

163 FERC ¶ 61,110  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Southwest Power Pool, Inc.

Docket No. ER17-1575-002

ORDER DENYING REHEARING

(Issued May 17, 2018)

1. On November 20, 2017, Xcel Energy Services Inc. (Xcel), on behalf of its affiliate Southwestern Public Service Company (Southwestern) filed a request for rehearing of the October 19, 2017 order in this proceeding<sup>1</sup> rejecting proposed revisions to the Auction Revenue Rights (ARRs) and Long-Term Congestion Rights (LTCRs) provisions in Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (Tariff). For the reasons discussed below, we deny Xcel's request for rehearing.

**I. Background**

2. In May 2017, SPP filed proposed Tariff revisions (May 2017 Filing) to bring the eligibility for ARR and LTCRs of customers taking Network Integration Transmission Service (network service) subject to redispatch<sup>2</sup> in line with the provisions in its Tariff governing ARR and LTCR eligibility for customers taking point-to-point transmission service subject to redispatch.<sup>3</sup>

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<sup>1</sup> *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,075 (2017) (Tariff Revision Order).

<sup>2</sup> As explained in the Tariff Revision Order, we use “subject to redispatch” to describe the process under the SPP Tariff when a firm transmission service request requires new transmission upgrades, but SPP is able to address the constraint identified in the system impact studies through redispatch until the transmission upgrades are placed into service. *See id.* P 3 n.6.

<sup>3</sup> SPP May 9, 2017 Transmittal Letter at 1-2.

**A. ARR and LTCR Eligibility for Transmission Service Subject to Redispatch**

3. Section 13.5 of SPP's Tariff provides that customers taking point-to-point transmission service subject to redispatch are only eligible to be allocated ARR for service that is not taken subject to the redispatch obligation, and are not eligible for LTCR allocation.<sup>4</sup> At the time of the May 2017 Filing, however, Tariff section 34.6 contained no such limitation on ARR and LTCR eligibility for *network* service customers subject to redispatch. SPP had previously interpreted this silence to mean that customers with network service subject to redispatch were eligible to nominate ARRs and LTCRs on the same basis as customers with network service not subject to redispatch, and, in March 2016 in Docket No. ER16-1286-000, proposed revisions to section 34.6 to memorialize this understanding. The Commission rejected this proposal in a September 2016 order<sup>5</sup> and instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>6</sup> in Docket No. EL16-110-000 (paper hearing proceeding) to examine whether the current version of section 34.6 was unjust and unreasonable to the extent it could be read to extend the eligibility for ARRs and LTCRs to network customers with service subject to redispatch.<sup>7</sup>

**B. May 2017 Filing**

4. In its May 2017 Filing, SPP proposed to revise section 34.6 of its Tariff to use language "substantively identical to the Commission-approved language in [s]ection 13.5" to limit ARR eligibility for network service subject to redispatch to those times of the year and amounts of service for which redispatch is not necessary to accommodate the service, and to exclude network service subject to redispatch from LTCR eligibility.<sup>8</sup>

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<sup>4</sup> SPP, Tariff, Pt. II, § 13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs (2.1.0) ("Transmission Customers having Firm Point-To-Point Transmission Service subject to redispatch will be eligible to nominate Candidate Auction Revenue Rights associated with that service only for those times of the year and for only the amounts of service that are not subject to redispatch. Long-Term Firm Point-to-Point Transmission Service with a redispatch requirement will not be eligible for any Candidate Long-Term Congestion Rights because it does not have continuous service covering the entirety of the associated Transmission Congestion Right year.").

<sup>5</sup> *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,217 (2016) (September 2016 Order).

<sup>6</sup> 16 U.S.C. § 824e (2012).

<sup>7</sup> September 2016 Order, 156 FERC ¶ 61,217 at P 29.

<sup>8</sup> SPP May 9, 2017 Transmittal Letter at 8. SPP further proposed to modify section 7.1.1 of Attachment AE of its Tariff to add a new subsection specifying that SPP

However, SPP proposed to grandfather the ability of network service subject to redispatch confirmed prior to the July 15, 2017 requested effective date of the proposed Tariff revisions to be eligible for ARR, “so as not to undermine the contractual expectations of transmission customers who entered into [network service subject to redispatch] arrangements under the existing Tariff provisions governing ARR eligibility.”<sup>9</sup> SPP asserted that permitting these customers to be eligible for ARR allocations was “conceptually in line” with the September 2016 Order, in which the Commission recommended that network customers subject to redispatch granted ARRs under the then-current Tariff be allowed to hold those ARRs until the end of the allocation year following the effective date of any approved Tariff revisions, and that previously granted LTCRs remain in effect through the completion of transmission upgrades.<sup>10</sup> SPP asked the Commission to accept the proposed Tariff revisions and issue an order terminating the FPA section 206 proceeding in Docket No. EL16-110-000.<sup>11</sup>

5. While two parties protested the grandfathering proposal, Xcel submitted comments supporting the proposal and explaining that two of Southwestern’s resources had confirmed transmission service requests for network service subject to redispatch prior to the September 2016 Order, but had not yet been allocated ARRs or LTCRs by SPP for these requests.<sup>12</sup>

### C. Paper Hearing Order

6. In a related order<sup>13</sup> issued in Docket No. EL16-110-000 and also issued on October 19, 2017, the Commission found Tariff section 34.6 to be unjust and unreasonable and unduly discriminatory or preferential to the extent that it allowed SPP to provide ARRs and LTCRs to network service customers subject to redispatch while network transmission upgrades were under construction on the same basis as these rights are provided to firm transmission customers not subject to redispatch. In the Paper Hearing Order, the Commission directed SPP to revise Tariff section 34.6 on compliance to reflect the same limitation on ARR and LTCR eligibility found in Tariff section 13.5

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will verify the times of year and amounts of service that are not subject to redispatch. *Id.* at 8-9.

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

<sup>10</sup> *Id.* (citing September 2016 Order, 156 FERC ¶ 61,217 at P 37).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Xcel June 5, 2017 Motion to File Comments Out of Time and Comments at 9-11.

<sup>13</sup> *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,071 (2017) (Paper Hearing Order).

for point-to-point service subject to redispatch. The Commission also held that, going forward from the effective date of these Tariff revisions, it would not be reasonable for SPP to allocate to customers with network service subject to redispatch any additional LTCRs nor any ARR on the same basis as customers with network service not subject to redispatch.<sup>14</sup> Given the lack of express limitation on ARR and LTRC eligibility in then-existing Tariff section 34.6, however, the Commission found it reasonable to permit network customers with service subject to redispatch to retain any LTCRs that had already been granted and any ARRs that had already been granted for times and amounts of service in which they were subject to a redispatch obligation.<sup>15</sup>

#### **D. Tariff Revision Order**

7. In light of the findings in the Paper Hearing Order, the Commission rejected SPP's proposed Tariff revisions in the Tariff Revision Order. In particular, the Commission found that SPP's proposed grandfathering provisions would inappropriately and indefinitely extend practices that the Commission had determined to be unjust and unreasonable.<sup>16</sup> The Commission found that permitting the limited form of grandfathering addressed in the Paper Hearing Order with respect to already-granted ARRs and LTCRs while prohibiting any further allocations "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 unjust and unreasonable and unduly discriminatory or preferential manner."<sup>17</sup>

#### **II. Xcel Rehearing Request**

8. On rehearing, Xcel argues that the Commission erred in the Tariff Revision Order by: (1) disregarding Southwestern's contractual rights;<sup>18</sup> (2) concluding that network

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<sup>14</sup> *Id.* PP 33, 38.

<sup>15</sup> *Id.* P 49.

<sup>16</sup> Tariff Revision Order, 161 FERC ¶ 61,075 at PP 43, 45.

<sup>17</sup> *Id.* P 44 (citing Paper Hearing Order, 161 FERC ¶ 61,071 at PP 50-51). The Tariff Revision Order also denied a request for rehearing and clarification filed by Alabama Power Company, by and through its agent, Southern Company Services, Inc., and Enel Green Power North America, Inc., on behalf of its subsidiary, Buffalo Dunes Wind Project, LLC (collectively, Joint Parties) regarding the July 13, 2017 delegated letter order accepting and suspending the proposed revisions subject to refund and further Commission order. *Id.* P 50.

<sup>18</sup> Rehearing Request at 9, 10-15.

service subject to redispach is not similarly situated to network service not subject to redispach;<sup>19</sup> and (3) determining that the remedy directed in the Tariff Revision Order did not have retroactive effect.<sup>20</sup> Xcel requests that the Commission grant rehearing and allow all network service transactions subject to redispach that were confirmed by SPP prior to the September 2016 Order to retain their eligibility to be allocated ARR and LTRs through the terms of their agreements, even during times of redispach.<sup>21</sup>

### **III. Commission Determination**

#### **A. Procedural Matters**

9. On December 20, 2017, Joint Parties submitted a motion for leave to answer and answer to Xcel's request for rehearing.<sup>22</sup> Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2017), prohibits an answer to a request for rehearing. Accordingly, we deny Joint Parties' motion to answer and reject their answer to Xcel's rehearing request.

#### **B. Substantive Matters**

10. We deny Xcel's request for rehearing of the Tariff Revision Order, and affirm the Commission's finding that permitting customers with network service subject to redispach to retain already-granted ARR and LTRs, while preventing the future

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<sup>19</sup> *Id.* at 9, 15-21.

<sup>20</sup> *Id.* at 9-10, 21-23.

<sup>21</sup> *Id.* at 2. We note that at section III.A.2 and in the conclusion of the rehearing request, Xcel characterizes its request differently, asking that the Commission either grant rehearing to find that all existing network service customers subject to redispach should remain eligible to receive ARR and LTRs even during periods of redispach or, in the alternative, permit customers with such service confirmed prior to the refund effective date of the September 2016 Order to remain eligible. *Id.* at 21, 23. As discussed in section III.B.2 below, we find the former request to be beyond the scope of the proceeding, as the proposed Tariff revisions SPP filed in this proceeding did not seek to preserve eligibility for all network service customers subject to redispach. *See* SPP May 9, 2017 Transmittal Letter at 2, 9-10. Arguments related to the Commission's conclusion in the Paper Hearing Order that SPP's existing Tariff is unjust and unreasonable to the extent that it permits customers with network service subject to redispach to be eligible for ARR and LTRs on the same basis as customers with network service not subject to redispach are addressed in the order being issued concurrently in Docket Nos. EL16-110-002 and EL17-69-001.

<sup>22</sup> Joint Parties also submitted this answer in Docket No. EL16-110-002.

allocation of ARRs and LTCRs 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 unjust and unreasonable and unduly discriminatory or preferential manner.”<sup>23</sup>

### 1. Contract Rights

11. Xcel objects to the conclusion in the Tariff Revision Order that Xcel failed to “explain what contract rights the Commission would be abrogating by not grandfathering confirmed network service subject to redispatch.”<sup>24</sup> Xcel contends the Commission erred in disregarding its explanation of Southwestern’s contractual rights under the SPP Tariff.<sup>25</sup> However, while Xcel parses section 7.1 of Attachment AE of SPP’s Tariff in more detail on rehearing,<sup>26</sup> the Commission already addressed this contention in the Tariff Revision Order and Xcel fails to show on rehearing that SPP’s Tariff provided Southwestern with a contractual right that was abrogated in the Tariff Revision Order.

12. According to Xcel, “the contract rights at issue are [Southwestern’s] eligibility for LTCRs and ARRs,” arising from the fact that, as a customer with a firm transmission service reservation, Southwestern is deemed an “Eligible Entity” and thus “permitted to nominate candidate LTCRs and/or ARRs” under section 7.1 of Attachment AE if it meets the conditions in section 7.1.1.<sup>27</sup> We do not question that these provisions, coupled with SPP’s interpretation of its Tariff, could create an expectation that Southwestern would be eligible to nominate and receive ARRs and LTCRs. However, Xcel disregards the Commission’s statutory duty under the FPA to prevent utilities from charging rates that

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<sup>23</sup> Tariff Revision Order, 161 FERC ¶ 61,075 at P 44.

<sup>24</sup> Rehearing Request at 11 (quoting Tariff Revision Order, 161 FERC ¶ 61,075 at P 46).

<sup>25</sup> *Id.* at 9, 11.

<sup>26</sup> *See id.* at 11-12; Xcel June 5, 2017 Motion to File Comments Out of Time and Comments at 13.

<sup>27</sup> Rehearing Request at 11-12. *See id.* at 13 (“It is the elimination of [Southwestern’s] status as an Eligible Entity with respect to the [network service subject to redispatch] for Mammoth Plains and Palo Duro, as well as truncating the eligibility of all other confirmed [network service subject to redispatch] that constitutes the abrogation of rights.”).

are not just and reasonable and unduly discriminatory or preferential.<sup>28</sup> Indeed, as Xcel acknowledges, the terms of Southwestern's transmission service agreement incorporate by reference the terms and conditions in SPP's Tariff.<sup>29</sup> In other words, the rights arise under the terms and conditions of SPP's Tariff, which must be just and reasonable, and which are subject to change.

13. In this regard, Xcel errs in contending that the Commission "ignore[d] the substantial financial cost to SPP and its requirements wholesale and retail native load customers" from the loss of ARR and LTCRs for confirmed transmission arrangements for service subject to redispatch.<sup>30</sup> The Commission weighed customers' expectations based on SPP's Tariff interpretation against the prospect of continuing an unjust and unreasonable allocation of ARR and LTCRs.<sup>31</sup> We continue to find that it was reasonable for the Commission to distinguish in the Tariff Revision Order between rights that customers already had been granted and rights that customers may have expected to be allocated. Neither Xcel's expected increase in costs<sup>32</sup> nor "[t]he fact that Xcel may

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<sup>28</sup> We also note that Xcel does not cite any precedent, in its initial comments or on rehearing, to support the contention that the Commission's findings in the Tariff Revision Order impermissibly abrogate a bilateral contract.

<sup>29</sup> Rehearing Request at 12 n.32.

<sup>30</sup> *Id.* at 10. Xcel estimates in its request for rehearing that Southwestern could incur "up to \$4 million or more per year in congestion costs that were not anticipated at the time SPS contracted for the resource." *Id.* at 13-14. While Xcel alleged in its initial comments in this proceeding that Southwestern would be harmed due to unhedged congestion costs if the Commission did not accept SPP's grandfathering proposal, it quantifies this harm for the first time on rehearing, which prevents other parties from responding to this estimate on the record. *See* Xcel June 5, 2017 Motion to File Comments Out of Time and Comments at 13-14; 18 C.F.R. § 385.713(d)(1) (2017).

<sup>31</sup> *See* Tariff Revision Order, 161 FERC ¶ 61,075 at P 46 (explaining that the Commission "balanced the interests of customers with network service subject to redispatch" with the Commission's finding that Tariff revisions were necessary).

<sup>32</sup> As noted in the Paper Hearing Order, allocating ARR and LTCRs to customers with network service subject to redispatch on the same basis as network service customers not subject to redispatch could reduce the portion of ARR and LTCRs allocated to network service customers not subject to redispatch. *See* Paper Hearing Order, 161 FERC ¶ 61,071 at P 34. Given the Commission's finding that network service subject to redispatch is similarly situated to network service not subject to redispatch only for those times of year and in those amounts of service that can be provided without redispatch, Xcel fails to explain why it is just and reasonable to increase costs for customers with network service not subject to redispatch by continuing to

have expected to receive ARR and LTCR under a provision of the Tariff that the Commission has now found to be unjust and unreasonable and unduly discriminatory or preferential” means that Xcel’s contract rights have been abrogated.<sup>33</sup>

14. Furthermore, the fact that the Commission found that SPP did not violate its Tariff by offering ARR and LTCR in the past to customers with firm network service subject to redispatch does not, as Xcel suggests, undermine the Commission’s conclusion that it would not be reasonable to continue allocating ARR and LTCR in this manner.<sup>34</sup> In the Paper Hearing Order, the Commission held that “going forward from the effective date of revisions to section 34.6 required in this order,” it would not be reasonable for SPP to allocate any additional LTCR to customers with network service subject to redispatch, and ARR for times and amounts subject to redispatch.<sup>35</sup> The Commission found that, because SPP’s Tariff did not previously contain the same limitation in the language on network service subject to redispatch as in the provision regarding point-to-point service subject to redispatch, SPP did not violate its Tariff.<sup>36</sup> After considering the record established in the paper hearing proceeding, however, the Commission directed SPP to revise its Tariff to align the two provisions, and found that it would not be reasonable to continue allocating ARR and LTCR under the old allocation method once the revised provisions were effective.<sup>37</sup> Accordingly, the fact that SPP did not violate its Tariff does not require the Commission to permit what it has found to be an unjust and unreasonable practice to continue indefinitely.

15. To the extent Xcel further suggests that the Commission’s rejection of SPP’s grandfathering proposal violates the requirements of FPA section 217,<sup>38</sup> as addressed in

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allocate ARR and LTCR to customers with network service subject to redispatch on this basis.

<sup>33</sup> Tariff Revision Order, 161 FERC ¶ 61,075 at P 46.

<sup>34</sup> See Rehearing Request at 13 (citing *Ala. Power Co. v. Sw. Power Pool, Inc.*, 161 FERC ¶ 61,073, at P 25 (2017) (*Alabama Power*); *Buffalo Dunes Wind Project, LLC v. Sw. Power Pool, Inc.*, 161 FERC ¶ 61,074, at P 36 n.56 (2017) (Enel Complaint Order)).

<sup>35</sup> See Paper Hearing Order, 161 FERC ¶ 61,071 at P 33 (emphasis added).

<sup>36</sup> See *Alabama Power*, 161 FERC ¶ 61,073 at PP 24-26; Paper Hearing Order, 161 FERC ¶ 61,071 at P 36.

<sup>37</sup> See Paper Hearing Order, 161 FERC ¶ 61,071 at PP 51-52.

<sup>38</sup> 16 U.S.C. § 824q (2012).



Order No. 681,<sup>39</sup> by impairing Southwestern's ability to hedge long-term power supply arrangements,<sup>40</sup> we note that network service customers with service subject to redispatch will still be eligible to obtain ARR during times and for amounts of service not subject to redispatch while the transmission upgrades are being constructed, and will be fully eligible for ARR and LTCR after the transmission upgrades are placed into service.<sup>41</sup> In compliance with Guideline 4 of Order No. 681, SPP proposed to tie the award and duration of LTCRs to the underlying firm transmission service, and the Commission accepted this proposal.<sup>42</sup> As the Commission found in the Paper Hearing Order, network service subject to redispatch is a form of conditional service, and is similarly situated to network service not subject to redispatch during those times of year and amounts of service that can be provided without redispatch.<sup>43</sup> Xcel's argument fails to recognize that, because network service subject to redispatch cannot be simultaneously feasible without leaning on the capacity of other firm transmission customers not subject to redispatch, the allocation of LTCRs to network customers with service subject to redispatch could decrease the LTCRs allocated to transmission customers with confirmed

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<sup>39</sup> *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), Order No. 681-B, 126 FERC ¶ 61,254 (2009). Under Guideline 4 of Order No. 681, the Commission required that long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation.

<sup>40</sup> Rehearing Request at 14-15.

<sup>41</sup> See September 2016 Order, 156 FERC ¶ 61,217 at P 28 (“we do not agree with commenters who allege that SPP’s proposal to limit LTCRs is overly restrictive, because point-to-point transmission service customers can still nominate candidate ARRs for periods when their service is not subject to redispatch until the transmission upgrade is placed into service and then nominate candidate LTCRs thereafter”); *id.* P 33 (denying network service customers subject to redispatch any LTCRs until the transmission upgrades are placed into service and the service is no longer subject to redispatch would not unduly harm network service customers with service subject to redispatch “because they can continue to obtain ARRs during those periods and for those amounts of service not subject to redispatch until the transmission upgrades are placed into service, and then obtain LTCRs thereafter”).

<sup>42</sup> See *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,076, at PP 37-38 (2014).

<sup>43</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at PP 33-34.

firm network or point-to-point transmission service not subject to redispatch,<sup>44</sup> reducing their ability to hedge long-term power supply arrangements.

## 2. Nature of Network Service Subject to Redispatch

16. Xcel argues that the Commission fundamentally mischaracterized the nature of redispatch service in concluding that customers taking service subject to redispatch were not similarly situated to network service customers not subject to redispatch.<sup>45</sup> The issue of whether SPP's practice of allocating ARRs and LTCRs to customers with network service subject to redispatch was just and reasonable was the subject of the paper hearing proceeding established in Docket No. EL16-110-000, and the determination that the allocation practice was unjust and unreasonable and unduly discriminatory or preferential was made in the Paper Hearing Order.<sup>46</sup> Xcel's arguments related to whether the Commission erred in so finding are appropriately raised in that proceeding,<sup>47</sup> and are thus addressed in the order being issued concurrently in Docket Nos. EL16-110-002 and EL17-69-001.

## 3. Retroactive Application

17. Finally, Xcel's request for rehearing revives the assertion from its initial comments that, absent SPP's proposed grandfathering, the Tariff changes will conflict with Commission policy favoring prospective revisions to market rules.<sup>48</sup> Xcel hinges this argument on its assumption that Southwestern's contract rights were abrogated by the Tariff Revision Order, and that the Tariff changes thus have retroactive effect. As explained above, we find this assumption to be invalid. As we explained in the Tariff

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<sup>44</sup> *See id.*

<sup>45</sup> Rehearing Request at 15-21.

<sup>46</sup> *See* Paper Hearing Order, 161 FERC ¶ 61,071 at P 33.

<sup>47</sup> *See* Tariff Revision Order, 161 FERC ¶ 61,075 at P 47 (advising parties that arguments concerning whether network service subject to redispatch was firm service were being addressed in the *Alabama Power* order); Enel Complaint Order, 161 FERC ¶ 61,074 at P 38 (noting that arguments regarding whether SPP's ARR and LTCR allocation practice is unjust and unreasonable would be addressed in Docket No. EL16-110-000).

<sup>48</sup> Rehearing Request at 21-23. *See* Xcel June 5, 2017 Motion to File Comments Out of Time and Comments at 16-17 (stating that SPP's grandfathering proposal is consistent with Commission policy preserving preexisting contract rights and disfavoring retroactive remedies that would disturb the settled expectations of parties that relied on the existing rules).

Revision Order, the changes to SPP's market rules directed in the Paper Hearing Order apply prospectively.<sup>49</sup> Southwestern is not losing any rights that already have been granted, and remains eligible to be allocated ARR in the future, subject to the limitation that the Commission found necessary in the Tariff Revision Order to ensure that SPP's Tariff is just and reasonable and not unduly discriminatory or preferential. Accordingly, we deny rehearing.

The Commission orders:

Xcel's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>49</sup> Tariff Revision Order, 161 FERC ¶ 61,075 at P 46.