

166 FERC ¶ 61,078  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Southwest Power Pool, Inc.

Docket No. ER19-456-000

ORDER ACCEPTING TARIFF REVISIONS IMPLEMENTING FORMULA RATES  
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 31, 2019)

1. On November 30, 2018, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission's regulations,<sup>2</sup> Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (Tariff) to add a formula rate template (Template) and implementation protocols (Protocols) (together, Formula Rate) to accommodate the recovery of an annual transmission revenue requirement (ATRR) for Mor-Gran-Sou Electric Cooperative, Inc. (Mor-Gran-Sou). In this order, we accept SPP's proposed Tariff revisions, effective February 1, 2019, subject to refund, and establish hearing and settlement judge procedures.

**I. Background**

2. SPP is a Commission-approved Regional Transmission Organization (RTO) based in Little Rock, Arkansas that administers open access transmission service across a transmission system spanning the central region of the United States, from northern Texas to North Dakota. On November 10, 2014, in Docket Nos. ER14-2850-000 and ER14-2851-000, the Commission issued an order facilitating the integration of the Western Area Power Administration – Upper Great Plains region (Western), Basin Electric Power Cooperative (Basin Electric), and Heartland Consumers Power District into SPP, effective October 1, 2015.<sup>3</sup> As part of this integration proposal, SPP

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.13 (2018).

<sup>3</sup> *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,113 (2014).

established a new SPP pricing zone, the Upper Missouri Zone, or Zone 19. Since the establishment of Zone 19, several additional entities have joined SPP as transmission owners and incorporated their ATRRs into Zone 19.<sup>4</sup>

3. Mor-Gran Sou is a not-for-profit, member-owned electric distribution cooperative serving south central North Dakota. Mor-Gran-Sou is a member of Basin Electric and will be transferring functional control of its transmission facilities to SPP on February 1, 2019.<sup>5</sup>

## II. SPP Filing

4. SPP states that the proposed revisions to its Tariff will implement Mor-Gran-Sou's recovery of transmission service revenues for its transmission facilities. Specifically, SPP proposes to include, as Addendum 45 to Attachment H (Annual Transmission Revenue Requirement for Network Integration Transmission Service) of its Tariff, Mor-Gran-Sou's Formula Rate. SPP also proposes revising Attachment H, section I, Table 1 to direct interested parties to SPP's website that contains the allocations of the ATRR consistent with the methodology established in the Tariff. Additionally, SPP requests approval to revise Attachment T (Rate Sheets for Point-To-Point Transmission Service) of its Tariff to add Mor-Gran-Sou to the SPP pricing Zone 19 rate sheet. SPP states that the Commission has previously approved similar modifications to the Tariff to accommodate zones that include multiple owners.<sup>6</sup> Finally, SPP requests approval to revise Addendum 2 to Attachment O (Transmission Planning Process) of its Tariff, to include Mor-Gran-Sou as a participant in SPP's planning region.<sup>7</sup>

5. SPP states that it submits this filing on behalf and at the request of Mor-Gran-Sou. In doing so, SPP explains that it is not independently supporting or justifying the proposed revisions or Mor-Gran-Sou's ATRR through this filing but that it is merely modifying the Tariff to implement Mor-Gran-Sou's recovery of transmission service revenues for its transmission facilities under the Tariff. SPP notes that Mor-Gran-Sou requested that SPP implement the proposed Tariff changes and provided SPP with

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<sup>4</sup> SPP Transmittal at 2-4.

<sup>5</sup> *Id.* at 3, 10.

<sup>6</sup> *Id.* at 11 (citing *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,113; *Sw. Power Pool, Inc.*, Docket No. ER10-273-000 (Jan. 11, 2010) (delegated order); *Sw. Power Pool, Inc.*, 120 FERC ¶ 61,297 (2007)).

<sup>7</sup> *Id.* at 10-11.

documents supporting the proposed ATRR included in the filing.<sup>8</sup> However, under Attachment AI (Transmission Definition) of the SPP Tariff, SPP is responsible for reviewing any information an incoming transmission owner has provided to support that transmission owner's facilities being eligible for rate recovery.<sup>9</sup> SPP states that its governing documents grant it the authority to determine the appropriate pricing zone placement for any facilities qualifying for rate recovery. SPP states that, notwithstanding its exercise of authority in this manner, it recognizes the Commission's ultimate jurisdiction over the determination of the justness and reasonableness of zonal placement of transmission facilities and the corresponding rate impacts on customers in the Zone.<sup>10</sup>

6. In support of the inclusion of Mor-Gran-Sou's transmission facilities (Transferring Facilities) in the SPP Tariff for rate recovery, SPP asserts that the Transferring Facilities satisfy two of the six criteria of Attachment AI in the SPP Tariff. SPP notes that transmission facilities need only meet a single criterion of Attachment AI to be included as part of the SPP transmission system. Specifically, SPP states that the Transferring Facilities are operated above 60 kV and serve two or more eligible customers that are not affiliated. Additionally, SPP indicates that Mor-Gran-Sou uses some of the Transferring Facilities to control and protect its 115 kV and 69 kV lines and substations that qualify as transmission facilities. SPP also states that none of the Transferring Facilities meet the exclusions of Attachment AI.<sup>11</sup>

7. SPP states that it determined that the Transferring Facilities should be placed in SPP pricing Zone 19. SPP explains that it first determined whether to place the Transferring Facilities in a new zone or in an existing zone based on three criteria: (1) whether the new transmission owner's ATRR is less than the smallest three-year average zonal ATRR in 2017, as adjusted for subsequent zonal ATRR changes; (2) the extent to which the new transmission owner's facilities substantively increase the SPP regional footprint; and (3) the nature of transmission service to serve load prior to the expected transfer date. SPP states that the scope and configuration of the Transferring Facilities does not support the establishment of a new Zone under these criteria. Specifically, SPP indicates that: (1) Mor-Gran Sou's proposed ATRR is substantially below the minimum benchmark; (2) the scope of the Transferring Facilities is smaller than any existing Zone in the SPP region; and (3) the load directly connected to the

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<sup>8</sup> *Id.* at 1-2, 10-11.

<sup>9</sup> SPP Tariff, Attachment AI.

<sup>10</sup> SPP Transmittal at 6-8.

<sup>11</sup> *Id.* at 5-6.

Transferring Facilities is already receiving SPP transmission service in Zone 19 under Basin Electric's Network Integration Transmission Service Agreement.<sup>12</sup>

8. SPP asserts that, because the establishment of a new Zone is not justified, the Transferring Facilities should be placed in Zone 19. SPP states that this placement is supported by an additional set of criteria, including the extent to which the Transferring Facilities are embedded and integrated into an existing Zone and the nature of transmission service to serve load prior to the expected transfer date. SPP explains that the Transferring Facilities currently serve the network load of Basin Electric under the Tariff. SPP notes that the Transferring Facilities are interconnected only with facilities currently in Zone 19 or facilities under the functional control of the Midcontinent Independent System Operator, Inc., but included in SPP rates through a crediting mechanism in the SPP Tariff.<sup>13</sup>

9. In support of its filing, SPP has submitted testimony prepared on behalf of Mor-Gran-Sou from: (1) Mr. Donald Franklund, Co-General Manager and Chief Executive Officer of Mor-Gran-Sou; (2) Mr. Bernard A. Cevera, Managing Consultant for C. H. Guernsey and Company; and (3) Mr. Robert C. Smith, Vice President of GDS Associates, Inc.

10. SPP states that according to Mor-Gran-Sou, the Template will calculate Mor-Gran-Sou's ATRR each year, which will be one component of the total ATRR for network integration transmission service and point-to-point transmission service in Zone 19. Mor-Gran-Sou states that the inputs to its rates will be based on the independently audited books and records of Mor-Gran-Sou for the most recent calendar year, including its certified Rural Utilities Service Financial and Operating Report – Electric Distribution (RUS Form No. 7).<sup>14</sup> SPP states that, in accordance with the Protocols, Mor-Gran-Sou will post each annual update of the ATRR on or before June 30 each year, to take effect January 1 of the following year.<sup>15</sup> SPP also explains that in light of the proposed effective date of February 1, 2019 for the commencement of SPP transmission service over Mor-Gran-Sou's facilities, the instant filing includes a populated version of the Template used to calculate an initial ATRR that will be effective from February 1, 2019 through December 31, 2019. Mor-Gran-Sou asserts that its

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<sup>12</sup> *Id.* at 6-9.

<sup>13</sup> *Id.* at 9.

<sup>14</sup> SPP Filing, Ex. No. SPP-008, Direct Testimony of Bernard A. Cevera at 4-5.

<sup>15</sup> SPP Filing at 11-12.

proposed Formula Rate is just and reasonable and is similar to those that the Commission has previously accepted.<sup>16</sup>

11. Mor-Gran-Sou states that its proposed Formula Rate includes a return on equity (ROE) of 10.1 percent, which includes a base ROE of 9.6 percent and a 50 basis point adder for its RTO membership in SPP. Mor-Gran-Sou asserts that the Commission has declined to establish a formal standard of review applicable to revenue requirements filed by non-jurisdictional entities transferring their facilities to an RTO's functional control, apart from examining the RTO's rates to ensure that they will be just and reasonable. Nonetheless, Mor-Gran-Sou asserts, as a part of its analysis as to whether the RTO's rates are just and reasonable, the Commission has examined non-jurisdictional entities' rates of return. Based on its reviews, according to Mor-Gran-Sou, the Commission has permitted non-jurisdictional entities to implement ROEs that fall within a range of reasonable returns approved by the Commission for other transmission owners. In addition, Mor-Gran-Sou states, the Commission has permitted non-jurisdictional transmission owners that have placed their facilities under the control of an RTO to apply the same overall rate of return as that applied by the dominant transmission owner in the same RTO pricing zone.<sup>17</sup> Mor-Gran-Sou states that it applied Commission precedent by basing the requested ROE on the ROE of the dominant non-governmental agency transmission owner in SPP Zone 19, Basin Electric. Mor-Gran-Sou explains that while Western is the dominant transmission owner in Zone 19, Western is a governmental agency that does not have a credit rating and does not earn a rate of return on its transmission plant. Mor-Gran-Sou asserts that its proposal is also appropriate because it is a member of Basin Electric.<sup>18</sup>

12. Mor-Gran-Sou also proposes to use either Basin Electric's actual capital structure or a hypothetical capital structure with an equity component of 36.3 percent and a debt component of 63.7 percent, depending on which capital structure has the higher equity component in a given year. Mor-Gran-Sou states that the same contingent capital

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<sup>16</sup> SPP Filing, Ex. No. SPP-001, Direct Testimony of Donald Franklund at 12; SPP Filing, Ex. No. SPP-008, Direct Testimony of Bernard A. Cevera at 9.

<sup>17</sup> SPP Filing, Ex. No. SPP-015, Direct Testimony of Robert C. Smith at 4-5 (citing *Sw. Power Pool, Inc.*, Docket No. ER16-1054-000 (Apr. 26, 2016) (delegated order); *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002); *City of Vernon, Cal.*, 109 FERC ¶ 63,057, at P 126 (2004), *aff'd*, *City of Vernon, Cal.*, Opinion No. 479, 111 FERC ¶ 61,092, *reh'g granted in part and denied in part*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006)).

<sup>18</sup> *Id.* at 6.

structure was previously approved by the Commission for Basin Electric.<sup>19</sup> Mor-Gran-Sou argues that, similar to the proposed base ROE, use of a capital structure based on Basin Electric is consistent with Commission precedent permitting the use of the capital structure of the dominant non-governmental transmission owner in the same RTO pricing zone and is appropriate because Mor Gran-Sou is a member of Basin Electric.<sup>20</sup>

13. In the event that the Commission does not accept the proposed methodology to determine its rate of return, Mor-Gran-Sou proposes a base ROE of 8.9 percent with a 50 basis point adder for participation in Mor-Gran-Sou to be applied to a hypothetical capital structure consisting of 53.1 percent equity and 46.9 percent debt. Regarding the alternative base ROE, Mor-Gran-Sou states that it calculated 8.9 percent using a two-step discounted cash flow (DCF) methodology.<sup>21</sup> Mor-Gran-Sou asserts that the alternative base-ROE is consistent with the Commission's decisions in Opinion Nos. 531, *et al.*<sup>22</sup> To develop the proposed alternative hypothetical capital structure, Mr. Smith states that he calculated the median weighted-average of the equity levels of the entities in the DCF analysis used to calculate the proposed base ROE. Mor-Gran-Sou contends that the proposed hypothetical capital structure is appropriate because: (1) application of the ROE resulting from a DCF analysis to its actual capital structure would disregard important differences between a cooperative and an investor-owned utility; and (2) Mor-Gran-Sou's actual equity level falls outside the range of equity in capital structures in the proxy group. Mor-Gran-Sou also argues that it does not meet any of the three criteria under which an operating company's actual capital structure will be used. Specifically, Mor-Gran-Sou does not (1) issue its own debt without guarantees; (2) have its own bond

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<sup>19</sup> *Id.* at 7 (citing *Sw. Power Pool, Inc.*, 157 FERC ¶ 61,153 (2016)).

<sup>20</sup> *Id.* (citing *City of Vernon, Cal.*, 109 FERC ¶ 63,057 at PP 110-119, *aff'd*, 111 FERC ¶ 61,092; *Sw. Power Pool, Inc.*, Docket No. ER16-1054-000 (Apr. 26, 2016) (delegated order)).

<sup>21</sup> *Id.* at 9-23.

<sup>22</sup> *Id.* at 23 (citing *Martha Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015) *vacated and remanded sub nom. Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017)).

rating; and (3) have a capital structure within the range of capital structures approved by the Commission.<sup>23</sup>

14. SPP states that, in the event the Commission determines further proceedings are necessary, Mor-Gran-Sou has voluntarily agreed to allow its ATRR and Formula Rate to be treated as being accepted, subject to refund with interest at the Commission interest rate. SPP states that Mor-Gran-Sou makes this voluntary commitment without waiving or in any way limiting or altering Mor-Gran-Sou's non-jurisdictional status.<sup>24</sup>

15. SPP requests that the proposed Tariff revisions become effective on February 1, 2019, the date upon which Mor-Gran-Sou will transfer functional control of its transmission facilities to SPP.<sup>25</sup> SPP also requests waiver of section 35.13 of the Commission's regulations with regard to the submission of the full cost of service filing requirements. SPP states that the Commission generally grants requests for waiver of such requirements in transmission formula rate cases.<sup>26</sup> SPP asserts that waiver is appropriate because Mor-Gran-Sou relies on RUS Form No. 7 data and because the filing involves a formula rate rather than a stated rate.

### **III. Notice of Filing and Responsive Pleadings**

16. Notice of SPP's filing was published in the Federal Register, 83 Fed. Reg. 63,497 (2018), with interventions and protests due on or before December 21, 2018. Mor-Gran-Sou, Basin Electric, and Mountrail-Williams Electric Cooperative (Mountrail-Williams) filed timely motions to intervene with comments. Western filed a timely motion to intervene with comments and a request for clarification. Missouri River Energy Services (Missouri River) filed a timely motion to intervene and protest. On January 7, 2019, Mor-Gran-Sou filed an answer. On January 28, 2019, Roughrider Electric Cooperative, Inc. (Roughrider) filed a motion to intervene out-of-time.

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<sup>23</sup> *Id.* at 24-27 (citing *Association of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 190 (2014)).

<sup>24</sup> *Id.* at n.63.

<sup>25</sup> SPP Transmittal at 1.

<sup>26</sup> *Id.* at 16 (citing, e.g., *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at PP 125-126 (2009)).

#### IV. Discussion

##### A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), 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) (2018), the Commission will grant Roughrider'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.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Mor-Gran-Sou's answer because it has provided information that assisted us in our decision-making process.

##### B. Responsive Pleadings

###### 1. Comments and Protests

19. Mor-Gran-Sou, Basin Electric, and Mountrail-Williams filed comments in support of Mor-Gran-Sou's proposed Formula Rate and ROE.<sup>27</sup> Mor-Gran-Sou asserts that the proposed Formula Rate is just and reasonable. Mor-Gran-Sou states that the Formula Rate methodology is similar to a methodology previously approved by the Commission and that, while the Template does include certain differences in specific components to reflect Mor-Gran-Sou's status as a non-public utility, it is nonetheless just and reasonable.<sup>28</sup> Mor-Gran-Sou also asserts that the Template inputs are just and reasonable and that, although the Template differs from other approved formula rates, the Template is populated using data from RUS Form No. 7, which contains data similar to FERC Form No. 1. Mor-Gran-Sou notes that RUS Form No. 7 is subject to certification by independent auditors and is a comparable source for purposes of determining the ATRR for a given year.<sup>29</sup> Mor-Gran-Sou also asserts that its proposed ROE and capital structure, as well its proposed alternative ROE and hypothetical capital structure, are just

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<sup>27</sup> Mor-Gran-Sou Comments at 5-12; Basin Electric Comments at 3-8; Mountrail-Williams Comments at 5-9.

<sup>28</sup> Mor-Gran-Sou Comments at 5-6.

<sup>29</sup> *Id.* at 6-7.

and reasonable.<sup>30</sup> Finally, Mor-Gran-Sou contends that the proposed Protocols are just and reasonable.<sup>31</sup>

20. Basin Electric and Mountrail-Williams also support SPP's filing, asserting—as Mor-Gran-Sou does—that the proposed Formula Rate is just and reasonable and consistent with Commission policy, that the proposed ROE is just and reasonable, and that the proposed Protocols are just and reasonable.<sup>32</sup>

21. Missouri River protests the filing and requests that the Commission schedule an initial technical conference and allow full and open discovery to begin.<sup>33</sup> Missouri River alleges that the proposed Formula Rate contains several errors and deficiencies. Missouri River contends that the proposal for a hypothetical capital structure is unjust and unreasonable for two reasons: (1) the capital structure proposal is internally inconsistent, calling for different levels of the equity component in different portions of the filing; and (2) the proposed use of an equity floor has no support in Commission precedent and could inflate returns.<sup>34</sup> On this second point, Missouri further explains that Mor-Gran-Sou may meet the Commission's requirements for an operating company to use its actual capital structure, but that more information is needed to make that determination. Missouri River also argues that the proposal to directly assign revenue credits lacks the minimum amount of transparency required by the Commission and that Mor-Gran-Sou's revenue crediting should be sourced directly from Mor-Gran-Sou's RUS Form No. 7 to ensure the basic level of transparency required by the Commission.<sup>35</sup>

22. Western has concerns as to certain Mor-Gran-Sou facilities qualifying for inclusion in the ATRR. Western requests feedback on the basis for inclusion of facilities in the McLaughlin, Roughrider, and Solen Substations, as well as the treatment of the three-way switches noted for the New Salem, Cannonball, Casino, Fort Yates, Sitting Bull, and Sioux Substation feeds. Western contends that there is a lack of detail as to which specific substation facilities are included in the ATRR, and that without a

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<sup>30</sup> *Id.* at 7-12.

<sup>31</sup> *Id.* at 12.

<sup>32</sup> Basin Electric Comments at 5-8; Mountrail-Williams Comments at 5-8.

<sup>33</sup> Missouri River Protest at 1.

<sup>34</sup> *Id.* at 3-4.

<sup>35</sup> *Id.* at 5-7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 83 (2013)).

description of which components within substations are included in the ATRR and the basis for their inclusion, it is impossible to determine whether the proposed ATRR includes only the costs of qualifying facilities.<sup>36</sup>

23. Western also seeks clarification regarding the terms of the Protocols that provide for the addition of future facilities. Western asserts that potential future facilities should not only meet the qualification criteria under Attachment AI in the SPP Tariff but should also be studied by SPP and deemed to be needed from a zonal perspective. Western requests that the Protocols require that new future facilities be vetted through the SPP planning process or recognize the right of others to challenge, as part of the annual update process, the inclusions of such facilities in the ATRR, with the burden on Mor-Gran-Sou to show its ATRR and the resulting rate remain just and reasonable.<sup>37</sup> Western also requests that Mor-Gran-Sou incorporate into its Protocols a commitment for participation in and being bound by the Zone 19 Attachment AI Guidance Document.<sup>38</sup>

## 2. Answer

24. Responding to Missouri River, Mor-Gran-Sou argues that the instant filing is not internally inconsistent. Mor-Gran-Sou contends that there is no inconsistency in the statements by its witness Mr. Smith regarding the proposed ROE and use of a hypothetical capital structure consistent with that of the dominant non-governmental agency transmission owner in Zone 19, Basin Electric. Mor-Gran-Sou further asserts that no inconsistency arises from Mr. Smith's discussion of an alternative approach to ROE in the event the Commission determines that the first approach is not accepted.<sup>39</sup>

25. Mor-Gran-Sou also disputes Missouri River's contention that a hypothetical capital structure is inconsistent with Commission precedent, and that, while the Commission has not established a formal standard to be applied to all non-jurisdictional revenue requirement cases, the Commission has permitted non-public utility transmission owners in RTOs/ISOs to use the same overall rate of return as that of the dominant zonal transmission owner, and to use rates of return that fall within the range of reasonable returns approved by the Commission. Mor-Gran-Sou states that this includes the use of a hypothetical capital structure where the non-jurisdictional entity does not meet certain criteria. Mor-Gran-Sou reiterates Mr. Smith's testimony, which outlines that Mor-Gran-

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<sup>36</sup> Western Comments and Request for Clarification at 4-5.

<sup>37</sup> *Id.* at 6-7.

<sup>38</sup> *Id.* at 7-8.

<sup>39</sup> Mor-Gran-Sou Answer at 3-5.

Sou does not meet the first criterion of the test for using an operating company's actual capital structure (i.e., issues its own debt without guarantees). As it does not meet that first criterion, Mor-Gran-Sou maintains that using a hypothetical structure is appropriate, and that in arguing otherwise, Missouri River ignores Commission precedent. Mor-Gran-Sou contends that Missouri River is wrong to suggest that Mor-Gran-Sou may meet the requirements because it "holds debt," arguing that the actual test is whether Mor-Gran-Sou "issues debt without guarantees."<sup>40</sup> Mor-Gran-Sou also asserts that Missouri River incorrectly characterizes the second criterion of the test when Missouri River states that it is unclear from the filing what bond rating the debt has. Mor-Gran-Sou explains that the second criterion is whether the operating company has its own bond rating, and as detailed in Mr. Smith's testimony, "Mor-Gran-Sou does not have long-term issuer credit ratings from [Moody's] or [Standard and Poor's]."<sup>41</sup> Thus, states Mor-Gran-Sou, it is clear that it does not have a bond rating. Mor-Gran-Sou argues that, because it fails the Commission's first two criteria and is relying on the calculation of a ROE based on another entity's credit rating, whether it meets the third criterion, that its actual capital structure falls within the range of capital structures approved by the Commission, is irrelevant.<sup>42</sup>

26. Mor-Gran-Sou further contends that its Template treatment of revenue credits related to its facilities qualifying as transmission in its ATRR is transparent. Mor-Gran-Sou includes additional information related to the inputs used in Worksheet H, Other Operating Revenue, of the populated proposed Template to address Missouri River's assertion that Template's treatment of revenue credits lacks transparency.<sup>43</sup>

27. In response to Western, Mor-Gran-Sou provides more information and explanation in order to justify including certain facilities in Mor-Gran-Sou's ATRR. Mor-Gran-Sou also agrees that future facilities will be vetted through the SPP planning process and will be highlighted in the annual update of the Mor-Gran-Sou ATRR.<sup>44</sup>

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<sup>40</sup> *Id.* at 6.

<sup>41</sup> *Id.* at 7 (citing SPP Filing, Ex. No. SPP-015, Direct Testimony of Robert C. Smith at 9).

<sup>42</sup> *Id.* at 5-8.

<sup>43</sup> *Id.* at 9.

<sup>44</sup> *Id.* at 10-14.

### C. Standard of Review

28. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional transmission revenue requirements in an opinion reviewing the transmission revenue requirement filed by the City of Vernon, California (Vernon).<sup>45</sup> In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to the Commission's jurisdiction under section 205 of the FPA. However, the Commission noted that because Vernon voluntarily submitted its transmission revenue requirement as a component of the California Independent System Operator Corporation's (CAISO) jurisdictional rate, Vernon's transmission revenue requirement was "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."<sup>46</sup> The Commission explained that, in *Pac. Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia held that the Commission had statutory authority to review Vernon's transmission revenue requirement "to the extent necessary to ensure that the CAISO rates are just and reasonable."<sup>47</sup> Subsequently, the court upheld the Commission's decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such as Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."<sup>48</sup>

29. However, in *TANC*, the court rejected the Commission's authority to order Vernon to pay refunds under section 205 of the FPA. The court held that the structure of the FPA clearly reflected Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority under section 205 of the FPA over wholesale electric energy sales.<sup>49</sup> The court reasoned that section 201(f) of the FPA exempts from Part II of the FPA "any political subdivision of a state."<sup>50</sup>

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<sup>45</sup> See Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297.

<sup>46</sup> *Id.* P 44.

<sup>47</sup> *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d at 1117).

<sup>48</sup> *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

<sup>49</sup> *Id.* at 673-74.

<sup>50</sup> *Id.* at 674.

30. Therefore, while Mor-Gran-Sou is not within the Commission's jurisdiction under section 205 of the FPA, we find that, based on the precedent cited above, it is appropriate to apply the just and reasonable standard of section 205 of the FPA to Mor-Gran-Sou's proposed transmission rates, which are a component of SPP's jurisdictional rates.<sup>51</sup> To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

31. Furthermore, Mor-Gran-Sou is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.<sup>52</sup> However, we note that Mor-Gran-Sou has voluntarily agreed to allow its ATRR and Formula Rate to be treated as being accepted, subject to refund with interest at Mor-Gran-Sou's actual short-term debt costs, capped at the Commission interest rate.<sup>53</sup>

#### **D. Commission Determination**

##### **1. RTO Participation Adder**

32. We conditionally grant the request for a 50 basis point adder to Mor-Gran-Sou's base ROE for its participation in SPP. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.<sup>54</sup> The purpose of the rule that section 219 directed the Commission to establish is, *inter alia*, to promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in electric transmission infrastructure.<sup>55</sup> The Commission

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<sup>51</sup> *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

<sup>52</sup> *Id.* P 41.

<sup>53</sup> SPP Transmittal at n.63; SPP Filing, Ex. No. SPP-1, Direct Testimony of Donald Franklund at 8-9.

<sup>54</sup> 16 U.S.C. § 824s(a), (b) (2012).

<sup>55</sup> *Id.*

subsequently issued Order No. 679,<sup>56</sup> which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

33. We find that, as conditioned below, the requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.<sup>57</sup> We condition our approval on the adder being applied to a base ROE that has been shown to be just and reasonable, and subject to the resulting ROE being within the applicable zone of reasonableness,<sup>58</sup> as may be determined in the hearing and settlement judge procedures ordered below. Further, our approval of this incentive is conditioned on Mor-Gran-Sou's continuing membership in SPP.

## 2. Hearing and Settlement

34. We find that, except for the 50 basis point adder, SPP's proposed Tariff revisions raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below.

35. Our preliminary analysis indicates that SPP's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Tariff revisions, effective February 1, 2019, as requested, subject to refund, and set them for hearing and settlement judge procedures.

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<sup>56</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>57</sup> *See, e.g., Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245, at P 30 (2014) (granting 50 basis point adder for continued RTO participation); *Valley Elec. Ass'n, Inc.*, 141 FERC ¶ 61,238, at P 26 (2012) (granting 50 basis point adder for RTO participation); *Pac. Gas and Elec. Co.*, 141 FERC ¶ 61,168, at P 25 (2012).

<sup>58</sup> On October 16, 2018, the Commission proposed a new methodology for determining whether an existing ROE is unjust and unreasonable under the first prong of section 206 of the FPA and for determining a new just and reasonable ROE under the second prong of section 206 of the FPA when an existing ROE has been found to be unjust and unreasonable. *See Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018). As clarified in *Ark. Pub. Serv. Comm'n v. Sys. Energy Res., Inc.*, 165 FERC ¶ 61,119 (2018), the Commission expects participants in ongoing proceedings to address the merits and application of the proposed methodology in their proceedings.

36. We will accept Mor-Gran-Sou's commitment to provide refunds, with interest, as of February 1, 2019. Mor-Gran-Sou is not subject to Commission-imposed refund obligations under section 205 of the FPA, and the Commission has previously accepted commitments by non-jurisdictional transmission owners that they will refund the difference between the proposed rate and the rate ultimately determined by the Commission to be just and reasonable.<sup>59</sup>

37. While we are setting SPP's proposed Tariff revisions for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>60</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.<sup>61</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

38. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because Mor-Gran-Sou is not subject to section 205 of the FPA, it is not subject to the Commission's cost of service regulatory filing requirements. However, to the extent that parties at the hearing can show the relevance of additional information needed to evaluate the proposal, the Administrative Law Judge can provide for appropriate discovery of such information.

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<sup>59</sup> See, e.g., *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

<sup>60</sup> 18 C.F.R. § 385.603 (2018).

<sup>61</sup> If the parties decide to request a specific judge, they must make their request jointly to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted for filing, to become effective February 1, 2019, as requested, subject to refund, as discussed in the body of this order.

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

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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

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

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.