWEA/TWC argue that *Cargill Alliant* was too factually distinct to be relevant in this proceeding.<sup>51</sup> In that order, the Commission rejected an interconnection customer’s request to adopt the section 35.19a rate for interest earned on cash deposits instead of an irrevocable letter of credit for virtual transactions.<sup>52</sup> While *Cargill Alliant* may be factually distinct in that it involved how to apply the somewhat ambiguous tariff language to the customer’s petition, we find that the rationale in *Cargill Alliant* applies to SPP’s proposal. In that case, the Commission held that Cargill Alliant, L.L.C. was not entitled to refunds with interest calculated at the section 35.19a rate on its collateral deposit; the Commission explained that “the collateral deposit only returns the lower overnight bank deposit rate, [and would impose costs on others] to pay the higher FERC rate.”<sup>53</sup> Similarly here, SPP holds customer deposits at a rate currently lower than the section 35.19a rate, and paying the higher rate would impose costs on others.<sup>54</sup>

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<sup>49</sup> AWEA/TWC Protest at 4 (citing *CAISO I*, 124 FERC ¶ 61,292; *CAISO II*, 140 FERC ¶ 61,070).

<sup>50</sup> Answer at 4.

<sup>51</sup> AWEA/TWC Protest at 4 (citing *Cargill Alliant*, 101 FERC ¶ 61,147).

<sup>52</sup> *Cargill Alliant*, 101 FERC ¶ 61,147 at P 2.

<sup>53</sup> *Id.* P 23.

<sup>54</sup> Furthermore, according to SPP, when billing disputes are involved under Attachment V, the disputed fund might actually be held in an escrow account, as in *Cargill Alliant*. Transmittal at 7.

29. The Commission has, in fact, accepted provisions, including in SPP's Tariff, that require refunding interest at the rate earned on deposits in an interest-bearing account (and not at the section 35.19a rate). The Commission has expressly found that the use of accrued interest is appropriate in a situation where refunds are to be made by a non-profit entity, like SPP,<sup>55</sup> and where the amounts have been deposited in an interest-bearing account. Moreover, AWEA/TWC have not demonstrated that it would be inappropriate to use accrued interest for the provisions at issue here, when accrued interest is already used in other parts of SPP's Tariff.

30. The Commission has held that the use of the prime rate in section 35.19a reasonably reflects the cost of capital in cases where the amounts are not deposited in an interest-bearing account and, instead, where a utility has ready access to the funds with no restrictions on their use (and thus can use the funds to generate a profit), because the amounts are effectively part of a utility's capital.<sup>56</sup> In contrast, here SPP, a non-profit, holds all study deposits in a separate bank account that preserves capital and yields interest, but allows sufficient liquidity for, *inter alia*, making timely refunds. Hence, where the funds are kept in an account to promote capital preservation and liquidity and when refunds are issued from such an account, it is reasonable to make refunds using the amount of interest SPP actually earned.

31. The issue of whether the customer impact of the Tariff Administrative Charge is minimal or beneficial is not relevant to the Commission's consideration of SPP's Tariff proposal. In considering Tariff changes under FPA section 205, the issue before the Commission is not whether customers receive *some* dollar-for-dollar benefit under the *current* tariff, but whether SPP's proposed revisions to that Tariff are just and reasonable.

32. We also find unavailing AWEA/TWC's argument that SPP may gain a "windfall" when the interest rate actually earned may be higher. We find this argument unavailing for two reasons. First, AWEA/TWC offer no evidence that SPP's actual interest rate on the funds has been higher than the section 35.19a rate. Second, as noted above, the issue

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<sup>55</sup> See, e.g., *Tampa Electric Co.*, 148 FERC ¶ 61,172, at P 224 (2014).

<sup>56</sup> See, e.g., *Rate of Interest on Amounts Held Subject to Refund*, Order No. 47, FERC Stats. and Regs., Regulations Preambles 1977-1981, ¶ 30,083, at 30,546 (1979), *order on reh'g*, Order No. 47-A, FERC Stats. and Regs., Regulations Preambles 1977-1981, ¶ 30,099 (1979), *order on reh'g*, Order No. 47-B, FERC Statutes and Regulations, Regulations Preambles 1977-1981, ¶ 30,121 (1979) (finding that the interest rate appropriate for funds collected subject to refund should reflect the benefits to the utility from collecting the excessive rates, noting customers' concerns that funds collected subject to refund have no restrictions on their use by the utility and may be directed towards other, highly-profitable, non-regulated businesses).

is not whether customers receive benefits under the current tariff, but whether SPP's proposed approach, which would avoid windfalls and shortfalls altogether, is just and reasonable, and we find that it is. We also reject AWEA/TWC's concerns regarding changes to SPP's deposit policies, and the need for interconnection customers to use equity or loans that may have a higher interest rate than what SPP earns and then returns to the interconnection customer. Those deposit policies are beyond the scope of this proceeding, which is focused solely on the interest rate to be used in calculating refunds. Moreover, how interconnection customers may choose to finance their projects is irrelevant; indeed, if considered, it would suggest that the interest rate should vary customer-by-customer depending on how each customer chooses to finance, and we do not believe that the interest rate SPP uses should be based on individual customers' financing choices.

33. AWEA/TWC request that, if the Commission does accept SPP's proposed revisions, the Commission prohibit SPP from applying the new interest method to deposits provided before the effective date of the revisions. As SPP notes in its Answer, the revisions are prospective; thus, the revisions only apply, for example, to study agreements executed after the effective date of the proposed revisions, and only to requests that are withdrawn after the effective date of the proposed revisions. We likewise reject AWEA/TWC's request that the Commission set the proposal for hearing, as AWEA/TWC have not shown SPP's investment policies and practices to be unjust and unreasonable.<sup>57</sup> Moreover, hearing is inappropriate because there are no facts in dispute.<sup>58</sup>

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<sup>57</sup> *E.g., Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,149, at P 20 (2010).

<sup>58</sup> AWEA/TWC argue that the issue of whether SPP earns 0.05 percent on deposits is a disputed fact. However, in this situation the actual interest rate that SPP earns is a market rate and will necessarily fluctuate over time. The issue is instead a legal one: is paying actual interest earned on deposits just and reasonable. The Commission has found, and finds here, that it can be in certain situations.

The Commission orders:

SPP's proposed revisions to its Tariff are hereby accepted for filing, to become effective December 1, 2014, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.