

166 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Company of Colorado

Docket No. ER19-404-000

ORDER ACCEPTING AND SUSPENDING FILING, AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 31, 2019)

1. On November 27, 2018, pursuant to section 205 of the Federal Power Act (FPA),¹ Public Service Company of Colorado submitted, on behalf of Southwestern Public Service Company (Southwestern), proposed revisions to Southwestern's transmission formula rate template (Template), contained in Attachment O-SPS to Xcel Energy Operating Companies' Joint Open Access Transmission Tariff (Xcel Tariff).²
2. In this order, we accept Southwestern's proposed revisions, suspend them for a nominal period, to become effective February 1, 2019, subject to refund, and establish hearing and settlement judge procedures.³

I. Background

3. Southwestern is a vertically-integrated electric utility that provides generation, transmission, and distribution services within Texas and New Mexico, and owns transmission in portions of Kansas and Oklahoma. Southwestern provides cost-based

¹ 16 U.S.C. § 824d (2012).

² Public Service Company of Colorado, an affiliate of Southwestern, is the designated eTariff filing entity for the Xcel Energy Tariff, consistent with the requirements of Order No. 714. *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

³ As discussed below, the flow-back of excess accumulated deferred income tax (ADIT) will be applied beginning January 1, 2018 through the 2018 formula rate true-up.

regulated electric services to about 390,000 retail and wholesale customers in Texas and New Mexico.

4. Southwestern is a transmission-owning member of Southwest Power Pool, Inc. (SPP), and transmission service over the Southwestern transmission system is available under the SPP Open Access Transmission Tariff (SPP Tariff).⁴ Southwestern recovers its annual transmission revenue requirements, calculated pursuant to the Template, from wholesale transmission service customers in the Southwestern rate zone (Zone 11) under the SPP Tariff, and these customers make up approximately 39 percent of the transmission loads on the Southwestern transmission system that are taking network integration transmission service under the SPP Tariff with load in Zone 11.⁵

5. Specifically, the Template calculates three separate annual transmission revenue requirements: (1) the Zonal Network Integration Transmission Service revenue requirement for Zone 11 (Zonal Revenue Requirement); (2) Southwestern's Base Plan Upgrade revenue requirement;⁶ and (3) the Scheduling, System Control and Dispatch revenue requirement for Schedule 1.

6. Southwestern implements the Template on a forward-looking basis, whereby the annual transmission revenue requirement is projected under the Template for each calendar year (Rate Year) using estimated costs and loads, and pursuant to the Formula Rate Implementation Procedures (Protocols), which are included as Appendix 1 to the Template, Southwestern's projected annual transmission revenue requirement is then subject to an annual true-up based on actual costs and loads when actual data becomes available. Southwestern calculates the true-up for each Rate Year by June of the year following the Rate Year, and the true-up for each Rate Year is applied to customer bills by the end of the year following the Rate Year. In addition, the Protocols provide for postings on Southwestern's Open Access Same-Time Information System (OASIS), customer meetings, discovery and challenge processes, and an Annual Informational Update filing with the Commission.

7. Southwestern notes that the Template is also included in the SPP Tariff as Addendum 5 to Attachment H, and, upon Commission approval, Southwestern, Xcel

⁴ Southwestern Transmittal at 3.

⁵ *Id.*

⁶ Base Plan Upgrades are those upgrades included in and constructed pursuant to the SPP Transmission Expansion Plan in order to ensure the reliability of the Transmission System. *See* SPP Tariff at section 1.B.

Energy Services Inc. and SPP will work to submit a companion filing that modifies the SPP Tariff to reflect the Template.⁷

II. Southwestern's Filing

A. Proposed Revisions to the Template

8. Southwestern states that its proposed revisions to the Template apply to its Zonal Revenue Requirement and its Base Plan Upgrade revenue requirement but not its revenue requirement for Schedule 1. Specifically, the filing: (1) updates its transmission depreciation rates used to calculate wholesale transmission rates; (2) revises its Template's Base Plan Upgrade revenue requirement calculation to use a weighted average transmission depreciation rate; (3) revises the Base Plan Upgrade revenue requirement net plant calculation so that historical depreciation rates only apply to applicable years; (4) revises the Template to recover certain wholesale transmission regulatory commission expenses from Southwestern's wholesale transmission service customers; (5) modifies the Template to correct the allocation of transmission-related ADIT; (6) revises the methodology for calculating ADIT to amortize the excess ADIT caused by the change in the federal corporate income tax as part of the Tax Cuts and Jobs Act of 2017;⁸ and (7) implements a ministerial change intended to improve the clarity of the Template.⁹

9. Southwestern explains that the transmission depreciation rates used to calculate its wholesale transmission rates were last updated in Docket No. EL89-50-000, *et al.*,¹⁰ and that Southwestern continues to use these 1989 depreciation rates. Southwestern asserts that the proposed revisions to the transmission depreciation rates are consistent with Order No. 618,¹¹ which requires that utilities use methods of depreciation accounting that

⁷ Southwestern Transmittal at 18.

⁸ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

⁹ Southwestern Transmittal at 1-2.

¹⁰ *Southwestern Pub. Serv. Co.*, Docket No. EL89-50-000, *et al.* (Oct. 10, 1990) (delegated order).

¹¹ Southwestern Transmittal at 5 (citing *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104 (2000)) (cross-referenced at 92 FERC ¶ 61,078).

“allocate the cost of utility property over its useful service life in a systematic and rational manner.”¹²

10. Southwestern supports its proposed depreciation rates with a depreciation study that finds that the average service life for six of the nine total transmission accounts increased, while the average service life for the remaining three stayed the same.¹³ Southwestern also attributes its proposed increase in wholesale transmission rates to an increase in negative net salvage, which Southwestern asserts is caused by a significant rise in the cost of removal, but no increase in gross salvage value. Southwestern also requests that the Commission accept its proposal to reallocate the book reserve amounts within the Transmission function in order to adjust the reserve for each account and bring each reserve closer to its theoretical reserve as of the requested effective date of February 1, 2019.¹⁴ Southwestern states that the reallocation of the depreciation reserve does not change the total reserve, but when comparing the reallocated book reserve to the theoretical reserve, the resulting reserve deficiency increases the annual depreciation expense by \$3.5 million.¹⁵

11. Southwestern states that the single depreciation rate that it currently uses for Base Plan Upgrade projects is no longer representative of Southwestern’s actual transmission depreciation expenses for such projects. Southwestern contends that a weighted average depreciation rate provides a more accurate measure of the actual transmission depreciation expense that is applicable to its Base Plan Upgrade transmission plant because a weighted average depreciation rate aligns the depreciation expense calculation with the other costs included in the Base Plan Upgrade revenue requirement calculation.¹⁶ Further, Southwestern proposes to change the Base Plan Upgrade revenue requirement depreciation expense calculation so that the depreciation rate is the weighted average rate under the new Base Plan Upgrade methodology for the year that those rates are in effect. Southwestern asserts that this change will ensure that net plant calculates the correct levels of depreciation expense for past and future years.¹⁷

¹² *Id.* (citing Order No. 618, FERC Stats. & Regs. ¶ 31,104 at 31,694).

¹³ *Id.* at 8.

¹⁴ *Id.* at 7-9.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 10 & n.32.

¹⁷ *Id.* at 11.

12. Southwestern further proposes to include in the Template a mechanism to recover all of its transmission-related expenses in Account 928 (Regulatory Commission Expense)¹⁸ from its wholesale transmission customers. Southwestern states that currently its wholesale transmission customers pay only their load ratio share of Southwestern's Zonal revenue requirement, and therefore, Southwestern currently recovers only about 39 percent of its transmission-related regulatory commission expenses in Zone 11 network service rates and in the portion of its Base Plan Upgrade revenue requirement allocated to Zone 11. Southwestern states that it is under-recovering its transmission-related regulatory commission expenses by about 46 percent.¹⁹ Southwestern states that the proposed revisions to the Template will apply a new gross-up factor to the transmission-related regulatory commission expenses, which will increase the amount included in the Zonal Revenue Requirement so that the resulting amount recovered from the wholesale transmission service customers is nearly the full amount of transmission-related regulatory commission expenses.²⁰ Southwestern asserts that this revision is just and reasonable because it allows Southwestern to recover its costs consistent with cost causation.

13. Southwestern states that the current Template assigns 100 percent of Southwestern's transmission-related ADIT to the transmission function, but Southwestern contends that this assignment is not an accurate allocation of this cost because it ignores the exclusion of certain transmission-facility costs from the Zonal Revenue Requirement.²¹ Southwestern proposes to revise the Template such that the Southwestern transmission-related ADIT is allocated using the transmission plant allocator,²² which Southwestern asserts ensures consistency with the allocation of other

¹⁸ Southwestern states that, for example, transmission regulatory expenses include the costs incurred to respond to an FPA section 206 complaint challenging Southwestern's Template, as well as the costs incurred to prepare filings to revise the Template. *Id.* at 12.

¹⁹ *Id.* at 12-13.

²⁰ *Id.* at 13. Southwestern notes that its production formula rates already include a mechanism to recover the FERC production-related regulatory commission expenses from its whole requirements customers. *Id.* at 14.

²¹ *Id.* at 14-15.

²² Southwestern explains that the transmission plant allocator allocates less than 100 percent of the transmission-related costs to reflect the exclusion of certain transmission plant that is not recovered in the revenue requirement (*e.g.*, generator step-up transformers). *Id.* at 14.

transmission-specific amounts in the Template and corrects for the assignment of ADIT to transmission service customers.²³

14. Southwestern explains that, effective January 1, 2018, the Tax Cuts and Jobs Act reduced the federal corporate income tax rate from a maximum of 35 percent to a flat 21 percent, resulting in Southwestern having excess ADIT balances. Southwestern states that these excess ADIT balances represent the amount of ADIT that Southwestern has on its books that exceeds the ADIT balance that would be on Southwestern's books if the federal corporate income tax rate had been at the lower 21 percent rate the entire time Southwestern was collecting these funds in rates.²⁴

15. Southwestern explains that, in order to address the Tax Cuts and Jobs Act's impact on the calculation of rate base, two lines are being added to the Template to reflect the inclusion of Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities) to account for excess ADIT associated with non-plant items.²⁵ Southwestern further proposes to add to the Template a calculation that amortizes excess ADIT in the deferred tax expense, one for plant-related excess ADIT and the other for non-plant related excess ADIT.²⁶

16. Southwestern proposes to return both protected and unprotected plant-related excess ADIT to customers using the Average Rate Assumption Method.²⁷ Southwestern explains that, because 92 percent of Southwestern's total plant-related excess ADIT is protected, using Average Rate Assumption Method methodology would normalize all plant-related deferred taxes to effectively share the current tax benefits with all future customers served by the assets. According to Southwestern, the deferred income tax

²³ *Id.* at 15.

²⁴ *Id.*

²⁵ Southwestern notes that, prior to the Tax Cuts and Jobs Act, the ADIT associated with non-plant items was included in Accounts 190 (Accumulated Deferred Income Taxes) and 283 (Accumulated Deferred Income Taxes – Other), which are already included in the Template. Ex. SPS-0003, Arthur P. Freitas Direct Testimony at 33, lines 18-21 (Freitas Test.).

²⁶ Southwestern Transmittal at 16.

²⁷ Southwestern explains that excess ADIT that is subject to U.S. Internal Revenue Service (IRS) rules of normalization is referred to as “protected” and excess ADIT that is not subject to IRS rules of normalization is referred to as “unprotected.” Freitas Test. at 34, lines 10-12.

expense associated with Southwestern's transmission plant related excess ADIT balance is calculated to be \$4.7 million in 2018. Southwestern states that a five-year amortization period is reasonable for non-plant excess ADIT because it ensures inter-generational equities and has been implemented by Southwestern in Texas and New Mexico.²⁸

17. Southwestern states that the ADIT-related changes to the Template are consistent with the proposed requirements in the Commission's recent ADIT notice of proposed rulemaking.²⁹ Southwestern is adding to the Template two ADIT-related worksheets as Tables 21B and 21C, which will track information related to excess or deficient ADIT under section 35.24 of the Commission's regulations on an annual basis and Southwestern is revising several tables to meet the proposed requirement in the ADIT NOPR. Southwestern explains that these new worksheets and revisions show Southwestern's ADIT balances before and after the Tax Cuts and Jobs Act's effective date of January 1, 2018, account for the effect of the Tax Cuts and Jobs Act on excess or deficient ADIT balances, account for excess or deficient amounts in Accounts 182.3 and 254, show the protected or unprotected classification of the excess or deficient ADIT, show the accounts to which the excess or deficient ADIT amounts are amortized, and show the information necessary to determine the amortization period of the excess or deficient ADIT being returned or recovered through Southwestern's rates.³⁰

18. Southwestern states that the current Template already includes excess ADIT balances in rate base, ensuring that unamortized excess ADIT balances are treated as an offset to rate base until those balances are flowed back to customers. Southwestern proposes to revise its Template to decrease its income tax allowance by any amortized excess ADIT and increase its income tax allowance by any amortized deficient ADIT to satisfy the proposed requirement in the ADIT NOPR. Southwestern states that it will apply this proposed change to the 2018 true-up results beginning January 1, 2018, which will benefit Southwestern's wholesale transmission customers. Southwestern clarifies that it will amortize its excess ADIT balances concurrently with the flow-back of these amounts in rates.³¹

²⁸ Southwestern Transmittal at 16 (citing Freitas Test. at 35).

²⁹ *Id.* (citing *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Notice of Proposed Rulemaking, 165 FERC ¶ 61,117 (2018) (ADIT NOPR)).

³⁰ *Id.* at 17.

³¹ *Id.* at 17-18.

19. Southwestern also proposes one change to Table 4 of the Template that it characterizes as ministerial, which is a summary table that presents all of Southwestern's expenses. Specifically, Southwestern proposes changing the label on Row 127 of Table 4 from "Other – Texas Use" to "Other Taxes" because the row encompasses other taxes besides Texas use taxes, including the amount of Southwestern's Oklahoma business franchise tax. According to Southwestern, the Template has always included these other taxes, and the revision in this filing clarifies this fact. As support, Southwestern notes that in the current Template, on Row 127, the "data source" is shown as Worksheet J and page 263.i of Southwestern's FERC Form No. 1, which includes taxes other than the Texas use tax.³²

20. Southwestern estimates that the proposed revisions to the Template will result in an increase to 2019 wholesale transmission service revenues of approximately \$9.427 million, with \$4.958 million being recovered from wholesale transmission service customers in Zone 11 under the SPP Tariff, and \$4.469 million being recovered from other SPP Tariff customers through regional transmission rates under the SPP Tariff. Southwestern states that the increase is primarily the result of the updated transmission depreciation rates, partially off-set by the reduction in costs from the flow-back of excess ADIT.

21. Southwestern requests an effective date of February 1, 2019 for the proposed revisions to the Xcel Tariff.

B. Requests for Waivers

22. Southwestern requests three waivers related to its filing to revise the Template. First, Southwestern requests waiver of its Protocols in order to allow Southwestern to revise the 2019 annual transmission revenue requirement so that rates charged under the SPP Tariff can be adjusted effective on the effective date of this order. Southwestern states that, consistent with the Protocols, it published its 2019 estimated annual transmission revenue requirement and estimated rates on October 1, 2018, and held the customer meeting required by the Protocols on October 11, 2018. Southwestern states that the Protocols are silent on the issue of adjusting estimated rates based on Commission-approved changes to the inputs to the Template. Southwestern states that it has satisfied the Commission's criteria for granting this waiver, because: (1) it has acted in good faith; (2) the waiver is of limited scope because it would be a one-time adjustment to the 2019 estimated annual transmission revenue requirement; (3) the waiver would avoid a large true-up adjustment for 2019 that would be calculated in 2020 and billed in rates in 2021 (with interest) under the normal true-up schedule; and (4) the

³² *Id.* at 18.

waiver does not have undesirable consequences because it will ensure the accuracy of the adjusted rate during the normal true-up and customer review process.³³

23. Second, Southwestern states that although it proposes that the excess ADIT flow-back and other Template revisions be effective February 1, 2019, it requests waiver, to the extent necessary, to calculate the 2018 rate year true-up to reflect the proposed excess ADIT revisions “so that the flow-back of excess ADIT can begin effective January 1, 2018.”³⁴ Southwestern states that good cause exists to grant this waiver because it will allow the flow-back of excess ADIT to commence as of the effective date of the Tax Cuts and Jobs Act, which it asserts is consistent with Commission guidance.³⁵

24. Third, Southwestern requests waiver of Part 35 of the Commission’s regulations requiring the submission of cost-of-service statements.³⁶ Southwestern asserts that there is good cause to grant the waiver and, as support, asserts that detailed cost-of-service statements are not needed because the currently effective Template already calculates the rates for service on a formulaic basis and are true-up each year to Southwestern’s actual costs. Southwestern states that it has acted in good faith and that the Commission has previously granted such waiver requests in similar proceedings where a party has proposed modifications to its formula rate template and depreciation rates.³⁷

III. Notice of Filing and Responsive Pleadings

A. Notice of Filing

25. Notice of Southwestern’s filing was published in the *Federal Register*, 83 Fed. Reg. 62,314 (2018), with interventions and protests due on or before December 18, 2018. On November 30, 2018, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed

³³ *Id.* at 21 (citing *EDP Renewables North America LLC*, 161 FERC ¶ 61,086, at P 6 (2017); *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,339, at PP 17-18 (2015)).

³⁴ *Id.*

³⁵ *Id.* at 21-22 (citing *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, FERC Stats, & Regs. ¶ 35,582, at PP 4, 16 (2018)).

³⁶ *Id.* Southwestern requests waiver of the following sections of the Commission’s regulations: sections 35.13(d)(1)-(2), section 35.13(d)(5), and section 35.13(h).

³⁷ *Id.* (citing, e.g., *Duke Energy Progress, Inc.*, 149 FERC ¶ 61,220, at P 77 (2014); *Public Service Co. of New Mexico*, 142 FERC ¶ 61,168, at P 29 (2013), *reh’g denied*, 143 FERC ¶ 61,227 (2013); *Westar Energy Inc.*, 131 FERC ¶ 61,183 at P 20 (2010), *reh’g denied*, 134 FERC ¶ 61,176 (2011)).

an unopposed request for an extension of time to file comments. On December 7, 2018, the Commission's Secretary granted the request and extended the time to file comments until December 28, 2018.

26. The Public Utility Commission of Texas (Texas Commission) filed a notice of intervention. Central Valley Electric Cooperative, Inc. filed a timely motion to intervene. The following entities filed timely motions to intervene and protests: Golden Spread; GridLiance High Plains LLC and Tri-County Electric Cooperative, Inc. (collectively, GridLiance); Western Farmers Electric Cooperative (Western Farmers); and West Texas Municipal Power Agency (West Texas).

27. On January 15, 2019, Southwestern filed a motion for leave to answer and an answer to the protests.

B. Protests

1. Depreciation Rates

28. Golden Spread argues that Southwestern's proposed revisions to the depreciation rates result in an \$18.6 million increase in annual transmission plant depreciation expense.³⁸ Western Farmers supports Golden Spread's protest and states that Southwestern's proposed revisions do not produce an annual transmission revenue requirement that is consistent with sound ratemaking policy and Commission precedent.³⁹ West Texas argues that Southwestern's depreciation rate increase is excessive.⁴⁰

29. Golden Spread contends that Southwestern's depreciation study does not support the proposed average service lives for some of the plant in service accounts in the Template, stating that the chosen Iowa Survivor Curves that describe service lives and dispersion do not appear to be a good fit with the actual data.⁴¹ Golden Spread notes that the tail part of the curve, which represents actual retirement data for the oldest assets, falls above the selected Iowa Survivor Curves. Golden Spread argues that Southwestern's depreciation study does not provide any statistical analysis to support its analyses. Golden Spread asserts that Southwestern's analysis creates potential bias because it has ignored the tail of the curve in its analysis of Accounts 355 (Poles and

³⁸ Golden Spread Protest at 5.

³⁹ Western Farmers Comments at 2.

⁴⁰ West Texas Protest at 2.

⁴¹ Golden Spread Protest at 5.

Fixtures) and 356 (Overhead Conductors and Devices) and, furthermore, Southwestern has not provided sufficient data for an actuarial analysis and has not provided any statistical analysis for these accounts to demonstrate that the selected Iowa Survivor Curve is the best fit.⁴²

30. Additionally, Golden Spread states that Southwestern's proposal to use markedly negative net salvage values for the affected transmission plant accounts should be subject to more scrutiny in discovery.⁴³ West Texas asserts that Southwestern's claims that state regulators have approved of Southwestern's negative net salvage rates is not evidence that those rates are just and reasonable.⁴⁴ West Texas also notes that Southwestern has not provided any workpapers, documentation, or underlying data needed to duplicate or check its depreciation and negative net salvage analyses.⁴⁵

31. Golden Spread also contends that Southwestern's proposed use of a weighted average transmission depreciation calculation for the purpose of depreciating Base Plan Upgrades produces significantly higher rates than the existing rates. Golden Spread notes that this proposed change increases the depreciation rate used for Base Plan Upgrades by 14 percent.⁴⁶ Golden Spread argues that these proposals need further examination through a discovery process.⁴⁷

2. Transmission Regulatory Expenses

32. Golden Spread and GridLiance state that Southwestern's proposal for directly assigning all transmission regulatory expenses to wholesale transmission customers is unduly discriminatory, because Southwestern's proposal forces all of the costs associated

⁴² *Id.* at 5-6.

⁴³ *Id.* at 9.

⁴⁴ West Texas Protest at 2.

⁴⁵ *Id.* at 4.

⁴⁶ Golden Spread Protest at 9.

⁴⁷ *Id.*

with Account 928 onto wholesale transmission customers.⁴⁸ Golden Spread posits that all administrative and general expenses associated with Account 928 should continue to be shared by retail and wholesale transmission customers relative to their load ratio share on the Southwestern transmission system.⁴⁹

33. According to Golden Spread and GridLiance, it is unduly discriminatory to allocate all of the Account 928 costs to the minority share of customers that use the transmission system, especially because Southwestern's claims that: (1) wholesale customers exclusively cause and are responsible for the Account 928 expenses that flow through the formula rate; and (2) its retail customers do not cause transmission regulatory expenses and should not bear any cost responsibility are inaccurate and false.⁵⁰ GridLiance further contends that Southwestern does not support its claim that the transmission regulatory expenses are excluded from Southwestern's retail electric rates under the jurisdictions of the Texas Commission and the New Mexico Public Regulation Commission (New Mexico Commission). GridLiance states that it is unclear whether Texas and New Mexico actually prohibit the pass-through of these expenses in retail rates or whether these expenses are excluded from Southwestern's current retail rates.⁵¹

34. Golden Spread also argues that only \$50,000 of Account 928 is examined in the illustrative example that Southwestern provided in Southwestern's Exhibit No. SPS-0003, which is the direct testimony of Arthur P. Freitas.⁵² However, Worksheet H of Southwestern's 2019 transmission formula rate projection indicates that Southwestern included \$500,000 for transmission-related costs for Account 928.⁵³ GridLiance also asserts that Southwestern provides no basis to assume \$50,000 is a reasonable estimate for affected costs, especially if Southwestern's projected costs for 2019 amount to

⁴⁸ Golden Spread Protest at 10; GridLiance Protest at 6. Golden Spread states that wholesale transmission customers account for 40 percent of all users on the Southwestern system, and retail customers account for the remaining 60 percent. Golden Spread Protest at 10-11.

⁴⁹ Golden Spread Protest at 11.

⁵⁰ Golden Spread Protest at 13; GridLiance Protest at 8.

⁵¹ GridLiance Protest at 4-5.

⁵² Freitas Test. at 25-26.

⁵³ Golden Spread Protest at 11 & n.16.

\$500,000.⁵⁴ Western Farmers states that it agrees with the concerns raised in Golden Spread's protest regarding Southwestern's proposal to directly assign regulatory expenses to wholesale transmission customers.⁵⁵

35. GridLiance contends that, if the Commission were to approve Southwestern's proposal, other transmission owners would also claim that their retail loads should not be assigned their relative share of transmission regulatory expense.⁵⁶ Golden Spread states that this issue should not be brought before the Commission. Golden Spread and GridLiance state that, instead, Southwestern should have brought this before its two retail rate regulators: the Texas Commission and the New Mexico Commission.⁵⁷ Golden Spread argues that Southwestern's proposal is contrary to the goals of network integration transmission service as set forth in Order No. 888.⁵⁸ Additionally, West Texas states that Southwestern has not provided a definition for "Transmission Regulatory Expense" in the Template.⁵⁹

3. ADIT

36. Golden Spread contends that Southwestern did not adequately justify the difference between its proposed amortization of unprotected, non-plant excess ADIT and its protected, plant excess ADIT.⁶⁰ Golden Spread argues there is no specified

⁵⁴ GridLiance Protest at 10. Golden Spread and GridLiance state that they obtained Worksheet H from the Southwestern OASIS website.

⁵⁵ Western Farmers Comments at 3 (citing Golden Spread Protest at 10).

⁵⁶ GridLiance Protest at 11.

⁵⁷ Golden Spread Protest at 14-15; GridLiance Protest at 5.

⁵⁸ Golden Spread Protest at 22 (citing *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)).

⁵⁹ West Texas Protest at 5-6.

⁶⁰ Golden Spread Protest at 16.

amortization period for unprotected ADIT balances.⁶¹ Golden Spread contends that Southwestern's proposal to amortize its unprotected plant excess ADIT using the Average Rate Assumption Method is not appropriate because the Average Rate Assumption Method should only apply to protected ADIT.⁶²

37. According to Golden Spread, the Tax Cuts and Jobs Act specifies that protected ADIT cannot be used to reduce the cost of service more rapidly than the rate at which the timing differences reverses over the life of the related property, while any unprotected excess ADIT, no matter if it is plant or non-plant related, can be returned to customers over any reasonable period.⁶³ Golden Spread states that it is not aware of any Commission or IRS guidelines that stipulate that unprotected, plant excess ADIT must be returned on the same basis as the protected plant excess ADIT.⁶⁴ Therefore, Golden Spread contends that Southwestern's argument that the unprotected plant excess ADIT should use the Average Rate Assumption Method is flawed and unsupported.⁶⁵

38. Golden Spread also contends that all of the excess ADIT has been contributed by customers that existed prior to January 1, 2018, the effective date of the Tax Cuts and Jobs Act.⁶⁶ Golden Spread argues that the proposal to return unprotected plant excess ADIT using the Average Rate Assumption Method will not ensure intergenerational equities as claimed by Southwestern, but will have exactly the opposite effect, whereby new customers who made no contributions to the excess ADIT will reap some of the benefits.⁶⁷ Golden Spread requests the Commission require the prompt flow-back of all of the unprotected excess ADIT on the same basis, regardless of whether the ADIT is plant or non-plant related.⁶⁸

⁶¹ *Id.* at 17.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 17-18.

⁶⁶ *Id.* at 18.

⁶⁷ *Id.*

⁶⁸ *Id.*

39. Furthermore, Golden Spread argues that Southwestern has not provided sufficient support for its ADIT, excess ADIT, and annual excess ADIT amortization amount calculations to show them to be just and reasonable. Golden Spread states that Southwestern's filing is lacking in detail so as to preclude meaningful examination of other issues that may result from Southwestern's implementation in the Template.⁶⁹

40. West Texas notes that Southwestern claims that its proposed Template revisions to address excess ADIT are consistent with the ADIT NOPR. West Texas states that the Commission should make clear that Southwestern must comply with any final rule that may result from the Commission's ADIT NOPR proceeding.⁷⁰

4. Waiver

41. Golden Spread objects to Southwestern's request for waiver of Part 35 of the Commission's regulations requiring the submission of cost-of-service statements. Golden Spread asserts that there is a significant difference between the \$50,000 in the transmission-related costs for Account 928 shown in Southwestern's illustrative example and the \$500,000 in Worksheet H of Southwestern's 2019 transmission formula rate projection. Golden Spread argues that the discrepancy between these figures could be resolved with cost data.⁷¹

IV. Discussion

A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

43. 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 are not persuaded to accept Southwestern's answer, and, therefore, reject it.

⁶⁹ *Id.* at 19-20.

⁷⁰ West Texas Protest at 8.

⁷¹ Golden Spread Protest at 12.

B. Substantive Matters

1. Proposed Revisions to the Template

44. We find that Southwestern's proposed revisions to the Template raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

45. Our preliminary analysis indicates that the proposed revisions to the Southwestern Template have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept Southwestern's proposed revisions, subject to modification as discussed below, suspend them for a nominal period, to become effective February 1, 2019, with the flow-back of excess ADIT to be applied beginning January 1, 2018, as requested, subject to refund, and establish hearing and settlement judge procedures.

46. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷² 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.⁷³ 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.

47. As explained by Southwestern, the excess ADIT balances associated with its plant in service are currently recorded in Accounts 190, 282 (Accumulated Deferred Income

⁷² 18 C.F.R. § 385.603 (2018).

⁷³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (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>).

Taxes – Other Property), and 283.⁷⁴ Southwestern is required to follow the accounting guidance in Docket No. AI93-5-000,⁷⁵ which requires that any future refunds or recoveries through rates as a result of a future increase or decrease in taxes payable, resulting from a change in tax law or rates, must be recognized in Account 254 or Account 182.3, as appropriate.

2. Waiver Requests

48. We grant Southwestern's requested waiver of its formula rate implementation protocols set forth in the Xcel Tariff to allow Southwestern to revise its 2019 annual transmission revenue requirement effective February 1, 2019. 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.⁷⁶ We find that Southwestern's waiver request satisfies these criteria. First, we find that Southwestern has acted in good faith by timely seeking waiver because the Protocols do not specifically allow for mid-year rate adjustments. Second, we find that the waiver is of limited scope because it is a one-time adjustment to Southwestern's 2019 annual transmission revenue requirement to reflect the revisions to the Template that we are accepting, subject to refund, in this order. Third, we find that the waiver addresses a concrete problem by allowing Southwestern to change its 2019 annual transmission revenue requirement as of the effective date of this order, rather than wait to reflect the change in a formula rate true-up adjustment that will not be reflected in rates until 2021. Fourth, we find that the waiver does not have undesirable consequences, such as harming third parties, as customers' rates will reflect the change to the 2019 annual transmission revenue requirement as of the effective date of this order, rather than through a potentially-large true-up adjustment in a later year. We also note that no party has opposed this waiver request. Accordingly, we grant Southwestern's requested waiver.

49. We grant Southwestern's requested waiver to allow it to flow back excess ADIT effective January 1, 2018. Because Southwestern has requested to put this component of its rate in effect as of January 1, 2018, we treat the request as a request for waiver of the Commission's 60-day prior notice requirement. The Commission generally finds good

⁷⁴ Southwestern Transmittal at 16 (citing Freitas Test. at 33).

⁷⁵ See Accounting for Income Taxes, Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993).

⁷⁶ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

cause to grant waiver of the prior notice requirement in the case of rate decreases.⁷⁷ Here we find that good cause exists because Southwestern represents that the waiver will allow it to decrease rates for the period January 1, 2018 to February 1, 2019 by flowing back excess ADIT and, therefore, will benefit customers.⁷⁸ However, to ensure that its formula rate appropriately specifies its proposal, we direct Southwestern to file revised tariff sheets, within 30 days of the date of this order, that clearly indicate that the newly added provisions to flow back excess ADIT will also be applied to true-up calculations for the period beginning January 1, 2018 to February 1, 2019.⁷⁹

50. We grant Southwestern's requested waiver of sections 35.13(d)(1), (2), and (5) and 35.13(h) of the Commission's regulations regarding the provision of full Period I and II data and cost-of-service statements, consistent with the Commission's prior approval of formula rates.⁸⁰ The filing by Southwestern is to revise formula rate provisions using a combination of sources of data including company records and FERC Form No. 1 data and, therefore, we find that full Period I and Period II data are not needed for an evaluation of the justness and reasonableness of Southwestern's proposed formula rate revisions. However, this finding does not preclude parties from demonstrating at hearing the need for additional specific information to allow for a full evaluation of Southwestern's proposal.

⁷⁷ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) ("We will generally grant waiver of the 60-day prior notice requirement . . . [for] filings that reduce rates and charges—such as rate decreases . . .").

⁷⁸ See Southwestern Transmittal at 17-18, 21-22.

⁷⁹ Southwestern could add or amend notes associated with the relevant provisions (*i.e.*, the rate base adjustments for excess/deficient ADIT and the adjustments to the income tax allowance to amortize excess/deficient ADIT) to indicate that these adjustments will also be applied to true-up calculations for the period beginning January 1, 2018 to February 1, 2019.

⁸⁰ See, *e.g.*, *Southern California Edison Co.*, 136 FERC ¶ 61,074 (2011); *Xcel Energy Services, Inc.*, 122 FERC ¶ 61,098, at P 75 (2008); *American Electric Power Service Corp.*, 120 FERC ¶ 61,205, at PP 40-41 (2007); *Trans-Allegheny*, 119 FERC ¶ 61,219, at P 57 (2007); *Allegheny Power System Operating Cos.*, 111 FERC ¶ 61,308, at PP 55-56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Commonwealth Edison*, 119 FERC ¶ 61,238, at PP 93-94 (2007).

The Commission orders:

(A) Southwestern's proposed revisions to Attachment O-SPS of the Xcel Tariff are hereby accepted for filing and suspended for a nominal period, to become effective February 1, 2019, as requested, subject to refund, with the flow-back of excess ADIT to be applied beginning January 1, 2018 through the 2018 formula rate true-up, as discussed in the body of the order.

(B) Southwestern is hereby directed to submit revised tariff sheets that add provisions relating to the flow-back of excess ADIT within 30 days of the date of this order, as discussed in the body of this order.

(C) Southwestern's requested waiver of its formula rate implementation protocols to allow it to revise its 2019 annual transmission revenue requirement effective February 1, 2019 is hereby granted, as discussed in the body of this order.

(D) Southwestern's requested waiver of sections 35.13(1), (2), and (5) and 35.13(h) of the Commission's regulations is hereby granted, as discussed in the body of this order.

(E) 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 Southwestern's proposed tariff revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) 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.

(G) 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.

(H) 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.