

152 FERC ¶ 61,250
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.

NorthWestern Corporation	Docket Nos. ER15-2069-000
Southwest Power Pool, Inc.	ER15-2075-000 (Consolidated)
NorthWestern Corporation	ER13-62-003 ER15-1667-000 ER13-1764-000
Southwest Power Pool, Inc.	ER15-1666-000
Midcontinent Independent System Operator, Inc.	ER15-1656-000 (Not Consolidated)

ORDER ACCEPTING FORMULA RATE TEMPLATE AND FORMULA RATE
PROTOCOLS, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued September 30, 2015)

1. In this order, we accept NorthWestern Corporation's (NorthWestern) proposed formula rate template and implementation protocols to be included in the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (Tariff), effective October 1, 2015, subject to refund, and establish hearing and settlement judge procedures. We also accept SPP's proposed revisions to its Tariff to add NorthWestern's proposed formula rate template and implementation protocols to the SPP Tariff, effective October 1, 2015, subject to refund, establish hearing and settlement judge procedures, and consolidate that proceeding with the hearing and settlement judge procedures established for the filing by

NorthWestern. Additionally, we reject, as moot, several Order No. 1000¹ compliance filings made by NorthWestern, SPP and the Midcontinent Independent System Operator, Inc. (MISO).²

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 (Western-UGP), 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 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. NorthWestern's Filing in Docket No. ER15-2069-000

3. On June 29, 2015, NorthWestern made its filing pursuant to section 205 of the Federal Power Act (FPA) and Part 35 of the Commission's regulations. NorthWestern explains that its filing involves only NorthWestern's South Dakota operations.

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

² The Order No. 1000 compliance filings, described more fully below, were filed in Docket Nos. ER13-62-003 and ER13-1764-000 by NorthWestern; Docket No. ER15-1666-000 by SPP; Docket No. ER15-1667-000 by NorthWestern and SPP jointly; and Docket No. ER15-1656-000 by MISO.

NorthWestern states that it owns approximately 339 miles of 115 kV transmission facilities that span from the Western Area Power Administration's (Western) Gavin Point substation near Yankton, South Dakota to Montana Dakota Utilities' Ellendale substation in North Dakota. NorthWestern explains that it also owns approximately 260 miles of 69 kV lines and 595 miles of 34.5 kV lines that serve as the main transmission in and around the load centers in the area. NorthWestern states that because it does not operate a control area for its South Dakota operations, 337 miles of its 115 kV transmission facilities are administered under the Western tariff.³

4. NorthWestern states that it will join SPP as a transmission-owning member effective October 1, 2015, and that it will recover its transmission revenue requirements as part of the new Upper Missouri Zone (Zone 19) joint pricing zone. NorthWestern explains that the joint pricing zone will have a blended rate based on the transmission revenue requirements for NorthWestern and the non-jurisdictional owners of the Integrated System.⁴ NorthWestern states that it is seeking approval of a formula rate template and formula rate protocols under which NorthWestern's annual transmission revenue requirement will be developed, as well as the annual transmission revenue requirement that SPP will use in establishing rates for the new joint pricing zone.

5. NorthWestern explains that its formula rate template is described in the testimony of Kendall G. Kliewer.⁵ NorthWestern states that, as further explained by Mr. Kliewer, the formula rate template is a historical formula rate that uses actual, historical costs that will be updated annually. According to NorthWestern, the inputs for the formula rate come primarily from its filed FERC Form No. 1, and will be supplemented with the prior year's accounting data as kept in NorthWestern's books and records. NorthWestern states that the formula rate develops the rate base by specific transmission assets at original cost, reduced by the accumulated depreciation, an allocated share of general and intangible assets, with adjustments for deferred taxes, prepayments, materials and supplies, and cash working capital. NorthWestern asserts that the expense portion of the cost of service includes operating and maintenance expenses of the specific transmission assets, an allocated portion of administrative and general expenses, test-year depreciation on the specific assets, and taxes other than income taxes. NorthWestern states that the

³ NorthWestern Transmittal at 2-3 (Docket No. ER15-2069-000).

⁴ *Id.* at 4-5.

⁵ *Id.* at 6.

cost of capital is calculated using the cost of debt and cost of equity based on the capital structure.⁶

6. NorthWestern notes that the testimony of Michael R. Cashell describes the NorthWestern transmission assets that will be transferred to the functional control of SPP and subject to cost recovery under the SPP Tariff. NorthWestern asserts that it will transfer functional control of most of its 115 kV transmission facilities, with the exception of two radial lines, and certain 69 kV facilities that satisfy the definition of Transmission Facilities under Attachment AI of the SPP Tariff. NorthWestern states that it will transfer 333.64 miles of 115 kV transmission facilities and 180.10 miles of 69 kV facilities for a total of 513.74 miles of transmission facilities. According to NorthWestern, the 115 kV facilities qualify as non-radial power lines, substations, and associated facilities, operated at 60 kV or above, and the 69 kV facilities qualify as radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers that are not affiliates of each other. NorthWestern notes that it has reviewed these facilities with SPP staff, and asserts that SPP concurred that these facilities are appropriately included under the SPP Tariff.⁷

7. According to NorthWestern, the return on equity (ROE) component fixed in the proposed formula rate template is based on the analysis and recommendations of the testimony of Adrien M. McKenzie. NorthWestern states that Mr. McKenzie supports a base ROE of 10.47 percent plus a 50 basis point ROE adder for regional transmission organization (RTO) participation, for a total ROE of 10.97 percent. NorthWestern notes that Mr. McKenzie developed his recommendation for the base ROE using the two-step discounted cash flow model set forth in Opinion No. 531.⁸ NorthWestern explains that Mr. McKenzie's analysis resulted in a zone of reasonableness of 7.13 percent to 12.26 percent based on earnings per share growth rates from the Institutional Brokers' Estimate System. NorthWestern states that Mr. McKenzie selected a base ROE of 10.47 percent, which it asserts represents the midpoint of the upper half of the zone of reasonableness. NorthWestern argues that, consistent with Opinion No. 531, Mr. McKenzie's recommendation is supported by his evaluation of the following

⁶ *Id.*

⁷ *Id.* at 6-7.

⁸ *Martha Coakley, Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *reh'g denied*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015), *appeals docketed sub nom. Emera Me., f/k/a Bangor Hydro-Elec. Co. v. FERC*, Nos. 15-1118, *et al.* (D.C. Cir. filed Apr. 30, 2015) (Opinion No. 531).

three alternative benchmark analyses: (1) a risk premium approach based on Commission-authorized ROEs for electric utilities; (2) the capital asset pricing model; and (3) the expected earnings approach.⁹

8. NorthWestern notes that Mr. McKenzie also discusses the implications of flotation costs, which NorthWestern contends are properly considered in evaluating a fair ROE for NorthWestern. NorthWestern states that Mr. McKenzie concludes that the recommended base ROE is consistent with the Commission's policy goal of attracting investment in new transmission infrastructure.¹⁰

9. NorthWestern states that Mr. McKenzie includes a 50 basis point adder to the base ROE for NorthWestern's participation in SPP. NorthWestern asserts that including an ROE adder of up to 50 basis points for RTO participation is consistent with Commission precedent and the Commission's policy of encouraging utilities to join and remain in RTOs. NorthWestern argues that the Commission has typically allowed public utilities in SPP to include a 50 basis point adder to their base ROE, without setting the matter for hearing. According to NorthWestern, the ROEs of all Commission-jurisdictional public utilities in SPP currently include an adder for RTO participation. NorthWestern contends that the total ROE of 10.97 percent, including the 50 basis point adder, falls well below the 12.26 percent upper band of the zone of reasonableness and, therefore, meets the Commission's requirements governing incentive-based ROEs.¹¹

10. NorthWestern states that Mr. Kliever's testimony calculates NorthWestern's initial annual transmission revenue requirement. NorthWestern explains that Mr. Kliever determines that the initial annual transmission revenue requirement for NorthWestern is \$8,162,218 based on 2014 FERC Form No. 1 data. According to NorthWestern, Mr. Kliever's testimony explains that this annual transmission revenue requirement is an increase over the annual transmission revenue requirement recovered by NorthWestern as facilities credits under the Western Tariff. NorthWestern asserts that the primary reason for this increase is that the facilities credits under the Western Tariff are based on 2012 cost information and do not reflect additional transmission upgrades to NorthWestern's system that are included in the 2014 data. NorthWestern notes that its proposed annual transmission revenue requirement also includes certain 69 kV facilities that were not

⁹ NorthWestern Transmittal at 7-8.

¹⁰ *Id.* at 8.

¹¹ *Id.* See *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 93 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

included under the Western Tariff. Mr. Kliewer's testimony also notes that customers located in the new Upper Missouri Zone joint pricing zone will pay a blended rate that is based on the revenue requirements for all transmission owners in the joint zone.¹²

11. NorthWestern states that the protocols describe the procedures applicable to the annual update of the formula rate and the informational filing of the annual update with the Commission, including how the annual update will be implemented. NorthWestern further explains that the protocols provide a mechanism for parties to review and obtain information about the annual update, and present formal and informal challenges to the annual update. NorthWestern notes that its protocols are based on the protocols that were developed for historical formula rates under the MISO Tariff¹³ and on the protocols accompanying The Empire District Electric Company's (Empire) historical formula rate, which were accepted by the Commission in *Empire*.¹⁴ NorthWestern asserts that, in developing these protocols, it specifically considered the guidance provided by the Commission in *Empire*.¹⁵

12. NorthWestern states that its protocols establish a rate year of April 1 through March 31. According to NorthWestern, because it is seeking an effective date of October 1, 2015 for its formula rate, the initial rate year will run from October 1, 2015 through March 31, 2016. NorthWestern notes that the protocols require NorthWestern to develop and post on the SPP website its annual update on or before March 1 each year. NorthWestern states that the annual update will include a workable-data populated formula rate template and underlying workpapers, and will provide other information specified in section II of the protocols. NorthWestern asserts that the protocols require NorthWestern to hold an open meeting with interested parties to explain and clarify the annual update no later than June 1 of each year. NorthWestern explains that interested parties will then have until September 1 to obtain information about the annual update in accordance with the informational exchange procedures in section III of the protocols. NorthWestern notes that interested parties will also have the opportunity to submit informal and formal challenges to the annual update in accordance with section IV of the protocols. NorthWestern states that section V of the protocols provides that any change

¹² NorthWestern Transmittal at 8-9.

¹³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209, *order on compliance filing*, 146 FERC ¶ 61,212 (2014).

¹⁴ *The Empire Dist. Elec. Co.*, 150 FERC ¶ 61,200 (2015) (*Empire*).

¹⁵ NorthWestern Transmittal at 9.

to the annual update, in response to formal or informal challenges or to a complaint or to correct a mistake in the annual update, will be incorporated into the annual update for the following rate year, with interest. NorthWestern asserts that, consistent with the Commission's requirements, section VI of the protocols provides that NorthWestern will submit to the Commission an informational filing of its annual update by December 15 each year.¹⁶

13. NorthWestern requests that the Commission accept the formula rate template, protocols, and initial annual transmission revenue requirement, with an effective date of October 1, 2015, which is the date on which NorthWestern and the other owners of the Integrated System plan to join SPP. NorthWestern asserts that the requested effective date will allow timely integration of the Integrated System into SPP in accordance with the parties' plans, and it will promote the Commission's goal of expanding the reach of RTOs.¹⁷

14. NorthWestern requests that the Commission not impose a suspension on this filing that would prevent an effective date of October 1, 2015. NorthWestern asserts that because its rates are based on actual, historical costs reflected in the FERC Form No. 1, the formula rate should not result in unjust and unreasonable and substantially excessive rates under the Commission's *West Texas* policy.¹⁸ NorthWestern contends that suspending its filing beyond October 1, 2015 could create complications for SPP in developing rates for the new joint pricing zone, and that this could threaten the timely integration of the Integrated System into SPP.¹⁹

15. NorthWestern requests waiver of section 35.13 of the Commission's regulations, 18 C.F.R. § 35.13, to the extent applicable to its filing, and requests waiver of any other applicable requirement of 18 C.F.R. Part 35 for which waiver is not specifically requested in order for the Commission to accept NorthWestern's formula rate template and protocols, and initial annual transmission revenue requirement, for filing, with an

¹⁶ NorthWestern Transmittal at 9-10.

¹⁷ *Id.* at 10.

¹⁸ *West Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,375 (1982). *See, e.g., Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at P 51 (2005) (accepting a proposed transmission formula rate with only a nominal suspension because "the Commission has, in fact, urged transmission owners to move from stated rates to formula rates"), *reh'g denied*, 115 FERC ¶ 61,156 (2006).

¹⁹ NorthWestern Transmittal at 10.

effective date of October 1, 2015. NorthWestern specifically requests waiver of the requirement in section 35.13 to submit full Period I and Period II data. NorthWestern asserts that the Commission typically waives this requirement in rate filings for approval of formula rates that are based on FERC Form No.1 data.²⁰

C. SPP's Filing in Docket No. ER15-2075-000

16. On June 30, 2015, SPP made its filing pursuant to section 205 of the FPA and Part 35 of the Commission's regulations to incorporate NorthWestern's formula rate into the SPP Tariff.²¹ SPP explains that its filing involves only NorthWestern's South Dakota operations.²² SPP proposes to add Addendum 27, the NorthWestern formula rate, to Attachment H of its Tariff, which will be used to calculate an annual transmission revenue requirement for NorthWestern. SPP further proposes to update Table 1 of Attachment H, which contains the zonal annual transmission revenue requirements for SPP transmission owners. SPP states that the revision to Table 1 includes NorthWestern's zonal annual transmission revenue requirement within the Upper Missouri Zone, Zone 19, and that NorthWestern will be designated Zone 19(g). In addition, SPP proposes to revise the Upper Missouri Zone rate sheet for point-to-point transmission service in Attachment T of its Tariff to reflect NorthWestern's revenue requirement in the blended point-to-point transmission service rates in Zone 19. Finally, SPP proposes to revise Addendum 2 of Attachment O of its Tariff to include NorthWestern as a participant in SPP's planning region.²³

17. SPP requests that the proposed revisions to its Tariff be made effective on October 1, 2015, which is the date NorthWestern plans to transfer functional control of its facilities to SPP. SPP asserts that NorthWestern has fully supported its proposed formula rate in its filing in Docket No. ER15-2069-000. SPP requests waiver of the requirement in 18 C.F.R. § 35.13 to submit full Period I and Period II data. SPP contends that the Commission typically waives this requirement in rate filings for approval of formula rates that are based on FERC Form 1 data.²⁴

²⁰ *Id.* at 10-11.

²¹ SPP Transmittal at 1 (Docket No. ER15-2075-000).

²² *Id.* at 3.

²³ *Id.* at 4-5.

²⁴ *Id.* at 5.

18. SPP states that by joining SPP, NorthWestern will be able to comply with its planning obligations under Order No. 1000. SPP notes that the current planning and cost allocations with Western-UGP and Mid-Continent Area Power Pool (MAPP) do not satisfy the requirements of Order No. 1000. SPP further notes that MAPP intends to dissolve on October 1, 2015, when the Integrated System joins SPP.²⁵

D. Order No. 1000 Compliance Filings

19. On October 10, 2012, NorthWestern submitted revisions to Attachment K of its Tariff for its South Dakota operations to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. On April 18, 2013, the Commission conditionally accepted NorthWestern's compliance filing, subject to a further compliance filing.²⁶ NorthWestern filed a request for partial waiver of the local and regional transmission planning and cost allocation requirements of Order No. 1000 or, in the alternative, rehearing of the April 18, 2013 Order. The Commission denied the partial waiver and rehearing and granted an extension of time to comply with the April 18, 2013 Order.²⁷ On January 2, 2015, in Docket No. ER13-62-003, NorthWestern submitted a further compliance filing with revisions to Attachment K of its Tariff for its South Dakota operations.

20. On June 13, 2013, in Docket No. ER13-1764-000, NorthWestern submitted a request for waiver of the interregional coordination and cost allocation requirements of Order No. 1000 and request for an extension of time. On July 8, 2013, in Docket No. RM10-23-000, the Commission issued a notice granting NorthWestern a 120 day extension of the Order No. 1000 interregional coordination and cost allocation filing deadline, with the extension commencing upon NorthWestern's submittal of its further regional compliance filing to comply with the April 18, 2013 Order.²⁸ On May 1, 2015,

²⁵ SPP Transmittal at 3-4. SPP states that, on May 4, 2015, in Docket No. ER15-1666-000, SPP submitted to the Commission its Order No. 1000 Compliance Filing for interregional planning and cost allocation requirements with NorthWestern that affirmed NorthWestern and SPP's intention that NorthWestern's integration into SPP would satisfy the parties' requirements for Order No. 1000.

²⁶ *NorthWestern Corp.*, 143 FERC ¶ 61,056 (2013) (April 18, 2013 Order).

²⁷ *NorthWestern Corp.*, 144 FERC ¶ 61,017 (2013).

²⁸ The 120 day extension commenced on January 2, 2015, the date NorthWestern made its further compliance filing in Docket No. ER13-62-003. The July 8, 2013 notice issued in Docket No. RM10-23-000 also stated that the Commission would address

in Docket No. ER15-1656-000, MISO submitted a filing to address the interregional coordination and cost allocation requirements of Order No. 1000 with respect to MISO, NorthWestern, and MAPP. On May 4, 2015, in Docket No. ER15-1666-000, SPP submitted a filing to address the interregional coordination and cost allocation requirements of Order No. 1000 with respect to SPP, NorthWestern, and MAPP. Also on May 4, 2015, in Docket No. ER15-1667-000, NorthWestern and SPP jointly submitted a filing to address the interregional coordination and cost allocation requirements of Order No. 1000 with respect to MISO, NorthWestern, and SPP.

E. Notice of Filings and Responsive Pleadings

21. Notice of NorthWestern's filing in Docket No. ER15-2069-000 was published in the *Federal Register*, 80 Fed. Reg. 38,677 (2015), with interventions and protests due on or before July 20, 2015. Basin Electric filed a timely motion to intervene. Western filed a timely motion to intervene and request for clarification. Missouri River filed a timely motion to intervene and comments. Missouri Public Service Commission (Missouri Commission) filed a notice of intervention, protest, and request for suspension, hearing, and settlement judge procedures.

22. Notice of SPP's filing in Docket No. ER15-2075-000 was published in the *Federal Register*, 80 Fed. Reg. 38,677 (2015), with interventions and protests due on or before July 21, 2015. Timely motions to intervene were filed by: NorthWestern; South Central MCN, LLC; Basin Electric; Missouri River; and Xcel Energy Service, Inc., on behalf of its utility operating company affiliates Southwestern Public Service Company, Northern States Power Company – Minnesota, and Northern States Power Company – Wisconsin. Western filed a timely motion to intervene and request for clarification. Missouri Commission filed a notice of intervention, protest, and request for suspension, hearing, and settlement judge procedures.

23. Notice of NorthWestern's January 2, 2015 filing in Docket No. ER13-62-003 was published in the *Federal Register*, 80 Fed. Reg. 1500 (2015), with interventions and protests due on or before February 2, 2015. None was filed.

24. Notice of NorthWestern's June 13, 2013 filing in Docket No. ER13-1764-000 was published in the *Federal Register*, 78 Fed. Reg. 40,471 (2013), with interventions and protests due on or before July 2, 2013. None was filed.

NorthWestern's request for waiver from Order No. 1000's interregional transmission coordination and cost allocation requirements in Docket No. ER13-1764-000.

25. Notice of MISO's May 1, 2015 filing in Docket No. ER15-1656-000 was published in the *Federal Register*, 80 Fed. Reg. 26,921 (2015), with interventions and protests due on or before May 22, 2015. Timely motions to intervene were filed by: Wisconsin Electric Power Company; Midcontinent MCN, LLC; and Western. Missouri Commission filed a notice of intervention.

26. Notice of SPP's May 4, 2015 filing in Docket No. ER15-1666-000 was published in the *Federal Register*, 80 Fed. Reg. 28,259 (2015), with interventions and protests due on or before May 26, 2015. Timely motions to intervene were filed by Western and South Central MCN, LLC.

27. Notice of the May 4, 2015 joint filing by NorthWestern and SPP in Docket No. ER15-1667-000 was published in the *Federal Register*, 80 Fed. Reg. 28,259 (2015), with interventions and protests due on or before May 26, 2015. Timely motions to intervene were filed by South Central MCN, LLC and SPP.

II. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they filed them.

B. Responsive Pleadings

1. Comments and Protests in Docket Nos. ER15-2069-000 and ER15-2075-000

29. Missouri Commission asserts that the Commission should set for hearing NorthWestern's request for a base ROE of 10.47 percent.²⁹ Missouri Commission notes that in Opinion No. 531, the Commission set the ROE for New England Transmission Owners, as reflected in ISO New England Inc.'s (ISO-NE) tariff, halfway between the midpoint of the zone of reasonableness and the top of that zone because of anomalous market conditions.³⁰ Missouri Commission states that a number of complaint cases now

²⁹ Missouri Commission filed substantially identical protests in Docket Nos. ER15-2069-000 and ER15-2075-000.

³⁰ Missouri Commission Protest at 2.

set for hearing before the Commission have challenged whether those anomalous market conditions still exist. Missouri Commission asserts that for this reason, it would be inappropriate for the Commission to accept NorthWestern's testimony that those anomalous capital market conditions still exist. Missouri Commission contends that NorthWestern's witness, Adrien M. McKenzie, has not provided workpapers to support his discounted cash flow analysis. Missouri Commission states that it does not believe NorthWestern has demonstrated that its proposed base ROE will lead to just and reasonable rates, and that NorthWestern has not performed a discounted cash flow analysis consistent with FERC's discounted cash flow methodology.³¹

30. Missouri Commission argues that NorthWestern's proposed ROE is not based on proper application of Commission policy, but rather on a modification to that policy designed to provide an unjustified upward bias to the calculated result, which creates a transmission formula rate that does not result in just and reasonable rates.³² Missouri Commission asserts that Mr. McKenzie's method departs from Commission policy in two respects. First, according to Missouri Commission, the Commission adopted the use of the midpoint of the range of reasonableness for determining the ROE when applied to all of the transmission owners in an RTO. Missouri Commission argues that the Commission has long used the median of the range of reasonableness when calculating the ROE for a single transmission owner.³³ Missouri Commission notes that Mr. McKenzie uses the higher midpoint of the range of reasonableness rather than the lower median in calculating his proposed ROE.

31. Second, according to Missouri Commission, Mr. McKenzie's discounted cash flow method also departs from Commission precedent by selecting not the midpoint in the range of reasonable ROEs, but rather the midpoint in the upper half of that range, relying on the Commission's ruling in Opinion No. 531.³⁴ Missouri Commission asserts that in Opinion No. 531, the Commission, for the first time, selected an ROE that was the midpoint of the upper half of the range of reasonable ROEs. Missouri Commission states that the Commission determined that anomalous capital market conditions in that proceeding justified such a departure from its policy of using the midpoint of the range of reasonableness.³⁵ Missouri Commission argues that the Commission, in rejecting that

³¹ *Id.* at 2-3.

³² *Id.* at 3.

³³ *Id.* at 3-4.

³⁴ *Id.* at 4.

³⁵ *Id.* (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 152).

approach in a more recent ruling, stated that the use of the midpoint in the upper half of the zone of reasonableness “was specific to return on equity for transmission owners in ISO-NE, based on the unique circumstances in that proceeding (such as the capital market conditions during a particular period).”³⁶ Missouri Commission notes that in deciding Opinion No. 531, the Commission analyzed the updated period through March 31, 2013. Missouri Commission asserts that the anomalous capital market conditions that led the Commission in Opinion No. 531 to depart from its policy and select a midpoint in the upper half of the range of reasonableness for that period are not present today.³⁷ Missouri Commission states that the Commission’s staff witness, Robert J. Keyton, in his recent testimony in Docket No. EL14-12-000, described today’s conditions as a “new normal.”³⁸ Missouri Commission asserts that Mr. Keyton’s six-month-discounted cash flow-analysis period, which ended April 30, 2015, is much closer in time to NorthWestern’s representative period than the six month period through March 31, 2013, reviewed in Opinion No. 531. Missouri Commission argues that while Mr. Keyton’s testimony in that proceeding is not evidence of the appropriate ROE to be awarded NorthWestern in this proceeding, it does raise significant concern about the reasonableness of NorthWestern’s request to base its ROE on anomalous economic conditions that no longer exist today. Missouri Commission asserts that the Commission should set the justness and reasonableness of the proposed ROE for evidentiary hearing because NorthWestern’s filing raises genuine issues of material fact regarding the appropriate ROE to be included in NorthWestern’s formula rate.³⁹

32. Missouri Commission contends that its review of NorthWestern’s proposed transmission rate template and protocols is hindered by the limited period for review in advance of the deadline for filing protests, and, therefore, states that Missouri Commission reserves the right to raise additional issues not identified in its protest during any investigation, hearing and settlement procedures scheduled. Missouri Commission asserts that the Commission should suspend NorthWestern’s filing for the maximum five-month suspension period given the potential for significant rate impacts resulting from NorthWestern’s filing.⁴⁰

³⁶ *Id.* (citing *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,183, at P 77 (2014)).

³⁷ *Id.*

³⁸ *Id.* at 4-5 (citing Prepared Direct and Answering Testimony, Robert J. Keyton (Ex. No. S-1), Docket No. EL14-12-002, at 68-69 (filed May 15, 2015)).

³⁹ *Id.* at 5.

⁴⁰ *Id.*

33. Western notes that facilities offered by NorthWestern to be placed under the functional control of SPP must qualify under Attachment AI of the SPP Tariff.⁴¹ Western asserts that there is a lack of detail in NorthWestern's filing as to which facilities of NorthWestern, in particular 115kV substation facilities as well as substation facilities along the NorthWestern 69kV lines, NorthWestern proposes to include in NorthWestern's annual transmission revenue requirement for the Upper Missouri Zone, Zone 19, and the basis upon which NorthWestern's transmission facilities are qualified under Attachment AI of the SPP Tariff. Western argues that the lack of detail regarding which specific substation facilities are included, and the Attachment AI basis for the inclusion of those facilities, makes it impossible for Western to determine whether all of the NorthWestern transmission facilities to be transferred to the functional control of SPP qualify under Attachment AI of the SPP Tariff. Western asserts that this lack of detail makes it unclear whether these are appropriate costs to be included in the Upper Missouri Zone. Western requests more detailed information regarding the specific transmission facilities, particularly components within NorthWestern's 115kV and 69kV substations, that NorthWestern intends to transfer to SPP's functional control as part of its annual transmission revenue requirement for recovery within the Upper Missouri Zone. Western also requests more detail regarding the basis for qualification of these facilities. In addition, Western requests clarification regarding NorthWestern's treatment of radial facilities connected to normally-open emergency ties, since SPP has advised Western that such facilities do not qualify for inclusion under the SPP Tariff.⁴²

34. Western asserts that NorthWestern's filing appears to not explicitly include provisions for NorthWestern's share of the Integrated System true-up for the last three months of 2013, all of 2014, and the first nine months of 2015. Western notes NorthWestern's proposal does not include a true-up in its SPP rates for the Upper Missouri Zone based upon the utilization of historical actual data. Western requests clarification regarding the inclusion of NorthWestern's share of the Integrated System true-ups.⁴³

35. Missouri River filed comments in Docket No. ER15-2069-000 in which it contends that NorthWestern's proposed formula rate fails to include key data, information, and explanations that are necessary for any formula rate to be approved. Missouri River states that NorthWestern claims that the majority of its input data for its

⁴¹ Western's request for clarification in Docket No. ER15-2075-000 incorporates the request for clarification Western filed in Docket No. ER15-2069-000.

⁴² Western Request for Clarification at 6-8.

⁴³ *Id.* at 8.

formula rate is taken from its FERC Form No. 1. However, Missouri River contends that many of the inputs cannot be found in NorthWestern's FERC Form No. 1. Missouri River further argues that NorthWestern appears to use figures specific to South Dakota that were not provided by the company and that are not otherwise available for audit or reconciliation with those appearing in its FERC Form No. 1. Missouri River asserts that NorthWestern should provide a reconciliation of the inputs to its formula rate with data reported in its FERC Form No. 1 and include any and all workpapers.⁴⁴

36. According to Missouri River, NorthWestern also appears to use total company data only for capitalization calculations, but it develops figures specific to South Dakota for everything else. Missouri River asserts that NorthWestern should explain the need for these disparate approaches. Missouri River further asserts that NorthWestern should provide one-line diagrams of all facilities being turned over to SPP's functional control, showing which facilities are included in the Upper Missouri Zone, and which will not be, by area. Missouri River argues that NorthWestern should provide support for the 45.9 percent of "Transmission under SPP Factor" referred to in Attachment 5, particularly the calculation of the \$61.5 million of Transmission Assets under SPP. Missouri River contends that NorthWestern should also include a list of all assets that are being included in SPP, as well as (for each facility): (1) Gross Plant; (2) Accumulated Depreciation; (3) Depreciation Expense; and (4) Transmission Pole/Structure Investment. Missouri River asserts that NorthWestern should provide an in-depth explanation of its approach to development of its administrative and general costs. Missouri River contends that this further detail is needed especially in light of NorthWestern's recent acquisition of 633 megawatts of hydroelectric facilities from PPL Montana, LLC, which involved 81 employees in the production function joining NorthWestern. Missouri River asserts that, in view of this acquisition, wages and salaries for NorthWestern's production function have likely recently increased and may continue to do so in 2015, which may necessitate a change to NorthWestern's Wages and Salary Allocator for 2015. Missouri River contends that NorthWestern should explain why, regarding "Adjustments to Transmission [Operations and Maintenance]," in Attachment 5, it does not remove Account 561, if these costs are to be recovered under Schedule 1. Missouri River asserts that it reserves the right to raise additional issues with the proposed formula rate and protocols.⁴⁵

⁴⁴ Missouri River Comments at 3-4.

⁴⁵ *Id.* at 4-5.

C. Commission Determination

1. RTO Participation Adder

37. As discussed below, we conditionally grant NorthWestern'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.⁴⁶ 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.⁴⁷ The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

38. We find that, as conditioned below, NorthWestern's requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.⁴⁸ 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, and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis, as those may be determined in the hearing and settlement procedures ordered below. Further, our approval of this incentive is conditioned on NorthWestern's continuing membership in SPP.

2. Formula Rate and Implementation Protocols

39. We find that, apart from the 50 basis point adder issue addressed above, NorthWestern's filing 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.

⁴⁶ 16 U.S.C. § 824s(a), (b) (2012).

⁴⁷ *Id.*

⁴⁸ 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).

40. Our preliminary analysis indicates that NorthWestern's proposed formula rate template and implementation protocols 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 NorthWestern's proposed formula rate template and implementation protocols, effective October 1, 2015, as requested, subject to refund, and set them for hearing and settlement judge procedures.

41. While we are setting NorthWestern's formula rate template and implementation protocols 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.⁴⁹ 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.⁵⁰ 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.

3. SPP's Proposed Tariff Revisions

42. We find that SPP's proposed Tariff revisions to incorporate NorthWestern's proposed formula rate template and implementation protocols 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.

43. 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 SPP's proposed Tariff revisions, effective October 1, 2015, as requested, subject to refund, and set them for hearing and settlement judge procedures.

⁴⁹ 18 C.F.R. § 385.603 (2015).

⁵⁰ 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>).

44. We consolidate the proceeding in Docket No. ER15-2075-000 regarding SPP's proposed Tariff revisions with the proceeding in Docket No. ER15-2069-000 regarding NorthWestern's proposed formula rate template and implementation protocols for purposes of settlement, hearing and decision, as there are common issues of law and fact in these proceedings, and we find that consolidation will promote administrative efficiency.

4. Order No. 1000

45. We find that, upon NorthWestern's integration into SPP as a transmission owning member on October 1, 2015, NorthWestern will comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000 by relying on the SPP Tariff and SPP Integrated Transmission Planning Process. Thus, we reject as moot NorthWestern's January 2, 2015 Order No. 1000 regional compliance filing in Docket No. ER13-62-003, upon NorthWestern joining SPP as a transmission-owning member. Similarly, NorthWestern will satisfy the interregional coordination and cost allocation requirements of Order No. 1000 by relying on SPP's interregional compliance filings. As a result, we also reject as moot, upon NorthWestern joining SPP as a transmission-owning member, the following interregional Order No. 1000 compliance filings that are related to NorthWestern: (1) MISO's May 1, 2015 filing in Docket No. ER15-1656-000; (2) SPP's May 4, 2015 filing in Docket No. ER15-1666-000; and (3) SPP and NorthWestern's May 4, 2015 filing in Docket No. ER15-1667-000. Additionally, we reject as moot, upon NorthWestern joining SPP as a transmission-owning member, NorthWestern's June 13, 2013 filing in Docket No. ER13-1764-000 requesting waiver of the interregional transmission coordination and cost allocation requirements of Order No. 1000.

5. Waivers

46. We grant NorthWestern's and SPP's requests for waiver of the requirement in 18 C.F.R. § 35.13 to submit full Period I and Period II data consistent with our prior approval of formula rates.⁵¹ Nonetheless, to the extent that parties at hearing can show the relevance of additional information needed to evaluate these proposals, the presiding judge can provide for appropriate discovery of such information.⁵²

⁵¹ *See, e.g., Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 41 (2008).

⁵² *Id.*

The Commission orders:

(A) NorthWestern's proposed formula rate template and implementation protocols, and SPP's proposed Tariff revisions adding NorthWestern's proposed formula rate template and implementation protocols to the SPP Tariff, 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 NorthWestern's proposed formula rate template and implementation protocols and SPP's proposed Tariff revisions adding NorthWestern's proposed formula rate template and implementation protocols to the SPP Tariff. 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.

(F) Docket Nos. ER15-2069-000 and ER15-2075-000 are hereby consolidated for purposes of settlement, hearing, and decision, as discussed in the body of this order.

(G) The following filings are hereby rejected as moot, as discussed in the body of this order: NorthWestern's January 2, 2015 filing in Docket No. ER13-62-003; MISO's May 1, 2015 filing in Docket No. ER15-1656-000; SPP's May 4, 2015 filing in Docket No. ER15-1666-000; SPP and NorthWestern's May 4, 2015 filing in Docket No. ER15-1667-000; and NorthWestern's June 13, 2013 filing in Docket No. ER13-1764-000.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.