

161 FERC ¶ 61,075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Southwest Power Pool, Inc.

Docket Nos. ER17-1575-000
ER17-1575-001

ORDER REJECTING TARIFF REVISIONS AND DENYING REQUEST FOR
REHEARING AND CLARIFICATION

(Issued October 19, 2017)

1. On May 9, 2017, pursuant to section 205 of the Federal Power Act,¹ Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (Tariff) to modify the eligibility for Auction Revenue Rights (ARRs) and Long-Term Congestion Rights (LTCRs)² for network service subject to redispatch while transmission upgrades are being constructed. On July 13, 2017, pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,³ SPP's proposed Tariff revisions were accepted for filing,

¹ 16 U.S.C. § 824d (2012).

² LTCRs are long-term (i.e., a period of more than one year) Transmission Congestion Right (TCRs), which are financial instruments entitling the holder to a stream of revenues, or obligating it to pay charges, based upon the difference between the hourly day-ahead marginal congestion component of the locational marginal price at the source and sink settlement locations associated with the TCR. TCRs are obtained in TCR auctions, either through purchase or self-conversion of ARRs, or through secondary sales of TCRs. *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048 at n.330 (Integrated Marketplace Order). ARRs are rights that entitle the holder to a share of the auction revenues generated in the applicable TCR auctions. An ARR can result in a credit or charge to the holder, based upon the TCR auction clearing price on the particular ARR path. Eligible entities may either self-convert awarded ARRs into TCRs or hold the ARR to receive a share of the revenue SPP collects from auction purchasers of TCRs. *Id.* at n.329

³ *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

suspended for a nominal period, to be effective July 15, 2017, as requested, subject to refund and further Commission order.⁴ As discussed below, in this further order, we reject SPP's proposed tariff revisions.

2. On August 14, 2017, Alabama Power Company (Alabama Power), by and through its agent, Southern Company Services, Inc. (Southern Company), and Enel Green Power North America, Inc. (Enel), on behalf of its subsidiary, Buffalo Dunes Wind Project, LLC (Buffalo Dunes) (collectively, Joint Parties), filed a request for rehearing and clarification of the July 13, 2017 delegated letter order, arguing that the Commission erred in accepting the tariff revisions even with conditions. As discussed below, the Commission denies Joint Parties' request for rehearing and clarification as moot.

I. Background

A. Integrated Marketplace Proceeding

3. In SPP's Integrated Marketplace all resources are dispatched as part of the security constrained economic dispatch algorithm and any "redispatch" costs incurred to relieve a system constraint in order to provide service prior to network upgrades being built are collected and paid through the marginal congestion component of the locational marginal price as part of the Integrated Marketplace settlement process. In its filing to establish the Integrated Marketplace, SPP proposed to limit the eligibility for ARR for any new point-to-point transmission service requiring redispatch until the network upgrades were placed in service and redispatch was no longer required. SPP explained that disallowing firm point-to-point service which requires redispatch from sharing in ARR allocations is appropriate because the preexistence of transmission service commitments to other service rendered the requested paths unavailable for the transmission service subject to redispatch.⁵ SPP did not propose any limitations for ARR eligibility of network service subject to redispatch in the Integrated Marketplace proceeding.⁶

⁴ *Sw. Power Pool, Inc.*, Docket No. ER15-1575-000 (July 13, 2017) (delegated letter order).

⁵ *See* Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 259.

⁶ Under the SPP Tariff, when a firm transmission service request requires new transmission upgrades, SPP commences service prior to the transmission upgrades being placed in service if SPP is able to address the constraint identified in the system impact studies through redispatch until the transmission upgrades are placed into service. This order uses the phrase "subject to redispatch" to describe such transmission service until transmission upgrades are placed into service, unless otherwise indicated.

4. The Commission conditionally accepted SPP's proposal regarding point-to-point transmission service subject to redispatch, subject to SPP revising section 13.5, Transmission Customer Obligations for Facilities, of the Tariff to "make clear that such firm point-to-point transmission customers with redispatch obligations will obtain ARR allocations except for those times of the year and for only those amounts of service that are subject to the redispatch obligation."⁷

B. Docket Nos. ER16-1286-000 and ER16-1286-001

5. In March 2016, in Docket No. ER16-1286, SPP proposed revisions to its Tariff regarding transmission customers' eligibility for ARRs and LTCRs when redispatch is required for requested transmission service. For point-to-point transmission service, SPP proposed revisions to section 13.5 of its Tariff to provide that firm point-to-point transmission service subject to redispatch would not be eligible for any LTCRs because the customer does not have continuous service covering the entirety of the associated TCR year.⁸ For network service, SPP proposed revisions to section 34.6, Network Customer Obligations for Redispatch Costs, to provide that network customers with service subject to redispatch would be eligible to nominate ARRs and LTCRs. SPP stated that while the Tariff currently places limits on eligibility of firm point-to-point customers for ARRs, it does not do so for network customers. SPP stated that the proposed revisions to section 34.6 would merely memorialize this difference between network service and firm point-to-point transmission service.

6. In the September 2016 Order, the Commission accepted in part, and rejected in part, SPP's proposed Tariff revisions.⁹ Specifically, the Commission accepted SPP's proposed revisions to limit the eligibility for LTCRs for firm point-to-point transmission customers whose service is subject to redispatch because LTCRs are annual financial congestion hedges and the service may be subject to redispatch during part of the associated congestion right year. However, the Commission rejected SPP's proposed revisions to its Tariff to reflect the eligibility for ARRs and LTCRs for network service

⁷ *Id.* P 268.

⁸ SPP stated that "[b]ecause LTCRs are only given in full-year increments, [point-to-point] customers are eligible to receive ...LTCRs based on the minimum MW amount that is eligible for the entire [TCR] year." SPP Response to Deficiency Letter, Docket No. ER16-1286-000, at 8 (filed July 25, 2016). In contrast, ARRs can be both seasonal instruments and monthly instruments. A point-to-point customer with redispatch obligations for part of the year can obtain seasonal or monthly ARRs for those times during which it does not have a redispatch obligation.

⁹ *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,217 (2016) (September 2016 Order).

customers subject to redispatch, finding that the proposed language was unclear and could extend the eligibility for ARR and LTCRs to network customers in a manner that may be inappropriate.¹⁰

7. The Commission expressed concern that network service subject to redispatch should not be eligible for ARRs except during those times of the year and for those amounts not subject to redispatch, consistent with SPP's treatment of point-to-point transmission service subject to redispatch. Thus, the Commission rejected the proposed revisions to section 34.6 of the Tariff and instituted a proceeding under section 206 of the FPA¹¹ to examine the SPP Tariff.¹² The Commission found that on initial review, the concerns the Commission had identified might be addressed by revising section 34.6 to limit the eligibility for ARRs and LTCRs of network customers with service subject to redispatch. Specifically, the Commission stated that in the interest of avoiding disruption to the results of the annual allocation of ARRs and LTCRs mid-year, it would be reasonable to allow network service customers granted ARRs associated with service subject to redispatch to continue to hold those ARRs until the end of the allocation year following the effective date of any revisions to section 34.6 adopted in a final Commission order in the section 206 proceeding.¹³ However, the Commission found that going forward following such effective date, it did not believe it would be reasonable for SPP to allocate any new ARRs to customers with network service subject to redispatch, except for those times and for those amounts not subject to redispatch if the section 206 proceeding results in the adoption of these tariff revisions.

8. The Commission also found that because LTCRs automatically renew each year, it would be reasonable to allow network service customers granted LTCRs associated with network service subject to redispatch under the current Tariff section 34.6 to continue to hold the LTCRs until the transmission upgrades are placed into service. The Commission also found, that following the effective date of any revisions to section 34.6 adopted in a final Commission order in the section 206 proceeding, it would not be reasonable for SPP to allocate any additional LTCRs to customers with network service subject to redispatch.

¹⁰ *Id.* P 29.

¹¹ 16 U.S.C. § 824e (2012).

¹² An order addressing the examination of SPP's Tariff under FPA section 206 is being issued in Docket No. EL16-110-000 concurrently with this order. *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,071 (2017) (Paper Hearing Order).

¹³ September 2016 Order, 156 FERC ¶ 61,217 at P 37.

II. SPP's Filing in Docket No. ER17-1575-000

9. SPP is proposing to revise the Tariff to modify current provisions governing the eligibility of customers taking network service subject to redispatch to receive ARRs and/or LTCRs. SPP states that the revisions are designed to address concerns identified by the Commission in the September 2016 Order by applying substantively identical ARR and LTCR eligibility standards to network service subject to redispatch and point-to-point transmission service subject to redispatch.

10. Specifically, SPP proposes to revise section 34.6 to limit ARR eligibility for network service subject to redispatch to those times of the year and the amounts of service for which redispatch is not necessary to accommodate the service. SPP also proposes to limit LTCR eligibility for network service subject to redispatch consistent with the exclusion applicable to point-to-point service subject to redispatch. SPP states that except for minor differences to reflect the differences between the services, the revised language in section 34.6 is substantively identical to the language the Commission accepted in section 13.5 of the Tariff for point-to-point transmission service subject to redispatch.

11. SPP also proposes to revise Attachment AE, section 7.1.1, Transmission Service and Incremental and Long-Term Congestion Rights Verification, to add in a new subsection providing for SPP to verify the times of year and amounts of service that are not subject to redispatch, in accordance with the limitations otherwise specified in sections 13.5 and 34.6 of the Tariff. SPP states that the new provision is necessary as a mechanism for ensuring proper implementation of the new redispatch procedures, consistent with the September 2016 Order.

12. SPP states that to facilitate the transition to the new ARR/LTCR eligibility paradigm, SPP proposes a limited exception for transmission customers who contracted for network service subject to redispatch prior to the effective date of the proposed Tariff revisions (i.e., July 15, 2017). SPP explains that the grandfathering proposal is intended to preserve contractual expectations by ensuring that customers that have contracted for network service subject to redispatch, i.e., service that is "confirmed" but has not commenced, remain eligible for ARRs for the full term of their service agreement, consistent with their expectations under the current Tariff, which does not limit such eligibility.

13. SPP states that its Tariff revisions generally conform to the Commission's suggested Tariff modifications in the September 2016 Order, with the exception of its proposal to grandfather all network service subject to redispatch confirmed prior to the proposed effective date of the proposed Tariff revisions. Under SPP's grandfathering proposal, the revised ARR eligibility provisions would apply to network service subject to redispatch confirmed after July 15, 2017, and to any network service subject to redispatch modified after such date.

14. SPP states that its grandfathering proposal is reasonable and conceptually in line with the September 2016 Order.¹⁴ SPP notes that in the September 2016 Order the Commission recognized that allowing network service subject to redispatch to continue to be eligible for LTCRs through the completion of necessary upgrades was “both reasonable and appropriate ‘[i]n the interest of avoiding disruption to the results’ of prior awards.”¹⁵ SPP asserts that the same consideration justifies grandfathering the rights of customers who entered into network service subject to redispatch contracts under a Tariff regime that provided for ARR eligibility. SPP states that terminating ARR eligibility at any point within the term of the existing network service subject to redispatch service agreement would disrupt the bargained-for expectations of customers who contracted for service with the understanding that they would be eligible for allocations of ARRs for the duration of the contract. SPP requests that, concurrently with the approval of these Tariff revisions without modification, the Commission issue an order terminating the section 206 proceeding instituted in Docket No. EL16-110-000.

III. Notice of Filing and Responsive Pleadings

15. Notice of SPP’s filing was published in the *Federal Register*, 82 Fed. Reg. 22,540 (2017), with interventions and protests due on or before May 30, 2017. Timely motions to intervene were filed by American Electric Power Service Corporation (AEP); American Wind Energy Association; Golden Spread Electric Cooperative, Inc.; Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Lincoln Electric System; Mid-Kansas Electric Company, LLC; Sunflower Electric Power Corporation; Missouri Joint Municipal Utility Commission, Kansas Power Pool, and City of Independence, Missouri (collectively, TDU Intervenors); and Westar Energy, Inc. Western Farmers Electric Cooperative filed a motion to intervene out-of-time.

16. Alabama Power, by and through its agent Southern Company, and Enel timely filed motions to intervene and protests. Xcel Energy Services, Inc. (Xcel), on behalf of its affiliate Southwestern Public Service Company (Southwestern), filed a motion to intervene out-of-time and comments.

17. On June 20, 2017, SPP filed a motion for leave to answer and answer. Additionally, on June 23, 2017, Joint Parties) filed a joint motion for leave to answer and answer.¹⁶ Finally, on July 14, 2017, SPP filed a motion requesting the Commission reject

¹⁴ See SPP Transmittal Letter at 9.

¹⁵ *Id.* at 10 (quoting September 2016 Order, 156 FERC ¶ 61,217 at P 37).

¹⁶ On May 1, 2017, in Docket No. EL17-69-000, Joint Parties filed a complaint against SPP related to the allocation of ARRs and LTCRs to customers with network service subject to redispatch for the 2017-2018 annual ARR allocation year. An order

the Joint Parties' June 23, 2017 answer or, in the alternative, motion for leave to answer and answer.

A. Protests and Comments

18. Alabama Power states that it does not oppose acceptance of the Tariff amendments for the purposes of clarification, but asserts that the amendments do not break any new ground under the Commission's requirements or the SPP Tariff and merely confirm what is already expected and required.¹⁷ However, Alabama Power contests the proposed grandfathering provision. Alabama Power states that allowing new ARR and LTCRs to be issued for network service subject to redispatch confirmed prior to July 15, 2017 undermines the September 29, 2016 refund effective date established in the September 2016 Order. Moreover, Alabama Power states that the Tariff does not provide for ARRs to be available for network service subject to redispatch.¹⁸ Alabama Power argues that it is unjustified for parties to believe they might have been able to obtain ARRs and/or LTCRs for the portion of the requested service that could not be granted as firm. Alabama Power states that confirmed firm transmission service, on the other hand, does have a reasonable expectation of receiving ARRs and/or LTCRs.¹⁹

19. Alabama Power argues that SPP's grandfathering proposal does not address the ongoing unduly discriminatory and preferential effects of its discriminatory practice that arise from the proposed implementation delay to well after the refund effective date. Alabama Power states that the grandfathering proposal appears to leave firm transmission service customers like Alabama Power to pay congestion costs that will fund the ARR/LTCR proceeds allocated to the wrong customers for several more years into the

addressing Joint Parties' complaint is being issued in Docket No. EL17-69-000 concurrently with this order.

¹⁷ For example, Alabama Power states that Order No. 890 already provides that planning redispatch service used to supply network loads or point-to-point transmission service under the *pro forma* Tariff is not comparable to "firm" transmission service. Alabama Power Protest at 7 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at PP 927-928, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

¹⁸ Alabama Power Protest at 16.

¹⁹ *Id.* at 15.

future. Alabama Power argues that equity requires that the discriminatory practice engaged in by SPP come to an end and any discriminatory effects be mitigated to the maximum extent possible.

20. Alabama Power also argues that the proposed grandfathering provision would violate the filed rate doctrine and constitutes retroactive ratemaking. Alabama Power contends that network transmission service subject to redispatch is not firm transmission service and contends that the proposed revisions to Attachment AE, section 7.1.1 would change what Alabama Power views as an established distinction in the Tariff between network service subject to redispatch and firm transmission service.²⁰ Alabama Power asserts that the Commission does not have authority to waive the filed rate doctrine retroactively based on equitable considerations, such as those advanced by SPP. Alabama Power also argues that the Commission's orders hold that network transmission service subject to redispatch is not firm service but rather is comparable to point-to-point transmission service subject to redispatch. Alabama Power argues that both services bridge the gap between requested and granted firm service while required system upgrades are pending.²¹

21. Enel similarly opposes SPP's grandfathering proposal arguing that it should be rejected because it is contrary to the September 2016 Order, which suggested that no new ARR's be allocated to customers with network service subject to redispatch. Enel argues that SPP's justification for the grandfathering proposal is to preserve contractual expectations of customers taking network transmission service subject to redispatch. Enel contends that SPP points to no provision of its Tariff that expressly provides for such an expectation.²² Enel also argues that SPP asks the Commission to grant deference to the wishes of its stakeholders but Enel argues that the stakeholder process should not be a basis for accepting the grandfathering proposal.

22. In addition, Enel contends that the grandfathering proposal is inconsistent with the character of network service subject to redispatch because the grandfathering proposal would give ARR's to conditional firm service and the system cannot accommodate all service that is subject to redispatch. Further, Enel argues that the grandfathering proposal violates costs causation principles because allocating ARR's to network service subject to redispatch will deny ARR's to firm transmission customers not subject to redispatch.

²⁰ *Id.* at 19.

²¹ *Id.* at 20 (citing September 2016 Order, 156 FERC ¶ 61,217; *Southwest Power Pool, Inc.*, 118 FERC ¶ 61,148, at PP 42-43 (2007) (2007 Network Redispatch Order)).

²² Enel Protest at 5.

23. In its comments, Xcel supports SPP's proposed revisions to its Tariff, including SPP's grandfathering proposal. Xcel states that five network transmission service requests that its affiliate Southwestern submitted and that were confirmed by SPP prior to the September 2016 Order would be affected by SPP's grandfathering proposal. Xcel also states that two of Southwestern's network resources, with confirmed redispatch service start dates in January 2018 and November 2018 and with the required upgrades expected to be completed in March 2021 and June 2020, respectively, would be particularly affected.

24. Xcel asserts that Southwestern's business decisions to enter into its arrangements for network transmission service subject to redispatch were predicated in part on the availability of LTCRs to hedge congestion costs. Xcel states that Southwestern relied on the SPP Tariff, which places no limitations on LTCRs for network service subject to redispatch, and the fact that SPP has consistently conveyed to stakeholders that network service subject to redispatch was eligible for ARRs and LTCRs. Moreover, Xcel states that Southwestern's service requests constitute binding transmission reservations from which it cannot withdraw and that Southwestern has entered into long-term power purchase contracts with non-affiliated generators.

25. Xcel asserts that if the Commission does not allow of grandfathering network service subject to redispatch confirmed by SPP, Southwestern's ability to hedge congestion costs would be severely curtailed, exposing Southwestern to costs it could not have anticipated and that would be passed through to wholesale and retail customers. In addition to congestion costs, Xcel states that Southwestern will be subject to crediting obligations under Attachment Z2 of the SPP Tariff as if it were a firm transmission service customer whose service is made possible by a creditable upgrade. Xcel asserts that if the Commission does not allow SPP's proposed grandfathering, Xcel will be subject to both unmitigated transmission congestion costs and charges for Attachment Z2 credits associated with the network service subject to redispatch. Xcel argues that if the Commission does not allow the proposed grandfathering, the Commission should consider whether revisions to Attachment Z2 are necessary to prevent unjust and unreasonable charges to customers with network service subject to redispatch. Xcel also notes that the effect of grandfathering would only be temporary, as Southwestern's service will not be subject to redispatch once transmission upgrades are placed into service.

26. Xcel further argues that Commission policy disfavors modifying market rules upon which market participants have relied and seeks to preserve pre-existing contract rights amidst regulatory changes.²³ Xcel states that the Commission has found

²³ Xcel Comments at 16 (citing *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on compliance*, 108 FERC ¶ 61,003, at P 66 (2004); *New England Power Pool and ISO*

retroactive remedies to be unfair and inequitable when affected entities cannot revisit economic decisions based upon the tariff and has favored prospective revisions to market rules while grandfathering existing uses.²⁴ Finally, Xcel asserts that the stakeholder process that led to SPP's proposed tariff revisions was robust and extensive, which justifies deference to SPP's proposal. Xcel requests that if the Commission does not grant SPP's grandfathering proposal it should, at a minimum, allow grandfathering of eligibility for ARR and LTCRs for network service subject to redispatch confirmed by SPP prior to the September 2016 Order.

B. Answers

27. SPP notes that there is no opposition to SPP's proposed Tariff revisions applying the same ARR/LTCR eligibility requirements to network service subject to redispatch that is currently applied to point-to-point transmission service subject to redispatch. SPP asserts that this central feature of its proposed Tariff revisions is consistent with the guidance given by the Commission in the September 2016 Order.

28. With regard to the protests, SPP argues that Alabama Power and Enel mistakenly rely on the September 2016 Order as a final Commission order. SPP states that in the September 2016 Order the Commission did not make any definitive findings or mandate any specific Tariff revisions. According to SPP, in the September 2016 Order the Commission merely established formal proceedings to consider the need for possible Tariff revisions. SPP asserts that this intent is further evidenced by the Commission's finding that any potential Tariff revisions would not become effective "until the end of

New England, Inc., 100 FERC ¶ 61,287, at P 87; *New England Power Pool and Massachusetts Wholesale Elec. Co.*, 83 FERC ¶ 61,045, at 61,242 (1998); *Pacific Gas & Elec. Co., et al.*, 81 FERC ¶ 61,122, at 61,470-61,471 (1997); *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, at 31,663-31,664 (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)).

²⁴ *Id.* at 16-17 (citing *Midwest Independent Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113, at P 95 (2006); *New England Power Pool*, 87 FERC ¶ 61,045, at 61,198 (1999)).

the allocation year following the effective date of any revisions to section 34.6 adopted in a final Commission order in the section 206 proceeding.”²⁵

29. SPP also contends that the protesters raise issues that are beyond the scope of this proceeding. SPP notes that two complaints have been filed with the Commission alleging that SPP has violated its Tariff by allocating ARRs/LTCRs to network service subject to redispatch and seek retroactive relief.²⁶ SPP states that it has submitted answers refuting the complainants’ claims in both complaint proceedings. SPP also states that this proceeding involves how to allocate ARRs and LTCRs prospectively. SPP contends the Commission should ignore the protesters’ arguments about Tariff violations given the clear demarcation between the issues in the two complaint proceedings and this proceeding (i.e., retroactive relief and prospective tariff revisions).

30. SPP argues that while certain of the protesters’ claims are within the scope of the complaint proceedings and should be disregarded in this proceeding, it offers responses out of an abundance of caution. For example, SPP contests Alabama Power’s statement that Commission precedent has found network service subject to redispatch is not firm service. While SPP states that it has refuted a similar claim in the complaint proceedings, SPP reiterates that Alabama Power has mischaracterized both the 2007 Network Redispatch Order and Order No. 890. SPP argues that a reservation confirmed subject to redispatch constitutes a firm service, with the acknowledgment that, during specified times of the year, SPP’s firm delivery obligation will be met by dispatching generation out of economic order and that any incremental costs associated with such out-of-order dispatch will be paid by the customer.²⁷ SPP adds that such service is indisputably firm for the period and MWs specified in the firm reservation and is not, contrary to Joint Parties’ claim, assigned a lower curtailment priority relative to other firm services not subject to redispatch.

31. With respect to the 2007 Network Redispatch Order, SPP states that the 2007 Network Redispatch Order involved an unexecuted revised Network Integration Transmission Service Agreement (NITSA) filed by SPP following a dispute between SPP

²⁵ SPP Answer at 7 (citing September 2016 Order, 156 FERC ¶ 61,217 at P 37).

²⁶ On October 24, 2016, Alabama Power filed a complaint against SPP in Docket No. EL17-11-000. An order addressing Alabama Power’s complaint in Docket No. EL17-11-000 is being issued concurrently with this order. *Alabama Power Co. v. Sw. Power Pool, Inc.*, 161 FERC ¶ 61,073 (2017) (Alabama Power Complaint Order). As noted above, Joint Parties filed a complaint against SPP in Docket No. EL17-69-000.

²⁷ SPP Answer at 11.

and the customer, AEP, over the installation of network and expansion plan upgrades.²⁸ SPP states that AEP requested that SPP add language to the NITSA to provide that, in the event of delays associated with the upgrades, SPP would curtail firm customers and dispatch generation, as necessary, to provide the new service under the revised NITSA.²⁹ SPP states that it declined, arguing that under Section 29.3 of the Tariff, SPP was not obligated to provide network service in cases where the service could not be confirmed without system upgrades. However, SPP states that it offered to examine whether the service could be provided via redispatch pending the system upgrades, subject to AEP's willingness to absorb redispatch costs.³⁰ SPP states that it rejected AEP's request that SPP curtail firm customers in order to accommodate the new network resources in the event of an installation delay. SPP notes that in the 2007 Network Redispatch Order the Commission stated:

Pursuant to Attachment K of SPP's tariff, if an entity applies for network service and is informed by SPP that the service can only be provided if redispatch occurs, and the entity agrees to pay redispatch costs, SPP must provide redispatch service. In this instance, AEP states that it agreed to pay redispatch costs. Therefore, in the interim period, i.e. until the upgrades are complete, SPP must provide redispatch service as long as AEP pays for the costs of redispatch and other conditions are satisfied. While SPP notes that it has not yet completed necessary studies to provide interim redispatch, we remind SPP that we expect it to do so in accordance with section 32 of its tariff.³¹

32. SPP states that the Commission rejected AEP's request that SPP curtail firm customers in order to accommodate the new network resources in the event of an installation delay.³² SPP states that the Commission also observed that under

²⁸ *Id.* at 12 (citing 2007 Network Redispatch Order, 118 FERC ¶ 61,148 at P 6).

²⁹ *Id.* (citing 2007 Network Redispatch Order, 118 FERC ¶ 61,148 at P 11).

³⁰ *Id.* (citing 2007 Network Redispatch Order, 118 FERC ¶ 61,148 at PP 24-25).

³¹ *Id.* at 13 (citing 2007 Network Redispatch Order, 118 FERC ¶ 61,148 at P 43 (footnote omitted)).

³² *Id.* at 12 (citing 2007 Network Redispatch Order, 118 FERC ¶ 61,148 at P 41).

section 29.3 of the Tariff, SPP is not obligated to confirm firm service if the service cannot be provided without system upgrades.³³

33. SPP argues that nothing in the 2007 Network Redispatch Order supports Alabama Power's arguments. According to SPP, it is only in instances where the requested service cannot be confirmed because of the need for system upgrades and SPP cannot redispatch the system, or the customer declines to pay for redispatch costs, that no firm service obligation is created.

34. With respect to Alabama Power's reliance on Order No. 890, SPP states that the paragraphs cited by Alabama Power address point-to-point "planning redispatch" and "conditional firm service," and say nothing about whether SPP's network service subject to redispatch is "less firm" than other firm service. SPP asserts that, in fact, the Commission explicitly declined in Order No. 890 to adopt a curtailable "conditional firm network service" product.³⁴ SPP further states that Order No. 890 expressly distinguishes between planning redispatch service, which requires redispatch of generation to maintain firm service year round, and conditional firm service, which is curtailable during limited periods when the existing transmission system cannot accommodate the service.

35. Joint Parties argue that SPP's and Xcel's attempts to characterize transmission service subject to redispatch as firm service fail because they do not cite to any particular Tariff provision in support of their argument. Joint Parties contend that the plain language of the Tariff precludes SPP from allocating ARRs to network service subject to redispatch. Joint Parties also contend that the SPP Tariff expressly allows for a network service customer to choose to obtain redispatch service as a means to obtain transmission service for its full request, but there is no corresponding provision that would allow SPP to grant ARRs/LTCRs as a hedging mechanism for network service subject to redispatch.

36. Furthermore, Joint Parties argue that paying congestion costs as part of the Integrated Marketplace does not make network service subject to redispatch firm service, and that service subject to redispatch is not similarly situated to service that can be granted without the need for additional upgrades.³⁵

37. Joint Parties also argue that the arguments of SPP and Xcel regarding customer expectations of receiving ARRs for network service subject to redispatch as a basis for the proposed grandfathering provisions is not supported by record evidence. Joint Parties

³³ *Id.* at 13 (citing 2007 Network Redispatch Order, 118 FERC ¶ 61,148 at P 40).

³⁴ *Id.* at 14 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1092).

³⁵ Joint Parties Answer at 9-12.

assert that SPP's own business records indicate that SPP intended to design both point-to-point service subject to redispatch and network service subject to redispatch consistently by denying them ARRs. Joint Parties also argue that even though the Integrated Marketplace went live in the first quarter of 2014, it was not until a stakeholder meeting presentation in February 2015 that SPP shared its change in practice in a public forum.³⁶ Joint Parties state that the SPP presentation, however, acknowledged that SPP's practice was not expressly authorized in the SPP Tariff and, therefore, that some Tariff revisions would be required. Joint Parties state that these Tariff revisions were the revisions filed in Docket No. ER16-1286-000.

38. Joint Parties argue that the Commission should reexamine the allocation of ARRs and LTCRs to network service subject to redispatch for all periods implicated by the scope of grandfathering requested by SPP in the instant proceeding, so as to give SPP an opportunity to support its proposal. Joint Parties state that the Commission should consider ordering a hearing to further examine the grandfathering proposal.

IV. Discussion

A. Procedural Matters

39. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), 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) (2017), the Commission will grant the late-filed motions to intervene of Western Farmers Electric Cooperative and Xcel given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

40. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept SPP's June 20, 2017 answer and Joint Parties' June 23, 2017 answer because they have provided information that assisted us in our decision-making process. However, we are not persuaded to accept SPP's July 14, 2017 answer and will, therefore, reject it.

B. Substantive Matters

41. We reject SPP's proposed Tariff revisions, as discussed below.

42. SPP proposes to grandfather all network service subject to redispatch confirmed prior to July 15, 2017 so that customers with network service subject to redispatch

³⁶ *Id.* at 15.

confirmed prior to July 15, 2017 would continue to be fully eligible for ARRs and LTCRs until the transmission upgrades are constructed. SPP only proposes to limit eligibility for ARRs and LTCRs for network service subject to redispatch confirmed after July 15, 2017, and to network service subject to redispatch modified after that date.³⁷

43. We find that SPP's proposed grandfathering provisions would inappropriately extend practices that the Commission finds unjust and unreasonable. In the Paper Hearing Order that is being issued concurrently with this order, the Commission finds that section 34.6 of SPP's Tariff is unjust and unreasonable and unduly discriminatory or preferential to the extent that it allows SPP to provide ARRs and LTCRs to network service customers subject to redispatch while necessary transmission upgrades are constructed on the same basis it provides ARRs and LTCRs to firm transmission customers not subject to redispatch.³⁸ We further find that, going forward from the date of issuance of the Paper Hearing Order, it will not be reasonable for SPP to allocate any additional ARRs to customers with network service subject to redispatch on the same basis as firm transmission customers not subject to redispatch, except for those times and amounts not subject to redispatch.³⁹ We also find that, going forward from the date of issuance of the Paper Hearing Order, it will not be reasonable for SPP to allocate any additional LTCRs to customers with network service subject to redispatch.⁴⁰ However, we find that it is reasonable to grandfather ARRs or LTCRs that have already been granted by SPP for service associated with network service subject to redispatch under the current Tariff section 34.6.⁴¹

44. As we state in the Paper Hearing Order proceeding, allowing customers with network service subject to redispatch to retain their already-granted ARRs for the periods of time and the amounts of service subject to redispatch obligation and to retain their already-granted LTCRs, while preventing the future allocation of ARRs and LTCRs to such service on the same basis as firm transmission customers not subject to redispatch, appropriately balances the interests of network customers with service subject to redispatch who were granted ARRs and LTCRs based on SPP's interpretation of its Tariff with the need to prevent ARRs and LTCRs from continuing to be awarded in an

³⁷ SPP Transmittal Letter at 9.

³⁸ Paper Hearing Order, *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,071 (2017) at P 33.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* P 49.

unjust and unreasonable and unduly discriminatory or preferential manner.⁴² However, as further discussed in the Paper Hearing Order, allowing network service subject to redispatch to continue to be granted ARR during the periods of time and amounts of service subject to a redispatch obligation and to continue to be granted LTCRs on the same basis as firm transmission customers not subject to redispatch after the effective date of revisions to section 34.6 would inappropriately extend practices that the Commission has found to be unjust and unreasonable and unduly discriminatory or preferential.

45. By allowing all network service subject to redispatch confirmed prior to July 15, 2017 to continue to be allocated ARR for the periods of time and the amounts of service subject to redispatch obligation and to continue to be allocated LTCRs, SPP's proposed grandfathering provisions would extend indefinitely practices that the Commission has found to be unjust and unreasonable. While we believe that some limited form of grandfathering with respect to already-granted ARR and LTCRs is appropriate given that network customers with service subject to redispatch were granted ARR and LTCRs based on SPP's reasonable interpretation of its Tariff, we do not believe it is reasonable for SPP to continue the unjust and unreasonable allocation of ARR and LTCRs to network service subject to redispatch. For the same reasons, we also find that it would not be reasonable for the Commission to allow all network service subject to redispatch confirmed prior to the September 2016 Order to continue to be eligible for ARR for the periods of time and the amounts of service subject to redispatch obligation and to continue to be eligible for LTCRs, as requested by Xcel.

46. Xcel argues that grandfathering confirmed network service subject to redispatch is consistent with Commission precedent,⁴³ but we disagree that this precedent supports a different outcome here. Xcel asserts that the Commission has found that retroactive remedies are unfair and inequitable when entities cannot revisit economic decisions, and that the Commission favors prospective revisions to market rules,⁴⁴ but we are not requiring a retroactive remedy. We are not requiring SPP to undo any previous allocations of ARR or LTCRs, nor are we requiring any refunds. Rather, the changes to market rules that we direct SPP to make in the Paper Hearing Order will apply

⁴² In the Paper Hearing Order, the Commission finds that customers with network service subject to redispatch can retain already-granted ARR through the end of the ARR allocation year and LTCRs until the upgrade is completed. *Id.* PP 50-51.

⁴³ Xcel Comments at 16.

⁴⁴ *Id.* at 16-17 (citing *Midwest Independent Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113, at P 95 (2006); *New England Power Pool*, 87 FERC ¶ 61,045, at 61,198 (1999)).

prospectively as of the date of the Paper Hearing Order. Xcel also cites to precedent where the Commission rejected tariff revisions that had no demonstrated benefit and that would have upset expectations that were based on the existing tariff,⁴⁵ but that precedent is distinguishable because the Commission has found that section 34.6 of SPP's Tariff is unjust and unreasonable and unduly discriminatory or preferential. Therefore, tariff revisions are necessary, and, as discussed above and in the Paper Hearing Order, we have balanced the interests of customers with network service subject to redispach may have had along with the need for tariff changes.⁴⁶ Additionally, Xcel states that it is the Commission's policy generally not to require the abrogation of contract rights,⁴⁷ but Xcel does not explain what contract rights the Commission would be abrogating by not grandfathering confirmed network service subject to redispach. The fact that Xcel may have expected to receive ARRs and LTCRs under a provision of the Tariff that the Commission has now found to be unjust and unreasonable and unduly discriminatory or preferential does not mean that its contract rights have been abrogated.⁴⁸ Further, with regard to Xcel's concern that it will be assessed charges pursuant to Attachment Z2 as if it were a firm transmission customer whose service is made possible by the Creditable

⁴⁵ *Id.* (citing *ISO New England Inc. and New England Power Pool Participants Committee*, 132 FERC ¶ 61,136, at P 22 (2010)).

⁴⁶ *See supra* P 45.

⁴⁷ Xcel Comments at 16 (citing *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on compliance*, 108 FERC ¶ 61,003, at P 66 (2004); *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287, at P 87; *New England Power Pool and Massachusetts Wholesale Elec. Co.*, 83 FERC ¶ 61,045, at 61,242 (1998); *Pacific Gas & Elec. Co., et al.*, 81 FERC ¶ 61,122, at 61,470-61,471 (1997); *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, at 31,663-31,664 (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)).

⁴⁸ Moreover, the precedent Xcel cites addresses the Commission's determination in Order No. 888 that it would be inappropriate to order generic abrogation of transmission contracts in the context of the changes to the electric utility industry required in that order, along with subsequent determinations not to order generic abrogation of transmission contracts in circumstances involving the restructuring of electric markets. Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,663-31,664.

Upgrade, as we explain in the Paper Hearing Order network service subject to redispach is firm transmission service, that is conditional in nature (i.e., subject to redispach). If Xcel's firm transmission service uses Creditable Upgrades, then Xcel is obligated to pay Attachment Z2 credits, consistent with the terms of the Tariff regardless of whether the service is subject to redispach. Accordingly, we do not need to consider whether Attachment Z2 crediting provisions should be revised.

47. The arguments of Alabama Power, Enel, Joint Parties, and SPP concerning whether network service subject to redispach is firm service and whether SPP violated its Tariff are addressed and discussed in more detail in the Alabama Power Complaint Order in Docket No. EL17-11-000.⁴⁹ Additionally, given our finding in the Alabama Power Complaint Order that SPP did not violate its Tariff by treating customers with network service subject to redispach as eligible for ARRs and LTCRs,⁵⁰ we find that there is no need to examine previous allocations of ARRs and LTCRs to network service subject to redispach and therefore reject the Joint Parties' request to set this issue for hearing.

48. We reject SPP's request to terminate the paper hearing in Docket No. EL16-110-000. As discussed above, the Commission is issuing an order, concurrently with this order, addressing the paper hearing in Docket No. EL16-110-000.

V. Request for Rehearing and Clarification in Docket No. ER17-1575-001

A. Request for Rehearing and Clarification

49. On August 14, 2017, Joint Parties filed a request for rehearing arguing that the Commission erred in accepting the Tariff revisions in the July 13, 2017 delegated letter order issued pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum. Specifically, Joint Parties argue that the Commission erred by not finding SPP's grandfathering proposal to be deficient and by not issuing a deficiency letter directing SPP to provide further support for the grandfathering proposal. Additionally, Joint Parties contend that the Commission erred by accepting the grandfathering proposal without discussing the factual inconsistencies in SPP's representations, Commission precedent, and the harms to Joint Parties. Moreover, Joint Parties state that the Commissions erred by not explaining how refunds would be implemented and request clarification of the refund process.

⁴⁹ *Alabama Power Co. v. Sw. Power Pool, Inc.*, 161 FERC ¶ 61,073 (2017) at PP 24-28.

⁵⁰ *Id.* P 24.

B. Commission Determination

50. The request for rehearing and clarification is hereby denied. To the extent Joint Parties are concerned about the acceptance of SPP's grandfathering proposal, the proposal has been rejected, as discussed above. As for Joint Parties' request for clarification of the refund process, we find that that request is moot because we are not requiring refunds related to already-granted ARRs or LTCRs. As discussed above, in the Paper Hearing Order the Commission finds that it is reasonable to grandfather ARRs or LTCRs that have already been granted by SPP for service associated with network service subject to redispach under the current Tariff section 3.6.⁵¹

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby rejected, as discussed in the body of this order.

(B) Joint Parties' request for rehearing and clarification is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵¹ Paper Hearing Order, (Issued October 19, 2017), *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,071 at P 49.