

153 FERC ¶ 61,103
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.

Golden Spread Electric Cooperative, Inc.	Docket Nos.	EL05-19-000
Lyntegar Electric Cooperative, Inc.		EL05-19-004
Farmers' Electric Cooperative, Inc.		EL05-19-015
Lea County Electric Cooperative, Inc.		
Roosevelt County Electric Cooperative, Inc.		
Central Valley Electric Cooperative, Inc.		

v.

Southwestern Public Service Company

Southwestern Public Service Company	Docket Nos.	ER05-168-000
		ER05-168-003
		ER05-168-014

Public Service Company of New Mexico	Docket Nos.	EL05-151-000
v.		EL05-151-001
Southwestern Public Service Company		EL05-151-002

Southwestern Public Service Company	Docket Nos.	ER06-274-000
		ER06-274-017

Golden Spread Electric Cooperative, Inc.	Docket No.	EL12-59-004
v.		
Southwestern Public Service Company		

Golden Spread Electric Cooperative, Inc.	Docket No.	EL13-78-004
v.		
Southwestern Public Service Company		

Golden Spread Electric Cooperative, Inc.	Docket Nos.	EL15-8-000
Central Valley Electric Cooperative, Inc.		EL15-8-001
Farmers' Electric Cooperative, Inc.		
Lea County Electric Cooperative, Inc.		
Roosevelt County Electric Cooperative, Inc.		
West Texas Municipal Power Agency		

v.

Southwestern Public Service Company

Southwestern Public Service Company

Docket No. ER14-192-000

Southwestern Public Service Company

Docket Nos. ER15-949-000
ER15-949-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued October 29, 2015)

1. On August 28, 2015, Southwestern Public Service Co. (SPS) filed an offer of settlement on behalf of itself and Golden Spread Electric Cooperative, Inc. (Golden Spread), Central Valley Electric Cooperative, Inc. (Central Valley), Lea County Electric Cooperative, Inc. (Lea County), Farmers' Electric Cooperative of New Mexico, Inc. (Farmers' Electric), Roosevelt County Electric Cooperative, Inc. (Roosevelt County),¹ Tri-County Electric Cooperative, Inc. (Tri-County), West Texas Municipal Power Agency (West Texas), and Public Service Company of New Mexico (PNM) (Settlement).² In this order, we approve the uncontested Settlement.

I. Background

2. This order involves multiple Commission proceedings, spanning more than a decade, in which the Filing Parties have litigated various aspects of SPS's rates and rate designs. A brief summary of each proceeding follows.

3. On November 2, 2004, Golden Spread and the New Mexico Cooperatives filed a complaint, pursuant to section 206 of the Federal Power Act (FPA),³ alleging that SPS's cost-based rates for its full and partial requirements customers had become unjust and unreasonable.⁴ On the same date, SPS submitted a filing, pursuant to section 205 of the

¹ In this order, Central Valley, Lea County, Farmers' Electric, and Roosevelt County are collectively referred to as the New Mexico Cooperatives.

² In this order, SPS, Golden Spread, the New Mexico Cooperatives, Tri-County, West Texas, and PNM are collectively referred to as the Filing Parties.

³ 16 U.S.C. § 824e (2012).

⁴ Golden Spread, Complaint, Docket No. EL05-19-000 (Nov. 2, 2004).

FPA,⁵ to change its power supply contracts with various customers, including Golden Spread and the New Mexico Cooperatives.⁶ In two separate orders issued in December 2004, the Commission consolidated and established hearing and settlement judge procedures for those two proceedings.⁷ Since that time, the parties have resolved all issues in the consolidated proceeding in Docket Nos. EL05-19 and ER05-168, except the issue of the appropriate demand cost allocation methodology for SPS.⁸ SPS asserted that it was appropriate to use a 12 coincident peak (CP) demand cost allocator, while Golden Spread and the New Mexico Cooperatives asserted that a 3 CP demand cost allocator was more appropriate. On August 15, 2013, the Commission found that a 3 CP demand cost allocator is more appropriate for SPS.⁹ On September 16, 2013, SPS sought rehearing of that determination, and that request for rehearing is currently pending before the Commission.

4. On September 15, 2005, PNM filed a complaint, in Docket No. EL05-151-000, alleging that SPS's rates for certain interruptible and firm power sales to PNM were unjust and unreasonable.¹⁰ On November 15, 2005, the Commission set the case for hearing and settlement judge procedures.¹¹ The parties subsequently settled all of the issues in Docket No. EL05-151-000, with the exception of certain issues related to SPS's fuel cost adjustment clause which the Chief Administrative Law Judge severed and held in abeyance pending a final Commission order in the consolidated proceedings in

⁵ 16 U.S.C. § 824d (2012).

⁶ SPS, Tariff Filing, Docket No. ER05-168-000 (Nov. 2, 2004).

⁷ See *Golden Spread Elec. Coop., Inc.*, 109 FERC ¶ 61,321 (2004) (establishing hearing and settlement judge procedures for the Docket No. EL05-19-000 complaint); *SW. Pub. Serv. Co.*, 109 FERC ¶ 61,373 (2004) (establishing hearing and settlement judge procedures for the tariff filing in Docket No. ER05-168-000 and consolidating it with Docket No. EL05-19-000).

⁸ For a more detailed description of the complex procedural history and the settlement agreements in Docket Nos. EL05-19 and ER05-168, see *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, Opinion No. 501-A, 144 FERC ¶ 61,132 (2013).

⁹ *Id.* PP 42-63.

¹⁰ PNM, Complaint, Docket No. EL05-151-000 (Sept. 15, 2005).

¹¹ *Pub. Serv. Co. of N.M. v. Sw. Pub. Serv. Co.*, 113 FERC ¶ 61,153 (2005).

Docket Nos. EL05-19 and ER05-168.¹² As mentioned above, rehearing is pending in Docket Nos. EL05-19 and ER05-168.¹³

5. On December 1, 2005, SPS submitted an FPA section 205 filing in Docket No. ER06-274-000 to revise the rates and rate design applicable to SPS's full and partial requirements customers.¹⁴ On January 31, 2006, the Commission established hearing and settlement judge procedures for SPS's tariff filing.¹⁵ Since that time, the parties have resolved all issues in Docket No. ER06-274, except the issue of the appropriate demand cost allocation methodology for SPS.¹⁶ As in Docket Nos. EL05-19 and ER05-168, the parties disagreed on whether a 12 CP or 3 CP demand cost allocator was more appropriate. On August 15, 2013, the Commission found that a 3 CP demand cost allocator is more appropriate for SPS.¹⁷ On September 16, 2013, SPS sought rehearing of that determination, and that request for rehearing is currently pending before the Commission.

6. On April 20, 2012, Golden Spread filed a complaint, in Docket No. EL12-59-000, alleging that the returns on equity (ROEs) in SPS's Power Supply Agreement with Golden Spread¹⁸ and transmission formula rate are unjust and unreasonable, and that a just and reasonable base ROE for both is now 9.15 percent.¹⁹ On July 19, 2013, Golden Spread filed another complaint, in Docket No. EL13-78-000, challenging the same ROEs

¹² See *Pub. Serv. Co. of N.M. v. Sw. Pub. Serv. Co.*, 124 FERC ¶ 61,232 (2008); *Pub. Serv. Co. of N.M. v. Sw. Pub. Serv. Co.*, Docket Nos. EL05-151-001 *et al.*, at P 1 (June 22, 2006) (Order of Chief Law Judge Severing Issues and Holding Portion of Proceedings in Abeyance).

¹³ See *supra* P 3.

¹⁴ SPS, Tariff Filing, Docket No. ER06-274-000 (Dec. 1, 2005).

¹⁵ *Sw. Pub. Serv. Co.*, 114 FERC ¶ 61,091 (2006).

¹⁶ For a more detailed description of the complex procedural history and the settlement agreements in Docket No. ER06-274, see *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,133 (2013).

¹⁷ *Id.* PP 42-54.

¹⁸ SPS provides cost-based wholesale power service to Golden Spread, West Texas, and each of the New Mexico Cooperatives pursuant to each customer's respective bilateral, long-term power supply agreement (collectively, Power Supply Agreements).

¹⁹ Golden Spread, Complaint, Docket No. EL12-59-000 (Apr. 20, 2012).

that it challenged in the Docket No. EL12-59-000 complaint, based on more recent market data indicating that the just and reasonable ROE is 9.15 percent.²⁰ On June 19, 2014, the Commission issued two orders, one on the 2012 complaint and one on the 2013 complaint, establishing hearing and settlement judge procedures and consolidating the 2013 complaint proceeding with the 2012 complaint proceeding.²¹ Because the parties were initially unable to reach a settlement agreement, the case proceeded to hearing before Administrative Law Judge Jennifer Whang.

7. On October 20, 2014, Golden Spread, West Texas, and the New Mexico Cooperatives filed a complaint, in Docket No. EL15-8-000, challenging the same ROEs at issue in Docket Nos. EL12-59-000 and EL13-78-000, as well as the ROE in SPS's Power Sales Agreements with each of the New Mexico Cooperatives.²² On January 29, 2015, the Commission issued an order establishing hearing and settlement judge procedures for the Docket No. EL15-8-000 complaint.²³ Because the parties were initially unable to reach a settlement agreement, the case proceeded to hearing before Administrative Law Judge Michael J. Cianci, Jr.

8. On October 28, 2013, SPS submitted an FPA section 205 filing, in Docket No. ER14-192-000, to make revisions to the cost-based formula rate template used for determining certain rates for the partial requirements service that SPS provides to Golden Spread.²⁴ On December 27, 2013, the Commission issued an order accepting SPS's tariff revisions, finding them to be just and reasonable.²⁵ Golden Spread requested rehearing of

²⁰ Golden Spread, Complaint, Docket No. EL13-78-000 (Jul. 19, 2013).

²¹ *See Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 147 FERC ¶ 61,238 (2014) (establishing hearing and settlement judge procedures for the Docket No. EL12-59-000 complaint), *reh'g denied*, 151 FERC ¶ 61,126 (2015); *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 147 FERC ¶ 61,239 (2014) (establishing hearing and settlement judge procedures for the complaint in Docket No. EL13-78-000 and consolidating it with Docket No. EL12-59-000), *reh'g denied*, 151 FERC ¶ 61,126 (2015).

²² Golden Spread, Complaint, Docket No. EL15-8-000 (Oct. 20, 2014).

²³ *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 150 FERC ¶ 61,052 (2015), *reh'g pending*.

²⁴ SPS, Tariff Filing, Docket No. ER14-192-000 (Oct. 28, 2013).

²⁵ *Sw. Pub. Serv. Co.*, 145 FERC ¶ 61,281 (2013).

that order, and the Commission subsequently denied Golden Spread's rehearing request on August 14, 2015.²⁶

9. On January 30, 2015, SPS submitted an FPA section 205 filing, in Docket No. ER15-949-000, to change the formula rate templates and implementation procedures in SPS's Power Supply Agreements with Golden Spread, West Texas, and the New Mexico Cooperatives.²⁷ On March 31, 2015, the Commission issued an order accepting and suspending SPS's formula rate filing for five months, and establishing hearing and settlement judge procedures for SPS's proposed revisions to the Power Supply Agreements.²⁸ SPS timely filed a request for rehearing of that Commission order, and SPS's request for rehearing is pending before the Commission. On April 9, 2015, Administrative Law Judge Michael J. Haubner was designated the Settlement Judge for Docket No. ER15-949-000.

10. On August 31, 2015, SPS filed the Settlement, on behalf of itself and Golden Spread, West Texas, Tri-County, PNM, and the New Mexico Cooperatives, to resolve all remaining issues in the aforementioned dockets.

II. Settlement

11. The Settlement resolves all issues in dispute in Docket Nos. EL05-19-000, ER05-168-000, EL05-151-000, ER06-274-000, EL12-59-000, EL13-78-000, EL15-8-000, ER14-192-000, and ER15-949-000, and all associated sub-dockets (Affected Dockets).²⁹

12. Article 3 of the Settlement requires SPS to refund \$44,862,000 to Golden Spread within 30 days of the Settlement becoming effective. This amount (1) is associated with the disputes concerning the demand cost allocation methodology used in the Power Supply Agreement with Golden Spread for the period through December 31, 2014, and (2) recognizes Golden Spread's agreement in Article 5 that, effective January 1, 2015, SPS will use a 12 CP demand cost allocator in connection with Docket Nos. ER14-192-000 and ER15-949-000.³⁰ Article 3 also requires SPS to refund \$4,217,000 to PNM

²⁶ *Sw. Pub. Serv. Co.*, 152 FERC ¶ 61,126 (2015).

²⁷ SPS, Tariff Filing, Docket No. ER15-949-000 (Jan. 30, 2015).

²⁸ *Sw. Pub. Serv. Co.*, 150 FERC ¶ 61,240 (2015), *reh'g pending*.

²⁹ Settlement at 2.

³⁰ *Id.* at Article 3.1.

within 30 days of the Settlement becoming effective.³¹ This payment will fully satisfy the requirements of section II.B.3 of the 2006 settlement between SPS and PNM.³²

13. Under Article 4 of the Settlement, Golden Spread agrees to withdraw the ROE complaints it filed in Docket Nos. EL12-59-000 and EL13-78-000, with no refunds due to any party to those dockets.³³ Under Article 4.4, effective October 20, 2014 (the refund effective date for the ROE complaint in Docket No. EL15-8-000): (1) the ROE used in SPS's Power Supply Agreements with Golden Spread and the New Mexico Cooperatives shall be 10.0 percent; and (2) the ROE used to calculate SPS's Transmission Formula Template revenue requirement pursuant to Attachment O-SPS of the Xcel Energy, Inc. Open Access Transmission Tariff (OATT), as reflected in Attachment H, Addendum 5 of the SPP OATT, shall be 10.5 percent, which is composed of a 10.0 percent base ROE and a 50 basis point adder for SPS's participation in SPP.³⁴ Article 4 imposes a moratorium under which SPS will not submit an FPA section 205 filing to increase, and no Settling Party³⁵ will submit an FPA section 206 complaint to decrease, the production and transmission formula ROEs established in Article 4.4 prior to October 31, 2019, and will not request a refund effective date earlier than January 1, 2020.³⁶

³¹ Article 7.3 requires SPS to pay the refunds to Golden Spread and PNM, in the amounts set forth in Articles 3.1 and 3.2, within 30 days after the Settlement becomes effective. Article 7.3 also states that the refund amounts set forth in Articles 3.1 and 3.2 are inclusive of interest through December 31, 2014, and that no additional interest shall accrue. *Id.* at Article 7.3.

³² *Id.* at Article 3.2; *see also* SPS, Offer of Settlement, Docket No. ER06-274-000, at section II.B.3 (Sept. 19, 2006), *approved in Sw. Pub. Serv. Co.*, 124 FERC ¶ 61,232 (2008).

³³ Settlement at Article 4.1.

³⁴ *Id.* at Article 4.4.

³⁵ Article 2 defines "Settling Party" and "Settling Parties" to include "(i) the parties listed anywhere on Appendix 1, and (ii) any party to one or more of the Affected Dockets that either (a) files no comments regarding [the Settlement] or (b) files comments that affirmatively support, or do not oppose or seek modification of, any provision of [the Settlement]." *Id.* at Article 2.1.

³⁶ *Id.* at Article 4.5.

14. Article 5 provides that, effective January 1, 2015, demand costs under the Power Supply Agreements of all six Requirements Customers³⁷ will be allocated using the 12 CP demand allocation method.³⁸ Article 5.3 imposes a moratorium under which, for the duration of the Golden Spread Power Supply Agreement – Rate Schedule No. 135, SPS will not submit an FPA section 205 filing to change the demand cost allocation method applicable to Golden Spread’s Power Supply Agreement, and no Settling Party will file a complaint under FPA sections 206 or 306 to change the demand cost allocation method under its respective Power Supply Agreement.³⁹

15. Article 6 provides that, within 45 days of the Settlement becoming effective, SPS will submit an FPA section 205 filing to revise the Transmission Formula Template and Transmission Formula Protocols as shown in Appendix 4. The purposes of the changes in that filing will be to: (1) base SPS’s expenses for post-retirement benefits other than pensions (PBOP) on the expense amount reported in SPS’s most recent annual actuarial valuation report as of the date of SPS’s Annual Transmission Update; and (2) provide SPS’s transmission customers a credit if SPS sells or transfers a transmission asset for a gain above net book value.⁴⁰ Under Article 6.3, the Settling Parties listed in Appendix 1, section 8 may not file a formal challenge to SPS’s Transmission Formula Protocols, or an FPA section 206 complaint related to the treatment of the wholesale portion of any gain on the Sharyland Transaction⁴¹ or the potential Oncor Transaction,⁴² or related to SPS’s

³⁷ The Requirements Customers are Golden Spread, West Texas, and each of the New Mexico Cooperatives. *Id.* at Article 1.2.

³⁸ *Id.* at Article 5.1.

³⁹ *Id.* at Article 5.3.

⁴⁰ *Id.* at Article 6.1.

⁴¹ Article 1.27 of the Settlement describes the Sharyland Transaction as a sale, in 2013, of certain SPS transmission facilities to Sharyland Distribution and Transmission Services, LLC, which the Commission approved in *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,131 (2013).

⁴² Article 1.29 of the Settlement describes the Oncor Transaction as SPS’s sale, to Oncor Electric Delivery Company LLC (Oncor), of certain de-energized transmission facilities that were originally interconnected to the facilities transferred as part of the Sharyland Transaction. Article 1.29 further states that the Public Utilities Commission of Texas approved the Oncor Transaction on August 18, 2015, and that, absent settlement, Golden Spread anticipates filing a preliminary challenge and/or an FPA section 206 complaint associated with the wholesale portion of the gain on the Oncor Transaction.

treatment of PBOP expenses, for any rate year prior to 2015.⁴³ Under Article 6.4, SPS may not submit an FPA section 205 filing to change its transmission depreciation rates prior to November 1, 2016, and SPS will not request an effective date earlier than January 1, 2017.⁴⁴ Under Article 6.6, SPS agrees that it will not submit an FPA section 205 filing to change its production rates applicable to Tri-County under Rate Schedule 136 prior to November 1, 2016, and will not request an effective date earlier than January 1, 2017.⁴⁵

16. Article 7 requires SPS to file a motion with the Chief Judge requesting Commission authorization to begin charging, on an interim basis, certain rates set forth in the Settlement.⁴⁶ Article 7.2 provides that, to the extent the Commission modifies or rejects the Settlement, SPS will surcharge or refund the difference between the interim rates and the final rates as part of the next Annual Transmission Update or the next Annual Production Update, as applicable.⁴⁷

17. Article 10 provides that the Filing Parties agree to seek Commission approval of the Settlement through an order issued on or before November 30, 2015, “to maximize the ability of the affected Settling Parties to account for the financial benefits and burdens of [the Settlement] during calendar year 2015.”⁴⁸ Article 10 further provides that a Commission order approving the Settlement

shall constitute all authority necessary (i) for the Xcel Energy OATT tariff records and the SPS Power Supply Agreement tariff records included in Appendices 3 through 5 to become effective on the dates proposed, and (ii) for SPP to make a ministerial filing to modify Attachment H, Addendum 5 of the SPP OATT to correspond to the changes to the Xcel Energy OATT included in Appendix 4.^{49]}

⁴³ *Id.* at Article 6.3.

⁴⁴ *Id.* at Article 6.4.

⁴⁵ *Id.* at Article 6.6.

⁴⁶ *Id.* at Article 7.1.

⁴⁷ *Id.* at Article 7.2.

⁴⁸ *Id.* at Article 10.1.

⁴⁹ *Id.* at Article 10.2.

18. Article 12 provides that the standard of review for any change to the Settlement proposed by a Settling Party shall be

the “public interest” application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and *NRG Power Marketing v. Maine Pub. Utilities Commission*, 558 U.S. 165 (2010).^{50]}

Article 12 further provides that, after the Settlement becomes effective, the standard of review for any changes to the Settlement sought by the Commission, acting *sua sponte*, or at the request of a non-Settling Party or a non-party to the Affected Dockets shall be “the just and reasonable standard of review (rather than the ‘public interest’ standard), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008).”⁵¹

19. The Settlement requires the Settling Parties to withdraw numerous pleadings, including requests for rehearing, in the Affected Dockets,⁵² as well as SPS’s petition for appellate review—in *Xcel Energy Services Inc. v. FERC*, No. 15-1213 (D.C. Cir. filed July 13, 2015)—of the Commission’s May 14, 2015, order on rehearing in Docket Nos. EL12-59-001 and EL13-78-001.⁵³

III. Joint Motion

20. As part of the Settlement, the Filing Parties also submitted a joint motion requesting, pursuant to Rule 602(b)(3), that the Commission: (i) direct the Secretary to transmit the Settlement directly to the Commission; and (ii) consolidate the Affected Dockets for purposes of consideration of the multiple proceedings addressed in the instant Settlement without any requirement for certification by an Administrative Law Judge (Joint Motion).⁵⁴

⁵⁰ *Id.* at Article 12.1.

⁵¹ *Id.* at Article 12.2.

⁵² *See id.* at Articles 3.3, 4.1, 5.10, and Appendix 2.

⁵³ *Id.* at Article 4.8.

⁵⁴ SPS Joint Unopposed Motion to Consolidate Proceedings for Consideration of Joint Uncontested Offer of Settlement at 2.

21. The Filing Parties contend that good cause exists to grant the Joint Motion, because it will promote administrative efficiency. The Filing Parties assert that the Commission dockets at issue in the Settlement have been: “(i) the subject of hard-fought disputes between the parties, (ii) the subject of multiple orders issued by the Commission itself, and (iii) have been pending before the Commission for many years.”⁵⁵ The Filing Parties further aver that the ability to resolve numerous complex issues in multiple dockets through an integrated settlement agreement was central to the Settling Parties’ ability to resolve each of the dockets at issue. Therefore, the Filing Parties argue that the Commission is in the best position to address and approve this “wide-ranging and integrated [Settlement].”⁵⁶ The Filing Parties also assert that transmitting the Settlement directly to the Commission will enable the Commission to act on the Settlement more quickly, which will provide benefits to customers, through certain refunds and rate treatments; provide benefits to SPS, in the form of rate certainty; and maximize the affected Settling Parties’ ability to account for the financial benefits and burdens of the Settlement during calendar year 2015.⁵⁷ The Filing Parties include in their Joint Motion a request for an extension of time for answers to the Joint Motion, to allow any such answers to be included in the parties’ comments on the Settlement.

IV. Notice and Responsive Pleadings

22. On September 1, 2015, the Commission granted the Filing Parties’ request for an extension of time, to and including September 17, 2015, for filing answers to the Joint Motion.⁵⁸ No party filed an answer to the Joint Motion.

23. On September 17, 2015, Trial Staff filed comments stating that it does not oppose the Settlement, and SPS filed comments in support of the Settlement.

24. According to SPS, the purpose of its comments is to request expeditious approval of the Settlement and to further explain the Settlement provisions concerning SPS’s PBOP expenses. SPS reiterates its request that the Commission waive the certification requirements of Rule 602, which would otherwise require the Presiding Judge in each

⁵⁵ *Id.* at 3.

⁵⁶ *Id.* at 4-5.

⁵⁷ *Id.* at 5.

⁵⁸ *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, Docket Nos. EL05-19-000, *et al.* (Sept. 1, 2015) (Notice of Extension of Time).

case to separately or jointly issue an order addressing the certification aspects of the Settlement.⁵⁹

25. With regard to the measurement of SPS's annual PBOP expenses, SPS states that the Commission's order approving the Settlement will result in a waiver of the Commission's existing policy on recovering PBOP expenses in rates.⁶⁰ SPS explains that this is because Article 6.1(a) provides that, as reflected in the tariff language of Appendix 4 to the Settlement, SPS's PBOP annual expenses will be updated as part of the annual update process under SPS's Transmission Formula Protocols, and because Article 10.2 provides that the Commission's order approving the Settlement "shall constitute all authority necessary" for the tariff records attached to the Settlement as Appendices 3 through 5 to become effective on the Filing Parties' proposed dates.⁶¹ SPS asserts that the Commission has previously granted waiver of its PBOP policy, and applying the Commission precedent on that issue to the facts here fully supports a waiver of the Commission's PBOP policy.⁶²

V. Commission Determination

A. Procedural Matters

26. Rule 602(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(b)(3) (2015), provides that, "[i]f an offer of settlement pertains to multiple proceedings that are in part pending before the Commission and in part set for hearing, any participant may by motion request the Commission to consolidate the multiple proceedings and to provide any other appropriate procedural relief for purposes of disposition of the settlement." We find that it is unnecessary to consolidate the Affected Dockets for purposes of approving the Settlement. Therefore, we deny the Filing Parties' request to consolidate the Affected Dockets. However, we grant the Filing Parties' request for waiver of the certification requirements of Rule 602(b)(2).⁶³ As a general matter, we are reluctant to waive the certification requirements of Rule 602. However, we find it appropriate to do so based on the unique circumstances of this filing, because the Settlement involves complex issues, across multiple proceedings that span more than

⁵⁹ SPS September 17, 2015 Comments at 8.

⁶⁰ *Id.* at 6.

⁶¹ *Id.* at 5-6 (quoting Settlement at Article 10.2).

⁶² *Id.* at 6-7 (citing *Utah Assoc. Mun. Power Sys. v. PacifiCorp*, 149 FERC ¶ 61,267 (2014)).

⁶³ 18 C.F.R. § 385.602(b)(2) (2015).

a decade and are, in part, pending before the Commission and, in part, set for hearing before multiple Administrative Law Judges.

B. Substantive Matters

27. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. Our approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Settlement resolves all issues in dispute in these proceedings. Accordingly, this order terminates Docket Nos. EL05-19-000, ER05-168-000, EL05-151-000, ER06-274-000, EL12-59-000, EL13-78-000, EL15-8-000, ER14-192-000, ER15-949-000, and all associated sub-dockets.

28. SPS has not yet complied with *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008), which requires the filing of revised tariff sheets in eTariff to implement the terms of the Settlement. Within forty-five (45) days of the date of this order, SPS must make a compliance filing in eTariff reflecting the Commission's action in this order.

The Commission orders:

(A) The Settlement is hereby approved, as discussed in the body of this order.

(B) SPS is hereby directed to submit a compliance filing within forty-five (45) days of the date of this order, as discussed in the body of this order.

(C) Docket Nos. EL05-19-000, ER05-168-000, EL05-151-000, ER06-274-000, EL12-59-000, EL13-78-000, EL15-8-000, ER14-192-000, ER15-949-000, and all associated sub-dockets are hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.