

150 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwestern Public Service Company

Docket No. ER14-2363-000

ORDER DENYING REQUEST FOR WAIVER

(Issued February 23, 2015)

1. On July 3, 2014, Southwestern Public Service Company (SPS) filed a request for waiver of the provisions in Schedules 1A and 11 of the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (Tariff). Specifically, SPS requests waiver of Tariff provisions that SPP asserts require SPP to bill SPS for coincident peak loads of Sharyland Utilities, L.P. (Sharyland), which physically disconnected from the SPP system and migrated to the Electric Reliability Council of Texas (ERCOT) at the end of 2013. In this order, we deny the requested waiver.

**I. Background**

2. SPS states that it provided wholesale full requirements services to certain divisions of Cap Rock Energy Corporation (Cap Rock) on an unbundled basis pursuant to a restated and amended agreement for wholesale full requirements power service (Requirements Agreement). SPS explains that Cap Rock operated four separate divisions and that two of those divisions were interconnected primarily to SPP and received wholesale power from SPS. SPS states that, in connection with the Requirements Agreement, it agreed to act as a transmission service agent to arrange for transmission services for Cap Rock and Cap Rock reimbursed SPS for all transmission service charges.<sup>1</sup>

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<sup>1</sup> SPS Request for Waiver at 3-5.

3. SPS states that, in July 2010, Sharyland<sup>2</sup> acquired control of Cap Rock.<sup>3</sup> SPS explains that, as part of the acquisition, the Requirements Agreement was assigned to Sharyland.<sup>4</sup> SPS states that, in approving Sharyland's acquisition of Cap Rock, the Public Utility Commission of Texas (Texas Commission) required Sharyland to study migrating to ERCOT the divisions in the SPP region that it had acquired from Cap Rock. SPS explains that the proceeding ultimately ended in a stipulation and settlement agreement to move those divisions from SPP to ERCOT. SPS asserts that SPP did not oppose this agreement.<sup>5</sup>

4. SPS states that, to effectuate the migration to ERCOT, it entered into an agreement, approved by the Commission,<sup>6</sup> whereby SPS would sell approximately sixty-six and a half miles of 345 kV transmission lines (previously operated at 230kV), two substations, and other Commission-jurisdictional transmission facilities to Sharyland. SPS asserts that it explained in its petition to the Commission requesting approval of the sale to Sharyland that the transmission facilities being sold would be transferred from the operational control of SPP to ERCOT.<sup>7</sup>

5. SPS states that by December 21, 2013, Sharyland disconnected the divisions that were interconnected with SPP, resulting in Sharyland only being interconnected with the ERCOT transmission system. SPS explains that, after the migration of all of Sharyland's loads to ERCOT, by December 31, 2013, SPS ceased making sales to Sharyland under the Requirements Agreement<sup>8</sup> and SPP ceased providing any transmission and ancillary services to Sharyland.<sup>9</sup>

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<sup>2</sup> Sharyland is a transmission and distribution utility serving approximately 50,000 metered and unmetered accounts in 29 counties across five geographically distinct divisions in Texas. Sharyland also provides wholesale transmission service.

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

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

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

<sup>6</sup> *Id.* at 5 (citing *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,131 (2013)).

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

<sup>8</sup> SPS states that the Requirements Agreement itself remains in effect to allow resolution of any residual billing issues. *See id.*

<sup>9</sup> *Id.* at 6.

### A. Contractual History

6. SPS explains that, on January 14, 2009, SPS and SPP executed a network integration transmission service (NITS) agreement with a term that extended for seven years.<sup>10</sup> SPS states that, in addition to the Cap Rock load, the 2009 NITS agreement included the loads of four New Mexico cooperatives with whom SPS had power supply agreements. SPS asserts that the 2009 NITS agreement had a term of seven years because it had to span the longest-lasting power supply agreement that SPS had with any of the five wholesale customers in order for that customer to claim the SPS power supply agreement as a designated network resource. According to SPS, the longest term of the underlying power sales agreements extended through December 31, 2015 while Cap Rock's power supply agreement extended only through December 31, 2013.<sup>11</sup>

7. SPS states that the 2009 NITS agreement was separated into three separate NITS agreements in 2012, one of which was specifically for Sharyland's load. SPS notes that, although it is listed as the "network customer" under the 2012 NITS agreement for Sharyland's load, SPS entered into the NITS agreement on behalf of Sharyland pursuant to the transmission service agency agreement described above<sup>12</sup> and the 2012 NITS agreement specified the load as Sharyland load and the delivery points as Sharyland delivery points.<sup>13</sup>

8. SPS states that, at the request of SPP, the 2012 NITS agreement for Sharyland's load continued to have the same termination date as was established in the 2009 NITS agreement, which was longer than the Sharyland/Cap Rock Requirements Agreement. SPS explains that SPP stated this was necessary because SPP was not permitted under its

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<sup>10</sup> SPS states that after the Commission's issuance of Order No. 890, service had to be obtained in a minimum of five-year increments in order to receive rollover rights. *See id.* at 6-7 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 87, *order on reh'g*, Order No. 890-A, FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

<sup>11</sup> *Id.* at 7.

<sup>12</sup> SPS also notes that the SPP Open Access Same-Time Information System postings continue to reflect Sharyland as a separate load from SPS's loads and SPP's list of NITS customers identifies Sharyland as the network customer, SPS as the agent for Sharyland, and a sink for Sharyland that is different from the sink for SPS.

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

Tariff to reduce what had been the term of the 2009 NITS agreement for the Sharyland load. In addition, SPS states that it viewed the longer 2012 NITS agreement as protecting transmission service to the Sharyland load in the event Sharyland's transition to ERCOT was delayed.<sup>14</sup>

**B. Billing History**

9. SPS states that even though Sharyland physically disconnected from the SPS system and SPP on December 21, 2013, and was integrated into the ERCOT transmission system effective January 1, 2014, SPP has continued to bill SPS, as the agent for Sharyland, under SPP's Tariff Schedule 1A (Tariff Administration Service)<sup>15</sup> and Schedule 11 (Base Plan Zonal Charge and Region-Wide Charge)<sup>16</sup> because Schedules 1A and 11 are billed based on the 12 coincident peak loads of the prior year. Thus, because Sharyland load was in SPP in 2013, SPP has been billing SPS for Schedules 1A and 11 charges for the 2013 Sharyland load in 2014.<sup>17</sup>

10. According to SPS, it was charged for the period of January through April 2014 approximately \$153,000 under Schedule 1A and \$819,000 under Schedule 11 based on Sharyland's 2013 load. SPS states that it anticipates that it will have to pay SPP

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<sup>14</sup> SPS states that given the condition of the system at the time, it was concerned that if Sharyland's migration was delayed beyond the January 1, 2014 effective date, there might not be enough Available Transfer Capacity (ATC) to accommodate a new transmission service request for Sharyland load.

<sup>15</sup> SPS states that the Schedule 1A rate is \$0.39/Mwh for NITS customers calculated based on the "the 12 month average of the Transmission Customer's coincident Zonal Demands used to determine the Demand Charges under Schedule 9 multiplied by the number of all hours of the applicable month." SPS states that SPP uses the prior calendar year rather than a rolling 12-month average to calculate the "12 month average of the Transmission Customer's coincident Zonal Demands." *See id.* at 10.

<sup>16</sup> SPS states that under Schedule 11, network customers and transmission owners are assessed a monthly Base Plan Zonal Charge which is calculated by multiplying the Base Plan Zonal Load Ratio Share by 1/12<sup>th</sup> of the Base Plan Zonal Annual Transmission Revenue Requirement. SPS explains that the Base Plan Zonal Load Ratio Share is calculated on calendar year basis for the prior calendar year. *See id.* at 11.

<sup>17</sup> *Id.* at 8-9.

approximately \$2.9 million under Schedules 1A and 11 in 2014 based on Sharyland's 2013 load, which had a coincident peak demand averaging 140 MW.<sup>18</sup>

11. SPS states that it submitted notice to SPP to terminate the 2012 NITS agreement on February 26, 2014, but that SPP has taken the position that the 2012 NITS agreement cannot be cancelled and must instead terminate on its own terms in January 2016.<sup>19</sup>

## **II. Request for Waiver**

12. SPS requests the Commission grant waiver of Schedules 1A and 11 of the SPP Tariff with respect to the 2014 charges to SPS based on Sharyland load that is not connected to SPS or SPP in 2014. SPS asserts that it is not receiving any benefits or services under these schedules in 2014 for such charges. SPS argues that waiver is appropriate because it has acted in good faith, the waiver is limited in scope, granting the waiver would remedy a concrete problem, and granting the waiver has no undesirable consequences.

### **A. Acted in Good Faith**

13. SPS asserts that it has acted in good faith in arranging transmission service for Cap Rock and Sharyland and in taking the necessary regulatory steps to assist in Sharyland's migration to ERCOT. SPS states that the 2009 and 2012 NITS agreements included terms that exceeded the power supply agreement to comply with the requirements of Order No. 890 as well as to accommodate SPP. Moreover, SPS argues that it has cooperated on the migration of Sharyland, but it was the actions of Sharyland and the Texas Commission that caused the present circumstances.<sup>20</sup>

14. SPS also asserts that it has cooperated with SPP on the Sharyland migration. SPS states that it sought confirmation from SPP that SPP would not assess 2014 Schedule 1A and 11 charges to SPS based on Sharyland's 2013 load. SPS states that SPP advised that it would review the issue and provide a response. SPS states that it raised the issue with SPP staff informally at other times. SPS explains that, in an e-mail dated August 23, 2013, counsel for SPP informed SPS that Schedule 1A and 11 charges would be assessed based upon Sharyland's 2013 load. SPS asserts that it continued discussions with SPP to try to resolve the issue but was informed by SPP that a waiver of the SPP Tariff would be

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<sup>18</sup> SPS states that it anticipates that no Schedule 1A or 11 charges will be billed in 2015 because the Sharyland loads would be zero MW for all of 2014. *See id.* at 9.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 12-13.

necessary. SPS states that it sought the approval of the SPP Board of Directors for SPP to submit a request for a waiver of SPP's Tariff, but the Board of Directors elected at its April 2014 meeting to not support a waiver request. SPS explains that it then determined it would submit a waiver request on its own initiative.<sup>21</sup>

### **B. Limited in Scope**

15. SPS asserts that the request for waiver is limited in scope because it addresses only 2014 charges related to Sharyland's load under Schedules 1A and 11 of the SPP Tariff. Because SPP bases charges under these schedules of its Tariff on the load in the previous year, SPS states that SPP will not assess the charges to SPS in 2015, based on 2014 load, because Sharyland's load is zero in 2014. SPS argues that, thus, granting the waiver will not create an ongoing issue.

16. SPS asserts that its request is also unique, as it applies only to the unusual circumstance where a wholesale load entirely disconnected from a Regional Transmission Organization (RTO) transmission system and is currently receiving no transmission service from that RTO and the rate schedules nevertheless provide for billing to that disconnected load for newly incurred costs. SPS claims that granting the requested waiver will therefore not lead to similar requests for waiver in the future.<sup>22</sup>

### **C. Remedy for a Concrete Problem**

17. Additionally, SPS contends that granting the waiver request will remedy the concrete problem of SPP's billing being inconsistent with cost causation and the requirements for NITS service. SPS asserts that Sharyland's loads do not cause SPP to incur any costs under Schedule 1A or 11. SPS states that the Commission has found that only those customers for whom SPS plans its system and makes capacity additions should be allocated costs and also that only these parties' loads should be included in the peak load tests that are used for demand allocations.<sup>23</sup>

18. SPS notes that the tariff administration charge in Schedule 1A of SPP's Tariff is "applied to all transmission service under the Tariff to cover the Transmission Provider's expenses related to administration of this Tariff."<sup>24</sup> SPS states that the Sharyland load

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<sup>21</sup> *Id.* at 13-14.

<sup>22</sup> *Id.* at 15.

<sup>23</sup> *Id.* at 16 (citing *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,132, at P 52 (2013)).

<sup>24</sup> *Id.* (citing SPP Tariff, Schedule 1A).

does not take service of any kind under the SPP Tariff and therefore does not cause SPP to incur any Tariff administration costs. SPS argues that permitting SPP to recover the costs of administering a tariff from a customer that does not receive services under the Tariff is inconsistent with the cost causation principle applicable to all Commission-jurisdictional rates.<sup>25</sup>

19. SPS states that the Base Plan Zonal Charges in Schedule 11 of the SPP Tariff “recover the revenue requirement of facilities classified as Base Plan Upgrades” constructed under the SPP Transmission Expansion Plan to provide for transmission system reliability.<sup>26</sup> SPS states that because the Sharyland load is no longer interconnected with the SPP system, assessing Sharyland’s load for transmission system upgrades to preserve and improve the reliability of the SPP transmission system is also contrary to the principle of cost causation.<sup>27</sup>

20. SPS argues that, moreover, Sharyland’s departure allowed SPP to cancel or modify the notices to construct for SPS transmission projects that would have been otherwise necessary for the provision of continued reliable service to Sharyland. SPS asserts that the cancellations of the notices to construct avoided approximately \$38.5 million of new SPS transmission facilities that would have been subject to partial regional recovery from other transmission owners and market participants in SPP at a cost to other SPP transmission service customers of approximately \$8.2 million through 2014.<sup>28</sup>

21. SPS also argues that SPP’s billing for Sharyland load is inconsistent with the requirements for NITS service. SPS asserts that the fundamental service provided under Part III of SPP’s Tariff is “firm transmission service over the Transmission System to the

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<sup>25</sup> *Id.* at 16-17.

<sup>26</sup> *Id.* at 17 (citing SPP Tariff § I.1).

<sup>27</sup> SPS argues that Order No. 1000, while not directly applicable to the 2014 Schedule 11 charges, requires that “[t]he cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits.” *Id.* (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 622 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)).

<sup>28</sup> *Id.* at 18.

Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Native Loads.”<sup>29</sup> SPS contends that because Sharyland load receives no such service, it should not be charged as though it does receive network service which is assessed on a load basis. SPS states that network service requires the existence of network load served by network resources. SPS adds that Sharyland load is not network load and the network resources that used to serve the load no longer qualify as network resources because they are no longer deliverable to the Sharyland load. Thus, SPS argues that the full requirements service provided by SPS to Sharyland no longer qualifies as a network service because there is no electrical path to deliver those resources to the Sharyland loads. Moreover, SPS states that SPP’s ATC calculations reserve no firm ATC for service to Sharyland load because there are no network resources that need to be deliverable to Sharyland load.<sup>30</sup>

22. SPS asserts that the 2012 NITS agreement does not support the assessment of the charges at issue and that waiver of the charges will resolve this inconsistency. SPS explains that the 2012 NITS agreement describes the network load as load “in the Southwestern Public Service Company Control Area” and describes the electrical location of the ultimate loads in the same manner but the Sharyland load is not in the SPS control, it is in ERCOT. SPS also states that the 2012 NITS agreement describes the delivery points as “interconnection points of Southwestern Public Service Company” but no such delivery points exist on the SPS system. Additionally, SPS explains that the 2012 NITS agreement states that the ancillary service charges, including the Schedule 1A charge, which are identified in section 8.4 of the 2012 NITS agreement, are dependent on taking “service under this Service agreement” but SPP no longer provides any service to Sharyland load under the 2012 NITS agreement.<sup>31</sup>

#### **D. No Undesirable Consequences**

23. SPS states that granting waiver will have no undesirable consequences. SPS explains that Schedules 1A and 11 assign certain costs throughout the SPP footprint. SPS states that a waiver would keep SPP whole and revenue-neutral because the costs at issue would appropriately flow to other SPP customers, including SPS, in accordance with their loads actually served under the SPP Tariff. In other words, waiver would result in SPP assessing only loads within the SPP footprint. SPS argues that if other customers are charged more, it is reasonable because it follows cost causation and on a net basis those customers have received greater benefits as a result of SPP’s cancelling transmission

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<sup>29</sup> *Id.* (citing SPP Tariff § 28.3).

<sup>30</sup> *Id.* at 18-19.

<sup>31</sup> *Id.* at 20.

projects to reflect Sharyland's migration to ERCOT. SPS estimates that cancellation of the projects avoided SPP Schedule 11 charges of approximately \$6.46 million for 2010 through 2013 and \$1.74 million for 2014. SPS argues that these savings are far greater than the increase in costs that customers may experience if the Commission grants the waiver.

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

24. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 41,267 (2014), with interventions and protests due on or before July 24, 2014. Sharyland and SPP filed timely motions to intervene and comments. SPS filed an answer to respond to the SPP comments.

25. Sharyland states that it is an investor-owned, Texas-based electric utility regulated by the Texas Commission and located entirely within ERCOT region.<sup>32</sup> Sharyland explains that, until December of 2013, Sharyland had been purchasing power from SPS. Sharyland states that SPS arranged transmission services for this power sales agreement and that Sharyland itself did not have any agreement with SPP.<sup>33</sup> Sharyland asserts that SPS cancelled this agreement in 2009, to be effective December 2013. Sharyland alleges that because of this cancellation, in 2011 the Texas Commission ordered Sharyland to disconnect from SPP and transfer its load to the ERCOT system by December 31, 2013.<sup>34</sup> As required by the 2011 Texas Commission Order, Sharyland states that it has physically disconnected from the SPS transmission system and the SPP grid and is now entirely within ERCOT.<sup>35</sup> Sharyland asserts that SPS's termination of the power supply contract and not Sharyland's own actions is the cause of Sharyland's transfer from SPP back to ERCOT.<sup>36</sup>

26. Sharyland requests that the Commission grant the requested waiver.<sup>37</sup> Sharyland contends that unless the Commission grants the requested waiver, the Sharyland 2013

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<sup>32</sup> Sharyland Comments at 1 and 3; App. A at P 4.

<sup>33</sup> *Id.* at 1; App. A at P 5.

<sup>34</sup> *Id.* at 5-6; App. A at P 6.

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

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.* at 4 and 9.

load will be used for both SPP and ERCOT transmission billings.<sup>38</sup> Sharyland states that it is being billed for 2014 ERCOT transmission charges based on the load the utility served during the four summer months of the preceding year.<sup>39</sup> Sharyland states that this billing was mandated by the 2011 Texas Commission Order and that SPP as an active participant in that proceeding has been well aware that the load was intended to be used for ERCOT billings.<sup>40</sup> Sharyland alleges that SPP seeks “an unjustified windfall of approximately \$2.9 million for 2014 ‘services’ that it physically cannot provide.”<sup>41</sup>

27. Sharyland maintains that its transfer to ERCOT has been certain since the 2011 Texas Commission Order. Sharyland asserts that although SPS sold Sharyland certain transmission facilities, the sale of these facilities was not necessary for the move to ERCOT.<sup>42</sup> Sharyland further states that its migration to ERCOT has enabled SPP to avoid constructing approximately \$38,475,000 of transmission facility upgrades, thus avoiding Schedule 11 regional charges.<sup>43</sup> Sharyland further argues that, even before Sharyland was ordered to disconnect from SPP, it agreed to limit its load in SPP to 150 MW to avoid the need for SPS and SPP to construct additional transmission facilities or make significant improvements to existing facilities.<sup>44</sup>

28. SPP requests that the Commission find that the SPP Tariff and the 2012 NITS agreement require SPP to assess SPS Schedule 1A and Schedule 11 charges in 2014 because such charges are based on Sharyland load figures for 2013.<sup>45</sup> SPP requests that, if the Commission grants the waiver, it limit such waiver to the Schedule 1A and Schedule 11 charges and clarify that the waiver does not impact any other obligations SPS or Sharyland may have to SPP as a result of the migration of the Sharyland load to ERCOT.<sup>46</sup> SPP states that all charges under Sharyland’s 2012 NITS agreement are

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<sup>38</sup> *Id.* at 8.

<sup>39</sup> *Id.*; App. A at P 9.

<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* at 2 and 4.

<sup>42</sup> *Id.* at 7; App. A at P 8.

<sup>43</sup> *Id.* at 2 and 6.

<sup>44</sup> *Id.* at 6-7.

<sup>45</sup> SPP Comments at 7.

<sup>46</sup> *Id.* at 7-8.

calculated in accordance with the SPP Tariff.<sup>47</sup> SPP clarifies that Schedule 1A and Schedule 11 are indeed based on the prior year's load.<sup>48</sup> SPP states that it anticipates the charges assessed to SPS pursuant to these schedules will be reduced to zero in 2015, but claims that this does not absolve SPS of responsibility for all charges under the NITS agreement.<sup>49</sup>

29. SPP states that as of January 1, 2014, the Sharyland load had migrated to ERCOT and that SPS submitted notice on February 26, 2014, to terminate the Sharyland 2012 NITS agreement.<sup>50</sup> SPP states it could not cancel the Sharyland 2012 NITS agreement because the 2012 NITS agreement must terminate on its own terms January 13, 2016. SPP contends that because the 2012 NITS agreement cannot be terminated until January 13, 2016, SPS is obligated to pay all charges specified in the 2012 NITS agreement for the duration of the agreement. SPP states that it has therefore been billing SPS for NITS including service reserved for the Sharyland load.<sup>51</sup>

30. SPP notes that, as SPS acknowledges, granting the requested waiver would result in other SPP customers being charged more under Schedules 1A and 11. SPP contends that this undesirable consequence will not be offset by the cost savings associated with the cancellations of the notices to construct that are cited by SPS. SPP states that the notice to construct that was cancelled was for a project that would not be needed until 2018. SPP contends that other events could have taken place before 2018 that would have made the upgrade unneeded.<sup>52</sup> SPP argues that, therefore, the savings alleged by SPS are uncertain but that costs necessarily will be increased for other SPP customers if the Commission grants the waiver request. SPP claims that because the savings cited by SPS would not have been realized until 2018, they should not be used as justification to grant a waiver that would increase costs for other SPP customers.<sup>53</sup>

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<sup>47</sup> *Id.* at 1.

<sup>48</sup> *Id.* at 4-5.

<sup>49</sup> *Id.* at 5.

<sup>50</sup> *Id.* at 3.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *Id.* at 6.

<sup>53</sup> *Id.* at 7.

31. In its answer, SPS contends that SPP does not dispute the appropriateness of the waiver and instead only points to its own Tariff provisions.<sup>54</sup> SPS reiterates that it meets all four of the criteria previously set out by the Commission for granting waiver.<sup>55</sup> SPS reiterates that SPP transmission owners and transmission customers have realized significant savings from Sharyland's migration to ERCOT. SPS states that according to SPP, the cancellation of transmission projects needed to serve the Sharyland load results in only uncertain cost savings because the projects would not be needed until a later date.<sup>56</sup> SPS rebuts SPP's assertion that the savings should not justify the waiver request because of their uncertainty and states that the cancellation has already occurred, saving SPP transmission owners and transmission customers millions.<sup>57</sup> SPS contends that the cancellation saved SPP transmission owners approximately \$8.2 million from 2010 through 2014.<sup>58</sup> SPS contends that while the cost estimates in the notice to construct are approximations, they still represent the best way to quantify the savings because they show specific transmission upgrades that are no longer necessary.<sup>59</sup> SPS contends that SPP further fails to consider the load limitations imposed by Sharyland and the benefits accruing to other transmission owners from that reduction. SPS restates Sharyland's claim that Sharyland reduced its load to 150 MW in 2010 and avoided the need for SPP to plan for additional transmission facilities beyond those in the notice to construct.<sup>60</sup> SPS contends that when the facts are viewed in totality, the waiver request should be granted.<sup>61</sup>

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<sup>54</sup> SPS Answer at 5-6.

<sup>55</sup> *Id.* at 3.

<sup>56</sup> *Id.* at 6-7.

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.* at 7.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 8 (citing Sharyland Comments at 6-7).

<sup>61</sup> *Id.* at 9.

#### IV. Discussion

##### A. Procedural Matters

32. 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 the proceeding. 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 answer filed by SPS because it has provided information that assisted us in our decision-making process.

##### B. Commission Determination

33. We deny SPS's request for waiver because it does not meet the Commission's requirements for granting waiver of a tariff provision. The Commission has previously granted requests for waivers of tariff provisions in situations where: (1) the applicant was unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by granting the waiver; and (4) the waiver would not have undesirable consequences, such as harming third parties.<sup>62</sup>

34. SPS argues that granting the waiver of Schedules 1A and 11 of the SPP Tariff will not have undesirable consequences, such as harming third parties. We are not persuaded by SPS's arguments that the waiver will not harm third parties. As SPS acknowledges, to the extent that SPS would avoid any costs if the waiver is granted, such costs would "flow to other SPP customers" and would need to be paid by those customers.<sup>63</sup> Accordingly, granting the waiver would have the adverse consequence of increasing the costs other SPP customers must pay under Schedules 1A and 11 of the SPP Tariff.

35. SPS asserts that, if the Commission grants the requested waiver, SPP members will still have benefitted from the departure of Sharyland's load on a net basis because of the costs savings associated with the cancellation of the notices to construct for the SPS transmission projects. We are not persuaded by SPS's arguments because these savings are uncertain while the costs that would be assessed on other SPP customers if the Commission were to grant the waiver request would be definite. As SPP states, it is uncertain whether future events would have changed the need for the projects cited by

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<sup>62</sup> See, e.g., *CleanLight Power + Energy, LLC*, 149 FERC ¶ 61,018, at P 14 (2014); *Allegany Generating Station LLC*, 147 FERC ¶ 61,147, at P 15 (2014); *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014).

<sup>63</sup> See SPS Request for Waiver at 21.

SPS, independent of Sharyland load moving to ERCOT. Furthermore, any savings realized by SPP members from the migration of Sharyland's load to ERCOT are separate from the requested waiver, so it would be inappropriate to net these savings against the costs that would be imposed on third parties by granting the requested waiver.

36. Given that SPS is unable to meet the requirements for waiver on this basis, we need not address arguments on the remaining factors that the Commission considers in determining whether to grant requests for waiver. In addition, SPP's request that the Commission find that the SPP Tariff and the 2012 NITS agreement require SPP to assess SPS Schedule 1A and Schedule 11 charges in 2014 is beyond the scope of this proceeding.

The Commission orders:

SPS's request for waiver is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.