

154 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER16-791-000

ORDER ACCEPTING AND SUSPENDING IN PART, AND REJECTING IN PART,
TARIFF REVISIONS AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued March 25, 2016)

1. On January 27, 2016, Southwest Power Pool, Inc. (SPP) filed revisions to its Open Access Transmission Tariff (Tariff) under section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations.² The proposed Tariff revisions govern the distribution of revenues (Settlement Revenues) received by SPP from Midcontinent Independent System Operator, Inc. (MISO) and NRG Energy, Inc. (NRG) under a Settlement Agreement accepted by the Commission in Docket No. ER14-1174-000, *et al.*³ In this order, we accept in part, and reject in part, SPP's proposed revisions. With respect to the proposed revisions that we accept, we also suspend those provisions for a nominal period, to become effective February 1, 2016, subject to refund. We further establish hearing and settlement judge procedures, as discussed below.

I. Background

2. In 2004, the Commission accepted a Joint Operating Agreement to address power flows and improve seams management between MISO and SPP (MISO-SPP JOA).⁴

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,021 (2016) (Settlement Order).

⁴ *See Sw. Power Pool, Inc.*, 109 FERC ¶ 61,008 (2004), *reh'g denied*, 110 FERC ¶ 61,031 (2005).

3. On January 28, 2014, SPP filed a complaint against MISO under sections 206 and 306 of the FPA⁵ in which it sought a Commission order finding that MISO was violating the MISO-SPP JOA and the SPP Tariff, and requiring MISO to compensate SPP under the Tariff for MISO's use of the SPP transmission system for real-time energy transfers between MISO Midwest⁶ and MISO South⁷ following the integration of the Entergy Operating Companies⁸ into MISO on December 19, 2013 (SPP Complaint).⁹
4. Concurrent with the SPP Complaint, SPP filed an unexecuted service agreement to assess MISO charges for MISO's use of the SPP transmission system as a result of MISO's real-time energy transfers between the MISO Midwest and MISO South regions (SPP Service Agreement).¹⁰
5. On February 18, 2014, MISO filed a complaint against SPP under sections 206 and 306 of the FPA, alleging that the SPP Complaint and SPP's filing of the SPP Service Agreement violated the MISO-SPP JOA and SPP's Tariff, and seeking a Commission order requiring SPP to cease sending invoices to MISO and to nullify the invoices already sent (MISO Complaint).¹¹

⁵ 16 U.S.C. §§ 824e, 825e (2012).

⁶ MISO Midwest represents the historical MISO footprint.

⁷ MISO South represents the integration of Entergy, along with Cleco Power, Lafayette Utilities Systems, East Texas Power Cooperatives and South Mississippi Electric Power Association, into MISO effective December 19, 2013.

⁸ Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

⁹ Southwest Power Pool, Inc., Complaint and Request for Fast Track Processing and Motion to Consolidate, Docket No. EL14-21-000 (filed Jan. 28, 2014).

¹⁰ Southwest Power Pool, Inc., Submission of Unexecuted Non-Firm Point-to-Point Transmission Service Agreement, Docket No. ER14-1174-000 (filed Jan. 28, 2014).

¹¹ Midcontinent Independent System Operator, Inc., Complaint and Motion to Consolidate, Docket No. EL14-30-000 (filed Feb. 18, 2014).

6. On March 28, 2014, the Commission issued an order¹² that, *inter alia*, addressed an opinion of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating and remanding Commission orders interpreting section 5.2 of the MISO-SPP JOA,¹³ the SPP Complaint, the SPP Service Agreement, and the MISO Complaint, and the MISO-SPP JOA Remand. In the MISO-SPP JOA Order, the Commission accepted for filing the SPP Service Agreement, suspended it for a nominal period, and made it effective January 29, 2014, subject to refund. In addition, the Commission consolidated the four proceedings and established hearing and settlement judge procedures.

7. On October 13, 2015, the parties to the hearing and settlement judge procedures (Settling Parties)¹⁴ filed the Settlement Agreement. The Settlement Agreement provides that beginning February 1, 2016, MISO will make payments to SPP and the Joint Parties as compensation for MISO's Available System Capacity Usage.¹⁵ In addition, the Settlement Agreement provides that MISO shall make retroactive settlement payments, totaling \$16 million to resolve all claims for compensation by SPP and the Joint Parties for the period beginning January 29, 2014 through January 31, 2016. Finally, the

¹² *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (MISO-SPP JOA Order).

¹³ *Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013). The D.C. Circuit remanded to the Commission its orders addressing the interpretation of section 5.2 of the MISO-SPP JOA which involves contract path capacity sharing.

¹⁴ The Settling Parties are SPP, MISO, Associated Electric Cooperative, Inc. (AECI), Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company, by and through their agent Southern Company Services, Inc. (collectively, Southern Companies), Tennessee Valley Authority (TVA), Louisville Gas and Electric Company and Kentucky Utilities Company (together, LG&E/KU), PowerSouth Energy Cooperative (PowerSouth), and NRG. The Settlement Agreement refers to AECI, Southern Companies, TVA, LG&E/KU, and PowerSouth as the Joint Parties.

¹⁵ Available System Capacity is defined as the transmission system capacity available for MISO intra-regional flows between the 1,000 MW contract path and an upper transfer limit. The Settlement Agreement provides that the upper limit of SPP and the Joint Parties' Available System Capacity is 3,000 MW for flows from MISO Midwest to MISO South and 2,500 MW for flows from MISO South to MISO Midwest. Settlement Agreement, Article II, Sections 2.1, 2.2 and Article VII, Section 7.1.

Settlement Agreement obligates NRG to make payments to SPP and the Joint Parties as consideration for SPP's and Joint Parties' agreement to recognize the flows associated with certain NRG transmission service reservations with MISO as firm. The Commission approved the Settlement Agreement on January 21, 2016.¹⁶

II. Proposed Tariff Revisions

8. SPP states that the Settlement Agreement distinguishes how Available System Capacity Usage is unique and different from the transmission service requirements contained in a party's tariff. SPP explains that the Settlement Agreement does not require any party to become a transmission customer of another party, and does not alter any requirements contained in a party's tariff. Additionally, SPP states that the Settlement Agreement outlines the terms and conditions for the Available System Capacity Usage and reflects the differences between Available System Capacity Usage and transmission service. SPP asserts that since Available System Capacity Usage is not a transmission service provided under a tariff, the Settlement Revenues are likewise not being collected pursuant to an existing SPP Tariff schedule such as Schedules 7 or 8 for point-to-point transmission service. SPP further explains that the methods used by the SPP Tariff to distribute revenues received under Schedules 7 or 8 are not applicable to the Settlement Revenues because those methods are dependent on having specific source and sink transaction information for the buyers and sellers of an energy transaction. Therefore, SPP states that the SPP Tariff currently does not provide a methodology for the distribution of the Settlement Revenues.¹⁷

9. SPP states that its proposed Tariff revisions implement a distribution methodology for the Settlement Revenues using a new Attachment AU and changes to Part III, sections 34.1, 34.2, and 34.3, Schedule 11, and Attachments H, L, and T of the SPP Tariff. SPP further states that the proposed Tariff revisions prescribe the procedures by

¹⁶ Settlement Order, 154 FERC ¶ 61,021. In response to a motion filed by the Settling Parties, the Chief Administrative Law Judge made certain provisions of the Settlement Agreement effective on February 1, 2016 pending Commission deliberations on the approval of the Settlement Agreement. *Sw. Power Pool, Inc.*, 153 FERC ¶ 63,006 (2015).

¹⁷ SPP Tariff, Attachment L, Treatment of Revenues, of the SPP Tariff governs the distribution of revenues received for services under the Tariff. Attachment L provides that revenues from point-to-point transmission service where the source and sink are not in the same zone are distributed 50 percent in proportion to each transmission owner's share of the zonal revenue requirements and 50 percent on the basis of load flows, i.e., in proportion to the MW-mile impacts incurred by each transmission owner.

which SPP will distribute and allocate Settlement Revenues and how the revenues will be reflected in the rates of the SPP Transmission Owners. SPP asserts that approval of the proposed Tariff revisions will facilitate implementation of the settlement negotiated by and between SPP, MISO, NRG, the Joint Parties, and other affected parties, and will give effect to the uncontested resolution of a dispute first presented to the Commission nearly five years ago.¹⁸

Attachment AU

10. Under proposed Attachment AU, SPP will distribute to its transmission owners the Settlement Revenues received by SPP under the Settlement Agreement based on the estimated magnitude of flow impacts of MISO's market dispatch on the transmission owners' facilities. SPP states that this method is consistent with the flow-based assessment of charges for Available System Capacity Usage under the Settlement Agreement. SPP explains that the components of distributable Settlement Revenues are specified in section II.A of Attachment AU which include: (1) revenues received from MISO by SPP for the period of January 29, 2014 through January 31, 2016, as described in section 2.6.1 of the Settlement Agreement (Compensation Phase I); (2) revenues received from MISO by SPP for the period of February 1, 2016 through January 31, 2017, as described in section 26.2 of the Settlement Agreement (Compensation Phase II); (3) revenues received from MISO by SPP for all years (with each such year extending from February 1 to January 31 of the following calendar year) after January 31, 2017, as described in section 2.6.3 of the Settlement Agreement (Compensation Phase III); and (4) all revenues received by SPP from NRG in accordance with Article IV of the Settlement Agreement.¹⁹

11. SPP states that at least once a year, SPP will perform a MW-mile analysis to determine estimated flow impacts of MISO's market dispatch across the SPP system.²⁰ SPP states that MW-mile values will be calculated by modeling a power transfer between MISO Midwest and MISO South subregions and taking the difference between the pre-transfer and post-transfer MW amounts on each transmission line, and multiplying that difference by the number of miles of the transmission line. The MW-mile values for each line owned by a transmission owner will then be summed to yield a transmission

¹⁸ SPP Transmittal at 7-8.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9, Attachment AU, section III.A.2.

owner's MW-mile impact. The sum of all transmission owners' MW-mile impacts equals the total SPP system MW-mile impacts.²¹

12. SPP explains that the Settlement Revenues will be distributed based on the ratio of each transmission owner's MW-mile impact to the total SPP system MW-mile impacts. SPP states that under the methodology set forth in Attachment AU, transmission owners with facilities most directly impacted by these flows will receive a proportionately greater share of Settlement Revenues than those transmission owners whose facilities are less impacted. Distributions will be made monthly and subject to true-up or refund consistent with the terms of the Settlement Agreement.²²

13. SPP also proposes two adjustments to the amount of Settlement Revenues available for distribution. First, SPP proposes a one-time payment of \$456,000 from SPP to certain SPP transmission owners "as reimbursement of legal expenses incurred by those SPP Transmission Owners in connection with the negotiation of the JOA Settlement Agreement."²³ SPP explains that along with SPP, these SPP Transmission Owners dedicated significant time and legal resources to the negotiations and drafting efforts leading to the settlement for the benefit of all SPP transmission customers. SPP argues that this reimbursement is appropriate because only a subset of the SPP Transmission Owners expended financial and human resources to negotiate the Settlement Agreement, and this one-time offset reflects actual invoiced amounts paid by these SPP Transmission Owners to their outside legal counsel.²⁴ In addition, SPP states that approval of this adjustment is consistent with precedent generally endorsing cost causation and "beneficiary pays" concepts.²⁵

14. The second adjustment is for \$250,000 per year to cover SPP's estimated incremental costs of administering the compensation and transfer limit provisions of the Settlement Agreement. SPP explains that expenses to administer the SPP Tariff are recovered from transmission customers who take transmission service under the SPP Tariff through the assessment of Schedule 1-A charges. However, according to SPP, the

²¹ *Id.* at 9.

²² *Id.*

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ *Id.* n.38 (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)).

Settlement Agreement does not constitute transmission service, so without this adjustment, SPP states that its expenses to administer the Settlement Agreement would have to be recovered from SPP's transmission customers through increased Schedule 1-A charges. This adjustment will instead be applied against SPP's annual operating costs which will prevent Schedule 1-A charges from increasing for all SPP transmission customers as a result of the Settlement Agreement.²⁶

15. SPP explains that this adjustment will occur on the first month in which such revenues are received in each calendar year and will cover functions including, but not limited to the following: verifying calculations of Available System Capacity Usage; conducting periodic MW-mile flow impact analysis, distributing Settlement Revenues; monitoring compliance with regional directional transfer limits; verifying increases or decreases in MISO contract path capacity; and staffing/participating in the operating committee prescribed by the Settlement Agreement.²⁷

16. SPP further states that Attachment AU specifies that the Settlement Revenues distributed to transmission owners will result in a reduction of transmission service charges under the SPP Tariff in the same manner as revenues associated with point-to-point transmission service. SPP explains that Settlement Revenues distributed to transmission owners will be subject to Part III, sections 34.1, 34.2, and 34.3 and section II.A of Schedule 11 of the Tariff, as applicable. To facilitate the application of these Tariff provisions, the transmission provider shall allocate the applicable revenue distributed to each transmission owner in proportion to the amount of Schedules 7, 8, and 11 revenues that each transmission owner received for point-to-point transmission service in the previous calendar year, with such proportion of revenues being determined in January of the current year. SPP states that for each transmission owner utilizing a formula rate, the resulting allocated revenues are to be treated consistently with the treatment of Schedules 7, 8, and 11 point-to-point transmission service revenues under its formula rate. SPP further states that it proposes revisions to Part III, sections 34.1, 34.2, and 34.3, Schedule 11 and Attachments H, L and T of the SPP Tariff.²⁸

17. SPP requests that the Commission issue an order before March 1, 2016 and accept the proposed Tariff revisions effective February 1, 2016. Additionally, SPP requests a waiver of the Commission's prior notice requirement because the proposed effective date is less than 60 days after filing.

²⁶ *Id.* at 11.

²⁷ *Id.*

²⁸ *Id.* at 11-12.

III. Notice of Filing and Responsive Pleadings

18. Notice of SPP's filing was published in the *Federal Register*, 81 Fed. Reg. 5728 (2016), with interventions and protests due on or before February 17, 2016. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Westar Energy, Inc.; American Electric Power Service Corporation; Oklahoma Gas & Electric Company; Heartland Consumers Power District; The Empire District Electric Company; Nebraska Public Power District; Sunflower Electric Power Corporation; Omaha Public Power District; Mid-Kansas Electric Company, LLC; City of Springfield, Missouri; Western Area Power Administration; Basin Electric Power Cooperative; Xcel Energy Services, Inc. on behalf of Southwestern Public Services Company; and Golden Spread Electric Cooperative, Inc. (Golden Spread) filed timely motions to intervene.
19. The Arkansas Public Service Commission and the Missouri Public Service Commission filed notices of interventions.
20. Southwestern Power Administration (Southwestern) filed a motion to intervene and comments.
21. The City of Lincoln, Nebraska (Lincoln) and Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC, Buckeye Wind Energy LLC and Bethel Wind Farm LLC (collectively, SPP Generators) filed motions to intervene and protests.
22. Indicated Southwest Power Pool Transmission Owners (Indicated SPP Transmission Owners)²⁹ filed comments in support.
23. Western Farmers Electric Cooperative filed a motion to intervene out-of-time.
24. SPP filed an answer to the comments and protests. Golden Spread filed an answer to the Indicated SPP Transmission Owners' comments, Lincoln's protest and SPP's answer.

²⁹ For purposes of this filing, the Indicated SPP Transmission Owners are Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; American Electric Power Service Corporation, on behalf of its affiliates, Public Service Company of Oklahoma and Southwestern Electric Power Company; City Utilities of Springfield, Missouri; The Empire District Electric Company; Nebraska Public Power District; Oklahoma Gas & Electric Company; Omaha Public Power District; Sunflower Electric Power Corporation; Mid-Kansas Electric Company; and Westar Energy, Inc.

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁰ 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,³¹ the Commission will accept Western Farmers Electric Cooperative'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.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority.³² We will accept the answers filed by SPP and Golden Spread because they have provided information that has assisted us in our decision-making process.

B. Substantive Issues

1. Comments in Support

27. Southwestern states that it supports SPP's proposed Tariff revisions to accommodate the distribution of the Settlement Revenues. Southwestern states that a flow study determined that certain Southwestern facilities were in fact used by the settling entities and that it agrees with the flow based calculation method to distribute the Settlement Revenues. Southwestern requests that the Commission recognize that it should receive a distribution of the Settlement Revenues for this reason.³³

28. Indicated SPP Transmission Owners state that because Available System Capacity Usage by MISO is not provided under any existing SPP Tariff rate schedule, the existing revenue distribution methodology was not applicable and SPP had to come up with a new methodology. Indicated SPP Transmission Owners state that service under the Settlement Agreement is not the same as point-to-point transmission service provided

³⁰ 18 C.F.R. § 385.214 (2015).

³¹ *Id.* § 385.214(d).

³² *Id.* § 385.213(a)(2).

³³ Southwestern Comments at 5-6.

under the SPP Tariff for several reasons including the following: (1) Available System Capacity Usage is not scheduled or reserved whereas point-to-point transmission service is scheduled and reserved.; (2) point-to-point transmission service is charged based on reservations regardless of the amount actually reserved, but Available System Capacity Usage is charged via a formula designed to measure actual usage of the SPP transmission system; (3) point-to-point transmission service is from a point-of-receipt to a point-of-delivery on the SPP transmission system, but Available System Capacity Usage is determined by the flow impact of MISO market dispatch between the MISO Midwest and MISO South regions; and (4) MISO could not meet the scheduling requirements of typical point-to-point transmission service and maintain the nature of the flow-based service it has sought.³⁴

29. Indicated SPP Transmission Owners state that the charges for this flow-based service reflect the type of usage because MISO is charged for actual market flows that exceed their own transmission capacity over a period of time.³⁵ Indicated SPP Transmission Owners also state that the flow-based charges can increase or decrease if MISO's transmission capability between MISO Midwest and MISO South regions changes. Indicated SPP Transmission Owners contend that if Available System Capacity Usage can be called a service at all, it is a residual form of service. Available System Capacity Usage is provided only to the extent that MISO's flows can be accommodated, in real time.³⁶ Indicated SPP Transmission Owners argue that the proposed flow-based methodology of revenue distribution in Attachment AU is reasonable because it properly parallels Available System Capacity Usage rate design, which will affect the transmission systems of some transmission owners more than others.³⁷

2. Protests

30. Lincoln states that the proposed methodology of revenue distribution is unnecessary because the SPP Tariff already has a methodology in place for revenue distribution for similar service.³⁸ Lincoln adds that the proposed departure from SPP's

³⁴ Indicated SPP Transmission Owners Comments at 7-8.

³⁵ *Id.* at 8-9 (citing Settlement Agreement, Attachment A – Compensation Manual at 5-6).

³⁶ *Id.* at 9-10.

³⁷ *Id.* at 10.

³⁸ Lincoln Protest at 1.

existing revenue allocation methodology for similar service to distribute such revenues on a 100 percent flow basis would disadvantage some SPP Transmission Owners, like Lincoln. Lincoln notes that SPP does not claim that those in proximity to the MISO-SPP seam would incur greater expense that justifies the increased revenue distribution.³⁹ According to Lincoln, SPP has failed to demonstrate what additional costs these transmission owners would incur that justify an increased revenue distribution to them over others. Therefore, Lincoln requests that the Commission require SPP to allocate the MISO revenues consistent with SPP's existing distribution methodology for non-firm point-to-point service revenues so that all transmission owners will be justly compensated for MISO's use of the SPP transmission system.

31. Lincoln contends that even though MISO's use of Available System Capacity Usage is not reserved under the SPP Tariff, the service is effectively non-firm transmission service through the SPP transmission system, connecting MISO Midwest and MISO South. Lincoln notes that Available System Capacity Usage service allows MISO to "use on a non-firm, as-available basis, available system transmission capacity of other Parties' systems."⁴⁰ In fact, Lincoln notes that when SPP filed the SPP Service Agreement for MISO, SPP characterized the service that MISO is using as Schedule 8, Non-Firm Point-to-Point Transmission Service. Lincoln contends that while the distinction between service provided under the Settlement Agreement and transmission service provided under the SPP Tariff may have been material for purposes of reaching settlement,⁴¹ it is not material for purposes of allocating revenues within SPP among the SPP transmission owners.⁴²

32. Lincoln states that even if Attachment AU is accepted it should not apply to payments for past periods because that would constitute retroactive ratemaking.⁴³

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 6 (citing Settlement Agreement at 2.1).

⁴¹ Lincoln states that Available System Capacity Usage service is not considered a Tariff service under the MISO-SPP JOA because MISO objected to being called a Tariff customer. *Id.* (citing MISO, Docket No. ER14-1174, Motion to Intervene and Protest, at 11 (Feb. 18, 2014)).

⁴² In addition to being non-firm and subject to availability, Lincoln notes that both services are also the first to be curtailed. *Id.*

⁴³ *Id.* n.29 (citing *Associated Gas Distrib. v. FERC*, 893 F.2d 349 (D.C. Cir. 1989)).

Instead, Lincoln argues that SPP should use the distribution methodology in Attachment L for any past periods.

33. SPP Generators argue that SPP's proposal would circumvent the Attachment Z2 process which provides a share of the SPP revenues to sponsors of upgrades when those upgrades are subsequently used by others. SPP Generators add that SPP cannot argue that the energy transfers are a usage for the system that is somehow materially different than a transmission service. SPP Generators claim that SPP's proposal is unduly discriminatory since it excludes payments to sponsors of upgrades when those upgrades are used to provide service under the Tariff.⁴⁴

3. Answers

a. SPP

34. In response to Southwestern, SPP states that it anticipates distributing funds to Southwestern under its proposed methodology.

35. In response to Lincoln, SPP asserts that because it is not providing transmission service and neither NRG nor MISO is a transmission customer under the SPP Tariff, the provisions of Attachment L are not applicable. Instead, SPP states that it is providing "Available System Capacity Usage" service which allows MISO to use "on a non-firm, as-available basis, available system capacity usage" on the SPP system.⁴⁵ SPP states that under the Settlement Agreement "[Available System Capacity Usage] shall not alter any requirements contained within any Party's respective [Tariff] or requirements by and between third parties for the provision of transmission service."⁴⁶ SPP states that while it did file a non-firm point-to-point service agreement in Docket No. ER14-1174-000, *et al.*, the ultimate outcome of the proceeding was that MISO will use Available System Capacity Usage service and not transmission service. Additionally, as part of the Settlement Agreement, SPP withdrew the service agreement and agreed to no rebillings, refunds, or resettlements of any kind. Thus, SPP asserts that at no time did MISO actually take transmission service.

⁴⁴ SPP Generators Protest at 5-7.

⁴⁵ SPP Answer at 3-6 (citing Settlement Agreement, at Article II, section 2.1).

⁴⁶ *Id.* at 4 (quoting Settlement Agreement at Art. II, section 2.4).

36. Likewise, SPP asserts that it is not providing transmission service to NRG.⁴⁷ SPP states that, as provided by the Settlement Agreement, it simply agreed not to dispute the validity or effectiveness of the service MISO provided to NRG. SPP states that, in exchange for that agreement, NRG will pay compensation to SPP.

37. With regard to Lincoln's retroactive ratemaking argument, SPP states that Lincoln's reference to precedent is misplaced because according to SPP, the precedent cited by Lincoln merely required notice to be provided to shippers so that they would have had the opportunity to change their behavior.⁴⁸ SPP argues that these concerns about notice are irrelevant and inapplicable in this proceeding because SPP Transmission Owners, including Lincoln, could not have behaved any differently during the past period to gain a larger share of the proceeds, regardless of whether Attachment L or the proposed Attachment AU is used to distribute the Settlement Revenues.

38. In response to the SPP Generators, SPP states that Attachment Z2 of the SPP Tariff is not applicable to the revenues that SPP receives under the Settlement Agreement.⁴⁹ SPP argues that because the service provided under the Settlement Agreement does not constitute transmission service and Attachment Z2 makes multiple references to transmission service, upgrade sponsors are not eligible for credits under Attachment Z2 from the Settlement Revenues.

b. Golden Spread

39. Golden Spread states that it supports Lincoln's protest. Golden Spread argues that the Settlement Agreement does not address and is not binding on how the Settlement Revenues will be distributed among SPP transmission owners, and ultimately, SPP transmission customers. Golden Spread agrees with Lincoln that Attachment L provides the proper revenue distribution mechanism and that the Commission should order SPP to distribute those revenues pursuant to the same revenue distribution mechanism established by Attachment L.⁵⁰

⁴⁷ *Id.* at 5.

⁴⁸ *Id.* at 6-7.

⁴⁹ *Id.* at 7-8.

⁵⁰ Golden Spread Answer at 3-4.

40. In addition, Golden Spread states that it supports overall SPP's agreement to settle the SPP Complaint and that it relied on SPP to represent SPP's interests as a whole, including the interests of all of SPP's transmission owners and transmission customers, in the complaint proceeding and negotiations leading to the Settlement Agreement. However, Golden Spread adds that it "did not perceive it had an interest sufficiently distinct from SPP's to justify the resource commitment necessary for effective independent participation in the [SPP Complaint]"⁵¹ and that it "did monitor the progress of that proceeding and was kept apprised of developments through its participation in the SPP collaborative process."⁵²

41. Golden Spread states that it is troubled by the policy implications and precedent that may be established by SPP's agreement to pay certain SPP Transmission Owners' legal expenses for participation in the SPP Complaint. Golden Spread argues that there is no showing that the SPP as a whole or all its market participants received any benefit from the separate individual legal expenses incurred by those SPP Transmission Owners. According to Golden Spread, there is no support for such payment under cost causation and neither SPP as a whole, Golden Spread, nor any other SPP transmission customers can be said to have caused the legal expenses incurred by the participating SPP Transmission Owners.⁵³ It asserts that while the SPP Transmission Owners are free to seek recovery of any of the legal expenses they incur in their individual transmission rates, Golden Spread is not aware of any Commission general policy, precedent or rule that supports SPP's assumption of the certain SPP Transmission Owners' legal expenses for the SPP Complaint. According to Golden Spread, the authority SPP cited is inapposite because does not address a litigant's legal expenses but addresses "costs associated with the Midwest ISO Security Center, including capital costs and expenses, and the costs of administering the Tariff."⁵⁴ Golden Spread asserts that the payment of legal expenses reduces the revenues that would otherwise be distributed to all SPP Transmission Owners under Attachment L.⁵⁵

⁵¹ *Id.* at 4-5.

⁵² *Id.* at 5.

⁵³ *Id.* at 6.

⁵⁴ *Id.*

⁵⁵ *Id.* at 6-7.

4. Commission Determination

42. We find that SPP's proposed Tariff revisions raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that SPP's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, or unduly discriminatory or preferential. Therefore, except for SPP's proposed one-time payment of \$456,000 for reimbursement of legal expenses, as summarily decided below, we accept the proposed Tariff revisions, suspend them for a nominal period to become effective February 1, 2016, subject to refund, and set them for hearing and settlement judge procedures.

43. We find that SPP has not supported the reasonableness of the \$456,000 reimbursement of legal expenses to certain SPP transmission owners. SPP states that this reimbursement is appropriate because only a subset of the SPP Transmission Owners expended financial and human resources to negotiate the Settlement Agreement, and this one-time offset reflects actual invoiced amounts paid by these SPP Transmission Owners to their outside legal counsel. However, SPP has not provided any Commission precedent permitting a regional transmission organization to reimburse certain stakeholders for legal expenses nor has SPP shown that the transmission owners that incurred the legal expenses represented the interests of SPP and its transmission customers rather than their own interests. Accordingly, we reject SPP's proposed Tariff revisions that allocate a portion of the Settlement Revenues to certain SPP transmission owners to reimburse them for their legal expenses.

44. While we are setting SPP's remaining proposed revisions for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.⁵⁶ 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.⁵⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days

⁵⁶ 18 C.F.R. § 385.603 (2015).

⁵⁷ 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 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>).

of the date of this order 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 commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby rejected in part, as discussed in the body of this order.

(B) SPP's proposed Tariff revisions are hereby accepted in part, suspended for a nominal period, to become effective February 1, 2016, subject to refund, as discussed in the body of this order.

(C) 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 Federal Power Act (18 C.F.R., Chapter I), a hearing shall be held concerning SPP's proposed Tariff revisions (except for the proposed reimbursement of legal expenses). However, the hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (D) and (E) below.

(D) 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 a 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.

(E) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of 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.

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

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.