

156 FERC ¶ 61,020
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. ER16-1341-000

ORDER GRANTING WAIVER REQUEST

(Issued July 7, 2016)

1. On April 1, 2016, Southwest Power Pool, Inc. (SPP) submitted a request for waiver of certain provisions of SPP's Open Access Transmission Tariff (Tariff) necessary for the implementation of the revenue crediting process in Attachment Z2, under section 207(a)(5) of the Commission's Rules of Practice and Procedure.¹ We note that it has been eight years since the Commission accepted SPP's Tariff provisions to implement revenue crediting. In the intervening years, SPP has experienced multiple delays in implementing the crediting Tariff provisions. Upgrade sponsors who have been negatively affected by SPP's delay will finally, through this order, get the appropriate relief. We remind SPP of the need for transparency and timeliness when implementing Commission-accepted Tariff provisions, especially in matters that so directly impact market participants and customers and are completely under the control of SPP. In this order, we grant SPP's request for waiver of section 7.1, section IV.A of Attachment J, and section III.C of Attachment Z1 of its Tariff, as discussed below.

I. Background

2. In 2005, SPP added the Aggregate Transmission Service Study process to the Tariff in a new Attachment Z, including provisions for revenue credits.² Under Attachment Z, transmission customers paying for a directly assigned network upgrade

¹ 18 C.F.R. § 385.207(a)(5) (2015).

² *Sw. Power Pool, Inc.*, 111 FERC ¶ 61,118 (2005), *order on reh'g*, 112 FERC ¶ 61,319 (2005); *Sw. Power Pool, Inc.*, 110 FERC ¶ 61,028 (2005).

would receive credits for a portion of new transmission service using the facility with credits determined based upon the subsequent incremental use of the network upgrade. The Aggregate Transmission Service Study process determines what transmission system upgrades may be needed to accommodate long-term firm point-to-point and long-term firm network integration transmission service requests. Subsequently, SPP and its stakeholders determined that the process in Attachment Z lacked the specificity necessary to calculate revenue credits. Because of this, in 2008, SPP filed revisions to its Tariff to separate Attachment Z into two attachments, Attachment Z1 (Aggregate Transmission Service Study Procedures and Cost Allocation and Recovery for Service Upgrades) and Attachment Z2 (Revenue Crediting for Upgrades).³ In addition, the revisions filed in 2008 provided that revenue credits would be based on transmission service that could not be provided “but for” the existence of the Creditable Upgrade.⁴ SPP states that, although the 2008 revisions provided clarification on some points, the changes did not simplify the process. In July 2013, in Docket No. ER13-1914-000, SPP again revised its Tariff to refine the revenue crediting process.⁵

3. Attachment Z2 provides that a sponsored upgrade may become a Creditable Upgrade if SPP determines that the sponsored upgrade is needed as part of the transmission system.⁶ The directly assigned upgrade costs are recoverable, with interest, from customers taking new transmission service that could not have been provided “but for” the Creditable Upgrade, until the amount owed to the upgrade sponsor is zero.

³ Petition at 4 (citing Submission of Proposed Tariff Revisions of Southwest Power Pool, Inc., Docket No. ER08-746-000 (filed Mar. 28, 2008)).

⁴ A Creditable Upgrade is “any network upgrade which was paid for, in whole or part, through revenues collected from a transmission customer, network customer, or generation interconnection customer through directly assigned upgrade costs” SPP Tariff at Attachment Z2, section I.A.

⁵ Petition at 6 (citing Revisions to Clarify the Determination of Credits and Distribution of Credit Revenue for Creditable Upgrades of Southwest Power Pool, Inc., Docket No. ER13-1914-000 (filed July 9, 2013)).

⁶ *Id.* (citing SPP Tariff at Attachment Z2, section I.B).

4. SPP states that it has been delayed since 2008 in its implementation of revenue crediting.⁷ SPP notes that it has not collected credit payment obligations from transmission customers, is not currently holding any funds related to the revenue crediting process, and has not distributed credit payments to upgrade sponsors. SPP asserts that it intends to calculate the credit payment obligations dating back to 2008, the date of the first impact on a Creditable Upgrade for which credits needed to be determined under this process. SPP states that it will then collect the credit payment obligations due from transmission customers and distribute those revenues to upgrade sponsors accordingly.

5. According to SPP, the calculations for the revenue crediting process are extremely complex and SPP requires specialized software to process the voluminous amounts of data required for the calculations.⁸ SPP states that, in October 2012, it engaged a vendor to develop the necessary software with a target date of May 2014 for full implementation of the crediting process. However, SPP states that by late 2014, after numerous delays and problems with the software, SPP worked with the vendor to rewrite the system requirements. In early 2015, SPP determined that it was necessary to engage a new vendor, and SPP contracted with a new vendor in May 2015 with a goal of implementation in 2016. Currently, SPP anticipates that the software will be fully operational in the second quarter of 2016. Once the software is operational, SPP will begin processing the historical data in order to calculate the credit payment obligations due to upgrade sponsors for all eligible Creditable Upgrades. SPP anticipates that it will begin collecting those credit payments from the appropriate entities and processing payments to upgrade sponsors by the fourth quarter of 2016.⁹

II. Waiver Request

6. SPP seeks waiver of three provisions of its Tariff to allow it to implement the Attachment Z2 revenue crediting process “for the historical period commencing with the first impacts in 2008 that require credit calculation with the crediting software.”¹⁰ Specifically SPP requests waiver of: (1) the one-year billing adjustment limitation in section 7.1 of the Tariff to allow SPP to adjust payment obligations and revenue distributions that may be beyond the one-year limitation; (2) the requirement to reallocate

⁷ *Id.* at 8.

⁸ *Id.* at 7.

⁹ *Id.* at 19.

¹⁰ *Id.* at 9.

Balanced Portfolio¹¹ transfers in section IV.A of Attachment J to allow SPP to retain previous reallocations extending back to October 1, 2012; and (3) the posting deadline requirement associated with waiver of the Safe Harbor Cost Limit¹² for network upgrade costs in section III.C of Attachment Z1 to provide transmission customers with an opportunity to request a waiver of the Safe Harbor Cost Limit that should have been available to them had SPP not been delayed in implementing the revenue crediting process. SPP states that, in order to accommodate the process for waivers of the Safe Harbor Cost Limit and still meet the deadline goal of fourth quarter 2016, SPP must have Board of Directors action on any requests for waiver of the Safe Harbor Cost Limit in early June 2016. SPP requests that the Commission act on its Petition for waiver by May 31, 2016.

7. SPP states that it has not been collecting credit payment obligations from transmission customers or paying credits to upgrade sponsors other than in limited cases.¹³ SPP asserts that the credit payment obligations of point-to-point transmission service reservations that are dependent on Creditable Upgrades are partially or completely funded through revenue generated by the standard transmission service demand charges under Schedules 7, 8, and 11 of the Tariff. SPP contends that, because the revenue crediting settlement system has not yet been implemented, these revenues have not been paid to compensate upgrade sponsors. Instead, SPP avers that these revenues have been distributed to transmission owners under the transmission service revenue distribution provisions of Attachment L, sections II.C and III, which is the standard transmission settlement process.

¹¹ SPP's Balanced Portfolio is a set of transmission projects that provide economic benefits across the SPP region. Under SPP's Balanced Portfolio process, some portion of zonal transmission revenue requirements may be transferred between zones to ensure that all zones have at least a minimum benefit to cost ratio of one for the Balanced Portfolio. *See* SPP Tariff at Attachment J, section IV.A.

¹² The Safe Harbor Cost Limit provides that, if the cost of network upgrades required to grant a transmission customer's request for transmission service exceeds \$180,000/MW, then the excess costs will be directly assigned to the transmission customer unless the customer is granted a waiver of these costs from the SPP Board. *See id.* at Attachment J, section III.B. All eligible network upgrade costs below the Safe Harbor Cost Limit are Base Plan funded and receive rolled-in rate treatment.

¹³ These limited cases include crediting for economic upgrades sponsored by Redbud Energy, LP and Kansas City Power & Light Company in 2007. Petition at 8.

8. With regard to section 7.1 of the Tariff, which limits billing adjustments to one year after the final bill is issued, SPP states that waiver will allow it to collect credit payment obligations from transmission customers from the date of the first impact on a Creditable Upgrade. SPP further states that this waiver is necessary to allow it to “claw back” revenues that were previously distributed to transmission owners.

9. Concerning section IV.A of Attachment J, SPP states that under the Balanced Portfolio process it reallocates a portion of the zonal revenue requirements for deficient zones (i.e., zones with a benefit to cost ratio of less than one) associated with an approved Balanced Portfolio. SPP states that it has been reallocating zonal revenue requirements in accordance with these provisions since October 1, 2012. According to SPP, in order to completely account for the historical period related to the revenue crediting process, SPP would be required to recalculate previous adjustments for deficient zones to account for the additional charges necessary to fund credit payment obligations. SPP asserts that any impacts of these reallocations would be minimal. Thus, SPP seeks waiver of section IV.A of Attachment J to not be required to make these reallocations for the historical period.¹⁴ SPP states that after implementation, all future credit payment obligations will include the impact of the Balanced Portfolio reallocations.

10. In addition, regarding the posting deadline requirement in section III.C of Attachment Z1, SPP states that when it calculates the credit payment obligations of transmission customers, many of the amounts due will be covered by the Safe Harbor Cost Limit and any costs that exceed the Safe Harbor Cost Limit are to be directly assigned to the transmission customer. Under this process, SPP is required to post the results of the aggregate facilities study on SPP’s Open Access Same-Time Information System and notify all transmission customers in the study. This posting identifies any directly assigned upgrade costs allocated to the transmission customers. The transmission customer is then provided 15 days from the posting to request a waiver of the Safe Harbor Cost Limit. SPP states that, since it has not yet implemented the Attachment Z2 crediting process, any posting made for previous aggregate facilities studies has not included any directly assigned upgrade costs associated with the credit payment obligations. Consequently, SPP notes that transmission customers have not yet had an opportunity to request a waiver of the estimated costs in excess of the Safe Harbor Cost Limit that would result from the credit payment obligations. SPP asserts that, in order to provide transmission customers with an opportunity to request a waiver of the Safe Harbor Cost Limit, SPP seeks a waiver of the timing of the posting requirement to permit SPP to make a posting outside the normal schedule.¹⁵

¹⁴ *Id.* at 12-13.

¹⁵ *Id.* at 13-16.

11. SPP states that its waiver request satisfies the standards that the Commission has used to grant waivers in the past.¹⁶ First, SPP asserts that the underlying error was in good faith.¹⁷ SPP states that it has worked continuously to implement the revenue crediting process; however, SPP has faced numerous delays and obstacles in implementation. According to SPP, stakeholders have worked closely with SPP, and it has provided regular updates on the status of the project to the Regional Tariff Working Group, Markets and Operations Policy Committee, and the SPP Board of Directors. Additionally, SPP notes that the intention of SPP and its stakeholders has been to account for the delay by calculating the credit payment obligations back to the date the first credit payment obligations were due.

12. Second, SPP argues that the requested waiver is limited in scope, as it is a one-time waiver for the implementation of the revenue crediting process in order to calculate, collect, and distribute credit payment obligations for the historical period due to SPP's delay in implementing the revenue crediting process.¹⁸ SPP states that it is finalizing the development of the necessary software, and, once the historical period is resolved, on a going-forward basis, SPP will calculate, collect, and distribute credit payment obligations on a monthly basis in accordance with Attachment Z2.

13. Third, SPP asserts that the waiver will solve a concrete problem, as it will allow SPP to fully implement the revenue crediting process to account for the delay in the implementation.¹⁹ SPP also states that the waiver will ensure that upgrade sponsors are properly compensated in accordance with the Commission-accepted revenue crediting process in Attachment Z2.

14. Fourth, SPP argues that the requested waiver will not result in any undesirable consequences because stakeholders have been on notice that SPP has been working to develop the Attachment Z2 process and planned to implement the crediting process to account for the historical period back to when the first credit payment obligation was due.²⁰ Additionally, SPP states that the revenue crediting provisions have been accepted

¹⁶ *Id.* at 16 (citing *Sw. Power Pool, Inc.*, 138 FERC ¶ 61,200, at P 5 (2012); *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,162, at P 8 (2009); *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

¹⁷ *Id.* at 16-17.

¹⁸ *Id.* at 17-18.

¹⁹ *Id.* at 18.

²⁰ *Id.*

by the Commission and are included in the Tariff. SPP posits that the waiver will provide benefits in that it will permit SPP to provide credits to all upgrade sponsors on a consistent basis.

III. Notice of Filing and Responsive Pleadings

15. Notice of SPP's filing was published in the *Federal Register*, 81 Fed Reg. 20,629 (2016), with interventions and protests due on or before April 22, 2016.

16. The following entities filed timely motions to intervene: American Electric Power Service Corporation (AEP); Apex Clean Energy Management, LLC (Apex); Arkansas Electric Cooperative Corporation (Arkansas Electric); Oklahoma Gas & Electric Company; Kansas Electric Power Cooperative, Inc. (Kansas Electric); Invenergy Wind Development LLC (Invenergy Wind Development); Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; East Texas Electric Cooperative, Inc.; Southern Company Services, Inc.; EDF Renewable Energy, Inc.; Westar Energy, Inc.; and Flat Ridge 2 Wind Energy LLC. Xcel Energy Services Inc. (Xcel), on behalf of Southwestern Public Service Company (SPS), Tenaska Power Services Co. (Tenaska), and DTE Energy Trading, Inc. (DTE) filed timely motions to intervene and protests. NextEra Energy Resources, LLC (NextEra) and American Wind Energy Association and the Wind Coalition (collectively, Wind Parties) filed timely motions to intervene and comments. On April 25, 2016, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed a motion to intervene out of time. On April 27, 2016, ITC Great Plains, LLC filed a motion to intervene out of time. On May 3, Apex filed a motion to file comments out of time and comments. On May 9, 2016, Golden Spread filed a motion for leave to answer and answer, and Kansas Electric filed a motion to file protest out of time and protest.

17. On May 9, 2016, Golden Spread also filed a motion to lodge, requesting that the Commission lodge materials from the April 26, 2016 SPP Board of Directors meeting regarding recommendations made by SPP staff to the Board on proposed customer credit payment options under Attachment Z2.²¹ Golden Spread argues that this information is directly relevant to the issues raised in this proceeding, the information presented was not available to Golden Spread at the time interventions and protests were due in this

²¹ Golden Spread Answer at 3-4 (citing *Pub. Serv. Co. of Colo.*, 149 FERC ¶ 61,208, at P 26 (2014); *ITC Midwest, LLC v. Am. Transmission Co., LLC*, 142 FERC ¶ 61,096, at P 36 (2013); *Astoria Generating Co., L.P. v. N.Y. Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189 (2012); *Entergy Servs.*, 130 FERC ¶ 61,023, at n.316 (2010); *Pac. Gas & Elec. Co.*, 129 FERC ¶ 61,251, at P 50 (2009); *La. Energy & Power Auth. v. Cent. La. Elec. Co.*, 54 FERC ¶ 61,236, at 61,697 (1991)).

proceeding, and the purpose of the motion is to assist the Commission in obtaining a complete and accurate record. Golden Spread notes that the scope of the motion is limited, the proceeding is still in the early stages, and there has been no substantive determination yet. Therefore, Golden Spread states that good cause exists to grant its motion to lodge.

18. On May 12, 2016, SPP filed an answer to comments and protests. On May 13, 2016, AEP filed a motion to file protest out of time and protest. On May 16, 2016, City of Independence, Missouri, Missouri Joint Municipal Electric Utility Commission, Municipal Energy Agency of Nebraska, and West Texas Municipal Power Agency (collectively, TDU Intervenors) filed a motion to intervene out of time. On May 19, 2016, Wind Parties filed a motion for leave to answer and answer. On May 20, 2016, Invenergy Wind filed a motion for leave to answer and answer, and Arkansas Electric filed a motion to file protest out of time and protest. On May 24, 2016, SPP filed a second answer to comments and protest. On June 2, 2016, Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC filed motions to intervene out of time.

IV. Comments and Protests

19. Xcel contends that SPP should have filed a request to defer the effective date of Attachment Z if it knew it could not implement it at the time it was proposed.²² Xcel also states that SPP's Petition could present serious financial hardships for those transmission customers that are eventually determined to owe credits under Attachment Z2. Xcel asserts that SPP should first establish, through a filing under section 205 of the Federal Power Act (FPA),²³ the details of how the Attachment Z2 process is to work prospectively. Tenaska likewise recommends that SPP recover the outstanding revenue credits on a prospective basis.²⁴ Thereafter, Xcel notes, SPP stakeholders can address the impact of transmission upgrades upon historically-granted transmission services, including alternative mechanisms that will enable cost recovery without creating undue financial hardships for load serving entities and customers associated with the lack of timely SPP billing under Attachment Z2.

²² Xcel Protest at 6.

²³ 16 U.S.C. § 824d (2012).

²⁴ Tenaska Protest at 11.

20. Xcel argues that granting SPP's Petition could result in "rate shock."²⁵ In addition, Xcel claims that, if the retroactive costs to be recovered are significant, such costs will be trapped because transmission customers (a) have not been accruing for potential Attachment Z2 liabilities and (b) may now be unable to pass through the costs to their own customers or counterparties. According to Xcel, costs also may be trapped to the extent customers owing Attachment Z2 credits are unable to recover the amounts from their non-jurisdictional counter-parties, who may be restricted by state or other laws from being assessed the retroactive amounts. Xcel further asserts that transmission revenues may also become trapped with an independent generator or the transmission owner itself. Moreover, Xcel states that SPP's proposal to assess compounded interest upon the allocations of Attachment Z2 credits exacerbates the problem. Xcel argues that this is not what was envisioned when SPP members endorsed the filing of the original Attachment Z. Xcel notes that SPP has included no workpapers, estimates, or cost information with the Petition, and SPP's proposed process is vague and must be clarified.

21. Xcel next argues that, when SPP has completed development of the mechanics of the Attachment Z2 crediting process and has a full understanding of the cost impacts, SPP should be required to file tariff revisions, under section 205, that describe and justify the recovery methodology.²⁶ Xcel states that there is a considerable amount of detail to the revised Attachment Z2 crediting process that is not included in the SPP Tariff and SPP appears to seek confirmation that it may simply apply the process it finally determines is appropriate, without need for further Commission review.²⁷ Therefore, Xcel contends that customers have no way of knowing from a review of the SPP Tariff that this is what SPP intends.

22. Xcel also questions SPP's statement that its Petition is justified because "stakeholders have been on notice for a number of years that SPP has been working to develop the Attachment Z2 process and planned to implement it retroactively."²⁸ Xcel

²⁵ Xcel Protest at 7 (citing SPP Tariff at Attachment Z2).

²⁶ *Id.* at 9 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 1650, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

²⁷ *Id.* at 10-11.

²⁸ *Id.* at 12 (citing Petition at 18).

states that it, as a stakeholder in SPP, has been aware that SPP has been seeking a method to resolve Attachment Z2 crediting. However, Xcel avers that the details of that process and its impact on SPS have always been vague, and SPP has relied upon the terms of the SPP Tariff that are currently in place. Xcel concludes that it can reasonably assume that no Attachment Z2 credits apply to SPS in conjunction with service granted under the Aggregate Transmission Service Study.

23. Xcel also argues that SPP has not justified its proposal to ignore section 7.1 of its Tariff, which constitutes a part of the filed rate, forms part of SPP's customers' expectations regarding any attempt by SPP to "claw back" revenues under the SPP Tariff, and upon which they may have relied to their detriment in light of SPP's proposal. Xcel contends that SPP must make a section 205 filing to support its proposal and to apply its revised Attachment Z2 process retroactively. Xcel asserts section 7.1 is an affirmative limitation on SPP's ability to correct or resettle invoices except where the invoice includes estimated data or there is provable meter error, which is not the case here.²⁹

24. In addition, Xcel alleges that SPP's Petition fails to satisfy the Commission's standards for waiver and should be denied.³⁰ Xcel preliminarily notes that SPP's Petition fails to identify all of the provisions requiring waiver to accomplish its remedy, specifically, section 7.1, section I.B of Attachment Z2, section III.C of Attachment Z1, and subsection III.C.8 of the Attachment Z1.³¹ Xcel states that SPP should explain why a waiver of these sections is justified in order to implement its proposal. Xcel argues that SPP would also need waiver of the prior notice requirements of the FPA to apply tariff revisions five years in the past. Xcel observes that SPP seeks to apply retroactively (to 2008) tariff revisions that the Commission placed into effect in 2013. Xcel states that SPP characterizes the changes it filed in Docket No. ER13-1914-000 as "clarifying changes," and claims that it "is applying these clarifications in its implementation of crediting for the historical period."³² However, Xcel asserts that SPP's filing in Docket No. ER13-1914-000 entailed more than simple clarifications and SPP modified Attachments Z1 and Z2 to allow customers the option to roll costs of a Creditable

²⁹ *Id.* at 16 (citing SPP Tariff, section 1.13.6).

³⁰ *Id.* at 17 (citing *Wis. Power and Light Co.*, 150 FERC ¶ 61,221 (2015)).

³¹ *Id.* at 17-19.

³² *Id.* at 19 (citing Petition at 9).

Upgrade through base plan funding in lieu of receiving further crediting.³³ Xcel argues that only the tariff revisions in effect at that time may be applied,³⁴ and, therefore, the 2013 revisions cannot be implemented retroactive to 2008.

25. Xcel, Tenaska, and DTE argue that SPP's Petition also fails each prong of the Commission's waiver test with regard to the provisions that it does seek to waive. First, Xcel contends that SPP's waiver request is not the result of an administrative oversight, nor was it necessitated by any emergent or unforeseen circumstance that would justify a waiver.³⁵ Xcel argues that SPP simply failed to implement the provisions in those filings within a reasonable timeframe, and SPP should have withdrawn Attachment Z2 until SPP was ready to implement the revenue crediting process within a reasonable amount of time.³⁶ Tenaska argues that SPP's delay in implementing Attachment Z2, failure to make a timely waiver request filing with the Commission, and lack of information in support of the Petition do not reflect good faith.³⁷

26. Second, Xcel and DTE contest SPP's claim that its requested waiver is limited in scope because it is a "one-time" occurrence.³⁸ Xcel asserts that the scope of SPP's request is not limited, either in duration or in breadth. Specifically, Xcel states that SPP's request pertains to recalculations of credit payment obligations over the course of eight years, and SPP admits it has not yet determined the extent of the credit charges.³⁹ Moreover, Xcel states that there is no assurance that the process can be timely completed and for how long the credits will be assessed; therefore, SPP appears to seek a continuing

³³ *Id.* (citing SPP Transmittal at 4, Docket No. ER13-1914-000 (filed Jul. 9, 2013); *Sw. Power Pool, Inc.*, Docket No. ER13-1914-002 (Feb. 12, 2014) (delegated letter order); *West Deptford Energy, LLC, v. FERC*, 766 F.3d 10 (D.C. Cir. 2014)).

³⁴ *Id.* (citing *West Deptford Energy, LLC, v. FERC*, 766 F.3d 10).

³⁵ *Id.* at 20 (citing *ISO New England Inc.*, 134 FERC ¶ 61,182 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004 (2010); *N.Y. Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026 (2006)).

³⁶ *Id.* at 21 (citing *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182 (2010)).

³⁷ Tenaska Protest at 8-9.

³⁸ Xcel Protest at 21 (citing Petition at 17-18); DTE Protest at 4 (citing Petition at 17).

³⁹ Xcel Protest at 21 (citing Petition at 7 n.21).

waiver of its tariff provisions for however long it may take SPP to implement the software, complete the analysis, and resettle all of the prior invoices.⁴⁰ Tenaska argues that extending the resettlement period from one year to eight years cannot be characterized as limited in scope.⁴¹ DTE asserts that, since SPP has not provided any information regarding the amount of dollars that have accumulated as creditable network upgrades over eight years, it has not provided information necessary to demonstrate that the waiver is limited in scope.⁴²

27. Third, Xcel argues that SPP's Petition fails to establish that there is a "concrete problem" that must be remedied. Given the lack of information included with the Petition, Xcel states that the Commission cannot assess the extent of the alleged problem or the amounts of money at issue and granting SPP's request at this time could lead to even more delays and result in further harm to SPP participants. Tenaska states that, although upgrade sponsors should receive compensation, it is not clear that SPP's requested waiver is the solution to the problem, and may impose hardships on transmission customers that are unable to unwind or seek additional compensation for past transactions.⁴³ DTE claims that the unknowns and lack of specificity on how the resettlements will be implemented cause the problem not to be concrete.⁴⁴

28. Finally, Xcel, Tenaska, and DTE aver that the Commission should not grant SPP's request because SPP has not met its burden to demonstrate that a waiver would not result in undesirable consequences. Xcel states that SPP previously has indicated to stakeholders that sponsored upgrades, generator interconnections, and directly assigned upgrades that may be subject to Attachment Z2 revenue crediting may total approximately \$720 million.⁴⁵ Xcel concludes that SPP cannot claim there would be no undesirable consequences when Attachment Z2 obligations for any entity in the past eight years could be significant and SPP itself does not have a completed calculation of

⁴⁰ *Id.* at 22 (citing *DTE Elec. Co.*, 150 FERC ¶ 61,127 (2015); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 15 (2011); Petition at 7 n.21).

⁴¹ Tenaska Protest at 10.

⁴² DTE Protest at 5.

⁴³ Tenaska Protest at 10.

⁴⁴ DTE Protest at 5.

⁴⁵ Xcel Protest at 24.

the potential costs.⁴⁶ Tenaska argues that it is too late to unwind transactions undertaken in reliance on the past charges.⁴⁷ Tenaska notes that marketers generally build the cost of transmission into their transactions, but once the transactions have been completed, Tenaska has no way to recover additional transmission charges from purchasers. DTE reiterates that SPP has not provided enough information to demonstrate that there are no undesirable consequences.⁴⁸

29. Tenaska contests SPP's statement that its request for waiver of the Balanced Portfolio Reallocation provisions in section IV.A of Attachment J would have "very small" impacts on transmission customers, stating that SPP provides no supporting information to back up this claim.⁴⁹ Tenaska argues that it is not clear that the waiver will not result in cost shifts between classes of customers.⁵⁰

30. Tenaska requests that the Commission require SPP to provide additional information, if the Commission does not deny the waiver request. Among other things, Tenaska states that the Commission should require SPP to provide: the exact dates for each of the waivers requested, including a clear definition of the "historical period"; the total value of all Creditable Upgrades to date; a list of all Creditable Upgrades; the amount of revenues that have been distributed and the amounts that may have to be "clawed back" from transmission owners; the amount of credit payments that will have to be collected from transmission customers; and the impact on credit payments if SPP applied the Tariff provisions that were in effect based on their respective dates.⁵¹

31. Kansas Electric, American Electric Power and Arkansas Electric state that they only recently received estimated cost impact data from SPP, which notified them of their shares of Directly Assigned Upgrade Costs and whether any of the costs were eligible for

⁴⁶ *Id.* (citing *Sw. Pub. Serv. Co.*, 150 FERC ¶ 61,128 (2015)).

⁴⁷ Tenaska Protest at 12.

⁴⁸ DTE Protest at 6-7.

⁴⁹ Tenaska Protest at 12.

⁵⁰ *Id.* at 13 (citing *Illinois Mun. Elec. Agency*, 150 FERC ¶ 61,179, at P 27 (2015); *DC Energy, LLC v. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,165, at P 94 (2012), *reh'g denied*, 144 FERC ¶ 61,024 (2013)).

⁵¹ *Id.* at 13-15.

waiver under the Safe Harbor Limit provisions in the SPP Tariff.⁵² Kansas Electric, American Electric Power and Arkansas Electric assert that SPP did not provide the type of notice expected to accompany the magnitude of liabilities.⁵³ In addition, Kansas Electric, American Electric Power and Arkansas Electric argue that SPP has yet to provide all the information needed to understand the basis of SPP's calculations of the charges.⁵⁴

32. NextEra, Wind Parties, and Apex filed comments in support of SPP's waiver. Specifically, they note that granting the waiver will facilitate SPP's final implementation of Attachment Z2 of its Tariff. Further, they note that granting the waiver and allowing SPP to implement revenue crediting will benefit customers who invested in transmission with the expectation that they would receive revenue credits. NextEra and Wind Parties assert that denial of the waiver would contribute to further delays to the implementation of revenue crediting. Apex supports SPP's waiver request and argues that, if the Commission does not grant SPP's Petition, interconnection customers who have funded Network Upgrades but have not received revenue credits would be forced to forfeit their rights to revenue credits that accrued during the Historical Period, which would be unjust and unreasonable.⁵⁵ Apex states that, under SPP's proposal, Transmission Customers and Transmission Owners will be returning money to which they were not entitled, and, therefore, they have no reason to complain.

33. Apex states that, although it supports the Petition, it also requests that the Commission direct SPP to provide Upgrade Sponsors with sufficient information relating to Transmission System usage in order to verify the revenue credits that flow through the Attachment Z2 implementation process.⁵⁶ Apex argues that disclosure of this information will be essential for Upgrade Sponsors and the Commission to verify that revenue credits and any arrearages are paid in full, and that SPP is administering the revenue crediting procedures set forth in Attachment Z2 in a manner that is just,

⁵² Kansas Electric Protest at 2; American Electric Power Protest at 3-4; Arkansas Electric Protest at 1.

⁵³ Kansas Electric Protest at 4-5; American Electric Power Protest at 3-6; Arkansas Electric Protest at 4-7.

⁵⁴ Kansas Electric Protest at 5; American Electric Power Protest at 5-6; Arkansas Electric Protest at 8.

⁵⁵ Apex Comments at 4.

⁵⁶ *Id.* at 4-5.

reasonable, and not unduly discriminatory or preferential. To the extent that SPP determines that it is unable to provide the requested information because it is confidential, Apex requests that the Commission direct SPP to make such disclosures on a no-names basis or that the Commission waive the confidentiality provisions of the Tariff to permit such disclosure.

V. Answers

34. Golden Spread argues that very little has been reported to stakeholders or the Commission as to the magnitude of the issue that has been created by SPP's inability to implement its Tariff over the last eight years, and the transparency of that process.⁵⁷ Golden Spread states that it is concerned that SPP will forego necessary Commission review to calculate the actual impacts on transmission customers and verification that the impacts are consistent with the filed-rate.

35. Golden Spread states that, on April 28, 2016, it received a letter from SPP discussing the implementation of the revenue crediting process, a list of Directly Assigned Upgrade Costs associated with credit payment obligations for transmission service requests, and a Directly Assigned Upgrade Costs summary report specific to Golden Spread's transmission service requests.⁵⁸ Golden Spread contends that the Directly Assigned Upgrade Costs report identified approximately \$13 million in credit payments due associated with two Golden Spread transmission service requests in calendar years 2014 and 2015. Golden Spread states that the report then identified four specific upgrades and their associated credits, that portion of those credit payments that would be covered in Base Plan funding (in Golden Spread's case, approximately \$8.7 million) and that portion to be directly assigned to it (approximately \$4.3 million). Golden Spread states that the Directly Assigned Upgrade Costs report identified which part of the direct assignments, if any, could be subject to a request for waiver of the Safe Harbor Cost Limit, and indicated that all waiver requests of the Safe Harbor Cost Limit must be submitted by May 13, 2016.

36. Golden Spread further states that, on May 3, 2016, it received a second draft assessment.⁵⁹ This Directly Assigned Upgrade Costs report was for "historical" Creditable Upgrades and identifies nine Golden Spread transmission service requests and 39 associated upgrades totaling approximately \$2.54 million, of which \$2.16 million

⁵⁷ Golden Spread Answer at 5.

⁵⁸ *Id.* at 6 (citing Petition at 13-14).

⁵⁹ *Id.* at 7.

was attributable to SPP Base Plan funding, and the remainder to direct assignment to Golden Spread. Golden Spread states that it will owe nearly \$400,000 payable on September 1, 2016, with the remaining \$4 million to be paid over the remaining 19 year term of its network transmission service agreement. Golden Spread notes that no support for the calculation was provided.

37. Golden Spread contends that SPP did not identify any instances in which Golden Spread could request a waiver of the Safe Harbor Cost Limit. Golden Spread states that SPP's proposed resettlements to Golden Spread affect only nine transmission service requests out of "millions of reservations that must be analyzed for creditable impacts"⁶⁰ of SPP transaction requests over eight years, yet they generate over \$4.3 million in cost responsibility to a single transmission service customer. Golden Spread states that the software logic that controls when and how an upgrade and associated credit is assigned to a particular transaction (or set of transactions) is voluminous and unavailable to the market participants.

38. Golden Spread argues that, even if the Commission were to bypass the significant customer concerns about whether the charges under Attachment Z2 are correct and verifiable, the request does not identify all the efforts that SPP may be implementing in that regard.⁶¹ Golden Spread notes that, at the April 26, 2016 SPP Board of Directors meeting, SPP Staff made a recommendation, which the SPP Board of Directors adopted, that waivers of provisions of Attachment Z2 be adopted to incorporate a "Level Payment Plan" option, which would permit a customer to pay credits due for historical periods all at one time or over four payments in one year rather than a monthly, levelized charge. Golden Spread argues that the Commission should consider the entire problem created by SPP's failure to implement Attachment Z2, and not just that portion of the solution currently before it. Golden Spread asserts that SPP should make a section 205 filing that fully describes the details and cost impacts of the proposed crediting process.

39. In its May 12, 2016 answer, SPP argues that a denial of its Petition for waiver would cause harm to upgrade sponsors who have funded projects with the expectation of receiving credit payments if the upgrades were subsequently utilized for transmission service.⁶² SPP avers that denial of the waiver or limiting SPP's ability to fully implement the revenue crediting process back to March 1, 2008, would deny these upgrade sponsors the compensation they are entitled to under the currently effective Tariff. SPP asserts

⁶⁰ *Id.* at 8 (citing Petition at 7 n.21).

⁶¹ *Id.* at 9.

⁶² SPP May 12 Answer at 6.

that upgrade sponsors should not be penalized for SPP's failure to timely implement the Commission-approved Tariff process. SPP further asserts that transmission customers' service should not be enhanced by using facilities, under a "but for" test, without compensation paid to the facilities' upgrade sponsors. SPP states that the Aggregate Transmission Service Study reports provided to transmission customers include notice of the possibility of credit payment obligations, stating that "[c]redits may be required for the following Network Upgrades in accordance with Attachment Z2 of the SPP [Tariff]" and list the affected Network Upgrades.⁶³

40. SPP notes that it has held over 20 widely-publicized informational sessions for interested stakeholder companies during the past year to address questions about the implementation of Attachment Z2.⁶⁴ SPP states that additional sessions can be scheduled upon customer request, but none of the protestors has requested one. SPP also states that it has made training materials publicly available and has provided regular updates on the status of the implementation project to stakeholder working groups since 2012. SPP states that it will also host an on-site review of the revenue crediting process implementation in June 2016, which will provide further information about the software developed for implementation and how the calculations are performed.⁶⁵ SPP states that it is providing information as it becomes available and expects to provide all impacted entities with the details related to the collection and distribution of the revenue credits in September 2016. SPP notes that it has already provided available information regarding the sponsored component of Creditable Upgrade costs, identification of reservations having creditable impacts, and the directly assigned component of credit payment obligations for network service reservations.

41. With regard to Tenaska's claim that SPP provides no information supporting its request for waiver of the Balanced Portfolio reallocation provisions of section IV.A of Attachment J, SPP responds that any bill impacts that may result from granting its waiver request would be minor and most zones would be unaffected. SPP states that, for the period since October 2012, when the Balanced Portfolio transfers were first implemented, the largest shift in revenue requirements for any single zone is estimated to be four hundredths of one percent of that zone's revenue requirement under Schedules 9 and 11, and on a company-specific basis, the largest bill impact on a transmission

⁶³ *Id.* at 12.

⁶⁴ *Id.* at 8.

⁶⁵ *Id.* at 9.

customer or transmission owner in that same zone is estimated to average less than \$40 per year.⁶⁶

42. In addition, SPP states that it and its stakeholders developed a payment plan, which was approved by the SPP Board of Directors in April 2016, to address the credit payment obligations associated with the historical period.⁶⁷ Specifically, the payment plan provides entities with the option to pay their credit payment obligations for the historical period in a one-time payment or over four equal installments, one every three months. SPP anticipates submitting the filings necessary to implement the payment plan proposal to the Commission in June 2016. Finally, SPP disagrees with Tenaska's assertion that it may be unable to implement its proposal for companies that are no longer doing business or have gone through bankruptcy. According to SPP, it has not identified any bankruptcies that would be an issue to implementation.

43. SPP states that, commencing in the fourth quarter of 2016 and going forward, SPP will begin collecting credit payments from transmission customers and distributing the amounts to upgrade sponsors on a monthly basis in accordance with the currently effective Tariff.⁶⁸

44. Wind Parties and Invenergy argue that the protestors' arguments ignore the fact that all parties have been on notice since 2008 of the provisions in the SPP Tariff, in Attachment Z2 and elsewhere, under which upgrade sponsors are entitled to compensation for network upgrades which they funded and were needed for transmission service purchased by transmission customers.⁶⁹ AWEA and Invenergy state that, although many protestors complain of the uncertainty they now face through additional charges, upgrade sponsors have dealt with uncertainty for many years as they waited to be reimbursed for the network upgrades they funded.⁷⁰ AWEA and Invenergy argue that denial of the waiver would result in further delay of upgrade sponsors' compensation and possibly even reduced compensation.⁷¹ AWEA notes that SPP states that it cannot provide the results of its revenue crediting calculations yet as it is still engaged in the

⁶⁶ *Id.* at 13.

⁶⁷ *Id.* at 14-15.

⁶⁸ *Id.* at 3-4.

⁶⁹ AWEA Answer at 2; Invenergy Answer at 4.

⁷⁰ AWEA Answer at 2; Invenergy Answer at 3.

⁷¹ AWEA Answer at 2-3; Invenergy Answer at 3.

various steps of the calculations and implementing the necessary software and also will soon propose to the Commission a payment plan, which was approved in the stakeholder process.⁷² AWEA contends that parties can express their concerns in that proceeding.⁷³

45. Invenergy also disputes Xcel's contention that the Attachment Z2 implementation details need to be filed under section 205.⁷⁴ Invenergy asserts that the Commission declined similar requests to require implementation details of SPP's transmission planning process to be included in the Tariff, instead finding that it was sufficient for the tariff provisions in question to simply provide the basic methodology, criteria, and assumptions.⁷⁵

46. In its May 24, 2016 answer, SPP notes that it stated in its May 12, 2016 answer that it was making information available to affected parties as it became available. SPP states that it provided a report to SPP transmission customers of any Directly Assigned Upgrade Costs associated with long-term network transmission service requests. According to SPP, to determine these Directly Assigned Upgrade Costs, SPP reviewed all transmission service requests for long-term network service since 2005 to determine whether the requested service could not have been granted "but for" the creditable upgrade. SPP states that it also identified the amount of Directly Assigned Upgrade Costs that was eligible for a waiver of the Safe Harbor Cost Limit, in accordance with Attachment J, section III.C of the Tariff.⁷⁶

47. SPP states that in order to keep the implementation of its revenue crediting process on schedule, SPP is proceeding with its current project schedule pending the Commission's order in this docket. SPP states that it is scheduling the required stakeholder meetings in early June to review the requests for waiver. SPP acknowledges that Commission approval of its Petition is necessary for the resolution of any requests for waiver of the Safe Harbor Cost Limit and final implementation of the revenue crediting process.⁷⁷

⁷² AWEA Answer at 3.

⁷³ *Id.*

⁷⁴ Invenergy Answer at 4 (citing Xcel Protest at 6, 9-11).

⁷⁵ *Id.* (citing *Sw. Power Pool, Inc.*, 136 FERC ¶ 61,050, at P 27 (2011)).

⁷⁶ SPP May 24 Answer at 3-4.

⁷⁷ *Id.* at 6.

48. SPP reiterates that it is providing information to affected parties when the information becomes available. SPP states that before it can complete the calculations and determine the total impact of the revenue crediting process, SPP will need to know whether the waiver will be granted for any of these potential Directly Assigned Upgrade Costs in order to properly classify the costs as Base Plan funded or Directly Assigned Upgrade Costs. SPP notes that this classification is required not only to determine how the funds will be collected, but also to determine whether subsequent credits will be due. SPP asserts that delay in the classification of these costs would have the likely effect of further delaying the payment of credits to those upgrade sponsors who are due credits for previous years pursuant to Attachment Z2 of the Tariff due to the need to identify all costs that should be included in Schedule 11 charges. SPP also contends that it will need to know what credit obligations were due each previous year in order to determine what credit obligations are due going forward. SPP asserts that it is critical for SPP to know whether the Commission will grant a waiver of the limitation on billing adjustments in section 7.1 of the Tariff in order for SPP to implement the revenue crediting process back to 2008 in order to fully account for SPP's delay in implementation. According to SPP, without this information, SPP is unable to determine what credit payment obligations and revenues are due on a going-forward basis. SPP asserts that, based on SPP's current implementation schedule, SPP plans to have all relevant information available by September 2016.⁷⁸

49. SPP notes that its Petition does not address the payment of any revenue credit obligations. SPP states that it anticipates submitting the filings necessary to implement the payment plan for the historical period to the Commission in June 2016. SPP asserts that any arguments about the payment of credit payment obligations should be raised with the Commission at the time SPP makes the filing with the Commission seeking approval of the payment plan.⁷⁹

VI. Discussion

A. Procedural Matters

50. 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 the late-filed motions to intervene given the entities' interests in

⁷⁸ *Id.* at 6-7.

⁷⁹ *Id.* at 8.

the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

51. 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 will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process. We will also grant Golden Spread's motion to lodge.

B. Substantive Matters

52. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁸⁰

53. We find that SPP has demonstrated good cause to grant the request for a tariff waiver because SPP's requested waiver satisfies the aforementioned waiver criteria. First, we find that SPP has acted in good faith. SPP has made concerted efforts to implement the revenue crediting process and, despite delays, has demonstrated progress and kept its stakeholders informed of developments. SPP represents that it has recently worked closely with stakeholders, providing regular updates on the status of the project and providing numerous informational sessions and trainings on the Attachment Z2 implementation. Finally, SPP asserts that the intention of SPP and its stakeholders has been to account for the delay by calculating the credit payment obligations back to the date the first credit payment obligations were due in 2008. We disagree with protestors' claims that they had insufficient notice of possible cost impacts. As SPP explains, it has held informational sessions for interested stakeholder companies during the past year to address questions about the implementation of Attachment Z2, and has offered to schedule additional sessions upon customer request. Further, SPP states that it has been providing more detailed information as it becomes available. In addition, we note that SPP has stated that it intends to convene a meeting in June 2016 to work further with stakeholders to implement Attachment Z2.⁸¹

⁸⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

⁸¹ This meeting was held on June 28-29, 2016.
<https://www.spp.org/events/calendar/z2-system-review-meeting-20160628-29/>.

54. Second, the requested waiver is of limited scope. Although resettlement is expected to involve a significant sum of money and spans eight years, it is a necessary, one-time waiver of three discrete Tariff provisions that will allow SPP to implement the revenue crediting mechanism under its Tariff. After the resettlements are made, SPP will be able to move forward prospectively and assess revenue credits on a monthly basis, as provided for under Attachment Z2.

55. Third, the waiver will remedy a concrete problem. Granting the waiver will allow SPP to implement the revenue crediting process in its currently effective Tariff. In addition, the waiver will ensure that upgrade sponsors are properly compensated in accordance with the revenue crediting process under the Tariff. We disagree with protestors' claims that SPP's waiver request should only apply prospectively because to do so would deprive upgrade sponsors of compensation to which they are entitled and anticipated receiving since 2008 under the Tariff, consistent with the filed rate.

56. Fourth, we find that granting the waiver will not lead to undesirable consequences, such as harming third parties. We disagree with the protestors' contention that SPP has failed to show that there are no undesirable consequences. The revenue crediting provisions in Attachment Z2 were accepted by the Commission and are included in the currently effective Tariff. Stakeholders have been on notice of these provisions and that SPP has been working to implement the crediting process for the historical period. We agree that the waiver will permit SPP to provide credits to all upgrade sponsors on a consistent basis, and denial of its waiver request would cause harm to upgrade sponsors, who funded projects with the expectation of receiving credit payments if the upgrades were subsequently used for transmission service. We find that granting the waiver request would not harm third parties because the compensation that these upgrade sponsors are entitled to would come from transmission customers who have benefited from upgrades paid for by upgrade sponsors. Further, these transmission customers have received a benefit from the funds that should have been paid as credits, but instead have been retained by transmission customers during the historical period. Granting the Petition will enable SPP to take needed steps to implement its Tariff and restore customers and upgrade sponsors to the position they should have been in absent SPP's inability to implement revenue crediting.

57. In addition, with regard to Tenaska's concern regarding the level of detail SPP provided to support its requested waiver of the Balanced Portfolio Reallocation provisions, as noted in its May 12 Answer, SPP responded that the largest shift in revenue requirements for any single zone is expected to be small (i.e., four hundredths of one percent of that zone's revenue requirement or an average bill impact of less than \$40 per year). Accordingly, we find that SPP's response addresses Tenaska's concern.

58. For these reasons, we find good cause to grant SPP's request for a waiver of section 7.1, section IV.A of Attachment J, and section III.C of Attachment Z1 of the SPP Tariff to implement its Attachment Z2 transmission revenue crediting process, as

discussed above. We encourage SPP to continue its outreach to the stakeholders to ensure that the calculation of credits is accurate and complete. We note that the Petition did not address any payment of revenue credit obligations and that, as SPP explained in its May 24, 2016 answer, it anticipates submitting to the Commission in June 2016 a filing to implement a proposed payment plan for the historical period. The Commission will act on SPP's filing to implement a payment plan after SPP submits such filing.

59. Finally, while we find good cause to grant SPP's waiver under the present circumstances, we remind SPP that as a public utility it has an obligation to ensure that it implements provisions of its Tariff in a timely manner.

The Commission orders:

SPP's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.