

152 FERC ¶ 61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER15-2028-000

ORDER ACCEPTING TARIFF REVISIONS IMPLEMENTING FORMULA RATES
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2015)

1. In this order, we accept Southwest Power Pool, Inc.'s (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) to add a formula rate template and implementation protocols to accommodate the recovery of an annual transmission revenue requirement for SPP member Corn Belt Power Cooperative (Corn Belt),¹ effective October 1, 2015, subject to refund, and establish hearing and settlement judge procedures.

I. Background

A. The Integrated System

2. The Integrated System is the backbone of the bulk electric transmission system across seven states in the Upper Great Plains region consisting of approximately 9,500 miles of transmission lines rated 115 kV through 345 kV. Spanning the Eastern and Western Interconnections of the U.S. electric grid, the Integrated System includes the combined transmission facilities of Western Area Power Administration – Upper Great Plains region, Basin Electric Power Cooperative (Basin Electric), and Heartland

¹ Corn Belt is an electric and transmission cooperative organized and existing under the laws of the State of Iowa and provides on a not-for-profit basis the wholesale power requirements of its nine rural electric cooperative members and one municipal electric cooperative association, North Iowa Municipal Electric Cooperative Association (NIMECA). SPP states that Corn Belt is a Rural Utilities Service (RUS) borrower and thus, is not subject to the Commission's jurisdiction over public utilities under the Federal Power Act, 16 U.S.C. § 824(f) (2012) (FPA). SPP Transmittal at 3-4.

Consumers Power District (collectively, Integrated System Parties). It also includes, through facility credits, facilities owned by Northwestern Energy and Missouri River Energy Services (Missouri River). The collaborative development of the Integrated System has resulted in transmission facilities that are highly integrated, and in some instances jointly owned, among the Integrated System Parties and with other transmission owners in the region. The Integrated System is planned to be transferred to the functional control of SPP effective October 1, 2015.

B. The Instant Filing

3. On June 26, 2015, SPP made the instant rate filing on behalf of Corn Belt, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations. SPP's proposed revisions to its Tariff are designed to govern SPP's transmission service using the facilities of Corn Belt when Corn Belt transfers functional control of its facilities to SPP.²

4. In the instant filing, SPP submits proposed modifications to Attachment H of the Tariff to accommodate Corn Belt's recovery of revenues for its transmission facilities. Specifically, SPP proposes to include, as Addendum 26 to Attachment H, Corn Belt's formula rate and formula rate protocols which calculate Corn Belt's revenue requirement. SPP further proposes to modify Attachment H, Section 1, Table 1 to include Corn Belt as Line 19f in the table with other transmission owners in the Upper Missouri Zone (Zone 19). Additionally, SPP requests approval to revise Attachment T, Rate Sheet for Point-To-Point Transmission Service, to add a reference to the Corn Belt formula rate template to the Zone 19 rate sheet. SPP asserts that the Commission has previously approved similar modifications to the Tariff to accommodate zones that include multiple owners.³ Further, SPP requests approval to revise Addendum 2 of Attachment O to include Corn Belt as a participant in SPP's planning region.⁴ Finally, SPP proposes modifications to Attachment W of the Tariff to include certain Grandfathered Agreements.

5. In support of its filing, SPP has submitted testimony and supporting exhibits from: (1) Kevin Bornhoft, Corn Belt's Vice President, Engineering & System Operations; (2) Greg Fritz, NIMECA's Chief Executive Officer, (3) Robert C. Smith,

² *Id.* at 1-2.

³ *Id.* at 9 & n.21.

⁴ *Id.* at 9.

Vice President of GDS Associates, Inc.; and (4) Ronald Kennedy, Director in the Transmission Strategy Practice at MCR Performance Solutions.⁵

6. Corn Belt states that it owns or controls approximately 1,700 miles of high voltage transmission lines and 337 MW of generating capacity through joint ownership arrangements and electric generating plants in Iowa. Corn Belt asserts that it is a member of Basin Electric. Corn Belt states that it proposes to transfer to the functional control of SPP approximately 1,500 miles of transmission lines as well as 40 substations/switching stations at 69 kV or above and associated transmission equipment. Corn Belt explains that these facilities also include certain NIMECA facilities. Corn Belt asserts that it provided SPP with a detailed list of the facilities and equipment which it is transferring to SPP, and contends that these transmission facilities are consistent with Attachment AI of SPP's Tariff.⁶

7. Corn Belt states that its formula rate template utilizes historic costs, with a rate year running from June 1 to May 31. Corn Belt explains that it is acting as agent for the NIMECA member cities, and that their historic costs are similarly developed in formula rate templates whose resulting revenue requirements are incorporated into Corn Belt's revenue requirement. Corn Belt asserts that the formula rate reflects just and reasonable revenue requirements supported by RUS Form 12 data, and is similar to many other historic formulas approved by the Commission, such as the Midcontinent Independent System Operator, Inc.'s (MISO) Attachment O formulas. Corn Belt further asserts that its proposed protocols conform to Commission precedent and are consistent with recent Commission orders on formula rate protocols. Corn Belt explains that its formula rate separates Corn Belt's investment in transmission facilities in SPP and its investment in other transmission facilities by using an "Inclusion Factor" that reflects the percentage of Corn Belt's overall transmission investment that is included in SPP transmission Zone 19. This "Inclusion Factor," is currently approximately 70 percent, and is used throughout the formula rate to allocate Corn Belt's transmission related rate base and expense items. Corn Belt explains that Administrative and General expenses and General Plant items are based on the wages and salaries allocator.⁷

8. Regarding the requested return on equity (ROE), Corn Belt asserts that the Commission has declined to establish a formal standard of review applicable to revenue requirements filed by non-jurisdictional transmission owners transferring the functional

⁵ *Id.* at 7-8.

⁶ Ex. No. SPP-1, Direct Testimony of Kevin Bornhoft, at 3-6; *see also*, Ex. No. KB-3.

⁷ Ex. No. SPP-3, Direct Testimony of Robert C. Smith, at 1-8.

control of their facilities to a Regional Transmission Organization (RTO). Corn Belt contends that the Commission has permitted non-jurisdictional transmission owners in RTOs to use the same overall rate of return as that of the dominant zonal transmission owner.⁸ Corn Belt explains that because there is no dominant transmission owner in SPP's Upper Missouri Zone, Corn Belt uses the average of the ROEs on file for the existing SPP transmission owners (excluding ROEs of independent transmission companies) to arrive at a base ROE of 10.37 percent, with a 50 basis point RTO participation adder, for a total proposed ROE of 10.87 percent.⁹

9. NIMECA states that it is a full member of Corn Belt, and that its members (excluding City of Webster City and Algona) bought into the Corn Belt system by contributing their respective transmission assets to create the Common Transmission System. According to NIMECA, its member cities own about 18 percent of the total dollar value of the Common Transmission System, while Corn Belt owns the remaining 82 percent. NIMECA explains that its member cities are parties to several Grandfathered Agreements for the delivery of pseudo-tied generation resources, and contends that it is important that the Grandfathered Agreements continue to be recognized as Grandfathered Agreements in order to preserve the pre-existing rights and obligations of the parties to those agreements.¹⁰

10. NIMECA asserts that its 12 member cities will calculate the revenue requirement for their city-owned transmission facilities using a historic formula rate template within the Corn Belt formula rate.¹¹ NIMECA states that Corn Belt, the City of Algona, and NIMECA will execute a revenue sharing agreement to distribute revenues received by Corn Belt on behalf of the NIMECA cities back to the appropriate cities.¹² NIMECA explains that 10 of its 12 cities are included in this filing. NIMECA explains that the cities will follow the protocols submitted by Corn Belt in this filing. NIMECA further explains that its formula rate templates will include an ROE that is the same ROE used by Corn Belt. NIMECA contends that this ROE reflects the undivided ownership interest of

⁸ *Id.* at 13 (citing *Pac. Gas and Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002) (additional citations omitted)).

⁹ *Id.* at 13-15.

¹⁰ Ex. No. SPP-2, Direct Testimony of Greg Fitz at 3, 5; *see also*, Ex. No. GF-1.

¹¹ Ex. No. SPP-5, Direct Testimony of Ronald Kennedy at 4.

¹² Ex. No. SPP-2, Direct Testimony of Greg Fitz at 4.

the same Common Transmission System facilities by Corn Belt and the NIMECA cities. NIMECA states that this ROE cannot be changed absent a filing with the Commission.¹³

11. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of Corn Belt's revenue requirement, formula rate, and formula rate protocols, Corn Belt has voluntarily agreed to allow its revenue requirement, formula rate, and formula rate protocols to be treated as being accepted, subject to refund with interest at the lesser of Corn Belt's short-term debt costs and Commission interest rates. SPP further states that Corn Belt has informed SPP that Corn Belt makes this voluntary commitment without waiving or in any way limiting or altering Corn Belt's non-jurisdictional status.¹⁴

12. SPP states that it has filed these proposed revisions to its Tariff at Corn Belt's request and on Corn Belt's behalf. SPP adds that it is not independently supporting or justifying the Corn Belt annual transmission revenue requirement, formula rate, or protocols, but merely modifying the Tariff to accommodate Corn Belt's recovery of transmission service revenues for its transmission facilities.¹⁵

13. SPP requests waiver of any provisions in 18 C.F.R. § 35.13 that may be deemed to require cost support for the proposed Tariff revisions in the form of cost-of-service statements.¹⁶

C. Notice of Filing and Responsive Pleadings

14. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 38,442 (2015), with interventions and protests due on or before July 17, 2015. Timely motions to intervene were filed by: American Electric Power Service Corporation, on behalf of its affiliate Public Service Company of Oklahoma; NorthWestern Corporation; South Central MCN, LLC; Interstate Power and Light Company; the Municipal Energy Agency of Nebraska; and Xcel Energy Services Inc., on behalf of its utility operating company affiliates Southwestern Public Service Company, Northern States Power Company – Minnesota, and Northern States Power Company – Wisconsin. Missouri Public Service Commission (Missouri Commission) filed a notice

¹³ Ex. No. SPP-5, Direct Testimony of Ronald Kennedy at 6-11.

¹⁴ SPP Transmittal at 9 & n.22; *see also*, Ex. No. SPP-3, Direct Testimony of Robert C. Smith at 6-7.

¹⁵ SPP Transmittal at 7.

¹⁶ *Id.* at 11.

of intervention, comments, and a conditional protest. Corn Belt, Basin Electric, and Missouri River filed timely motions to intervene and comments. Western Area Power Administration (Western) filed a timely motion to intervene, comments, and a request for clarification. MidAmerican Energy Company (MidAmerican) filed a timely motion to intervene, conditional protest, and comment. On August 3, 2015, Corn Belt filed an answer.

II. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Corn Belt's answer because it has provided information that assisted us in our decision-making process.

B. Responsive Pleadings

1. Comments and Protests

17. Corn Belt and Basin Electric filed comments in support of Corn Belt's proposed formula rate, protocols, and ROE.¹⁷ Corn Belt asserts that its formula rate inputs are just and reasonable, the facilities it intends to transfer to the functional control of SPP meet the criteria established in Attachment AI of the Tariff, and the Grandfathered Agreements that Corn Belt proposes to include in Attachment W meet the Tariff criteria for Grandfathered Agreements. Finally, Corn Belt states that Commission acceptance of Corn Belt's (i) formula rate, (ii) proposed facilities for transfer to SPP's functional control, and (iii) desired list of Grandfathered Agreements is a fundamental condition to Corn Belt joining SPP as a transmission-owning member.¹⁸

18. Western argues that the cost of some of the listed Corn Belt facilities included in Corn Belt's revenue requirement appears to be already included in the Basin Electric revenue requirement filed in Docket No. ER15-1775. Western seeks clarification on whether the costs of these facilities will be removed from Corn Belt's or Basin Electric's

¹⁷ Corn Belt Comments at 5-7; Basin Electric Comments at 5-7.

¹⁸ Corn Belt Comments at 6-8.

revenue requirements.¹⁹ Western also contends that there is not a sufficient level of detail regarding which facilities are included in Corn Belt's revenue requirement. Western specifically notes that Corn Belt's facilities include substations with multiple load deliveries and connections to low voltage facilities, and contends there is not enough detail to determine whether the costs of certain low side facilities were excluded, or, if they were included, under what criteria they qualify.²⁰ Western further requests clarification as to whether Corn Belt's revenue requirement will be reduced to account for other transmission revenue received under Grandfathered Agreement service over the Corn Belt facilities included in its revenue requirement.²¹

19. Missouri Commission asks that Corn Belt consider having its annual meeting by July 31 rather than September 1, and contends this would expedite the transfer of information and could stream line the information exchange process.²²

20. Missouri Commission is concerned that the Corn Belt's method for determining its ROE is deficient and contends that developing the base ROE using the average of the ROEs on file for the existing SPP transmission owners may not lead to an ROE within the range of reasonableness. Specifically, Missouri Commission argues that the methodology fails to provide an analysis of what the current range of reasonableness is for SPP transmission owners, and that the use of this average would allow Corn Belt to rely on outdated information that does not reflect current capital market conditions or the results of the application of the Commission's currently approved discounted cash flow methodology. Further, Missouri Commission contends that many of the ROEs used by Corn Belt to calculate an average ROE were established in settlement negotiations and are thus likely to be arbitrary and increased or decreased when giving consideration to the negotiation of other issues. Missouri Commission also asserts that numerous ROE complaint cases are pending before the Commission challenging whether existing ROEs are just and reasonable. Missouri Commission argues that the Commission should reject Corn Belt's filing as deficient and require Corn Belt to provide data and analyses to allow interested parties and the Commission to examine and assess whether Corn Belt's filing contains any justification for its use of a 10.37 percent base ROE.²³

¹⁹ Western Comments at 6-7.

²⁰ *Id.* at 7-9.

²¹ *Id.* at 9.

²² Missouri Commission Protest at 3.

²³ *Id.* at 3-5.

21. Missouri River alleges that the proposed formula rate fails to include data, information, and explanations which are necessary for the formula rate to be approved. Specifically, Missouri River contends the formula rate suffers from a lack of transparency for cost of service data and qualified transmission facilities. Missouri River further asserts that the revenue requirement's treatment of Grandfathered Agreements is unclear. Missouri River also argues that the treatment of lease payments received from Basin Electric needs to be justified.²⁴

22. MidAmerican raises several concerns regarding the treatment of its Grandfathered Agreements with Corn Belt. MidAmerican contends that some of the Grandfathered Agreements Corn Belt proposes to include in Attachment W do not involve facilities owned by Corn Belt or included in the SPP footprint. MidAmerican states that it objects to including those agreements in Attachment W to the SPP Tariff to the extent that their inclusion would: (1) place any of MidAmerican's facilities, including its ownership interests in jointly-owned facilities, under the functional control of SPP; (2) create obligations for MidAmerican under the SPP Tariff since the facilities are already subject to the MISO tariff; and (3) imply that either MidAmerican or MISO offers transmission service in the SPP region pursuant to the Grandfathered Agreements.²⁵ MidAmerican notes that SPP passes on certain charges to Grandfathered Agreement customers and transmission owners under the Tariff, and requests the Commission establish hearing and settlement judge procedures to ensure a just and reasonable treatment of these Grandfathered Agreement related charges upon Corn Belt's integration.²⁶ Finally, MidAmerican states that it is concerned about its inability to secure basic information about the ongoing service it will receive under the Grandfathered Agreements, and states that it expects all parties to live up to their obligations under the existing Grandfathered Agreements. MidAmerican contends that the Commission should make the integration of Corn Belt contingent on the ability of SPP and Corn Belt to abide by the existing obligations under the Grandfathered Agreements.²⁷

²⁴ Missouri River Comments at 3-4.

²⁵ MidAmerican Protest at 4-9. MidAmerican specifically notes that Grandfathered Agreement Nos. 764, 767-777, and 782-804 involve facilities under the functional control of MISO.

²⁶ *Id.* at 5, 12-13.

²⁷ *Id.* at 5-6, 20.

2. Answer

23. Corn Belt asserts that it has already provided sufficient data regarding formula rate inputs and qualified transmission facilities, and contends that all the facilities to be transferred to SPP's functional control meet the qualification criteria for inclusion in the SPP Tariff under Attachment AI. Regarding facilities that Corn Belt has historically leased to Basin Electric, Corn Belt clarifies that it has provided Basin Electric with notice that the leases expire upon the October 1, 2015 integration date, and contends that they are thus properly included in Corn Belt's revenue requirement.²⁸

24. Corn Belt argues that Missouri Commission's objection to the timing of Corn Belt's annual meeting is unfounded, and asserts that the Commission should not require it to hold its annual meeting by July 31 because Corn Belt's proposed timeline provides interested parties ample time to review Corn Belt's posted information and to submit document requests to facilitate informed participation at the annual meeting.²⁹

25. Corn Belt further contends that its proposed ROE is just and reasonable, and that no precedent requires a non-jurisdictional entity to justify its ROE using a discounted cash flow analysis. Corn Belt argues that its methodology is just and reasonable. Corn Belt asserts that even though its ROE is based on an average of ROEs that were the result of settlements, those settlements were approved by the Commission as just and reasonable, and thus their average is a highly reasonable proxy for Corn Belt to use in its formula rate. Corn Belt argues that its proposed ROE satisfies the Commission's precedent in accepting ROEs that fall within the range of reasonable returns for similar entities.³⁰

26. Corn Belt asserts that it has no intention to double collect any costs related to Grandfathered Agreements, and commits to work with SPP and MidAmerican to help reconcile any cost issues arising under the SPP Tariff with both Corn Belt and MidAmerican reserving their rights under any Grandfathered Agreement. Corn Belt argues, however, that these are implementation issues and should not prevent Corn Belt from having its Grandfathered Agreements accepted in the SPP Tariff. Corn Belt commits to implement its formula rate consistent with the SPP Tariff and Commission requirements to avoid recovering costs both through Grandfathered Agreement revenues and under the formula rate included in the Tariff. Corn Belt clarifies that its inclusion of Grandfathered Agreements that do not include facilities owned by Corn Belt and/or that

²⁸ Corn Belt Answer at 2-4.

²⁹ *Id.* at 4-5.

³⁰ *Id.* at 5-6.

are not included in the SPP footprint was made out of an abundance of caution and Corn Belt does not intend to impose obligations with respect to those facilities. Finally, in response to Western's request for clarification as to whether and how Corn Belt reduced its revenue requirement to account for other transmission revenue received under Grandfathered Agreement service over the Corn Belt facilities included in its revenue requirement, Corn Belt clarifies that the revenue credits in its formula rate are associated with the only two Grandfathered Agreements for which Corn Belt receives transmission revenues, and contends that the majority of the remaining Grandfathered Agreements are related to capacity rights for which no revenues are received by Corn Belt.³¹

C. Standard of Review

27. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional transmission revenue requirements in an opinion reviewing the transmission revenue requirement filed by the City of Vernon, California (Vernon).³² In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to the Commission's jurisdiction under FPA section 205. However, the Commission noted that because Vernon voluntarily submitted its transmission revenue requirement as a component of California Independent System Operator Corporation's (CAISO) jurisdictional rate, Vernon's transmission revenue requirement was "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."³³ The Commission explained that, in *Pac. Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia held that the Commission had statutory authority to review Vernon's transmission revenue requirement "to the extent necessary to ensure that the CAISO rates are just and reasonable."³⁴ Subsequently, the court upheld the Commission's decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such as Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."³⁵

³¹ *Id.* at 6-7.

³² See *City of Vernon, Cal.*, Opinion No. 479, 111 FERC ¶ 61,092, *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).

³³ *Id.* P 44.

³⁴ *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d at 1117).

³⁵ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

28. However, in *TANC*, the court rejected the Commission's authority to order Vernon to pay refunds under FPA section 205. The court held that the structure of the FPA clearly reflects Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority under FPA section 205 over wholesale electric energy sales.³⁶ The court reasoned that FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."³⁷

29. Therefore, while Corn Belt is not within the Commission's jurisdiction under FPA section 205, we find that, based on the precedent cited above, it is appropriate to apply the just and reasonable standard of FPA section 205 to SPP's proposed rates filed on behalf of Corn Belt.³⁸ To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

30. Furthermore, Corn Belt is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.³⁹ However, we note that Corn Belt has voluntarily agreed to allow its revenue requirement, formula rate, and formula rate protocols to be treated as being accepted, subject to refund with interest at the lesser of Corn Belt's short-term debt costs and Commission interest rates.⁴⁰

D. Commission Determination

1. RTO Participation Adder

31. As discussed below, we conditionally grant Corn Belt's request for a 50 basis point adder to its base ROE for its participation in SPP. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.⁴¹

³⁶ *Id.* at 673-74.

³⁷ *Id.* at 674.

³⁸ *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

³⁹ *Id.* P 41.

⁴⁰ SPP Transmittal at 9 & n.22; *see also*, Ex. No. SPP-3, Direct Testimony of Robert C. Smith at 6-7.

⁴¹ 16 U.S.C. § 824s(a), (b) (2012).

The purpose of the rule that FPA section 219 directed the Commission to establish is, *inter alia*, to promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in electric transmission infrastructure.⁴² The Commission subsequently issued Order No. 679,⁴³ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

32. We find that, as conditioned below, Corn Belt's requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.⁴⁴ We condition our approval on the adder being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash flow analysis or otherwise shown to be just and reasonable, and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis or otherwise shown to be just and reasonable, as those may be determined in the hearing and settlement procedures ordered below. Further, our approval of this incentive is conditioned on Corn Belt's continuing membership in SPP.

2. Hearing and Settlement

33. We find that, apart from the 50 basis point adder issue addressed above, SPP's proposed Tariff revisions filed on behalf of Corn Belt raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below.

34. 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. Accordingly, we will accept the proposed Tariff revisions, effective October 1, 2015, as requested, subject to refund, and set them for hearing and settlement judge procedures.

35. We will accept Corn Belt's commitment to provide refunds, with interest, as of October 1, 2015. Corn Belt is not subject to Commission-imposed refund obligations

⁴² *Id.*

⁴³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 61,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴⁴ *See, e.g., Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245, at P 30 (2014) (granting 50 basis point adder for continued RTO participation); *Valley Elec. Ass'n, Inc.*, 141 FERC ¶ 61,238, at P 26 (2012) (granting 50 basis point adder for RTO participation); *Pac. Gas and Elec. Co.*, 141 FERC ¶ 61,168, at P 25 (2012).

under section 205 of the FPA and the Commission has previously accepted commitments by non-jurisdictional transmission owners that they will refund the difference between the proposed rate and the rate ultimately determined by the Commission to be just and reasonable.⁴⁵

36. While we are setting SPP's proposed Tariff revisions 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.⁴⁶ 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.⁴⁷ 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.

37. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because Corn Belt is not subject to section 205 of the FPA, it is not subject to the Commission's cost of service regulatory filing requirements. However, to the extent that parties at the hearing can show the relevance of additional information needed to evaluate the proposal, the Administrative Law Judge can provide for appropriate discovery of such information.

The Commission orders:

(A) SPP's proposed tariff revisions are hereby accepted for filing, to become effective October 1, 2015, as requested, subject to refund, as discussed in the body of the order.

(B) Pursuant to the authority contained in and subject to the jurisdiction

⁴⁵ See, e.g., *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

⁴⁶ 18 C.F.R. § 385.603 (2015).

⁴⁷ 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 (5) 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>).

conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of SPP's proposed Tariff revisions. 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 (2015), 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.

(D) 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.

(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 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

