

156 FERC ¶ 61,217
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 Nos. ER16-1286-001
EL16-110-000

ORDER ACCEPTING IN PART, AND REJECTING IN PART, TARIFF REVISIONS,
INSTITUTING SECTION 206 PROCEEDING, COMMENCING PAPER HEARING
PROCEDURES, AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued September 23, 2016)

1. In this order we accept in part, and reject in part, Southwest Power Pool, Inc.'s (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) which, among other things, (1) limit the eligibility for Long-Term Congestion Rights (LTCRs)¹ for firm point-to-point transmission customers taking service subject to redispatch until transmission upgrades are placed into service; and (2) clarify that Network Integration Transmission Service (network service) customers taking service subject to redispatch until transmission upgrades are placed into service² are eligible to receive

¹ LTCRs are long-term (i.e., a period of more than one year) Transmission Congestion Rights (TCRs), which are financial instruments entitling the holder to a stream of revenues, or obligating it to pay charges, based upon the difference between the hourly day-ahead marginal congestion component of the locational marginal price at the source and sink settlement locations associated with the TCR. TCRs are obtained in TCR auctions, either through purchase or self-conversion of Auction Revenue Rights (ARRs), or through secondary sales of TCRs. *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048, at n.330 (2012) (Integrated Marketplace Order), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013) (Integrated Marketplace Rehearing Order).

² Under the SPP Tariff, when a firm transmission service request requires new transmission upgrades, SPP commences service prior to the transmission upgrades being placed in service if SPP is able to address the constraint identified in the system impact

(continued ...)

ARRs³ and LTCRs for such transmission service. As discussed below, we find that the proposed revisions to section 34.6 of the SPP Tariff as it pertains to network service subject to redispatch have not been shown to be just and reasonable, and not unduly discriminatory or preferential. Therefore, we reject them. We also institute a proceeding under section 206 of the Federal Power Act (FPA),⁴ to examine SPP's Tariff, as discussed more fully below.

I. Background

2. As part of the design of its Integrated Marketplace, SPP established mechanisms to provide market participants with financial tools to manage congestion costs and to allow them to sell their rights to others (i.e., ARR and TCRs).⁵ Transmission customers and market participants with firm transmission service are eligible to nominate candidate ARRs from a specific source point serving a specific sink point consistent with their firm service, and SPP allocates the portion of the nominated ARRs that are simultaneously feasible given SPP's transmission system.⁶ ARRs are allocated annually in April of each year, with additional monthly or seasonal ARR allocations made as needed to address new transmission service.⁷

3. Section 13.5 of the Tariff provides that customers with firm point-to-point transmission service subject to redispatch are not eligible to obtain ARR allocations

studies through redispatch until the transmission upgrades are placed into service. This order uses the phrase "subject to redispatch" to describe such transmission service until transmission upgrades are placed into service, unless otherwise indicated.

³ ARRs are rights that entitle the holder to a share of the auction revenues generated in the applicable TCR auctions and entitle the holder to self-convert the ARR to a TCR. An ARR can result in a credit or charge to the holder, based upon the TCR auction clearing price on the particular ARR path. Eligible entities may either self-convert awarded ARRs into TCRs or hold the ARR to receive a share of the revenue SPP collects from auction purchasers of TCRs. Integrated Marketplace Order, 141 FERC ¶ 61,048 at n.329.

⁴ 16 U.S.C. § 824e (2012).

⁵ *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,121, at P 2 (2016).

⁶ Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 246.

⁷ *Id.*

associated with that service, except for the times of the year and for the amounts of service that are not subject to redispatch.⁸ The Tariff does not specify whether customers with network service subject to redispatch are eligible to obtain ARR allocations associated with that service.

II. SPP's Filing

4. SPP proposes revisions to certain provisions in its Tariff related to transmission service subject to redispatch. SPP states that the purpose of the proposed revisions is to add language setting forth customers' eligibility for ARRs and LTCRs when redispatch is required for the requested service and to eliminate language that has become obsolete as a result of the establishment of the Integrated Marketplace. SPP states that the proposed revisions are meant to clarify the redispatch provisions of the Tariff and are not intended to make changes to the Integrated Marketplace's design.

5. With regard to eligibility for ARRs and LTCRs, SPP proposes to add language to section 13.5 of the Tariff stating that long-term firm point-to-point transmission service subject to redispatch will not be eligible to obtain LTCRs because that service is not continuous over the entirety of the associated TCR year. Additionally, SPP proposes to add language to section 34.6 of the Tariff stating that customers with network service subject to redispatch are eligible to obtain ARRs and LTCRs associated with that service. SPP states that while the Tariff currently places limits on ARR allocations for firm point-to-point service subject to redispatch, it does not do so for network service subject to redispatch. SPP asserts that the proposed language merely memorializes this difference between firm point-to-point and network service.

6. With regard to the elimination of obsolete Tariff language, SPP proposes to delete language in sections of the Tariff that reference requirements that SPP shall arrange and that the customer must agree to pay redispatch costs in order to receive firm transmission service when redispatch is required to provide service until the required network upgrades are placed into service. SPP states that the agreement to pay redispatch costs is no longer necessary because, after the establishment of the Integrated Marketplace, all resources are involved in a system-wide redispatch and any costs incurred to relieve a system constraint are collected and paid as part of the Integrated Marketplace settlements and procedures. Relatedly, SPP proposes revisions to section 13.5 of the Tariff to make language in that section consistent with how redispatch costs are now handled under the Integrated Marketplace design. SPP also proposes to revise Attachment Z1 of the Tariff

⁸ The Commission approved this limited eligibility for ARRs with respect to point-to-point service subject to redispatch in its order accepting SPP's Integrated Marketplace filing. *Id.* PP 267-268.

to state that when a customer requests service subject to redispatch, SPP will determine whether a feasible redispatch solution exists, rather than provide the top 100 redispatch pairs to the customer, which SPP says is an obsolete requirement given the operation of the Integrated Marketplace.

7. SPP also proposes to revise language in Attachment K of the Tariff to provide that a request for firm point-to-point transmission service will be denied if the service cannot be provided without redispatch through the Integrated Marketplace and the customer does not agree to the limited ARRs and LTCRs proposed in section 13.5 of the Tariff. Finally, SPP proposes organizational and cleanup revisions to other redispatch provisions of the Tariff.

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 81 Fed. Reg. 19,599 (2016), with interventions and protests due on or before April 20, 2016. Timely motions to intervene were filed by Exelon Corporation and Westar Energy, Inc. On April 20, 2016, 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), filed a timely motion to intervene and protest. Also on April 20, 2016, the American Wind Energy Association (AWEA) filed a timely motion to intervene and filed joint comments with the Wind Coalition. On May 5, 2016, SPP filed an answer. On May 13, 2016, Southern Companies filed a motion for leave to answer, answer, and motion to lodge.

9. On May 27, 2016, Commission staff issued a deficiency letter informing SPP that its filing was deficient and that additional information was required to process the filing (Deficiency Letter). On June 10, 2016, Kansas Power Pool filed an out-of-time motion to intervene. On July 8, 2016, SPP filed a motion for an extension of time to respond to the Deficiency Letter until July 25, 2016, which the Commission granted. On July 25, 2016, SPP filed its response to the Deficiency Letter (Deficiency Response). Notice of the Deficiency Response was published in the *Federal Register*, 81 Fed. Reg. 50,696 (2016), with interventions and protests due on or before August 15, 2016. Southern Companies filed a protest and Enel Green Power North America, Inc. (Enel) filed comments. On August 16, 2016, AWEA and the Wind Coalition filed joint comments out-of-time. On August 31, 2016, SPP filed an answer to the protest and comments filed in response to the Deficiency Response.

A. Protest and Answers

10. In their protest, Southern Companies argue that SPP's proposal would harm firm transmission service customers. Southern Companies state that, as long-term firm point-to-point transmission service customers of SPP, they have been unable to obtain ARR allocations in sufficient amounts to reasonably hedge congestion costs, resulting in higher

net congestions costs. Southern Companies assert that SPP's proposal would contribute to the under-allocation of ARR for firm transmission service because ARR eligibility for network service subject to redispatch would increase the total pool of ARR nominations competing for ARR allocations. Similarly, in its comments, AWEA and the Wind Coalition state that firm point-to-point transmission service would compete for ARRs with network service subject to redispatch, restricting the ability of point-to-point customers to hedge long-term transmission service.

11. Southern Companies, AWEA, and the Wind Coalition contend that SPP's proposal raises issues of unduly preferential treatment for network service customers subject to redispatch. Southern Companies state that allowing network service subject to redispatch to be eligible for ARRs inappropriately gives such service equal status to firm transmission service not subject to redispatch. Southern Companies, AWEA, and the Wind Coalition argue that treating network service subject to redispatch the same as firm transmission service not subject to redispatch is contrary to previous SPP tariff filings and Commission precedent.⁹ Southern Companies assert that the Commission has previously found that it is reasonable for SPP to differentiate between transmission service based on whether it is subject to redispatch.¹⁰

12. In its answer, SPP states that when it filed to establish its Integrated Marketplace design, it only proposed revisions specifying that point-to-point transmission service subject to redispatch would be ineligible for ARRs. SPP states that, in accepting the proposed revisions subject to condition, the Commission did not require SPP to adopt the same limitation on ARR eligibility for network service subject to redispatch.¹¹ Accordingly, SPP asserts, it is not authorized to place such limitations on network service customers' eligibility for ARRs, nor has it done so. SPP states that the proposed revisions in the instant filing merely clarify and memorialize SPP's current practice regarding ARR eligibility for network service subject to redispatch.

13. In their answer, Southern Companies argue that in its application for approval of the Integrated Marketplace SPP only stated that network service not subject to redispatch would be eligible for ARRs, and that SPP did not propose or otherwise disclose that

⁹ Southern Companies April 20, 2016 Protest at 5 & n.11; AWEA and the Wind Coalition April 20, 2016 Comments at 2 & n.3.

¹⁰ Southern Companies April 20, 2016 Protest at 5 & n.12 (citing Integrated Marketplace Rehearing Order, 142 FERC ¶ 61,205).

¹¹ SPP May 5, 2016 Answer at 3, 5 & n.17 (citing Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 250).

network service subject to redispatch was also intended to be eligible for ARR. ¹² Southern Companies explain that in the Integrated Marketplace proceeding, SPP proposed that ARRs would only be for firm service and the Commission determined that transmission service subject to redispatch requirements was a form of transmission service that was “conditional” and “complementary service to conditional firm service.”¹³ Southern Companies provide what they identify as SPP Market Working Group documents and assert that the documents show that, after the Commission issued the Integrated Marketplace Order, SPP market design staff recommended Tariff revisions to clarify that network service subject to redispatch would not be eligible for ARRs. Southern Companies state that the documents also indicate that SPP staff believed the recommended revisions would not involve a design change, would not trigger an impact analysis, and the Tariff revisions proposed by SPP staff would merely be a clarification of existing practice, contrary to SPP’s contention in the instant proceeding that it always contemplated that network service subject to redispatch would be eligible for ARRs.¹⁴ Consequently, Southern Companies assert, the documents show that SPP’s proposal in the instant proceeding seeks to ratify a previously undisclosed design change to the Integrated Marketplace.

14. Asserting that SPP’s proposal raises genuine issues of material fact, Southern Companies, AWEA, and the Wind Coalition request that the Commission set SPP’s proposed Tariff revisions for hearing and/or settlement procedures. SPP states that the Commission should accept the filing without setting it for hearing or settlement procedures.

B. Deficiency Letter, Response, and Related Pleadings

15. In the Deficiency Letter, Commission staff requested information from SPP concerning the reasons for treating point-to-point and network services subject to redispatch differently with respect to eligibility for ARRs and LTCRs. In response, SPP states that there are several differences between point-to-point and network service that support different ARR eligibility when the service is subject to redispatch. First, SPP states that point-to-point and network service customers are not similarly situated because point-to-point customers contract for service along a specific transmission path, while

¹² Southern Companies Answer at 3-4 (citing Southwest Power Pool, Inc. Transmittal, Docket No. ER12-1179-000, at 14 (filed Feb. 29, 2012)).

¹³ *Id.* at 4 (citing Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 267).

¹⁴ Southern Companies note that, in 2013, the SPP Market Working Group voted against SPP staff’s recommendation revisions.

network service customers do not. SPP argues that because ARR allocation is subject to simultaneous feasibility, allowing point-to-point customers to nominate ARRs over the requested, constrained path would result in an over-allocation of ARRs because more service is provided over the path due to redispatch than is physically feasible. Second, SPP states that point-to-point and network services are subject to different ARR nomination caps. Specifically, SPP explains, firm point-to-point customers receive a nomination cap equal to the full MW amount of service, whereas a network service customer's nomination cap is typically limited to 103 percent of the average of the last three years' peak load amount. Third, SPP asserts that network service has a load service obligation that does not necessarily apply to point-to-point customers, as well as a different transmission settlement construct and a different study baseloading construct.

16. In response to the request in the Deficiency Letter regarding whether there are downsides to treating point-to-point and network services subject to redispatch comparably with respect to ARR and LTCR eligibility, SPP argues that if the services are treated comparably, network service customers would not be encouraged to obtain service with redispatch during the time period prior to a transmission upgrade being put in place. Additionally, SPP notes that if the Commission determines that both services should be treated comparably, SPP would prefer to eliminate the limitation on ARR and LTCR eligibility for both services rather than apply the limitation to both services.

17. In response to the request in the Deficiency Letter regarding how many ARRs and LTCRs have been allocated to customers with network service subject to redispatch, SPP explains that currently there are 7,477 MW of ARRs and 327 MW of LTCRs that have been awarded to customers with network service subject to redispatch, which is 3.0 percent of the total ARRs awarded and 2.8 percent of the total LTCRs awarded. Additionally, SPP clarifies that all redispatch costs for point-to-point and network services subject to redispatch are settled in the Integrated Marketplace.

18. In their protest to SPP's Deficiency Response, Southern Companies argue that the Deficiency Response demonstrates the substantial harm SPP's proposal could cause to transmission customers. Southern Companies assert that the 7,477 MW of ARRs granted to network service customers subject to redispatch is a large number that may be even larger because it does not include pending requests for transmission service or pending network resource designations. Southern Companies state that in the last annual ARR allocation they were awarded only 8 percent of the 187 MW of ARRs requested for one of Southern Companies' 202 MW firm point-to-point reservations and argue that the ARRs granted to network service subject to redispatch may be part of the reason why they received so few ARRs.

19. Southern Companies also point to the Tariff as support for their argument that network service subject to redispatch should be subject to limitations on ARR allocations. Southern Companies contend that granting ARRs to network service subject to redispatch is inconsistent with section 7.1.1 of Attachment AE, Integrated Marketplace, of the

Tariff, which states that only service not subject to planned interruption can be validated for ARR eligibility. Southern Companies further assert that, contrary to SPP's assertion in the Deficiency Response that there is a difference between point-to-point and network transmission services because point-to-point customers contract for service along a specific transmission path while network service customers do not, section 7.1.2 of Attachment AE of the Tariff indicates that both point-to-point and network transmission services are treated as involving specific source points serving specific sink points.

20. Southern Companies further argue that the nomination caps applicable to network service do not prevent over-allocation of ARRs along specific paths, such as constrained paths. Additionally, Southern Companies state that granting ARRs to network service subject to redispatch mutes the congestion price signals that encourage timely completion of required transmission upgrades. Southern Companies also note that the inability of point-to-point customers to effectively hedge congestion creates a disincentive for new transmission requests.

21. In their comments on the Deficiency Response, AWEA and the Wind Coalition argue that SPP's proposal would impermissibly give preferential treatment to network service customers subject to redispatch over point-to-point customers subject to redispatch. AWEA and the Wind Coalition also state that SPP's suggestion that network service customers do not contract for service along a specific transmission path is misleading because when designating a particular resource under network service, the aggregate service study examines the generation resource and determines whether it can be delivered along paths to the designated load. Additionally, AWEA and the Wind Coalition contend that SPP's proposal to limit the eligibility of point-to-point service subject to redispatch for LTCRs is overly restrictive and inconsistent with the Commission's directive to provide ARRs except for the times of the year and for the amounts of service that are not subject to redispatch.¹⁵

22. In its comments on the Deficiency Response, Enel expresses concern that firm point-to-point service that is not subject to redispatch will have to compete for ARRs against network service customers whose service is subject to redispatch. Enel also states that SPP's proposal raises issues of undue preference between network service subject to redispatch and firm point-to-point service not subject to redispatch.

23. In its answer to the protest and comments responding to the Deficiency Response, SPP argues that, contrary to the assertions of Southern Companies, AWEA, and the Wind Coalition, under the plain terms of the Tariff and general principles of tariff interpretation

¹⁵ AWEA and the Wind Coalition August 16, 2016 Comments at 7.

the only limitations on ARR eligibility in the Tariff are for point-to-point service subject to redispatch.

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), 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) (2016), the Commission will grant Kansas Power Pool'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.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept SPP's and Southern Companies' answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

26. We accept in part, effective May 29, 2016, and reject in part, SPP's proposed revisions to its Tariff.¹⁶ Additionally, as discussed below, we institute a proceeding under section 206 of the FPA to consider whether to require SPP to limit the eligibility for ARRs and LTCRs for network service subject to redispatch so that such service is treated comparably with point-to-point transmission service subject to redispatch with respect to ARR and LTCR eligibility.

27. We accept SPP's proposed clarifying revisions to its Tariff to remove obsolete language and more accurately reflect the operation of the Integrated Marketplace. SPP's proposed revisions remove the requirement that a customer agree to compensate SPP for all redispatch costs prior to service being granted because now such costs are collected and paid as part of the settlement procedures of the Integrated Marketplace. Instead, under SPP's proposal a point-to-point transmission service customer requesting service

¹⁶ The Commission can revise a proposal under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

subject to redispatch must agree to limited eligibility for ARR and LTR. SPP's proposal eliminates the requirement that it provide redispatch pairs to a transmission customer choosing to have its service subject to redispatch because, under the Integrated Marketplace, SPP will no longer arrange and customers are no longer required to separately contract for redispatch as they were prior to the Integrated Marketplace. Instead, under the proposed revisions, SPP will determine if a redispatch solution exists through the operation of the Integration Marketplace. We find the proposed clarifying revisions to reflect the operation of the Integrated Marketplace and remove obsolete language to be reasonable because they more accurately reflect the procedures for obtaining transmission service when redispatch is necessary. Additionally, we accept the organizational and cleanup revisions in SPP's filing.

28. In addition, we accept SPP's proposed revisions to limit the eligibility for LTRs of firm point-to-point transmission customers whose service is subject to redispatch. In the Integrated Marketplace Order, the Commission required SPP to provide ARR for those times of the year and for the amounts of service that can be provided without redispatch.¹⁷ As SPP explains, because LTRs are in effect for the entire term of the congestion right year, transmission service subject to redispatch may be redispatched during the congestion right year for which the candidate LTR is applicable.¹⁸ We find SPP's proposal limiting LTR eligibility for point-to-point transmission customers subject to redispatch to be reasonable because LTRs are annual financial congestion hedges and the service may be subject to redispatch during part of the associated congestion right year. This approach is consistent with the Integrated Marketplace Order, where the Commission accepted SPP's proposal to make firm point-to-point service ineligible for ARR at times when redispatch is required.¹⁹ Moreover, we do not agree with commenters who allege that SPP's proposal to limit LTRs is overly restrictive, because point-to-point transmission service customers can still nominate candidate ARR for periods when their service is not subject to redispatch until the transmission upgrade is placed into service and then nominate candidate LTRs thereafter.

29. With regard to section 34.6, we reject SPP's proposed revisions to its Tariff to reflect the eligibility for ARR and LTRs for network service customers subject to redispatch because the proposed language is unclear and as discussed below, the proposed language extends eligibility for ARR and LTRs to network customers in a manner that may be inappropriate. SPP's proposed language reads in part "[n]etwork

¹⁷ Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 268.

¹⁸ SPP Transmittal at 9.

¹⁹ See Integrated Marketplace Order, 141 FERC ¶ 61,048 at PP 267-268.

customers having service subject to redispatch.” It is understood that network service customers are required under the Order No. 888²⁰ *pro forma* tariff to redispatch their designated resources, as necessary, for reliability purposes.²¹ All network service is subject to this reliability-based redispatch obligation and such network service should remain eligible for ARRs and LTCRs when it has been granted without a redispatch obligation until transmission upgrades are placed into service. Thus, the proposed language in section 34.6 of the Tariff may be reasonable for network service subject only to reliability-based redispatch.

30. While the proposed language in section 34.6 of the Tariff may be reasonable for network service subject only to reliability-based redispatch, the proposed language in section 34.6 of the Tariff could also apply to network service customers that request network service over constrained facilities and select network service subject to redispatch while necessary transmission upgrades are being constructed. For this type of network service, SPP will attempt to redispatch the system in order to accommodate the requested service until transmission upgrades are placed into service. SPP has not shown that the proposed revisions to section 34.6 of the Tariff are just, reasonable, and not unduly discriminatory or preferential for network service subject to this type of redispatch.

31. We are concerned that network service subject to redispatch is not similarly situated to network service subject only to a reliability-based redispatch obligation. Network service granted subject only to a reliability-based redispatch is granted without an attendant redispatch obligation pending the completion of transmission upgrades whereas network service that is subject to redispatch is a form of conditional service. In this circumstance, SPP has determined it cannot provide the requested service without redispatch because the service would cause transmission constraints, and the service is

²⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²¹ *Pro forma* Open Access Transmission Tariff at § 30.5; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,267 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,767).

granted *conditionally* subject to transmission upgrades being placed into service. Thus, our preliminary review indicates that network service subject to redispatch is similarly situated to network service not subject to redispatch only for those times of the year and in those amounts of service that can be provided without redispatch. This distinction between network service subject only to a reliability-based redispatch obligation and network service subject to redispatch appears to be similar to the distinction drawn by the Commission between firm point-to-point transmission service not subject to redispatch and firm point-to-point transmission service subject to redispatch.²² Therefore, we are concerned that network service subject to redispatch should not be eligible for ARRs except during those times of the year and for those amounts not subject to redispatch, consistent with SPP's treatment of point-to-point transmission service subject to redispatch.²³

32. Additionally, we are concerned that by allowing network service subject to redispatch to nominate candidate ARRs for those times of the year and for those amounts of service that are subject to redispatch prior to necessary transmission upgrades being placed in service, SPP could increase the amount of nominated candidate ARRs subject to the simultaneous feasibility test.²⁴ This increase in nominated candidate ARRs subject to the simultaneous feasibility test could result in a decrease in allocated ARRs for firm transmission service customers that are not subject to redispatch. In other words, firm point-to-point transmission service customers not subject to redispatch could receive a reduced portion of the available ARRs because such firm point-to-point transmission service would be competing with network service subject to redispatch.²⁵

²² Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 267 (finding that point-to-point service subject to redispatch while necessary upgrades are being constructed is not similarly situated to other firm point-to-point service which did not have a redispatch obligation).

²³ *Id.* P 268 (finding that SPP should provide ARR allocations except for those times of the year and for those amounts of service that are subject to the redispatch obligation).

²⁴ A simultaneous feasibility test is a test for a state in which each set of injections and withdrawals associated with Long-Term Congestion Rights, Auction Revenue Rights and Transmission Congestion Rights would not exceed any thermal, voltage, or stability limits within the Transmission System under normal operating conditions or for monitored contingencies. SPP Tariff, Attachment AE, Section S.

²⁵ *See* Southern Companies April 20, 2016 Protest at 4-5.

33. Similarly, with regard to LTCRs, we are concerned that by allowing network service customers with service subject to redispatch to nominate candidate LTCRs, it could unreasonably increase the amount of nominated candidate LTCRs. If the amount of nominated candidate LTCRs are not all simultaneously feasible, then parties nominating candidate LTCRs could receive a reduced portion of allocated LTCRs. As such, transmission customers with confirmed network service or point-to-point transmission service could be allocated fewer LTCRs due to LTCRs being allocated to network service customers with service subject to redispatch for all or part of the year. Consequently, our preliminary review indicates that SPP should not provide network service customers subject to redispatch with any LTCRs until the transmission upgrades are placed into service and the service is no longer subject to redispatch. The Commission notes that this approach would be consistent with SPP's rationale for not providing point-to-point customers subject to redispatch with LTCRs.²⁶ We do not believe this would unduly harm network service customers with service subject to redispatch because they can continue to obtain ARR during those periods and for those amounts of service not subject to redispatch until the transmission upgrades are placed into service, and then obtain LTCRs thereafter.

34. SPP argues that point-to-point transmission service and network service are not similarly situated and therefore treating ARR and LTCR eligibility differently for the two services is reasonable. SPP's reasons for treating network service subject to redispatch differently from point-to-point service subject to redispatch are not persuasive. While SPP notes that point-to-point transmission service uses a specific transmission path and network service uses the network as a whole, we note that SPP appears to ignore the fact that ARRs and LTCRs are allocated for both point-to-point and network service from a particular source point on the system serving a particular sink point on the system. Moreover, when a transmission customer requests service and the service can only be provided through redispatch, both point-to-point transmission service customers and network service customers use alternate parts of the network for service when SPP redispatches the system as a result of constrained facilities. Providing ARRs and LTCRs when such redispatch occurs could result in an over-allocation of ARRs and LTCRs over the constrained facilities for both point-to-point and network service. Moreover, SPP notes that network service and point-to-point transmission service have different

²⁶ We also question whether, to the extent the transmission customer is responsible for having the transmission upgrades constructed, allowing network service subject to redispatch until transmission upgrades are placed into service to at least partially hedge congestion costs may reduce the incentive to place the necessary transmission upgrades into service on a timely basis or to expedite the construction of the transmission upgrades. *See* Southern Companies August 15, 2016 Protest at 13-14.

nomination caps for ARR and LTR but does not explain why that difference should affect the eligibility to nominate ARR and LTR. All nominated ARR and LTR are subject to a simultaneous feasibility test, which could result in both network service customers and point-to-point service customers receiving a pro-rated portion of their nominated ARR and LTR. Additionally, with respect to the other reasons given by SPP for the differences between point-to-point service and network service, SPP provides no explanation about how those possible differences support its proposal.

35. Accordingly, we find that SPP's proposed language in section 34.6 of the Tariff is unclear because it does not address the different types of network service. We share the concerns raised in the protests and comments that SPP's proposed revisions to section 34.6 of the Tariff could provide undue preference to network service subject to redispatch over firm point-to-point transmission service not subject to redispatch. We therefore reject the proposed revisions to section 34.6 of the Tariff.

36. SPP states that it has been its practice to provide ARR and LTR to network service customers subject to redispatch while necessary transmission upgrades are constructed. The record shows that SPP has allocated 7,477 MW of ARR and 327 MW of LTR to network service that is subject to redispatch. For the same reasons discussed above with respect to SPP's proposed revisions to section 34.6 of the Tariff, we believe that section 34.6 of SPP's existing Tariff may be unjust and unreasonable and unduly discriminatory or preferential to the extent that it allows SPP to provide ARR and LTR to network service customers subject to redispatch while necessary transmission upgrades are constructed.

37. Accordingly, we institute a proceeding in Docket No. EL16-110-000, pursuant to FPA section 206, to examine the SPP Tariff. Upon initial review, the concerns identified by the Commission might be addressed by revising section 34.6 to limit the eligibility for ARR and LTR of network customers with service subject to redispatch, as follows. In the interest of avoiding disruption to the results of the annual allocation of ARR and LTR mid-year, we believe that it would be reasonable to allow network service customers granted ARR associated with service subject to redispatch under the current Tariff section 34.6 to continue to hold those ARR until the end of the allocation year following the effective date of any revisions to section 34.6 adopted in a final Commission order in the section 206 proceeding. However, going forward following such effective date, we do not believe that it would be reasonable for SPP to allocate any new ARR to any such customers with network service subject to redispatch, except for those times and for those amounts not subject to redispatch if the section 206 proceeding results in the adoption of these tariff revisions. In addition, because LTR automatically renew each year, we believe that it would be reasonable to allow network service customers granted LTR associated with network service subject to redispatch under the current Tariff section 34.6 to continue to hold the LTR until the transmission upgrades are placed into service. Going forward following the effective date of any

revisions to section 34.6 adopted in a final Commission order in the section 206 proceeding, we do not believe that it would be reasonable for SPP to allocate any additional LTCRs to such customers with network service subject to redispatch; consistent with SPP's treatment of point-to-point service, additional LTCRs would be awarded only for firm transmission service that is no longer subject to redispatch.

38. We find that a paper hearing, as ordered below, is the appropriate procedure to resolve this matter. As ordered below, any person desiring to participate in the paper hearing must file a notice of intervention or timely motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016).

39. We will require SPP and other interested parties to file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of this section 206 proceeding in Docket No. EL16-110-000. Parties also may file reply briefs in response to parties' initial briefs due within 21 days after the due date of initial briefs.

40. In cases where, as here, the Commission institutes a proceeding under FPA section 206, the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of the proceeding in the *Federal Register*, and no later than five months subsequent to that date.²⁷ Consistent with Commission precedent,²⁸ we will establish a refund effective date at the earliest date allowed, i.e., the date the notice of the initiation of the proceeding in Docket No. EL16-110-000 is published in the *Federal Register*. The Commission is also required by section 206 to indicate when it expects to issue a final order. We expect to issue a final order in this proceeding within six months of receiving reply briefs, or May 30, 2017.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted in part, effective May 29, 2016, and rejected in part, as discussed in the body of this order.

²⁷ 16 U.S.C. § 824e(b) (2012).

²⁸ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-110-000, as discussed in the body of this order.

(C) SPP and other interested parties may file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding in Docket No. EL16-110-000. Reply briefs may be filed no later than 21 days thereafter.

(D) Any interested person desiring to be heard in Docket No. EL16-110-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), within 21 days of the date of issuance of this order.

(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation under FPA section 206 of the proceeding in Docket No. EL16-110-000.

(F) The refund effective date in Docket No. EL16-110-000 established pursuant to section 206 of the FPA shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.