

153 FERC ¶ 61,367
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. ER16-209-000

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 Central Power Electric Cooperative, Inc. (Central Power), 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 Central Power is a wholesale generation and transmission cooperative organized to generate power for its member rural electric distribution cooperatives. SPP explains that Central Power's six members serve customers across the

¹ SPP Transmittal at 2.

central and southeastern third of North Dakota. SPP states that Central Power's transmission system consists of approximately 163 distribution substations, 25 wholly-owned and 10 jointly-owned high-voltage transmission stations, and 1,297 miles of transmission lines interconnected with the Western Area Power Administration (Western), Basin Electric Power Cooperative (Basin Electric), and three investor-owned utilities. SPP also notes that Central Power is a member of Basin Electric.²

4. SPP states that Central Power is a borrower from the Rural Utilities Service (RUS) and therefore is not subject to the Commission's ratemaking jurisdiction under sections 205 and 206 of the Federal Power Act (FPA)³ because it is not a public utility. 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 Central Power 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

5. SPP states that the Commission issued an order permitting Western's Upper Great Plains Region, Basin Electric, and Heartland Consumers Power District to join SPP as transmission owners, to place their respective transmission facilities under the functional control of SPP, and to begin taking transmission service under the Tariff.⁵ SPP explains that, in connection with that integration, SPP established a new pricing zone, the Upper Missouri Zone, or Zone 19.⁶

A. The Instant Filing

6. On October 30, 2015, SPP filed, on behalf of Central Power, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations,⁷ proposed Tariff revisions to govern transmission service using the facilities of Central Power when Central Power transfers functional control of its facilities to SPP. SPP explains that

² *Id.* at 3.

³ 16 U.S.C. §§ 824d, 824e (2012).

⁴ SPP Transmittal at 3.

⁵ *Id.* at 4 (citing *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,113 (2014)).

⁶ *Id.*

⁷ 18 C.F.R. pt. 35 (2015).

Central Power proposes to become a SPP transmission owner and transfer functional control of its transmission facilities to SPP on January 1, 2016.⁸

7. SPP states that Central Power 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 Central Power's proposed annual transmission revenue requirement, but is merely modifying the Tariff to accommodate Central Power's recovery of transmission service revenues for its transmission facilities under the Tariff.⁹

8. SPP proposes to include as Addendum 37 to Attachment H of the Tariff, Central Power's formula rate and formula rate implementation protocols that will be used to calculate Central Power's annual transmission revenue requirement. SPP further proposes to modify Attachment H (Annual Transmission Revenue Requirement For Network Integration Transmission Service), Section 1, Table 1 to include a line in Zone 19 that directs interested parties to the revenue requirements and rates file on SPP's website, which contains the allocations of annual transmission revenue requirements consistent with the methodology established in the Tariff. In addition, SPP requests to revise Attachment T to add Central Power to the Zone 19 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.¹⁰ SPP also requests approval to revise Addendum 2 of Attachment O (Transmission Planning Process) to include Central Power as a participant in SPP's planning region.¹¹

9. SPP states that the proposed implementation protocols provide for an annual update process based on Central Power's independently audited books and records of the most recent fiscal year, including its RUS Financial and Operating Report Electric Power Supply or successor reports. SPP asserts that the Central Power annual update will be posted on a publicly accessible location on the SPP website and the Central Power website. SPP adds that the implementation protocols provide for notice and review by

⁸ SPP Transmittal at 1, 5.

⁹ *Id.* at 5.

¹⁰ *Id.* at 5-6 & n.23.

¹¹ *Id.* at 6.

interested parties, as well as opportunities to challenge the proposed formula rate prior to the effective date each year.¹²

10. In support of its filing, SPP has submitted testimony and supporting exhibits from: (1) Thomas L. Meland, General Manager of Central Power; (2) Bernard A. Cevera, Managing Consultant at Guernsey; and (3) Robert C. Smith, Vice President of GDS Associates, Inc.¹³

11. Central Power 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. Central Power states that the facilities to be transferred to SPP's functional control include qualifying facilities consisting of approximately 296.6 miles of transmission lines of Central Power's 60 kV, 69 kV, and 115 KV transmission system, together with several transmission-level substations and equipment connected to the qualifying transmission lines.¹⁴ Central Power notes that portions of its system lie within the Midcontinent Independent System Operator, Inc. (MISO) footprint, and others lie within the SPP footprint.¹⁵ Central Power explains that it is a party to two existing transmission agreements that it anticipates will terminate on December 31, 2015, corresponding with Central Power's planned January 1, 2016 integration into SPP. Central Power states that the first agreement is between Central Power and Otter Tail Power Company (Otter Tail) and the second agreement is between Central Power and Basin Electric.¹⁶

12. Central Power states that it proposes to collect its revenue requirement using a formula rate based on historical costs. Central Power explains that it calculated an annual transmission revenue requirement of \$6,452,112 based on its 2014 and 2013 Certified RUS Form No. 12s.¹⁷ Central Power states that if a correction to its RUS Form No. 12 or

¹² *Id.* at 6-7.

¹³ *See id.* at 5; Ex. No. SPP-1 Direct Testimony of Thomas L. Meland; Ex. No. SPP-7 Direct Testimony of Bernard A. Cevera; Ex. No. SPP-12 Direct Testimony of Robert C. Smith.

¹⁴ Ex. No. SPP-1 Direct Testimony of Thomas L. Meland at 7, 9.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 10-14.

¹⁷ Ex. No. SPP-7 Direct Testimony of Bernard A. Cevera at 4-5.

the calculation of its annual transmission revenue requirement is necessary, then an adjustment will be included in the next derivation of the annual transmission revenue requirement. Central Power 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

13. Central Power requests that its transmission facilities and the annual transmission revenue requirement for those facilities be included in SPP pricing Zone 19 because its transmission system is located within Zone 19. Central Power notes that its 115 kV, 69 kV, and 60 kV transmission circuits that are included in the annual transmission revenue requirement are integrated with the transmission systems of Basin Electric and Western.¹⁹

14. Regarding the requested return on equity (ROE), Central Power asserts 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. Central Power contends that the Commission has permitted non-jurisdictional transmission owners in RTOs to implement ROEs that fall within a range of reasonable returns approved by the Commission for other transmission owners. In addition, Central Power asserts that the Commission has permitted non-jurisdictional transmission owners to use the same overall rate of return as that used by the zone's dominant transmission owner.²⁰ Central Power states that it is proposing an ROE based on the average ROEs in effect for existing, similar transmission owners within SPP, excluding ROEs of independent transmission companies. Central Power explains that its approach resulted in a base ROE of 10.37 percent, and, after applying a 50 basis point RTO participation adder, a total proposed ROE of 10.87 percent. Central Power asserts that this 50 basis point participation adder is consistent with Commission policy.²¹

15. SPP states that, in the event the Commission determines that further proceedings are necessary in order to complete its evaluation of Central Power's proposed annual

¹⁸ *Id.* at 10-11.

¹⁹ *Id.* at 5.

²⁰ Ex. No. SPP-12 Direct Testimony of Robert C. Smith at 5 (citing *Pac. Gas and Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002) (additional citations omitted)).

²¹ *Id.* at 5-7.

transmission revenue requirement, formula rate, and formula rate implementation protocols, Central Power has voluntarily agreed to allow its annual transmission revenue requirement, formula rate, and formula rate implementation protocols to be treated as being accepted, subject to refund with interest at Central Power's actual short-term debt costs, capped at the Commission interest rate. SPP further explains that Central Power has informed SPP that Central Power makes this voluntary commitment without waiving or in any way limiting or altering Central Power's non-jurisdictional status.²²

16. 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 Central Power is relying on its publicly-available RUS Form No. 12 data and is proposing a formula rate rather than a stated rate.²⁴

B. Notice of Filing and Responsive Pleadings

17. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 68,529 (2015), with interventions and protests due on or before November 20, 2015. Timely motions to intervene were filed by the following: South Central MCN, LLC, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, East River Electric Power Cooperative, Inc., MISO Transmission Owners,²⁵ Corn Belt Power

²² SPP Transmittal at 9-10 & n.36; Ex. No. SPP-1 Direct Testimony of Thomas L. Meland at 6-7.

²³ 18 C.F.R. § 35.13 (2015).

²⁴ SPP Transmittal at 10.

²⁵ The MISO Transmission Owners for this filing consist of the following: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power, LLC; Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric

(continued...)

Cooperative, Inc., Mid-Kansas Electric Company, LLC, Sunflower Electric Power Corporation, and Xcel Energy Services Inc., on behalf of its utility operating company affiliates Southwestern Public Service Company, Northern States Power Company – Minnesota, and Northern States Power Company – Wisconsin. Notices of intervention were filed by the Missouri Public Service Commission, North Dakota Public Service Commission (North Dakota Commission), and the Minnesota Public Utilities Commission (Minnesota Commission). Otter Tail filed a timely motion to intervene and protest. Northwest Iowa Power Cooperative (NIPCO), Arkansas Electric Cooperative Corporation (AECC), Central Power, Basin Electric, and Missouri River Energy Services (Missouri River) filed timely motions to intervene and comments. Western filed a timely motion to intervene, comments, and request for clarification. On November 25, 2015, MISO filed a motion to intervene out-of-time and comments. On December 7, 2015, SPP and Central Power filed motions for leave to answer and answers. On December 9, 2015, Minnesota Commission filed a motion to file comments out-of-time and comments. On December 15, 2015, the South Dakota Public Utilities Commission (South Dakota Commission) filed a motion to intervene out-of-time and file comments out-of-time, and comments. On December 17, 2015, Otter Tail filed a motion for leave to answer and limited answer to the answers. On December 18, 2015, North Dakota Commission filed a motion to file comments out-of-time and comments. On December 23, 2015, SPP filed an answer to Otter Tail's December 17 answer.

II. Discussion

A. Procedural Matters

18. 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 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 MISO's and South Dakota

Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Otter Tail Power Company; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Commission's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

19. 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 SPP, Central Power, and Otter Tail's answers because they have provided information that assisted us in our decision-making process.

B. Responsive Pleadings

1. Comments and Protests

20. NIPCO, Central Power, and Basin Electric filed comments in support of Central Power's proposed formula rate, implementation protocols, and ROE.²⁶ In their comments, NIPCO, Central Power, 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 Central Power explains that it developed its proposed ROE using the average of the ROEs on file for the existing SPP transmission owners because there is no dominant public utility transmission owner in SPP pricing Zone 19.²⁹ NIPCO, Central Power, and Basin Electric also assert that the proposed formula rate implementation protocols conform to Commission orders and guidance regarding formula rate implementation protocols.³⁰

21. Otter Tail argues that SPP has not provided sufficient information to demonstrate that the inclusion of Central Power's annual transmission revenue requirement will not

²⁶ NIPCO Comments at 5-7; Central Power Comments at 4-7; Basin Electric Comments at 4-6.

²⁷ NIPCO Comments at 5; Central Power Comments at 4-5; Basin Electric Comments at 4-5.

²⁸ NIPCO Comments at 6-7; Central Power Comments at 6-7; Basin Electric Comments at 5-6.

²⁹ Central Power Comments at 6.

³⁰ NIPCO Comments at 7; Central Power Comments at 7; Basin Electric Comments at 6.

cause SPP's rates to become unjust and unreasonable.³¹ Otter Tail asserts that formula rate inputs must be transparent, but that the RUS Form No. 12, which provides the inputs for the proposed formula rate is not publicly available, contrary to the statement in SPP's filing.³² Otter Tail also contends that SPP has failed to provide sufficient information to demonstrate that the facilities to be included under the SPP Tariff qualify as transmission facilities under Attachment AI of the SPP Tariff. Otter Tail asserts that, while Central Power includes a list of facilities that it proposes to include under the SPP Tariff, it does not provide a one-line diagram or transmission geographic map to show the facilities that are to be included under the SPP Tariff and how they interconnect with the rest of the SPP transmission system.³³

22. Otter Tail states that it has jointly planned and developed transmission facilities with Central Power for more than half a century and that some of its transmission facilities are highly integrated with those of Central Power.³⁴ In particular, Otter Tail explains that this joint development has resulted in ownership rights, usage rights, and functional control of transmission facilities that do not necessarily reside with a single entity. For example, in many locations, Otter Tail owns the high voltage transmission lines, Central Power owns the transmission substation, and Otter Tail owns the low voltage transmission facilities served by the transmission substation. Otter Tail also explains that physical ownership of the transmission facilities is non-contiguous, with Central Power and Otter Tail transmission substations intermingled, and Central Power and Otter Tail each owning separate points of delivery along the jointly-owned transmission system.³⁵

23. Otter Tail argues that, because of the uniquely interconnected nature of this jointly-owned system, Central Power and Otter Tail's facilities should not be divided into different RTO regions absent adequate provisions to mitigate impacts on Otter Tail and its native load customers.³⁶ Otter Tail asserts that, when Central Power places its transmission facilities under the SPP Tariff, certain Otter Tail load will become isolated

³¹ Otter Tail Protest at 1.

³² *Id.* at 9-10.

³³ *Id.* at 10-14.

³⁴ *Id.* at 1-2.

³⁵ *Id.* at 5.

³⁶ *Id.* at 1-2.

from the rest of the system controlled by MISO, of which Otter Tail is a transmission owning member. Otter Tail contends that this will leave it dependent on SPP transmission service, at pancaked inter-RTO rates, in order to reach other areas of MISO. Otter Tail further argues that it will be forced to substantially alter its normal system configuration to eliminate as many scenarios as possible where Otter Tail load could be switched into SPP. Otter Tail requests that the Commission condition the inclusion of Central Power's facilities under the SPP Tariff on SPP and Central Power adopting a solution to hold Otter Tail harmless from the financial and operational impacts caused by Central Power's decision to join SPP.³⁷

24. Otter Tail also requests that the Commission direct SPP to allow Otter Tail to amend its network integration transmission service agreement to reflect the outcome of this proceeding. Otter Tail states that it filed a network integration transmission service application for service on Central Power facilities, but that it was compelled to submit that application on its best guess as to which facilities would be placed under the SPP Tariff because Otter Tail did not receive a list of such facilities until the morning the application was due. Otter Tail asserts that it will not have certainty as to which Otter Tail load will need to take service from SPP until resolution of this proceeding and therefore it is possible that the points of delivery listed in Otter Tail's agreement will no longer be accurate. Accordingly, Otter Tail asks that the Commission direct SPP to allow Otter Tail to amend its network integration transmission service agreement to reflect the outcome of this proceeding.³⁸

25. Western supports Central Power joining SPP, including integration of its eligible transmission facilities into SPP, but asserts that there is a lack of detail in the filing as to which Central Power facilities are proposed to be included in its revenue requirement and the basis upon which Central Power's transmission facilities are qualified under Attachment AI of the SPP Tariff. Western specifically notes that certain components that make up a substation bus may not qualify under Attachment AI and the lack of detail provided makes it impossible for Western to determine whether all of the Central Power transmission facilities to be transferred to the functional control of SPP qualify under Attachment AI of the SPP Tariff.³⁹

26. Missouri River, Minnesota Commission, and North Dakota Commission argue that SPP's filing fails to include key data, information, and explanations that are

³⁷ *Id.* at 16-25.

³⁸ *Id.* at 25-27.

³⁹ Western Comments at 5-6.

necessary for the proposed formula rate to be approved. Missouri River provides a non-exhaustive list of information that it asserts Central Power should supply and states that it reserves the right to raise additional issues. Missouri River also requests that the Commission schedule an initial settlement conference.⁴⁰

27. AECC requests that the Commission order MISO and SPP to eliminate rate pancaking for transactions that cross the seam between the two RTOs and to modify their joint planning process to specifically address the needs of entities that must serve load on both sides of the MISO-SPP seam.⁴¹

28. MISO does not protest SPP's filing or the planned integration of Central Power into SPP, but it states that it agrees with several of the concerns expressed in Otter Tail's protest. MISO notes that when Otter Tail decided to join an RTO, but Central Power declined to do so, MISO treated Central Power as being out of the energy markets, which resulted in Central Power not being subject to any transmission or market charges by MISO even though some Central Power load could not be adequately served but for the use of the Otter Tail/MISO transmission facilities. MISO asserts that a similar, reciprocal, remedy would not be unreasonable following Central Power's decision to join an RTO.⁴² MISO argues that the Commission should require MISO and SPP to develop a seams solution for Central Power's integration that does not penalize either party because of their respective RTO choices. While MISO and SPP have a Joint Operating Agreement, MISO explains that substantial portions of the Central Power and Otter Tail facilities are lower voltage facilities that would likely not fall within the Joint Operating Agreement provisions. MISO asserts that MISO and SPP should agree to study the anticipated change in operations that may occur after Central Power's integration into the SPP markets to ensure that further RTO coordination is not necessary.⁴³

29. Minnesota Commission, South Dakota Commission, and North Dakota Commission support Otter Tail's protest and its request that the Commission require SPP and Central Power to hold Otter Tail and its native load customers harmless from the financial and operational impacts of Central Power's integration into SPP. Minnesota Commission, South Dakota Commission, and North Dakota Commission also urge the

⁴⁰ Missouri River Comments at 3-6; Minnesota Commission Comments at 3; North Dakota Commission Comments at 3.

⁴¹ AECC Comments at 7.

⁴² MISO Comments at 4-5.

⁴³ *Id.* at 6-7.

Commission to determine that SPP's proposed Tariff revisions will not become effective until at least 60 days after Central Power or SPP provide additional information demonstrating that the facilities identified by Central Power are eligible for rolled-in rate treatment.⁴⁴

2. Answers

30. SPP requests that the Commission reject Otter Tail's and AECC's inter-RTO pancaking concerns or find that such concerns are outside the scope of this proceeding.⁴⁵ SPP asserts that the Commission has no general policy against multiple transmission service charges where transactions are between transmission providers, including MISO and SPP. SPP states that the Commission prohibits pancaked rates charged by transmission owners that join the same RTO – intra-RTO rates,⁴⁶ but the Commission has found that separate inter-RTO transmission charges are permissible.⁴⁷ SPP asserts that in a recent proceeding, the Commission allowed consideration at hearing of whether new pancaked rates should be mitigated under the limited circumstances of joint ownership and joint planning, but those limited circumstances do not apply here because there are no transmission facilities that are jointly owned by Central Power and Otter Tail. SPP argues that if Otter Tail is interested in mitigating its SPP transmission charges, it should seek SPP Tariff section 30.9 credits, which it may apply for without becoming an SPP transmission owner.⁴⁸

31. SPP asserts that AECC will not be affected by Central Power's membership as an SPP transmission owner because AECC is not located within SPP pricing Zone 19. SPP also argues that this docket is not the appropriate forum in which to raise AECC's concerns regarding pancaked rates.⁴⁹ According to SPP, the Commission has stated that AECC's concerns regarding the perpetuation of pancaked rates between MISO and SPP

⁴⁴ Minnesota Commission Comments at 1-3; South Dakota Commission Comments at 1-3; North Dakota Commission Comments at 1-3.

⁴⁵ SPP Answer at 9.

⁴⁶ *Id.* at 4-5.

⁴⁷ *Id.* at 6-7 (citing *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,051, at P 52 (2015)).

⁴⁸ *Id.* at 7-8.

⁴⁹ *Id.* at 8.

are most appropriately addressed in certain ongoing proceedings related to rates and charges associated with the integration of the Entergy Operating Companies into MISO.⁵⁰

32. SPP asserts that Otter Tail's argument that it should be held harmless from any impacts associated with Central Power's integration into SPP is inconsistent with Commission precedent. SPP argues that, while the Commission required a hold harmless provision as a condition of entities joining an RTO in one situation, in every subsequent proceeding involving entities joining or withdrawing from RTOs, the Commission has rejected attempts to require transmission providers to include hold harmless provisions in their tariffs and agreements. SPP contends that MISO's argument that SPP should treat Otter Tail in a manner similar to MISO's treatment of Central Power when Otter Tail integrated into MISO is not compelling because that voluntary agreement between MISO, Otter Tail, and Central Power is not precedent in this case and has no relation to Commission policy. SPP states that the Joint Operating Agreement between SPP and MISO addresses seams issues between SPP and MISO and that even MISO recognizes that the appropriate mechanism to address these seams-related issues is through a joint operating agreement.⁵¹

33. SPP argues that the operational and reliability issues and SPP and MISO seams issues raised by Otter Tail in this proceeding have already been addressed in Docket Nos. ER14-2850-000 and ER14-2851-000 through an uncontested settlement pending certification to the Commission for approval. SPP asserts that Otter Tail should not be permitted to re-litigate these issues.⁵² SPP also contends that Otter Tail should not be permitted to unilaterally amend its network integration transmission service agreement. SPP asserts that Otter Tail's argument that it did not know which of the Central Power facilities it would use is a non-sequitur because the agreement does not describe specific transmission facilities over which network service is provided. SPP also states that Otter Tail has not yet executed the agreement and therefore would be better served by contacting SPP to discuss changes to the application before it executes the agreement.⁵³

⁵⁰ *Id.* at 8-9 (citing, e.g., *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 171 (2013); *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,244, at PP 37-40, 46 (2013); *reh'g denied*, 148 FERC ¶ 61,094, at PP 9-10, 12 (2014); *Sw. Power Pool, Inc., et al.*, 150 FERC ¶ 61,093, at PP 167-68, 175 (2015); *So. Company Services, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,026, at PP 81-82 (2015)).

⁵¹ *Id.* at 9-11.

⁵² *Id.* at 13-17.

⁵³ *Id.* at 18-19.

34. Central Power argues that, contrary to the assertions of Otter Tail and Missouri River, it has provided adequate support to justify its formula rate. Central Power states that its proposed implementation protocols require that each input to the formula rate be either taken directly from RUS Form No. 12 or reconcilable to RUS Form No. 12 and that SPP will post the RUS Form No. 12 for each rate year on its website to ensure it is easily accessible to interested parties. Central Power acknowledges that its RUS Form No. 12 was not posted on the SPP website contemporaneously with the October 30 Filing, but states that it has since rectified that oversight.⁵⁴

35. Central Power also asserts that it has provided adequate support to justify the rolled-in treatment of the facilities to be transferred to SPP's functional control and included in its revenue requirement. Central Power states that it is unaware of any Commission requirement to provide a one-line diagram or transmission geographic map to show the facilities being included under the SPP Tariff and how they interconnect with the rest of the SPP transmission system to satisfy its burden of proof as suggested by Otter Tail⁵⁵ Central Power further argues that, contrary to the assertions of Otter Tail and AECC, payment for service over more than one RTO's transmission systems is just and reasonable.⁵⁶

36. In its answer to the answers, Otter Tail argues that, contrary to SPP and Central Power's answers, the Commission excluded all the rate-pancaking issues that Otter Tail raised in its protest here from the scope of the integrated system parties integration proceeding in Docket Nos. ER14-2850-000 and ER14-2851-000, and on rehearing clarified that Otter Tail could raise those issues in that proceeding only to the extent they related to facilities that were jointly planned and owned with SPP facilities as they pertained to the integrated parties integration.⁵⁷ Otter Tail maintains that the settlement agreement filed in that proceeding, which is pending certification by the Commission, only resolved those issues that were set for hearing in that proceeding, and therefore did not and could not have resolved issues relating to the placement of Central Power facilities under the SPP Tariff.⁵⁸

⁵⁴ Central Power Answer at 3.

⁵⁵ *Id.* at 4-5.

⁵⁶ *Id.* at 7-9.

⁵⁷ Otter Tail Answer at 1-2, 5-6.

⁵⁸ *Id.* at 1-2, 6-7.

37. In its answer to Otter Tail's answer, SPP asserts that the non-formula rate issues that Otter Tail raises in this proceeding were already addressed in the settlement agreement filed in the integrated system parties integration proceeding in Docket Nos. ER14-2850-000 and ER14-2851-000. SPP argues that Otter Tail misrepresents the transmission cost impact resulting from having to take and pay for SPP transmission service following Central Power's membership in SPP. SPP contends that, contrary to Otter Tail's claims, Otter Tail must pay for the use of Central Power's transmission facilities regardless of whether Central Power's costs are recovered through a MISO or SPP zonal rate. SPP also reiterates that, because none of Central Power's transmission facilities are jointly owned with Otter Tail, Otter Tail should not be permitted to address inter-RTO rate pancaking in hearing or at settlement.⁵⁹

C. Standard of Review

38. 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).⁶⁰ 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."⁶¹ 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."⁶² Subsequently, the court upheld the Commission's decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such as Vernon) to a

⁵⁹ SPP Answer to Otter Tail Answer at 2-5.

⁶⁰ 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)).

⁶¹ *Id.* P 44.

⁶² *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d at 1117).

full section 205 review is “the only way to ensure that CAISO’s rate is just and reasonable.”⁶³

39. 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.⁶⁴ The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”⁶⁵

40. Therefore, while Central Power 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 Central Power.⁶⁶ To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

41. Furthermore, Central Power is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.⁶⁷ However, we note that Central Power 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 Central Power’s actual short-term debt costs, capped at the Commission interest rate.⁶⁸

⁶³ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

⁶⁴ *Id.* at 673-74.

⁶⁵ *Id.* at 674.

⁶⁶ *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

⁶⁷ *Id.* P 41.

⁶⁸ SPP Transmittal at 9-10 & n.36; Ex. No. SPP-1 Direct Testimony of Thomas L. Meland at 7.

D. Commission Determination

1. RTO Participation Adder

42. As discussed below, we conditionally grant Central Power'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.⁶⁹ 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.⁷⁰ The Commission subsequently issued Order No. 679,⁷¹ which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

43. We find that, as conditioned below, Central Power's requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.⁷² 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,⁷³ and subject

⁶⁹ 16 U.S.C. § 824s(a), (b) (2012).

⁷⁰ *Id.*

⁷¹ *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).

⁷² *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).

⁷³ 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. Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297. 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).

to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis,⁷⁴ as may be determined in the hearing and settlement procedures ordered below. Further, our approval of this incentive is conditioned on Central Power's continuing membership in SPP.

2. Hearing and Settlement

44. We find that, except for the 50 basis point adder and the issues addressed below, SPP's proposed Tariff revisions filed on behalf of Central Power 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.

45. Our preliminary analysis indicates that SPP's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Tariff revisions, effective January 1, 2016, as requested, subject to refund, and set them for hearing and settlement judge procedures.

46. We will accept Central Power's commitment to provide refunds, with interest, as of January 1, 2016. Central Power is not subject to Commission-imposed refund obligations under section 205 of the FPA and the Commission has previously accepted commitments by non-jurisdictional transmission owners that they will refund the difference between the proposed rate and the rate ultimately determined by the Commission to be just and reasonable.⁷⁵

47. We decline to impose a hold harmless condition and similarly reject the request to address rate pancaking that results from Central Power's membership in SPP. Separate inter-RTO transmission charges are consistent with Commission precedent, which permits RTOs to collect transmission charges from a load-serving entity for every transmission system that the load-serving entity uses.⁷⁶ However, to the extent that Otter

⁷⁴ *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).

⁷⁵ *See, e.g., Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

⁷⁶ *See Sw. Power Pool, Inc.* 153 FERC ¶ 61,051 at P 52.

Tail has facilities that are highly integrated with facilities in the expanded SPP transmission system as a result of joint planning and ownership, and is concerned that the integration of Central Power into SPP will introduce duplicative or pancaked rates that did not previously exist for use of such jointly planned and owned facilities, Otter Tail may address in the hearing and settlement judge procedures whether any provision is needed in its service agreement with SPP to mitigate such impacts in order to ensure just and reasonable rates. In addition, we recognize that many utilities in the area have facilities that are highly integrated with each other, that these arrangements may need to be reflected in their service agreements, and that their service agreements may need to reflect transmission facilities credits under section 30.9 of the Tariff.⁷⁷ Accordingly, the parties may raise in the hearing and settlement judge procedures the issue of transmission facilities credits under section 30.9 as a way to receive recognition of the integrated facilities that they contribute after the integration of Central Power into SPP.

48. 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.⁷⁸ 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.⁷⁹ 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.

49. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because Central Power 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

⁷⁷ *See id.* P 55.

⁷⁸ 18 C.F.R. § 385.603 (2015).

⁷⁹ 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>).

the extent that parties at the hearing can show the relevance of additional information needed to evaluate the proposal, the Administrative Law Judge can provide for appropriate discovery of such information.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted for filing, to become effective January 1, 2016, as requested, subject to refund, as discussed in the body of the order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of SPP's proposed Tariff revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.