

152 FERC ¶ 61,251
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. ER15-2115-000

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 Northwest Iowa Power Cooperative (NIPCO),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 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

¹ SPP states that NIPCO is a Rural Utilities Service (RUS) borrower and is thus 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.

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 NIPCO, 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 NIPCO when NIPCO 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 NIPCO's recovery of revenues for its transmission facilities. Specifically, SPP proposes to include as Addendum 28 to Attachment H, NIPCO's formula rate and formula rate protocols which calculate NIPCO's revenue requirement. SPP further proposes to modify Attachment H, Section 1, Table 1 to include NIPCO as Line 19h 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 NIPCO 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 NIPCO 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) Matthew R. Washburn, NIPCO's Senior Vice President & Chief Operating Officer; (2) Steve J. Ver Mulm, NIPCO's Vice President, Engineering and Operations; (3) Bernard A. Cevera, Managing Consultant at NIPCO's consultant Guernsey; and (4) Robert C. Smith, Vice President of GDS Associates, Inc.⁵

² SPP Transmittal at 1.

³ *Id.* at 8 & n.20.

⁴ *Id.* at 8.

⁵ *Id.* at 7.

6. NIPCO explains that it is an electric generation and transmission cooperative owned by six distribution cooperatives and an association of municipal utilities, all located in Iowa, and is a member of Basin Electric. NIPCO states that it serves over 30,000 member consumers of these utilities with over 900 miles of 69 kV transmission lines and 80 distribution substations. NIPCO explains that of these transmission assets, approximately 742 miles of transmission circuits and the substations and equipment serving these 69 kV lines will be transferred to the functional control of SPP and included in NIPCO's revenue requirement.⁶ NIPCO contends that all of these facilities meet the criteria for inclusion in SPP's Tariff, and states that it provided SPP with the relevant information.⁷ NIPCO asserts that the Grandfathered Agreements it intends to add to SPP's Tariff satisfy the SPP Tariff requirements to be included in Attachment W. Finally, NIPCO explains that its intent to join SPP and complete the transfer of its facilities to the functional control of SPP is dependent upon: (1) acceptance of NIPCO's transfer of substantially all of the transmission facilities that it proposes to transfer to SPP's functional control; (2) the Commission's recognition of Grandfathered Agreement status for the Grandfathered Agreements NIPCO proposes to include in SPP's Tariff; and (3) NIPCO's recovery of the total revenue requirement requested.⁸

7. NIPCO states that it intends to collect its revenue requirement based on historical costs. NIPCO explains that it calculated a revenue requirement of approximately \$8 million based on its 2014 and 2013 Certified RUS Form No. 12s. NIPCO states that if a correction to its RUS Form No. 12 is discovered, then an adjustment will be included in the next revenue requirement. Further, NIPCO contends that its protocols are consistent with the protocols recently filed by The Empire District Electric Company, *et al.*⁹

8. Regarding the requested return on equity (ROE), NIPCO 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 control of their facilities to a Regional Transmission Organization (RTO). NIPCO 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

⁶ Ex. No. SPP-1, Direct Testimony of Matthew Washburn, at 4-7.

⁷ Ex. No. SPP-2, Direct Testimony of Steven Ver Mulm, at 3-5; *see also*, Ex. No. SVM-2.

⁸ Ex. No. SPP-1, Direct Testimony of Matthew Washburn, at 6-8.

⁹ Ex. No. SPP-3, Direct Testimony of Bernard Cevera, at 4-10.

owner.¹⁰ NIPCO explains that because there is no dominant transmission owner in SPP's Upper Missouri Zone, NIPCO 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.¹¹

9. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of NIPCO's revenue requirement, formula rate, and formula rate protocols, NIPCO 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 NIPCO's short-term debt costs and Commission interest rates. SPP further explains that NIPCO has informed SPP that NIPCO makes this voluntary commitment without waiving or in any way limiting or altering NIPCO's non-jurisdictional status.¹²

10. SPP states that it has filed these proposed revisions to its Tariff at NIPCO's request and on NIPCO's behalf. SPP adds that it is not independently supporting or justifying the NIPCO annual transmission revenue requirement, formula rate, or protocols, but merely modifying the Tariff to accommodate NIPCO's recovery of transmission service revenues for its transmission facilities.¹³

11. 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.¹⁴

¹⁰ Ex. No. SPP-5, Direct Testimony of Robert C. Smith at 4. (citing *Pac. Gas and Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002) (additional citations omitted)).

¹¹ *Id.* at 4-6.

¹² SPP Transmittal at 8 & n.21; *see also*, Ex. No. SPP-1, Direct Testimony of Matthew Washburn at 3.

¹³ SPP Transmittal at 7; *see also*, Ex. No. SPP-3, Direct Testimony of Bernard Cevera, at 7-8.

¹⁴ SPP Transmittal at 10.

C. Notice of Filing and Responsive Pleadings

12. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 41,495 (2015), with interventions and protests due on or before July 28, 2015. Timely motions to intervene were filed by the following: South Central MCN, LLC; NorthWestern Corporation; 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. NIPCO and Basin Electric filed timely motions to intervene and comments. Missouri Public Service Commission (Missouri Commission) filed a notice of intervention, comments, and a conditional protest. MidAmerican Energy Company (MidAmerican) filed a timely motion to intervene, conditional protest, and comment. Western Area Power Administration (Western) filed a timely motion to intervene, comments, and a request for clarification. Missouri River filed a timely motion to intervene, conditional protest, and comment. On August 12, 2015, NIPCO filed an answer.

II. Discussion

A. Procedural Matters

13. 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.

14. 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 NIPCO's answer because it has provided information that assisted us in our decision-making process.

B. Responsive Pleadings

1. Comments and Protests

15. NIPCO and Basin Electric filed comments in support of NIPCO's proposed formula rate, protocols, and ROE.¹⁵ NIPCO further contends 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 NIPCO proposes to include in Attachment W meet the Tariff criteria for Grandfathered Agreements. Finally, NIPCO contends that Commission acceptance of

¹⁵ NIPCO Comments at 5-7; Basin Electric Comments at 5-7.

NIPCO'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 NIPCO joining SPP as a transmission-owning member.¹⁶

16. Western argues that the cost of some of the listed NIPCO facilities included in NIPCO'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 NIPCO's or Basin Electric's revenue requirements. Western also contends that there is not a sufficient level of detail regarding which facilities are included in NIPCO's revenue requirement. Western specifically notes that certain components that make up a substation bus would not qualify under Attachment AI and the lack of detail provided makes it impossible for Western to determine whether all of the NIPCO transmission facilities to be transferred to the functional control of SPP qualify under Attachment AI of the SPP Tariff. Western further requests clarification of whether NIPCO's revenue requirement will be reduced to account for other transmission revenue received under Grandfathered Agreement service over the NIPCO facilities included in its revenue requirement.¹⁷

17. Missouri River alleges that the proposed formula rate fails to include data, information, and explanations which are necessary for the formula rate to be properly evaluated and approved. Specifically, Missouri River argues that the formula rate suffers from a lack of transparency for cost of service data and qualified transmission facilities. Missouri River further contends that the revenue requirement's treatment of Grandfathered Agreements is unclear. According to Missouri River, NIPCO has not supported the inclusion of Construction Work in Progress in rate base.¹⁸

18. Missouri River also argues that, barring amendment or termination of a 1990 agreement between Missouri Basin Municipal Electric Cooperative Association (MBMECA)¹⁹ and NIPCO, MBMECA will pay twice for its transmission service when NIPCO transfers its proposed facilities to SPP. This is because, according to Missouri River, NIPCO will no longer be supplying MBMECA transmission service under its

¹⁶ NIPCO Comments at 6-8.

¹⁷ Western Comments at 6-9.

¹⁸ Missouri River Protest at 4-8.

¹⁹ MBMECA is a municipal cooperative association comprised of 13 Iowa municipal utility members of Missouri River and located within an area served by NIPCO's transmission system.

existing transmission agreement. Rather, Missouri River will be taking and paying for transmission service for MBMECA through the SPP Upper Missouri Zone rate, that includes NIPCO's proposed revenue requirement, and pass the costs of this service on to MBMECA, while MBMECA would also be paying NIPCO transmission costs via the 1990 agreement. Therefore, Missouri River contends the agreement should be modified or terminated before the Commission approves NIPCO's formula rate filing.²⁰

19. Missouri Commission argues there are several errors and inconsistencies in NIPCO's protocols that need to be addressed. For example, Missouri Commission asserts that section III.E.1 states that NIPCO must submit its annual informational filing to the Commission by May 1, while the example table indicates that date is actually April 15. Missouri Commission notes other inconsistencies and ambiguities regarding conflicting deadlines, inconsistent terminology, and extraneous language. Further, Missouri Commission contends that the deadline to submit an informal challenge should be extended to June 15.²¹

20. Missouri Commission is concerned that the NIPCO's method for determining its ROE is deficient and argues 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 asserts that the Commission found that the discounted cash flow methodology is appropriate for non-investor-owned entities and that the entity's bond rating can be used as a basis to develop a group of proxy companies that have a similar level of risk. According to Missouri Commission, the methodology used by NIPCO 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 NIPCO 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 argues that many of the ROEs used by NIPCO 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.

21. Missouri Commission 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 NIPCO's filing as deficient and require NIPCO to provide data and analyses to allow interested parties and

²⁰ Missouri River Protest at 9-11. Missouri River notes that negotiations are underway to terminate the MBMECA agreement.

²¹ Missouri Commission Protest at 3-4.

the Commission to examine and assess whether NIPCO's filing contains justification for its use of a 10.37 percent base ROE.²²

22. MidAmerican raises several concerns regarding the treatment of its Grandfathered Agreements with NIPCO. Specifically, MidAmerican contends that some of the Grandfathered Agreements NIPCO proposes to include in Attachment W do not involve facilities owned by NIPCO 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 Midcontinent Independent System Operator, Inc. (MISO) Tariff; and (3) imply that either MidAmerican or MISO offers transmission service in the SPP region pursuant to the Grandfathered Agreements.²³ 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 NIPCO's integration. Finally, MidAmerican states that it is concerned about its inability to secure information on the logistical details associated with the NIPCO integration, 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 NIPCO contingent on the ability of SPP and NIPCO to abide by the existing obligations under the Grandfathered Agreements.²⁴

2. Answer

23. NIPCO asserts that it has provided sufficient data regarding formula rate inputs and qualified transmission facilities. NIPCO objects to what it characterizes as Missouri River's "request for redundant information regarding the facilities to be transferred to SPP's functional control."²⁵ NIPCO explains that it has carefully reviewed the Attachment AI criteria and developed its list of facilities in consultation with SPP staff,

²² *Id.* at 4-6 (citing *City of Vernon, Cal.*, Opinion No. 479, 111 FERC ¶ 61,092, at P 96, *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)).

²³ MidAmerican Protest at 4-9.

²⁴ *Id.* at 4-17.

²⁵ NIPCO Answer at 3.

and contends that all of its proposed facilities meet the criteria for inclusion. NIPCO clarifies that it does not believe Basin Electric will include the facilities noted by Western in Basin Electric's revenue requirement following termination of the lease for those facilities on January 1, 2016. NIPCO further clarifies that it has deducted the lease revenues from October 1, 2015 to January 1, 2016, from its revenue requirement.²⁶

24. NIPCO contends the formula protocols are just and reasonable and objects to Missouri Commission's proposal to extend the deadline for submitting informal challenges. NIPCO argues that the informal challenge procedures are intended to allow NIPCO and interested parties to resolve their issues in an informal setting during the review period and prior to the start of the rate year, while disputes left unresolved remain subject to formal challenge. Thus, NIPCO asserts the proposed schedule is just and reasonable.²⁷ NIPCO further contends that its methodology for determining its ROE is just and reasonable and that no precedent requires a non-jurisdictional entity to justify its ROE using a discounted cash flow analysis or any other pre-defined method. NIPCO argues that its methodology satisfies Commission precedent by using ROEs for similar entities to construct a range of reasonable returns and placing its requested ROE within that range. NIPCO further notes that it has voluntarily committed to refund any difference between the proposed rates and those ultimately accepted by the Commission, and contends the Commission should therefore approve its filing and permit the formula rate to go into effect on October 1, 2015.²⁸

25. NIPCO 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 NIPCO and MidAmerican reserving their rights under any Grandfathered Agreement. NIPCO argues, however, that these are implementation issues and should not prevent NIPCO from having its Grandfathered Agreements accepted in the SPP Tariff. NIPCO commits to implement the formula rate consistent with the SPP Tariff and Commission requirements to avoid recovering costs both through Grandfathered Agreement revenues, including the to-be-terminated agreement with MBMECA, and under the Tariff's formula rate. NIPCO clarifies that its inclusion of Grandfathered Agreements that do not include facilities owned by NIPCO and/or that are not included in the SPP footprint was made out of an abundance of caution and it does not intend to impose obligations with respect to those facilities. Finally, NIPCO contends that its filing clearly shows that its revenue

²⁶ *Id.* at 2-4.

²⁷ *Id.* at 4.

²⁸ *Id.* at 5-6.

requirement is reduced to account for transmission revenues received under Grandfathered Agreements.²⁹

C. Standard of Review

26. 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).³⁰ 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."³¹ 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."³² 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."³³

27. 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

²⁹ *Id.* at 6-8.

³⁰ 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)).

³¹ *Id.* P 44.

³² *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d at 1117).

³³ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

energy sales.³⁴ The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”³⁵

28. Therefore, while NIPCO 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 NIPCO.³⁶ To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

29. Furthermore, NIPCO is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.³⁷ However, we note that NIPCO 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 NIPCO’s short-term debt costs and Commission interest rates.³⁸

D. Commission Determination

1. RTO Participation Adder

30. As discussed below, we conditionally grant NIPCO’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.³⁹ 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

³⁴ *Id.* at 673-74.

³⁵ *Id.* at 674.

³⁶ *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

³⁷ *Id.* P 41.

³⁸ SPP Transmittal at 8 & n.21; Ex. No. SPP-1, Direct Testimony of Matthew Washburn, at 3.

³⁹ 16 U.S.C. § 824s(a), (b) (2012).

electricity by promoting capital investment in electric transmission infrastructure.⁴⁰ The Commission subsequently issued Order No. 679,⁴¹ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

31. We find that, as conditioned below, NIPCO's requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.⁴² 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 NIPCO's continuing membership in SPP.

2. Hearing and Settlement

32. We find that, apart from the 50 basis point adder issue addressed above, SPP's proposed Tariff revisions filed on behalf of NIPCO 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.

33. 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.

34. We will accept NIPCO's commitment to provide refunds, with interest, as of October 1, 2015. NIPCO is not subject to Commission-imposed refund obligations under section 205 of the FPA and the Commission has previously accepted commitments by

⁴⁰ *Id.*

⁴¹ *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).

⁴² *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).

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.⁴³

35. 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.⁴⁴ 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.⁴⁵ 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.

36. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because NIPCO 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.

⁴³ See, e.g., *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

⁴⁴ 18 C.F.R. § 385.603 (2015).

⁴⁵ 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>).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the 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.