

156 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER16-2330-000

ORDER GRANTING WAIVER REQUEST

(Issued September 30, 2016)

1. On July 29, 2016, Southwest Power Pool, Inc. (SPP) submitted, under section 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ a petition for waiver of certain provisions of SPP's Open Access Transmission Tariff (SPP Tariff) necessary to provide the option of a payment plan to entities affected by SPP's implementation of the revenue crediting process under Attachment Z2 of the SPP Tariff. In this order, we grant SPP's request for waiver of section 7.1 of the SPP Tariff and section II.B of Attachment Z2 of the SPP Tariff, as discussed below. We also clarify that SPP's payment plan proposal must be consistent with the Commission's regulations, specifically, with respect to the interest rate used in calculating amounts owed under Attachment Z2.

I. Background

2. Attachment Z2 of the SPP Tariff provides that any network upgrade which was paid for, in whole or part, through directly assigned upgrade costs shall be considered a Creditable Upgrade.² Attachment Z2 of the SPP Tariff provides that a sponsored upgrade may become a Creditable Upgrade if SPP determines that the sponsored upgrade is

¹ 18 C.F.R. § 385.207(a)(5) (2016).

² Petition at 2-3 (citing SPP Tariff at Attachment Z2, section I.A). 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.

needed as part of the transmission system.³ 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.⁴

3. On April 1, 2016, in Docket No. ER16-1341-000, SPP filed a request for waiver of three provisions of the SPP Tariff (Initial Waiver Request) to allow it to implement the Attachment Z2 revenue crediting process.⁵ SPP asserted that it had been delayed since 2008 in its implementation of revenue crediting because of numerous delays and problems with the software necessary to implement revenue crediting. SPP stated that it anticipated that the software would be fully operational in the second quarter of 2016, and it planned to begin collecting and distributing credit payment obligations by the fourth quarter of 2016. SPP noted that it would submit a proposal for a payment plan for Commission review in a separate filing. On July 7, 2016, the Commission granted SPP’s Initial Waiver Request.⁶

4. In its petition, SPP states that it has been significantly delayed in its implementation of the revenue crediting process and is currently processing eight years

³ Petition at 3 (citing SPP Tariff at Attachment Z2, section I.B).

⁴ *Id.* (citing SPP Tariff at Attachment Z2, section II).

⁵ *Id.* Specifically SPP requested waiver of: (1) the one-year billing adjustment limitation in section 7.1 of the SPP Tariff to allow SPP to adjust payment obligations and revenue distributions that may be beyond the one-year limitation; (2) the requirement to reallocate Balanced Portfolio 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 Limit 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. *Id.* at 4.

⁶ *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,020 (2016) (July 2016 Order). On August 5, 2016, Kansas Electric Power Cooperative, Inc. filed a request for rehearing of the July 2016 Order. On August 8, 2016, Southern Company Services, Inc. as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company filed a request for rehearing of the July 2016 Order. On August 8, 2016, American Electric Power Service Corporation and Xcel Energy Services Inc. filed a request for rehearing of the July 2016 Order.

of credit payment obligations. SPP also states that, once it is ready to commence the process, the affected entities will be responsible immediately for eight years of credit payment obligations.⁷ According to SPP, in order to account for the historical period,⁸ SPP and its stakeholders determined that the option of a payment plan would be appropriate. SPP notes that, on July 26, 2016, the SPP Board approved a payment plan that would allow affected entities the option of making payments associated with the historical portion of the revenue crediting process over a five-year period of time (Payment Plan).⁹ Specifically, SPP states that the Payment Plan provides that each entity with a net payable balance would be offered the option to pay the entire amount due at one time or pay equal installments every three months over a five-year period of time. SPP states that the interest rate established under 18 C.F.R. § 35.19a(a)(2) (2016), applicable in the quarter in which the Payment Plan begins, would apply to outstanding unpaid balances of those electing to pay in installments.¹⁰ Once set, the interest rate will remain the same during the Payment Plan period. SPP contends that entities with net receivable balances would receive distribution of amounts paid in proportion to their net receivable balances.¹¹ SPP states that the payments and receipts would be administered over the term of the Payment Plan on a levelized basis, in the same manner as an amortized loan.

5. SPP states that the five-year Payment Plan allows affected entities to pay the credits over time, as they would have if SPP's implementation had not been delayed eight years. SPP argues that, because the credit payment obligations for the first

⁷ Petition at 5.

⁸ The eight-year period during which SPP has been unable to implement the revenue crediting process is also referred to as the "historical period," which spans from 2008 through the date of implementation expected in 2016. *Id.* at 4.

⁹ *Id.* at 6.

¹⁰ *Id.* SPP notes that this is a different interest calculation than the interest that accrues on an upgrade sponsor's creditable balance pursuant to section II of Attachment Z2.

¹¹ *Id.* SPP states that each company would be treated as either a net payable or a net receivable entity, which would be determined by aggregating and netting across the various charges and credits resulting from settlement of Attachment Z2 historical amounts. SPP notes that the one exception to this approach is that the entities with both Transmission Customer and Transmission Owner functions under the SPP Tariff would have separate net amounts calculated for the two functions.

three years were much lower than in later years, a payment period of five years is more appropriate than eight years. SPP provides the following Table 1 showing estimated credit payment obligations by year since 2008.¹²

Year	Credit Payment Obligations for Creditable Upgrades
2008	\$76,726
2009	\$979,478
2010	\$5,490,341
2011	\$10,545,511
2012	\$18,196,696
2013	\$27,201,769
2014	\$38,211,261
2015	\$50,895,028
8/31/2016	\$43,221,636
Total	\$194,818,446

6. SPP states that it continues to process the historical data and, in September 2016, plans to provide each entity with its net amount payable or receivable for the historical period, as well as details regarding the components of these net amounts.¹³ SPP states that the Payment Plan is limited to the payment of the historical period balances and will not affect any normal monthly billing of revenue credits going forward.¹⁴ SPP asserts

¹² *Id.* at 7-8.

¹³ *Id.* at 8.

¹⁴ *Id.* at 9.

that, once the revenue crediting process is fully implemented, which is currently estimated to be November 2016, SPP will commence monthly billing for revenue credits going forward.

II. Waiver Request

7. SPP requests waiver of section 7.1 of the SPP Tariff and section II.B of Attachment Z2 of the SPP Tariff in order to provide entities, with credit payment obligations in the historical period, affected by the implementation of SPP's revenue crediting process the option to pay certain credit obligations over a five-year period.¹⁵ According to SPP, under the Payment Plan, SPP will determine the historical amount owed by an affected entity and divide the amount into 20 payments, including interest, over a five-year period. SPP plans to begin collecting and distributing credit payment obligations by November 2016. SPP requests that the Commission issue an order by October 1, 2016 to prevent further delays in the implementation of the revenue crediting process.

8. 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, and SPP has been transparent in communicating with its members and stakeholders. SPP contends 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 obligation was due.

9. Second, SPP argues that the requested waiver is limited in scope, as it is a one-time waiver for the implementation of the Payment Plan for the historical period for those affected entities with a net payable balance.¹⁸ SPP states that, once the historical period is resolved, on a going-forward basis, SPP will calculate, collect and distribute

¹⁵ Section 7.1 of the SPP Tariff requires that SPP provide monthly invoices and that invoices be paid within 15 days of receipt. Section II.B of Attachment Z2 of the SPP Tariff requires that annual revenue credit amounts be paid monthly.

¹⁶ Petition at 10 (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 11.

¹⁸ *Id.*

credit payment obligations on a monthly basis in accordance with Attachment Z2 and section 7.1 of the SPP Tariff, and no additional payment plans will be necessary.

10. Third, SPP asserts that the waiver will solve a concrete problem, as it will allow affected entities the option to pay the amounts owed over a five-year time period, similar to what would have been paid if SPP had timely implemented the process, rather than be subjected to eight years' worth of credit payment obligations in one month.¹⁹

11. Fourth, SPP contends that the waiver will not result in undesirable consequences, but, instead, will provide benefits in that it will lessen affected entities' burden of paying eight years' worth of credit payment obligations in one month.²⁰ SPP asserts that this option can mitigate the financial harm to entities that have net payable amounts in the historical period and will provide greater opportunity for such companies to absorb and manage the cost increase. Further, SPP states that, without such a Payment Plan, some affected entities could face severe financial repercussions. For those entities with net receivable amounts, SPP states that the Payment Plan will include interest at a Commission-established rate to compensate them for the time value of delayed receipts.

III. Notice of Filing and Responsive Pleadings

12. Notice of SPP's filing was published in the *Federal Register*, 81 Fed. Reg. 52,678 (2016), with interventions and protests due on or before August 19, 2016.

13. The following entities filed timely motions to intervene: Arkansas Electric Cooperative Corporation; Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC, Buckeye Wind Energy LLC, and Bethel Wind Farm LLC; Mid-Kansas Electric Company, LLC; Sunflower Electric Power Corporation; Westar Energy, Inc.; Golden Spread Electric Cooperative, Inc.; Flat Ridge 2 Wind Energy LLC; and NextEra Energy Resources, LLC. Timely motions to intervene and comments were filed by: Kansas Electric Power Cooperative, Inc. (KEPCO); Xcel Energy Services Inc. (Xcel); and American Wind Energy Association and the Wind Coalition (collectively, Wind Parties). EDF Renewable Energy, Inc. (EDF) and Enel Green Power North America, Inc. (Enel) filed timely motions to intervene and protests. On August 22, 2016, Oklahoma Gas & Electric Company (OG&E) filed a late intervention.²¹ On August 24, 2016,

¹⁹ *Id.* at 11-12.

²⁰ *Id.* at 12.

²¹ *See* 18 C.F.R. § 385.2001(a)(2) (2016) ("Any document is considered filed, if in paper form, on the date stamped by the Secretary or, in the case of a document filed via the Internet, on the date indicated in the acknowledgment that will be sent immediately

(continued...)

Lincoln Electric System filed a motion to intervene out of time. On August 26, 2016, Frontier Windpower, LLC and Cimarron Windpower II, LLC filed motions to intervene out of time. On September 9, 2016, SPP filed an answer to comments and protests. On September 21, 2016, EDF filed a motion for leave to answer and answer to SPP's answer.

IV. Comments and Protests

14. KEPCO states that it supports the petition for waiver, and notes that it has concerns with SPP's implementation and calculations of Attachment Z2 credits in the historical period.²² Xcel also filed comments supporting the waiver. However, Xcel argues that the Commission should require SPP to submit compliance filings in September 2016, when SPP completes its initial estimates of charges, and in November 2016, when SPP issues invoices and customers are able to select the Payment Plan.²³ In addition, Xcel asserts that SPP should be required to allow customers to submit information requests regarding the estimated charges in order to identify errors in calculations before final invoices are issued.²⁴ Finally, Xcel states that, if an entity does not believe SPP has adequately explained the charges, the entity would be able to make a filing pursuant to section 206 of the Federal Power Act (FPA).²⁵

15. Wind Parties state that they do not take a position on whether the Commission should grant SPP's petition; however, Wind Parties assert that SPP's proposed calculation of interest on historical balances is inconsistent with the Commission's regulations.²⁶ Specifically, Wind Parties contend that the Commission's regulations do not provide for fixing an interest rate at one time and applying that fixed interest rate through the period when refunds are owed. Wind Parties argue that, instead, the Commission's regulations require SPP to recalculate the interest for the balance of the

upon the Commission's receipt of a submission, unless the document is subsequently rejected. Any document received after regular business hours is considered filed on the next regular business day.”).

²² KEPCO Comments at 7.

²³ Xcel Comments at 8-9.

²⁴ *Id.* at 10.

²⁵ *Id.*

²⁶ Wind Parties Comments at 5.

five-year period as of any quarter when the interest rate has changed.²⁷ Wind Parties and EDF argue that the amount of each quarterly payment may vary from one quarter to the next, and SPP must calculate the amounts owed based on the current interest rate.²⁸ Additionally, Wind Parties aver that SPP's proposal is inconsistent with the Commission's regulations because it fails to compound interest over time. Wind Parties assert that the Commission's regulations provide that the "interest required to be paid under clause (iii)(A) shall be compounded quarterly" which means that the interest be calculated at each quarter not only on the initial principal amount owed, but also on the accumulated interest of the previous periods.²⁹ Wind Parties note that SPP did not request waiver of, and is bound to comply with, 18 C.F.R. § 35.19a(a)(2) . Wind Parties also argue that the Commission should clarify the effect of dispute resolution on the payments under the Payment Plan and should require that the five-year period should not be tolled pending resolution of any disputes over amounts owed under Attachment Z2.³⁰

16. EDF argues that the Commission should deny SPP's petition. EDF states that it would not oppose SPP receiving a waiver to implement the ten-month payment plan originally presented by SPP in Docket No. ER16-1341-000.³¹ EDF asserts that SPP's argument that it needs to implement a five-year payment plan to grant affected entities additional time to repay the amounts owed does not constitute a concrete problem that needs to be remedied.³² EDF states that SPP customers were well aware that they would eventually have to repay for Creditable Upgrades,³³ the relative amount of money owed is limited, as the economic impact "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

²⁷ *Id.* at 4-5 (citing 18 C.F.R. § 35.19a(a)(2) (2016)).

²⁸ *Id.* at 5; EDF Comments at 12.

²⁹ Wind Parties Comments at 5 (citing 18 C.F.R. § 35.19a(a)(2)(iii)(B) (2016)). Clause (iii)(A) provides for an interest rate "[a]t an average prime rate for each calendar quarter on all excessive rates or charges held (including all interest applicable to such rates or charges) on or after October 1, 1979." 18 C.F.R. § 35.19a(a)(2)(iii)(A) (2016).

³⁰ Wind Parties Comments at 6 (citing SPP Tariff, section 7.4).

³¹ EDF Comments at 7 (citing SPP Answer at 14, Docket No. ER16-1341-000 (filed May 12, 2016)).

³² *Id.*

³³ *Id.* at 8.

impact of less than \$40 per year),”³⁴ and entities receiving financial and transmission service benefits from the network upgrades should not be allowed to further extend and delay their repayment obligations at the expense of upgrade sponsors.³⁵ EDF also asserts that the inclusion of interest accounting for an extended payment plan period would not eliminate all undesirable consequences, and the five-year Payment Plan would increase upgrade sponsors’ credit risk exposure and punish upgrade sponsors by eliminating their ability to utilize their money now as they see fit.³⁶ EDF argues that the Commission should confirm that SPP must include interest in the historical net payment amounts that upgrade sponsors will receive.³⁷

17. Enel argues that further delaying the payment of credits will result in undesirable consequences and is unjust and unreasonable and that SPP’s petition should be denied.³⁸ Enel contends that, if the Commission does grant waiver, it should be a balanced waiver that would allow an affected entity to pay in one lump sum or over the course of 16 months to allow affected entities a reasonable amount of time, but not add too much further payment delay to upgrade sponsors and minimize the risk period.³⁹

V. SPP Answer

18. SPP argues that EDF misconstrues the July 2016 Order as finding that the amount of money owed is limited.⁴⁰ SPP states that, in the July 2016 Order, the Commission found that “the largest shift in revenue requirements for any single zone from a Balanced Portfolio reallocation is expected to be small (i.e., four hundredths of one percent of that

³⁴ *Id.* (citing July 2016 Order, 156 FERC ¶ 61,020 at P 57).

³⁵ *Id.* at 8-9.

³⁶ *Id.*

³⁷ *Id.* at 9-10, 12 (citing 18 C.F.R. § 35.19a(a)(2) (2016)).

³⁸ Enel Protest at 3-4.

³⁹ *Id.* at 5.

⁴⁰ SPP Answer at 3 (citing EDF Protest at 8).

zone's revenue requirement or an average bill impact of less than \$40 a year.")⁴¹ SPP asserts that EDF uses this information as a basis for stating that the impact from the revenue crediting process is limited, which is incorrect because it confuses the total amount of credits to be settled in the historical period with the minimal effect on Balanced Portfolio reallocation. SPP clarifies that, currently, there are \$848 million worth of Directly Assigned Upgrade Costs for 158 Creditable Upgrades that are eligible to receive credits in accordance with Attachment Z2.⁴² SPP states that the credit payment obligations for the time period applicable to the Payment Plan total approximately \$217 million.⁴³

19. SPP states that, while it agrees with EDF that affected entities have had sufficient notice of the potential cost impacts, such notice does not alleviate the need for the Payment Plan. According to SPP, requiring affected entities to pay cost impacts that have accumulated for eight years in one lump sum payment is unreasonable. SPP agrees with Xcel that the "danger for load serving entities . . . is that costs could be 'trapped' because, due to the passage of time and inability to forecast the liability, such customers (a) have not been accruing for potential [Attachment] Z2 liabilities and (b) may now be unable to contemporaneously recover the costs from customers or counterparties who benefitted from the transmission service made possible by a Creditable Upgrade"⁴⁴ and that the "five-year Payment Plan would allow entities in SPP to seek recovery of the [Attachment] Z2 charges (and credit any revenues) in wholesale and retail rates in a way that avoids the undesirable consequences of either non-recovery of the costs or 'rate-shock' in a single-year."⁴⁵

20. SPP observes that EDF does not oppose SPP receiving a waiver to implement the one-year payment plan approved by the SPP Board of Directors in April 2016⁴⁶ and Enel

⁴¹ *Id.* (citing July 2016 Order, 156 FERC ¶ 61,020 at P 57).

⁴² *Id.* at 4 (citing Board of Directors/Members Committee Meeting Minutes No. 169, at 555 (July 25-26, 2016), <https://www.spp.org/documents/40433/bod-mc%20minutes%2020160725-26.pdf> (SPP Board July 2016 Minutes)).

⁴³ *Id.* (citing SPP Board July 2016 Minutes at 569).

⁴⁴ *Id.* at 4-5 (citing Xcel Comments at 8).

⁴⁵ *Id.* at 5 (citing Xcel Comments at 8-9).

⁴⁶ *Id.* (citing EDF Protest at 7). EDF refers to the plan developed by SPP and its stakeholders as the ten-month payment plan. EDF Protest at 7.

proposes an alternative payment plan period of 16 months.⁴⁷ SPP states that, initially, SPP and its stakeholders determined that one year was the appropriate length of time for the Payment Plan;⁴⁸ however, once additional information was available related to the magnitude of credit payment obligations and Directly Assigned Upgrade Costs, it was determined that five years was a more appropriate repayment period.⁴⁹

21. SPP avers that the calculation of interest it proposes is consistent with 18 C.F.R. § 35.19a(a)(2) with respect to its application of quarterly compounded interest. SPP states that, although EDF seeks to link interest under the Payment Plan with SPP's calculation of interest during the historical period that results from SPP's delayed implementation of settlements under Attachment Z2, a clear distinction should be drawn between these two applications of interest and it is only the Payment Plan interest calculation that is germane to this proceeding.

22. SPP states that section II of Attachment Z2 provides that "Directly Assigned Upgrade Costs are recoverable, with interest calculated in accordance with 18 C.F.R. § 35.19a(a)(2), from new transmission service using the facility as defined below until the amount owed the Upgrade Sponsor is zero."⁵⁰ SPP states that this is the interest that accrues on an upgrade sponsor's creditable balance, including accrual during the historical period resulting from SPP's delayed implementation. SPP asserts that the creditable balances of upgrade sponsors that have incurred Directly Assigned Upgrade Costs during that period are being increased to reflect the compounding of such interest during the full time that has elapsed since each Upgrade Sponsor incurred the cost. SPP states that the upgrade sponsors will receive compensation for both the accrued interest and the Directly Assigned Upgrade Costs amounts if a sufficient level of subsequent transmission service has creditable impacts on the sponsored facilities. However, SPP contends that they will not receive full compensation if insufficient transmission service is dependent on the Creditable Upgrade. According to SPP, under Attachment Z2,

⁴⁷ SPP Answer at 6 (citing Enel Protest at 5).

⁴⁸ *Id.* (citing SPP Markets and Operations Policy Committee Minutes, Agenda Item 9 (Apr. 12-13, 2016), <https://www.spp.org/documents/37791/mopc%20minutes%20and%20attachments%2020160412-13.pdf>; SPP Board of Directors/Members Committee Meeting Minutes No. 168, Agenda Item 4 (Apr. 26, 2016), https://www.spp.org/documents/37863/bod_mc%20minutes%2020160426_full.pdf).

⁴⁹ *Id.* (citing SPP Board July 2016 Minutes at 656-57).

⁵⁰ *Id.* at 7 (citing SPP Tariff at Attachment Z2, section II).

compensation through credits, including interest, is not guaranteed and is contingent on the level of subsequent service, and such compensation is provided through transmission service charges determined in accordance with Attachment Z2. Therefore, SPP concludes that this interest accrual on and compensation of creditable balances under section II of Attachment Z2 is separate and distinct from the interest related to the Payment Plan. SPP clarifies that it does not propose any changes to the requirement to pay interest in accordance with section II of Attachment Z2; thus, there is no explanation in the petition for waiver of how such interest is calculated.

23. SPP states that the Payment Plan addresses how interest will be calculated, and, if any entity elects the Payment Plan, interest will be charged on the outstanding unpaid balance owed by the entity. SPP proposes to use the interest rate established under 18 C.F.R. § 35.19a(a)(2), and once set, the interest rate would remain the same during the Payment Plan period, in the same manner as an amortized loan. SPP states that EDF and Wind Parties maintain that the interest rate applied under the Payment Plan should vary over the five-year period with quarterly changes in the prime rate rather than remaining fixed. However, SPP argues that, given the unique circumstances underlying the Payment Plan proposal, SPP is not requesting to apply the entirety of 18 C.F.R. § 35.19a(a)(2), but rather to apply the rate determination provision applicable in the quarterly period in which entities make the decision to accept the Payment Plan. SPP states that other examples of utilizing 18 C.F.R. § 35.19a(a)(2) to determine interest rates without applying the entirety of the regulation have been accepted by the Commission, such as in cost true-up calculations under formula rates. SPP also argues that providing for the interest rate to remain fixed at the level applicable in the initial settlement quarter is consistent with the fact that, absent the Payment Plan, the entire balance for the historical period would be due and payable in that same quarter. SPP contends that utilizing a fixed interest rate also affords both payers and receivers of the net amounts to have predictability in their expenses and revenues over the term of the Payment Plan, and, conversely, allowing the rate to vary would introduce an unnecessary element of financial uncertainty. Further, SPP argues that the fixed rate allows entities to make a clear economic choice among alternatives that may include accepting the Payment Plan, paying the entire balance up-front through self-financing, and paying the entire balance up-front through external financing.

24. SPP states that Wind Parties maintain that the Payment Plan proposal does not include the quarterly compounding of interest in accordance with Commission regulations. However, SPP contends that this characterization is incorrect and the Payment Plan does require the payer to incur interest charges on not only the principal, but also on the previously compounded interest balance. SPP states that the receiver is paid the compounded interest, and the fact that the payments are calculated on a levelized basis does not eliminate this feature of the Payment Plan.

25. In response to KEPCO's claim that SPP has yet to provide the information needed to replicate calculations,⁵¹ SPP states that it plans to have the initial settlement results and supporting input information available by September 22, 2016. SPP states that this will include the initial calculations of credit payment obligations a Transmission Customer is expected to pay, the total amount of credit revenues that an upgrade sponsor is to receive, the total effect to Schedule 11 rates, the total amount of revenues incorrectly distributed to Transmission Owners that should have been distributed to upgrade sponsors, and the input data necessary for the calculation of the credit payment obligations.⁵²

26. SPP further states that affected entities will be provided an opportunity to review impact and billing information prior to the issuance of invoices.⁵³ SPP states that, after it provides the initial settlement results and input information, SPP will provide final settlement results in mid-October to allow the affected entities time to review the data and calculations and ask SPP questions before the November 2016 invoice date. SPP states that, during this review period, any entity may submit questions related to the information provided to identify inadvertent errors in the billing prior to the issuance of the invoice in November 2016 and that SPP will continue to provide one-on-one sessions for any affected entity.

27. In response to Wind Parties' request for clarification, SPP asserts that the dispute resolution process will not toll the Payment Plan period.⁵⁴ SPP states that section 7.4 of the SPP Tariff requires that a Transmission Customer continue to make payments in the event of a dispute, with the disputed amounts being placed into an escrow account. Once the dispute is resolved, SPP will either resettle to account for any errors in the previous billing and refund any amounts due to the Transmission Customer or if the billing is determined to be correct, SPP would release the funds to the appropriate entities.

VI. EDF Answer

28. EDF states that, because SPP acknowledges that affected entities have had "sufficient notice" of the inevitable requirement to recover revenues to reimburse upgrade sponsors and the "potential cost impacts," there is no need for the Payment

⁵¹ *Id.* at 9 (citing KEPCO Comments at 7).

⁵² *Id.* at 10.

⁵³ *Id.* at 11 (citing Wind Parties Comments at 6).

⁵⁴ *Id.* (citing Wind Parties Comments at 6).

Plan.⁵⁵ EDF disputes SPP's assertion that the Payment Plan "mitigates the possibility of rate shock for customers at both the wholesale and retail levels"⁵⁶ and "provides more adequate time for affected companies to address issues related to cost recovery from the entities and customers benefitting from Creditable Upgrades."⁵⁷

29. EDF argues that SPP's methodology for calculating interest during the "historical period" will fail to reimburse upgrade sponsors for the time value of money lost due to SPP's delays, and, specifically, would not provide interest to upgrade sponsors when SPP receives revenues from Transmission Customers that do not exceed the full amount of a Creditable Upgrade.⁵⁸ EDF asserts SPP's methodology makes the receipt of interest contingent upon an upgrade sponsor first receiving full compensation for the non-inflation-adjusted investment in Creditable Upgrades; however, upgrade sponsors should instead receive interest based on the time value of money that has elapsed, regardless of whether SPP recovers through transmission service rates the full amount of a Creditable Upgrade.⁵⁹

VII. Discussion

A. Procedural Matters

30. 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 the late-filed motions to intervene given the entities' interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.⁶⁰

⁵⁵ EDF Answer at 2-3 (citing SPP Answer at 4).

⁵⁶ *Id.* at 3 (citing SPP Answer at 6).

⁵⁷ *Id.* (citing SPP Answer at 6-7).

⁵⁸ *Id.* at 5 (citing SPP Answer at 7).

⁵⁹ *Id.* at 5-6 (citing SPP Tariff at Attachment Z2, section II; 18 C.F.R. § 35.19a(a)(2) (2016)).

⁶⁰ Although OG&E filed its motion to intervene after the comment deadline, it did

(continued...)

31. 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 an answer unless otherwise ordered by the decisional authority. We will accept SPP's and EDF's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

32. 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.⁶¹

33. 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, consistent with the Initial Waiver Request, which the Commission granted, to allow SPP to implement the revenue crediting process for the historical period, we find that SPP acted in good faith. SPP, working with stakeholders, has developed an option of a payment plan in order to reduce the burden of costs from revenue credits for the historical period on entities with credit payment obligations.

34. Second, we find that the requested waiver is of limited scope. Granting waiver of section 7.1 and section II.B of Attachment Z2 to permit SPP to provide the option of a payment plan requires a one-time waiver for credit payment obligations for the historical period. Going forward, SPP will collect and distribute credit payments as part of its normal monthly billing and settlement process.

35. Third, we find that granting the petition will address a concrete problem that needs to be remedied. Due to the extended period of time it has taken SPP to implement revenue crediting, some affected entities, at no fault of their own, may be faced with a large one-time payment absent the option to pay over time. We disagree with EDF's assertions that the relative amount of money owed is limited⁶² and that, because entities

not file a motion to intervene out of time. Nonetheless, we will grant OG&E's motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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

⁶² EDF Protest at 8.

have had sufficient notice of the potential revenue credits, a payment plan is not required to mitigate potential rate shock for some entities.⁶³ As SPP states in its petition and answer, granting the waiver request will mitigate the financial harm to entities that have net payable amounts in the historical period, and will provide greater opportunity for these entities to absorb and manage the cost.⁶⁴ Specifically, entities with a net payable balance will have the option to extend repayment of their credit payment obligations over a five year period rather than paying them in a single lump sum payment.

36. Fourth, we find that the requested waiver will not result in undesirable consequences, such as harming third parties. While entities with net receivable balances will not receive all of the funds due to them at one time, they will receive interest on the outstanding balances as the credit payment obligations are repaid. We also find it unnecessary for SPP to institute a customer information request process outside of the billing procedures currently available under the SPP Tariff or for SPP to submit compliance filings as Xcel suggests. Notably, SPP states that affected entities will be provided an opportunity to review impact and billing information, including one-on-one sessions to identify any errors or disputes, prior to the issuance of invoices in November 2016.⁶⁵ In addition, if an entity disputes a charge SPP has assessed, it can use the dispute resolution procedures in the SPP Tariff and, as Xcel noted, the entity can file a complaint under section 206 of the FPA if it believes SPP has not adequately explained a charge. Although EDF and Enel may be correct that further delay could prevent entities from using their money now as they see fit and may increase the potential for credit risk exposure, we find that granting the requested waiver strikes a reasonable balance between allowing upgrade sponsors to receive amounts owed and mitigating financial harm to entities with net payable amounts in the historical period.

37. While we grant SPP waiver of section 7.1 of the SPP Tariff and section II.B of Attachment Z2 of the SPP Tariff, we note the concerns raised by Wind Parties, and EDF regarding SPP's proposed calculation of interest on historical balances⁶⁶ and the

⁶³ EDF Answer at 3.

⁶⁴ Petition at 12; SPP Answer at 4-5.

⁶⁵ SPP Answer at 11.

⁶⁶ With regard to EDF's request that the Commission require that SPP confirm that it must include interest in the historical net payment amounts that upgrade sponsors will receive, in the Initial Waiver Request, SPP stated that the historical net payment amounts will include interest that has accrued on the unpaid balances. Initial Waiver Request at 8. Additionally, in its answer, SPP clarifies that it is not proposing any change to the requirement to pay interest in accordance with section II of Attachment Z2. SPP Answer

(continued...)

application of interest under 18 C.F.R. § 35.19a(a)(2) to outstanding balances of those electing to pay in installments under the Payment Plan. SPP states that “[t]he interest rate established under 18 C.F.R. § 35.19a(a)(2), applicable in the quarter in which the payment plan begins, would apply to outstanding unpaid balances of those electing to pay in installments. Once set, the interest rate will remain the same during the Payment Plan period.”⁶⁷ SPP argues that a clear distinction should be drawn between calculation of interest made under the Payment Plan and the calculation of interest during the historical period that resulted from SPP’s delayed implementation of settlements under Attachment Z2.⁶⁸ SPP also argues that a fixed interest rate will allow predictability and financial certainty for both payers and receivers.⁶⁹ SPP’s proposal deviates from the application of interest under the Commission’s regulations by keeping the interest rate the same over the Payment Plan period rather than compounding interest on a quarterly basis as required under 18 C.F.R. § 35.19a(a)(2)(iii)(A). The Commission generally requires that interest for refunds or payments to make parties whole be calculated consistent with section 35.19a(a)(2). Therefore, we require that interest under the Payment Plan be calculated consistent with the Commission’s regulations under 18 C.F.R. § 35.19a(a)(2). In other words, SPP must calculate the amounts owed under the Payment Plan based on the current interest rate for each quarter, as well as ensure that interest be calculated at each quarter on the initial principal amount owed, and also on the accumulated interest of the previous periods.⁷⁰

38. In addition, we will not require SPP to clarify its dispute resolution procedures or that its proposed Payment Plan will not be delayed pending the resolution of any disputes. The dispute resolution process outlined in the SPP Tariff does not specify that

at 8. We further note that EDF’s answer appears to misinterpret both SPP’s answer and the SPP Tariff. In its answer, SPP reiterated how interest had accrued on the unpaid balances. SPP Answer at 7-9. SPP also noted that an upgrade sponsor is only entitled to repayment based on the amount of transmission service granted but for the upgrade, which may not result in full repayment to the upgrade sponsor. *Id.* at 7-8. This application of the SPP Tariff does not mean that the receipt of interest is contingent upon an upgrade sponsor first receiving full compensation for the non-inflation-adjusted investment in Creditable Upgrades as EDF alleges.

⁶⁷ Petition at 6.

⁶⁸ SPP Answer at 6-7.

⁶⁹ *Id.* at 8-9.

⁷⁰ See 18 C.F.R. § 35.19a(a)(2)(iii) (2016).

payments will be tolled during the dispute resolution process⁷¹ and SPP has not proposed to change the dispute resolution procedures in the instant petition. Moreover, SPP asserts that the dispute resolution process will not toll the Payment Plan period.⁷² Accordingly, Wind Parties' concern that the five-year period should not be tolled pending resolution of any disputes over amounts owed under Attachment Z2 is, therefore, misplaced.

39. For these reasons, we find good cause to grant SPP's request for a waiver of section 7.1 of the SPP Tariff and section II.B of Attachment Z2 of the SPP Tariff to allow SPP to provide the option of a payment plan to entities affected by SPP's implementation of the revenue crediting process in Attachment Z2, as discussed above.

⁷¹ SPP Tariff, Part I, section 12 (Dispute Resolution Procedures).

⁷² SPP Answer at 11.

The Commission orders:

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

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.