

152 FERC ¶ 61,247
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. ER15-1943-000

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 Missouri River Energy Services (Missouri River),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.

¹ Missouri River is a municipal joint action agency formed under Chapter 28E of the Iowa Code and existing under the joint action laws of the States of Iowa, Minnesota, North Dakota, and South Dakota. SPP states that, as a municipal joint action agency, Missouri River is not a “public utility” as defined in section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e) (2012) (FPA). SPP Transmittal at 4 & n.17.

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 18, 2015, SPP made the instant rate filing on behalf of Missouri River, 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 Missouri River when Missouri River transfers functional control of its facilities to SPP.²

4. In the instant filing, SPP submits proposed Tariff modifications to Attachment H to accommodate Missouri River's recovery of its revenue requirement for its transmission facilities. Specifically, SPP proposes to include as Addendum 24 to Attachment H, Missouri River's formula rate and formula rate protocols which calculate Missouri River's revenue requirement. Additionally, SPP proposes revisions to Attachment T, Rate Sheet for Point-To-Point Transmission Service, to add a reference to the Missouri River formula rate template to the Upper Missouri Zone rate sheet. SPP asserts that the Commission has previously approved similar modifications to the Tariff to accommodate zones that include multiple owners.³ Finally, SPP requests approval to revise Addendum 2 of Attachment O to include Missouri River as a participant in SPP's planning region.⁴

5. In support of its filing, SPP has submitted testimony and supporting exhibits from (1) Terry J. Wolf, Manager of Transmission Services for Missouri River, and Merlin H. Sawyer, Director of Finance and CFO for Missouri River; and (2) James Pardikes, Vice President and head of the Transmission Strategy Practice at MCR Performance Solutions.⁵

6. Missouri River explains that it intends to combine its financial data with that of Western Minnesota Municipal Power Agency (WMMPA) for ratemaking purposes in

² *Id.* at 1.

³ *Id.* at 8 & n.35.

⁴ *Id.* at 8.

⁵ *Id.* at 11-12.

SPP. Missouri River states that the Commission previously granted a petition for declaratory order authorizing Missouri River and WMMPA to combine their financial data for the purpose of ratemaking in the Midcontinent Independent System Operator, Inc. (MISO) Regional Transmission Organization (RTO). Missouri River further explains that it is already a member of MISO, but the RTO seam between SPP and MISO bifurcates Missouri River's transmission assets, leaving it with no other option than to participate in both RTOs. Missouri River contends that without the ability to combine its financial statements with WMMPA, the transmission costs associated with Missouri River facilities within the Upper Missouri Zone would not be properly represented.⁶

7. Missouri River explains that the three facilities to be included in SPP's rates are: (1) Missouri River's share of the high-voltage transmission facilities of the Missouri Basin Power Project, (2) Missouri River's share of the Irv Simmons transmission project, and (3) the Watertown Peaking Plant substation.⁷ Missouri River asserts that all of these facilities meet the definition of "Transmission Facilities" under Attachment AI, Transmission Definition, of the SPP Tariff, and that SPP has reviewed the diagrams and descriptions of these facilities.⁸

8. Missouri River proposes a forward-looking formula rate template almost identical to the one used by Missouri River in MISO.⁹ Missouri River explains that it first calculates its total revenue requirement for all of its transmission facilities, then reduces this gross amount by the revenue requirement for facilities calculated in Attachment GG, Network Upgrade Charge, and Attachment MM, MVP Charge, in the MISO tariff and any additional revenue credits to derive a net revenue requirement. Missouri River then allocates the net revenue requirement between the Upper Missouri Zone in SPP and the Otter Tail Power Company pricing zone in MISO.¹⁰ Additionally, Missouri River states that the timeline in the proposed protocols is patterned to coincide with the timeline that

⁶ Ex. No. SPP-1, Panel Testimony of Terry J. Wolf and Merlin H. Sawyer, at 9-10 (citing *Missouri River Energy Servs.*, 125 FERC ¶ 61,300, at P 12 (2008)).

⁷ *Id.* at 12-13.

⁸ *Id.* at 13-15. However, SPP notes that the Watertown Peaking Plant substation did not meet the definition of transmission facilities under the Integrated System Parties' tariff. *Id.* at 6.

⁹ SPP states that Missouri River uses a SPP-specific return on equity (ROE) in lieu of the generic MISO ROE that it uses in its MISO formula. *Id.*

¹⁰ *Id.* at 20-21.

was previously approved by the Commission for Missouri River's use in MISO.¹¹ Missouri River explains that it is requesting a ROE of 12.38 percent. Missouri River contends this ROE is reasonable for the following reasons: (1) it is less than the imputed ROE of 13.7 percent derived from the minimum average debt service coverage ratio of 1.40 mandated by Missouri River's Board of Directors; (2) it is the same ROE Missouri River used under the Integrated System Tariff; and (3) it translates into a weighted average total rate of return of 7.35 percent, which is less than the averages for other SPP transmission owners. In addition, Missouri River contends that the requested ROE will result in a rate lower than the rate Missouri River charges its members/customers.¹² Missouri River further asserts that the requested ROE provides a minimum level of return consistent with the rates it charges its members/customers and required for its credit rating to ensure an attractive cost of financing.¹³

9. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of Missouri River's revenue requirement, formula rate and formula rate protocols, Missouri River 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 Commission interest rates. SPP further states that Missouri River has informed SPP that Missouri River makes this voluntary commitment without waiving or in any way limiting or altering Missouri River's non-jurisdictional status.¹⁴

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

11. SPP requests waiver of the requirement in 18 C.F.R. § 35.13 concerning the Period I and Period II data requirements. SPP asserts that waiver is appropriate because the Commission generally grants requests for waiver for the full cost of service filing

¹¹ *Id.* at 16.

¹² Ex. No. SPP-7, Direct Testimony of James Pardikes, at 6-7.

¹³ *Id.* at 21.

¹⁴ SPP Transmittal at 9 & n.39.

¹⁵ *Id.* at 4.

requirements prescribed by section 35.13 in transmission formula rate cases and because Missouri River is not subject to the general rate regulations of the Commission.¹⁶

C. Notice of Filing and Responsive Pleadings

12. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 36,796 (2015), with interventions and protests due on or before July 9, 2015. NorthWestern Corporation filed a timely motion to intervene. Missouri River filed a timely motion to intervene and comments. Missouri Public Service Commission (Missouri Commission) filed a notice of intervention. Missouri Commission also filed comments and a conditional protest out-of-time. Basin Electric filed a timely motion to intervene and protest. Western Area Power Administration (Western) filed a timely motion to intervene and request for clarification. Xcel Energy Services Inc. (Xcel), on behalf of its utility operating company affiliates Southwestern Public Service Company, Northern States Power Company – Minnesota, and Northern States Power Company - Wisconsin, filed a motion to intervene out-of-time. On July 21, 2015, Missouri River 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 the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant Xcel's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. We also accept Missouri Commission's late-filed comments and conditional protest.

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

¹⁶ *Id.* at 10.

B. Responsive Pleadings**1. Comments and Protests**

15. Basin Electric contends Missouri River has not provided sufficient information to allow for a thorough analysis. Specifically, Basin Electric contends that it appears that the proposed rate will result in an increase of approximately \$700,000 from the rates currently in effect, and that the filing does not contain the data and information necessary to understand this increase. Therefore, Basin Electric argues that the Commission should set the rate for hearing.¹⁷

16. Basin Electric asserts that the proposed ROE of 12.38 percent is unjust and unreasonable. Basin Electric alleges that Missouri River has not provided sufficient justification for its ROE, but merely arrived at the same ROE used in MISO and in Missouri River's Integrated System rates. Basin Electric states that the ROE requested by Missouri River is 158 basis points higher than any equivalent ROE in SPP, and contends that Missouri River has not justified the need for an ROE that is higher than any other Commission-approved ROE currently in effect in SPP for a transmission owner that is not a transmission company.¹⁸ Further, Basin Electric alleges that the ROE that is in effect under the Integrated System tariff was approved for MISO transmission owners approximately 13 years ago. Basin Electric further states that economic conditions in the United States and capital markets have changed greatly over the past 13 years. Thus, Basin Electric argues that the fact that the generic MISO ROE of 12.38 percent was accepted by the Integrated System in 2011 should have no bearing on determining what a just and reasonable rate is today.¹⁹

17. Missouri Commission alleges that Missouri River's protocols contain provisions that may not provide interested parties an adequate opportunity to review and seek additional information related to the annual true-up and projected revenue requirement. First, Missouri Commission contends that Missouri River should be required to provide notice to interested parties of both its annual true-up and revenue requirement postings. Missouri Commission asserts that this would be consistent with the Commission's determination in the Empire District Electric Company's protocol review case.²⁰ Second,

¹⁷ Basin Electric Protest at 3.

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 5.

²⁰ Missouri Commission Protest at 3 (citing *The Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015)).

Missouri Commission alleges that Missouri River's protocols only identify "material" adjustments made to the data in determining inputs. Missouri Commission contends the Commission should require Missouri River to specifically identify and explain every adjustment made to the formula rate data, and provide all supporting documentation.²¹ Finally, Missouri Commission argues that Missouri River should hold its annual true-up meeting no more than 30 days after the true-up is published.²²

18. Missouri Commission asserts that SPP should be required to implement a service list dedicated to transmission formula rate postings. According to Missouri Commission, the current SPP Service List includes notification of all SPP filings and those of its members in addition to transmission formula rate postings.²³

19. In addition, Missouri Commission argues that there is insufficient information and analysis for the Commission to determine that Missouri River's requested 12.38 percent ROE will result in a just and reasonable rate for consumers. Missouri Commission asserts that the 12.38 percent ROE used in MISO was set in 2003 based on an analysis of that time period over 13 years ago and Missouri River has not supported its filing with a current discounted cash flow analysis.

20. Western states that it supports the inclusion of facilities that qualify under Attachment AI under the Tariff. However, Western alleges there is a lack of detail regarding which facilities are to be included in the revenue requirement, particularly regarding the Watertown Peaking Plant substation. Western thus requests more detailed information regarding the specific transmission facilities included in Missouri River's rates and the basis for qualification of such facilities.²⁴ Western also contends it is unclear whether Missouri River included the remaining 2013 Integrated System true-up for the last three months of 2013 in its 2015 revenue requirement, and requests clarification on this issue. Western further requests clarification that Missouri River intends to true-up the last three months of 2015.²⁵

²¹ *Id.* at 3-4.

²² *Id.* at 5.

²³ *Id.*

²⁴ Western Comments at 6-8.

²⁵ *Id.* at 8-9.

2. Answer

21. Missouri River contends that the objections raised by Missouri Commission and Basin Electric miss the point that the requested ROE is comparable to the imputed ROE applied by Missouri River for its own rates. According to Missouri River, arguments about the Commission's use of discounted cash flow analysis are irrelevant because Missouri River does not issue equity, and therefore the considerations underlying the discounted cash flow methodology do not apply. Missouri River contends that neither Missouri Commission nor Basin Electric have raised any issue of material fact that warrants a hearing, and asserts that the Commission should accept the formula rate as filed, including the proposed 12.38 percent ROE.²⁶

22. Missouri River asserts that the Watertown Peaking Plant facilities are transmission facilities satisfying SPP's requirements for inclusion in rates. Missouri River provides a one-line diagram of the transmission facilities, and contends that the facilities meet Criteria 1 of Attachment AI.²⁷ Missouri River explains that these facilities are not responsible for the rate increase observed by Basin Electric, but that the increase was caused by differences in the date of calculation for the Integrated System, MISO, and SPP revenue requirement filings. Missouri River states that this difference was a one-time problem that will not recur.²⁸ In addition, Missouri River clarifies that it will conduct separate true-ups for 2015, one based upon the first nine months of 2015 and another based upon the last three months.²⁹

23. Missouri River contends its protocols are generally consistent with the recently-updated MISO protocols approved by the Commission.³⁰ Missouri River argues that Missouri Commission's requested deletion of the word "material" from the phrase "material changes" is without authority, and notes that Missouri River's proposed protocols require it to submit sufficient data for interested parties to replicate results, identify changes to formula references, provide underlying data for all inputs, and identify any accounting changes. Missouri River asserts that there will be no shortage of

²⁶ Missouri River Answer at 2-6.

²⁷ *Id.* at 6; *see also* Ex. No. MRE-1 at 4, and Ex. No. MRE-2.

²⁸ *Id.* at 6-10; *see also* Ex. No. MRE-1 at 5.

²⁹ *Id.* at 9-10.

³⁰ *Id.* at 7 & n.21 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015)).

information for interested parties.³¹ Missouri River requests that if the Commission finds these measures necessary, that they be incorporated into a compliance filing.

24. Missouri River contends that its proposed window in which it will conduct its true-up meeting – between the June 1 publication and September 1 – is consistent with protocols already on file at the Commission.³² Finally, Missouri River contends that Missouri Commission’s request to require SPP to maintain a separate service list for notification of transmission formula rate postings is beyond the scope of this proceeding.³³

C. Standard of Review

25. 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).³⁴ 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 the 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.”³⁵ 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.”³⁶ Subsequently, the court upheld the Commission’s decision that subjecting

³¹ *Id.* at 8.

³² *Id.* at 8-9 (citing Attachment O-CMMPA Formula Rate Protocols, Docket No. ER13-2379-000).

³³ *Id.* at 9.

³⁴ 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).

³⁵ *Id.* P 44.

³⁶ *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

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.”³⁷

26. 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.³⁸ The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”³⁹

27. Therefore, while Missouri River 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 Missouri River.⁴⁰ To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

28. Furthermore, Missouri River is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.⁴¹ However, we note that Missouri River has agreed to allow its revenue requirement, formula rate, and formula rate protocols to be treated as being accepted, subject to refund with interest at Commission interest rates.⁴²

³⁷ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

³⁸ *Id.* at 673-74.

³⁹ *Id.* at 674.

⁴⁰ *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

⁴¹ *Id.* P 41.

⁴² SPP Transmittal at 9 & n.39.

D. Hearing and Settlement

29. We find that SPP's proposed Tariff revisions filed on behalf of Missouri River 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.

30. 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.

31. We will accept Missouri River's commitment to provide refunds, with interest, as of October 1, 2015. Missouri River is not subject to Commission-imposed refund obligations 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.⁴³

32. 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.

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>).

33. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because Missouri River 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 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.