

153 FERC ¶ 61,366
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER16-204-000

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

(Issued December 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 Tri-State Generation and Transmission Association, Inc. (Tri-State), to become effective January 1, 2016, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. SPP states that, as a Regional Transmission Organization (RTO), it administers open access transmission service across the facilities of SPP's transmission owners. SPP explains that it also administers the Integrated Marketplace, a centralized day ahead and real-time energy and operating reserve market with locational marginal pricing and market-based congestion management. SPP states that its Tariff specifies a zonal annual transmission revenue requirement for each SPP transmission zone. SPP explains that transmission service rates to support the load located within the SPP region are based, in part, on the sum of the zonal annual transmission revenue requirement for each transmission owner within the zone in which the load is located.¹

3. SPP states that Tri-State is a cooperative corporation headquartered in Westminster, Colorado. SPP explains that Tri-State's primary functions involve the generation, transmission, transformation, and sale of electricity at wholesale to its 44 member distribution cooperatives and public power districts within the states of Colorado, Nebraska, New Mexico, and Wyoming. SPP states that Tri-State is not subject

¹ SPP Transmittal at 2.

to the Commission's ratemaking jurisdiction under sections 205 and 206 of the Federal Power Act (FPA)² because it is not a public utility under section 201(e) of the FPA by virtue of section 201(f) of the FPA.³ However, SPP explains that the Commission does have jurisdiction over the rates for transmission service provided by SPP and that, when a non-jurisdictional transmission owner such as Tri-State voluntarily joins an RTO, the Commission can ensure that the RTO's rates are just and reasonable by examining the non-jurisdictional utility's revenue requirement.⁴

A. The Instant Filing

4. On October 30, 2015, SPP filed, on behalf of Tri-State, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations,⁵ proposed Tariff revisions to govern transmission service using the facilities of Tri-State when Tri-State transfers functional control of a portion of its transmission facilities to SPP. SPP explains that Tri-State proposes to become a SPP transmission owner and transfer functional control of a portion of its transmission facilities to SPP on January 1, 2016.⁶

5. SPP states that Tri-State has requested that SPP implement the proposed Tariff changes and has provided testimonial support for its proposed annual transmission revenue requirement. SPP adds that it is not independently supporting or justifying Tri-State's proposed annual transmission revenue requirement, but is merely modifying the Tariff to accommodate Tri-State's recovery of transmission service revenues for its transmission facilities under the Tariff.⁷

6. SPP proposes to include as Addendum 36 to Attachment H of the Tariff, Tri-State's formula rate and formula rate implementation protocols that will be used to calculate Tri-State's annual transmission revenue requirement. SPP further proposes to revise Attachment H (Annual Transmission Revenue Requirement For Network Integration Transmission Service), Section I, Table 1 to include a line in Zone 17 that directs interested parties to the revenue requirements and rates file on SPP's website,

² 16 U.S.C. §§ 824d, 824e (2012).

³ 16 U.S.C. §§ 824(e), 824(f) (2012).

⁴ SPP Transmittal at 3.

⁵ 18 C.F.R. pt. 35 (2015).

⁶ SPP Transmittal at 1, 4.

⁷ *Id.* at 4.

which contains the allocations of the annual transmission revenue requirement consistent with the methodology established in the SPP Tariff. In addition, SPP proposes to revise Attachment T to add Tri-State to Zone 17, Nebraska Public Power District's (NPPD) rate sheet for point-to-point transmission service. SPP asserts that the Commission has previously approved similar modifications to the Tariff to accommodate zones that include multiple owners.⁸ SPP also proposes to revise Addendum 2 of Attachment O (Transmission Planning Process) to include Tri-State as a participant in SPP's planning region.⁹

7. SPP states that the proposed implementation protocols provide for an annual update process based on Tri-State's independently audited books and records of the most recent fiscal year, including its Rural Utilities Service (RUS) Financial and Operating Report or successor reports and the Financial and Operating Report Electrical Power Supply. SPP asserts that the Tri-State annual update will be posted on a publicly accessible location of the SPP website. SPP adds that the implementation protocols provide for notice and review by interested parties, as well as opportunities to challenge the proposed formula rate prior to the effective date each year.¹⁰

8. SPP states that it intends to include Tri-State's transmission facilities in Zone 17, a multi-transmission owner Zone, in which NPPD is the dominant transmission owner. SPP also explains that because the transmission facilities that Tri-State intends to transfer to SPP's functional control are highly integrated with NPPD's facilities in Zone 17, it is difficult to operate NPPD's facilities without the use of Tri-State's facilities. SPP adds that most of Tri-State's transmission facilities are jointly managed with NPPD's facilities under the Western Nebraska Joint Transmission Agreement between Tri-State and NPPD. SPP contends that because NPPD and Tri-State have jointly planned and operated their facilities for over 40 years, including Tri-State's facilities in any other pricing zone would conflict with the historical operation of their respective facilities and would likely result in an improper allocation of costs between Tri-State and NPPD.¹¹ According to SPP, it has implicit authority under the SPP Membership Agreement to determine in which pricing zone to include the transmission facilities of a new transmission owner. SPP contends that, under the Membership Agreement, it has the responsibility "to take any actions necessary for it to carry out its duties and

⁸ *Id.* at 5 & n.22.

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 4.

responsibilities, subject to receiving any necessary [approval from the Commission],”¹² and to “[use] best efforts to promote the design and development of Transmission Tariff rates to assure recovery by Transmission Owner of transmission revenue requirements to the greatest extent practicable and subject to receiving necessary regulatory approvals.”¹³

9. In support of its filing, SPP has submitted testimony and supporting exhibits from: (1) Ronald W. Steinbach, Tri-State’s Senior Policy Advisor; (2) Bernard A. Cevera, Management Consultant at Guernsey; and (3) Robert C. Smith, Vice President of GDS Associates, Inc.¹⁴ SPP also includes affidavits from: (1) Rod Rinne, NPPD Contracts Manager; and (2) Ronald Steinbach that were initially filed in SPP’s Integrated Marketplace Filing in Docket Nos. ER12-1179-000 and ER12-1179-001, in support of the instant filing.

10. Tri-State asserts that all of its facilities that are submitted for transfer to SPP’s functional control qualify as transmission facilities under Attachment AI (Transmission Definition) of the SPP Tariff. Tri-State states that the facilities to be transferred to SPP’s functional control consist of approximately 300 miles of transmission circuits of Tri-State’s 69 kV and 115 kV transmission system, together with several 230 kV substations and equipment. Tri-State notes that these facilities and equipment comprise only a portion of Tri-State’s overall transmission system.¹⁵ Tri-State explains that it owns (wholly or jointly) or has maintenance responsibilities for approximately 5,400 miles of transmission lines across both the Western and Eastern Interconnections, but that Tri-State is proposing to transfer to SPP’s functional control only the facilities and equipment in the Eastern Interconnection that meet the Attachment AI definition of transmission facilities.¹⁶

11. Tri-State states that it proposes to collect its revenue requirement using a formula rate based on historical costs. Tri-State explains that it calculated an annual transmission revenue requirement of \$8,127,996 based on its 2014 and 2013 RUS Financial and Operating Report.¹⁷ Tri-State states that if an error in the Tri-State RUS Financial and

¹² *Id.* (citing SPP Membership Agreement at § 2.1.1(1)).

¹³ *Id.* (citing SPP Membership Agreement at § 2.3(d)).

¹⁴ *Id.* at 5, Ex. No. SPP-1 Testimony of Ronald W. Steinbach; Ex. No. SPP-10 Testimony of Bernard A. Cevera; and Ex. No. SPP-14 Testimony of Robert C. Smith.

¹⁵ Ex. No. SPP-1 Testimony of Ronald W. Steinbach at 8, 11-12.

¹⁶ *Id.* at 6-7, 11.

¹⁷ Ex. No. SPP-10 Testimony of Bernard A. Cevera at 3-5.

Operating Report or the calculation of its annual transmission revenue requirement is discovered, then an adjustment will be included in the next update of the annual transmission revenue requirement. Tri-State asserts that its implementation protocols are consistent with the implementation protocols previously filed by The Empire District Electric Company and other utilities within SPP, as well as the Commission's orders and guidance regarding formula rate implementation protocols.¹⁸

12. Regarding the requested return on equity (ROE), SPP asserts that the courts have made clear that when a non-jurisdictional transmission owner such as Tri-State voluntarily joins an RTO, the Commission "can ensure by examining [the non-jurisdictional utility's revenue requirement] that the [RTO's] rates will ultimately be just and reasonable."¹⁹ Tri-State states that the Commission has declined to establish a formal standard of review applicable to revenue requirements filed by non-jurisdictional transmission owners transferring functional control of their facilities to an RTO. Tri-State contends that the Commission has permitted non-jurisdictional entities to use ROEs that fall within the range of reasonable returns approved by the Commission for other transmission owners. Tri-State also asserts that the Commission has permitted non-jurisdictional transmission owners, within RTOs, to apply the same overall rate of return as that applied by the zone's dominant transmission owner.²⁰ In applying the Commission's prior orders here, Tri-State's proposed base cost of common equity uses the average of the ROEs on file for the existing SPP transmission owners, excluding ROEs of independent transmission companies, to arrive at a base ROE of 10.37 percent, with a 50 basis point RTO participation adder, for a total ROE of 10.87 percent. Tri-State asserts that this 50 basis point participation adder is consistent with Commission policy.²¹

13. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of Tri-State's revenue requirement, formula rate, and formula rate implementation protocols, Tri-State has voluntarily agreed to allow its revenue requirement, formula rate, and formula rate implementation protocols to be treated as being accepted, subject to refund with interest at Tri-State's actual short-term debt costs, capped at the Commission interest rate. SPP further states that Tri-State has

¹⁸ *Id.* at 9-12.

¹⁹ SPP Transmittal at 3 (citing *Pac. Gas and Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002)).

²⁰ Ex. No. SPP-14 Testimony of Robert C. Smith at 4-5 (citing *Pac. Gas and Elec. Co.*, 306 F.3d at 1116 (additional citations omitted)).

²¹ *Id.* at 5-7.

informed SPP that Tri-State makes this voluntary commitment without waiving or in any way limiting or altering Tri-State's non-jurisdictional status.²²

14. SPP requests waiver of section 35.13 of the Commission's regulations,²³ including waiver of the full Period I and Period II data requirements and waiver of the requirement in section 35.13(a)(2)(iv) to determine if and the extent to which a proposed change constitutes a rate increase based on Period I-Period II rates and billing determinants. SPP asserts that the Commission generally grants requests for waiver for the full cost of service filing requirements prescribed by section 35.13 in transmission formula rate cases and argues that waiver is appropriate in this instance because Tri-State is relying on its RUS Financial and Operating Report data and is proposing a formula rate rather than a stated rate.²⁴

B. Notice of Filing and Responsive Pleadings

15. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 68,528 (2015), with interventions and protests due on or before November 20, 2015. Timely motions to intervene were filed by the following: Xcel Energy Services Inc. on behalf of its utility operating company affiliate Southwestern Public Service Company, City of Grand Island Nebraska, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, LLC, Corn Belt Power Cooperative, Inc., East River Electric Power Cooperative, Inc., Municipal Energy Agency of Nebraska, City of Independence, Missouri, South Central MCN, LLC, and Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company. Basin Electric Power Cooperative (Basin Electric), Northwest Iowa Power Cooperative (NIPCO), Western Area Power Administration (Western), and Tri-State filed timely motions to intervene and comments. NPPD filed a timely motion to intervene, protest, and motion for summary disposition or in the alternative, hearing. On December 3, 2015, Missouri River Energy Services (Missouri River) filed a motion to intervene out of time. Tri-State, Western, and SPP filed answers.²⁵ NPPD filed a motion for leave to answer and answer to the answers.

²² SPP Transmittal at 9 & n.32.

²³ 18 C.F.R. § 35.13 (2015).

²⁴ SPP Transmittal at 9-10.

²⁵ On December 7, 2015, SPP filed a motion for extension of time until December 14, 2015 to file an answer.

II. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant Missouri River's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. 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 or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by Tri-State, Western, SPP, and NPPD because they have provided information that assisted us in our decision-making process.

B. Responsive Pleadings

1. Comments and Protests

18. NIPCO, Tri-State, Basin Electric, and Western filed comments in support of Tri-State's proposed formula rate, implementation protocols, and ROE.²⁶ In their comments, NIPCO, Tri-State, and Basin Electric assert that the proposed formula rate is just and reasonable and consistent with Commission policy.²⁷ They also contend that the proposed 10.87 percent ROE is just and reasonable.²⁸ Tri-State explains that it developed its proposed ROE using the average of the ROEs on file for the existing, similar SPP transmission owners, and reasonably eliminated from the calculation those ROEs granted to independent transmission companies because they are situated differently than Tri-State.²⁹ NIPCO, Tri-State, and Basin Electric also assert that the proposed formula rate

²⁶ NIPCO Comments at 5-7; Tri-State Comments at 4-7; Basin Electric Comments at 4-6; Western Comments at 4.

²⁷ NIPCO Comments at 5; Tri-State Comments at 4-5; Basin Electric Comments at 4.

²⁸ NIPCO Comments at 6-7; Tri-State Comments at 5-6; Basin Electric Comments at 4-5.

²⁹ Tri-State Comments at 6.

implementation protocols conform to Commission orders and guidance regarding formula rate implementation protocols.³⁰ Tri-State, Basin Electric, and Western contend that including Tri-State's facilities in Zone 17 is just and reasonable, as the dominant transmission owner in Zone 17 is NPPD, and Tri-State and NPPD have load connected to each other's facilities and most of Tri-State's facilities are jointly managed with NPPD's facilities.³¹

19. While NPPD supports the inclusion of Tri-State as a new transmission owner in SPP, it opposes the placement of Tri-State in the NPPD's Zone 17.³² NPPD contends that the inclusion of Tri-State in Zone 17 will shift approximately \$5 million of Tri-State's proposed \$8.1 million annual transmission revenue requirement to NPPD and other transmission customers in Zone 17. According to NPPD, the end result of rolling in Tri-State's annual transmission revenue requirement and load into NPPD Zone 17 will be an approximate 62 percent reduction in the cost currently incurred by Tri-State to serve its transmission customers, and an approximate 9 percent increase in the costs to serve NPPD's transmission customers, which is contrary to cost causation principles.³³ NPPD asserts that the Commission can avoid the significant cost shift to Zone 17, and the creation of perverse incentives to join SPP, by creating a new pricing zone for Tri-State, thereby providing a license plate rate for that zone based on Tri-State's historical cost of service.³⁴

20. NPPD argues that SPP's Tariff does not contain specific criteria governing the placement of new transmission owners in SPP pricing zones. NPPD notes that SPP uses the following criteria to govern the zone placement of a new transmission owner: (1) whether the new transmission owner substantially increases the size of the SPP footprint; (2) whether the new transmission owner is embedded within an existing zone; (3) whether the new transmission owner's annual transmission revenue requirement is less than that of any existing single transmission owner zone; and (4) the number of interconnections between new transmission owner and existing zones and other entities.³⁵

³⁰ NIPCO Comments at 7; Tri-State Comments at 6-7; Basin Electric Comments at 5.

³¹ Tri-State Comments at 7; Basin Electric Comments at 6; Western Comments at 4.

³² NPPD Protest at 3.

³³ *Id.* at 10.

³⁴ *Id.* at 13.

³⁵ *Id.* at 6-7.

While NPPD agrees that each of the four criteria should be given consideration in determining whether to place a new transmission owner into an existing zone or a new pricing zone, NPPD argues that no one factor should be dominant. NPPD asserts that SPP has overlooked a critical factor: whether placement of the new transmission owner into an existing zone will cause an unreasonable shift of costs to transmission customers in the existing zone.³⁶

21. NPPD argues that Tri-State should be placed into its own separate pricing zone because: (1) Tri-State's annual transmission revenue requirement is substantial enough to merit creation of its own pricing zone; (2) the inclusion of Tri-State as a new transmission owner will significantly expand SPP's geographic scope; (3) Tri-State's scope and configuration is consistent with that of a separate pricing zone; (4) it would be more difficult to operate Tri-State's facilities without the SPP Zone 19 and the Western-Rocky Mountain Region (Western RMR) transmission facilities than without NPPD's facilities; (5) termination of the Western Nebraska Joint Transmission Agreement already will cause a \$1 million dollar cost shift to NPPD and placing Tri-State in Zone 17 would increase this cost shift to \$5 million; and (6) Tri-State is more integrated with SPP Zone 19 and the Western RMR transmission facilities than it is with NPPD's transmission facilities.³⁷

22. NPPD also argues that Tri-State's formula rate raises issues of fact requiring further investigation. Specifically, NPPD asserts that: (1) Tri-State's proposed ROE has not been supported by a current discounted cash flow analysis or by any other current measure of Tri-State's cost of capital; (2) there is no support for the proposed 3.4 percent depreciation rate for transmission facilities; (3) Tri-State's use of an allocation factor to allocate a portion of system-wide accumulated depreciation to Tri-State's facilities, rather than use of actual accumulated depreciation related to the specific facilities located in western Nebraska, may be inappropriate; (4) Tri-State's proposed factors to allocate system wide operating expenses require further investigation; and (5) inclusion of cost of electric transmission paid to others may be inappropriate.³⁸

23. NPPD acknowledges Tri-State's commitment to refund the difference, if any, between the revenue it receives pursuant to the proposed formula rate in this filing and the amount resulting from the formula rate that the Commission determines to be just and reasonable, but argues that this commitment does not address refunds and revenue distribution required to implement a Commission determination that it is not just and

³⁶ *Id.* and Ex. No. NPP-6 Answering Testimony of Paul J. Malone at 8.

³⁷ *Id.* at 14-22.

³⁸ *Id.* at 22.

reasonable to place Tri-State in Zone 17. According to NPPD, to protect the existing transmission owners and customers in Zone 17, Tri-State must commit to receive a revenue distribution from SPP, reduced by the amount of costs shifted from Tri-State to Zone 17. In the absence of such a commitment, NPPD asserts that the Commission should direct SPP, effective January 1, 2016, to establish a separate pricing zone for Tri-State (or a separate rate based on its own revenue requirement and applicable to Tri-State load) to apply to service during the pendency of the hearing, subject to refund and, if, at the conclusion of the hearing, the Commission determines that SPP and Tri-State successfully demonstrated that Tri-State should be integrated into Zone 17, the Commission could then authorize SPP to impose a surcharge on deliveries into Zone 17 to compensate for the refunds owed to Tri-State. Alternatively, NPPD argues that if Tri-State becomes integrated into Zone 17 effective January 1, 2016, the Commission should put Tri-State on notice that it can be subject to a surcharge pending the outcome of any hearing ordered by the Commission.³⁹

24. NPPD requests that the Commission summarily rule that it would be unjust and unreasonable to place Tri-State into NPPD's Zone 17. In the alternative, NPPD requests that the Commission set for hearing all issues associated with the determination of whether Tri-State should be in a separate pricing zone, or integrated into the existing Zone 17 or Zone 19 pricing zones, and all issues associated with Tri-State's proposed formula rate and annual transmission revenue requirement.⁴⁰

2. Answers

25. Tri-State argues that NPPD misrepresents SPP's authority to determine the pricing zone in which it will place transmission facilities and mischaracterizes the integrated nature of NPPD's and Tri-State's transmission facilities in western Nebraska.⁴¹ Tri-State asserts that the SPP Membership Agreement grants SPP the sole authority to decide the SPP pricing zone in which to include a new transmission owner's facilities. Tri-State states that the Membership Agreement provides SPP with the right to propose any changes in "prices, pricing methods, terms, and conditions" that are necessary to fulfill its obligations under the Membership Agreement and that selecting a pricing zone is a change in "prices, pricing methods, terms, and conditions."⁴² Tri-State also asserts that, pursuant to the Commission's regulations, an RTO like SPP "must have exclusive and

³⁹ *Id.* at 24-25.

⁴⁰ *Id.* at 23-24.

⁴¹ Tri-State Answer at 1.

⁴² *Id.* at 2-4.

independent authority” under section 205 of the FPA “to propose rates, terms and conditions of transmission service provided over the facilities it operates.”⁴³

26. According to Tri-State, the Commission should find that SPP correctly exercised its authority to place Tri-State’s transmission facilities into Zone 17. Tri-State asserts that multi-transmission owner pricing zones are permitted under Attachment L (Treatment of Revenues) of the SPP Tariff. Tri-State states that transmission facilities are appropriately included in the pricing zone in which they benefit load and the facilities which Tri-State seeks to transfer to SPP’s functional control benefit load in Zone 17.⁴⁴

27. Tri-State argues that including Tri-State’s facilities in Zone 17 also meets the requirements of SPP’s internal criteria regarding the pricing zone into which the transmission facilities of a new transmission owner should be placed. Specifically, Tri-State asserts that including Tri-State as a new transmission owner in Zone 17 will not substantially expand the SPP footprint, a new pricing zone consisting of only Tri-State would have a smaller revenue requirement than any existing pricing zone, and Tri-State’s inclusion in Zone 17 is warranted because of Tri-State’s extensive integration and interconnection with the existing NPPD facilities in Zone 17.⁴⁵

28. Tri-State also contends that NPPD cites to no Commission precedent to support its position that cost-shifting in a multi-transmission owner zone is a basis for rejecting a new transmission owner’s attempt to join that zone. In addition, Tri-State asserts that if the Commission were to establish a policy of rejecting multi-transmission owner zones on the basis of cost-shifting, that policy would undermine the language of Attachment L to the SPP Tariff. Tri-State explains that Attachment L explicitly provides for multi-transmission owner pricing zones and the creation of a multi-transmission owner zone by adding a new transmission owner to an existing pricing zone inevitably will result in cost shifts. Tri-State further argues that NPPD exaggerates and mischaracterizes the cost shift that will occur when Tri-State’s facilities are included in Zone 17.⁴⁶

29. Tri-State argues that NPPD does not offer any evidence or legal basis for any of its claims that Tri-State’s proposed ROE, depreciation rate, allocation factors, and inclusion of transmission by others in its annual transmission revenue requirement require further

⁴³ *Id.* at 4 (citing 18 C.F.R. § 35.34(j)(1)(iii) (2015)).

⁴⁴ *Id.* at 5-7.

⁴⁵ *Id.* at 7-16.

⁴⁶ *Id.* at 16-20.

investigation.⁴⁷ Tri-State explains that the October 30 filing inadvertently included two transmission assets in its revenue requirement that already were included as transmission assets of Basin Electric in Docket No. ER15-1775-000. Tri-State commits to submit a compliance filing removing those facilities and updating its proposed revenue requirement after the Commission issues an order in this proceeding.⁴⁸

30. Tri-State argues that no surcharge will be required to recover the amounts needed to provide existing Zone 17 transmission customers with any necessary refunds. Tri-State explains that its voluntary commitment to provide refunds includes refunds for any difference in charges assessed by SPP to transmission customers in Zone 17 if the Commission ultimately decides to place Tri-State in a separate pricing zone, so it is unnecessary for the Commission to put Tri-State on notice for any surcharge.⁴⁹

31. Western asserts that the relevant issue raised by NPPD's protest is whether the inclusion of Tri-State into the existing multi-owner Zone 17 is just and reasonable and that numerous statements in the NPPD protest may confuse the relevant issue.⁵⁰ According to Western, NPPD's arguments that SPP should have considered the interconnections between Tri-State and Western as a whole, meaning the Western Upper Great Plains region (Western UGP) and Western RMR, are based on factual inaccuracies, are misleading, and should be disregarded. Western states that Western RMR is not a transmission owning member of SPP and therefore the number of interconnections Tri-State has with Western RMR is not relevant to the justness and reasonableness of Tri-State's facilities being placed in Zone 17.⁵¹ Western also contends that, contrary to NPPD's assertions, Tri-State does not have twice as many interconnections with Western UGP and Zone 19 as it does with Zone 17. According to Western, NPPD witness Randy Lindstrom's testimony infers that Western's facilities operate as one integrated system, but that interpretation is incorrect because Western UGP facilities and Western RMR facilities were not, and are not today, planned, built, or operated as one integrated system.⁵²

⁴⁷ *Id.* at 20-22.

⁴⁸ *Id.* at 22.

⁴⁹ *Id.* at 23.

⁵⁰ Western Answer at 3.

⁵¹ *Id.* at 3-5.

⁵² *Id.* at 7.

32. SPP argues that its decision to include the relevant Tri-State facilities in existing Zone 17 is just and reasonable, comports with its historical practice regarding incorporation of new transmission owners, and was within its authority under the Tariff and SPP Membership Agreement. Accordingly, SPP asserts that NPPD's request for summary disposition should be denied.⁵³

33. Specifically, SPP states that its inclusion of the Tri-State facilities in Zone 17 is just and reasonable because those facilities are highly integrated with NPPD's facilities in Zone 17, it is difficult to operate NPPD's facilities without Tri-State's facilities, and the relevant Tri-State facilities were planned and operated as part of a joint effort by Tri-State and NPPD to serve Tri-State and NPPD loads under the Western Nebraska Joint Transmission Agreement. SPP argues that NPPD does not cite to any Commission precedent requiring analysis of cost shifting as a prerequisite for determining proper zonal placement of a new transmission owner, or any Commission precedent or policy articulating at what level an alleged cost shift would be unjust and unreasonable.⁵⁴ SPP also asserts that NPPD's request that the Commission summarily rule that Tri-State should be placed in a separate pricing zone or Zone 19 is contrary to the FPA because those proposals were not part of SPP's filing and the only issue before the Commission is whether the proposals in SPP's filing were just and reasonable, not whether alternatives may also be just and reasonable or more just and reasonable.⁵⁵

34. SPP contends that its decision to include the Tri-State facilities in Zone 17 is consistent with its internal criteria. SPP asserts that NPPD does not dispute that Tri-State's proposed revenue requirement is less than the lowest current revenue requirement of any existing pricing zone. SPP argues that NPPD's claim that Tri-State has twice as many interconnections with Western's facilities and Zone 19 than with facilities in Zone 17 confuses the facts because it includes Western RMR facilities and those facilities are not part of SPP. SPP disagrees with NPPD's contention that integrating Tri-State into SPP will substantially increase SPP's geographic footprint. SPP notes that the addition of Tri-State's transmission facilities will increase the SPP footprint by one-half of one percent and that Tri-State's service territory represents only three percent of SPP's 575,000 square mile RTO region.⁵⁶

⁵³ SPP Answer at 3.

⁵⁴ *Id.* at 5-7.

⁵⁵ *Id.* at 3-4.

⁵⁶ *Id.* at 8-12.

35. SPP asserts that NPPD has failed to explain how Tri-State's voluntary commitment to provide refunds is insufficient to protect consumers. SPP argues that, contrary to NPPD's assertion that SPP would not be able to fund such refunds and distribute the full annual transmission revenue requirement to Tri-State and the other transmission owners in Zone 17, the Commission can accept Tri-State's voluntary refund commitment and direct SPP to distribute any such refunds from Tri-State in accordance with the Commission's ultimate findings in this proceeding.⁵⁷

36. In its answer to the answers, NPPD asserts that the answers filed by Tri-State, Western, and SPP confirm that there are no disputed issues of fact to prevent the Commission from summarily determining that placing Tri-State as a new transmission owner in Zone 17 will cause an unjust and unreasonable cost shift.⁵⁸ NPPD also argues that, if the Commission does not grant such summary disposition, the three answers confirm the existence of disputed factual issues regarding the degree of interconnections between Tri-State and Western UGP and Western RMR.⁵⁹ NPPD further asserts that Tri-State is mistaken in claiming that NPPD has failed to call into question specific elements of Tri-State's proposed revenue requirement.⁶⁰ NPPD notes that, while SPP claims that the only issue before the Commission is whether SPP's proposal to place Tri-State in Zone 17 is just and reasonable, Tri-State instead has agreed that its commitment to provide refunds includes refunds for any difference in charges assessed by SPP to transmission customers in Zone 17 if the Commission ultimately decides to place Tri-State in a separate pricing zone.⁶¹

C. Standard of Review

37. 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).⁶²

⁵⁷ *Id.* at 16-17.

⁵⁸ NPPD Answer at 3-7.

⁵⁹ *Id.* at 1-2, 7-10.

⁶⁰ *Id.* at 10.

⁶¹ *Id.* at 6 & n.20.

⁶² 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).

In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to the Commission's jurisdiction under FPA section 205. However, the Commission noted that because Vernon voluntarily submitted its transmission revenue requirement as a component of California Independent System Operator Corporation's (CAISO) jurisdictional rate, Vernon's transmission revenue requirement was "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."⁶³ 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."⁶⁴ Subsequently, the court upheld the Commission's decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such as Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."⁶⁵

38. 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.⁶⁶ The court reasoned that FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."⁶⁷

39. Therefore, while Tri-State 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 Tri-State.⁶⁸ To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

⁶³ *Id.* P 44.

⁶⁴ *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d at 1117).

⁶⁵ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

⁶⁶ *Id.* at 673-74.

⁶⁷ *Id.* at 674.

⁶⁸ *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

40. Furthermore, Tri-State is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.⁶⁹ However, we note that Tri-State has voluntarily agreed to allow its revenue requirement, formula rate, and formula rate implementation protocols to be treated as being accepted, subject to refund with interest at Tri-State's actual short-term debt costs, capped at the Commission interest rate.⁷⁰

D. Commission Determination

1. RTO Participation Adder

41. As discussed below, we conditionally grant Tri-State'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.⁷¹ 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.⁷² The Commission subsequently issued Order No. 679,⁷³ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

42. We find that, as conditioned below, Tri-State's requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.⁷⁴ We condition our approval on the adder being applied to a base ROE that has been shown to be just and

⁶⁹ *Id.* P 41.

⁷⁰ SPP Transmittal at 9 & n.32.

⁷¹ 16 U.S.C. § 824s(a), (b) (2012).

⁷² *Id.*

⁷³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁷⁴ *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).

reasonable based on an updated discounted cash flow analysis,⁷⁵ and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis,⁷⁶ as may be determined in the hearing and settlement procedures ordered below. Further, our approval of this incentive is conditioned on Tri-State's continuing membership in SPP.

2. Hearing and Settlement

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

44. 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, to become effective January 1, 2016, as requested, subject to refund, and set them for hearing and settlement judge procedures.

45. We accept Tri-State's commitment to provide refunds, with interest, as of January 1, 2016. Tri-State 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

⁷⁵ While the Commission prefers a discounted cash flow analysis to support an ROE, it may be appropriate to consider alternative approaches if a utility can demonstrate that a discounted cash flow analysis is simply not possible. *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). For example, some public power entities do not have bond ratings or even enter the market for debt, which might make it difficult to perform a discounted cash flow analysis. *See Sw. Power Pool Inc.*, 153 FERC ¶ 61,281, at P 11 (2015).

⁷⁶ *Martha Coakley, Mass. Attorney General*, Opinion No. 531, 147 FERC ¶ 61,234, at P 146 (2014) ("In considering these other methodologies, we do not depart from our use of the [discounted cash flow] methodology; rather, we use the record evidence to inform the just and reasonable placement of the ROE within the zone of reasonableness established in the record by the [discounted cash flow] methodology."), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

reasonable.⁷⁷ We reject NPPD's proposed alternatives to accepting Tri-State's commitment to provide refunds. As Tri-State explains⁷⁸ and NPPD acknowledges,⁷⁹ Tri-State has agreed that its commitment to provide refunds includes refunds for any difference in charges assessed by SPP to transmission customers in Zone 17 if the Commission ultimately decides to place Tri-State in a separate pricing zone. Accordingly, we find that NPPD's proposed alternatives to accepting Tri-State's commitment to provide refunds are not necessary in order to provide any refunds that may be needed. We also accept Tri-State's commitment to remove those facilities that it inadvertently included in its proposed revenue requirement that were already included as transmission assets of Basin Electric as part of its case in chief.

46. 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.⁸⁰ 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.⁸¹ 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.

47. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because Tri-State 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

⁷⁷ See, e.g., *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

⁷⁸ See Tri-State Answer at 23.

⁷⁹ See NPPD Answer at n.20.

⁸⁰ 18 C.F.R. § 385.603 (2015).

⁸¹ 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>).

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 January 1, 2016, 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.