

167 FERC ¶ 61,279
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 28, 2019

In Reply Refer To:
Southwestern Public Service Company
Docket No. ER19-1727-000

Xcel Energy Services Inc.
414 Nicollet Mall - 401 - 8
Minneapolis, MN 55401

Attention: James P. Johnson

Dear Mr. Johnson:

1. On April 30, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² Xcel Energy Services Inc., on behalf of Southwestern Public Service Company (SPS), filed revisions to the transaction agreement (Transaction Agreement) between SPS and Lubbock Power & Light (LPL). In this order, we accept the proposed revisions, effective June 1, 2019, as requested.

2. SPS states that in 2009, SPS agreed to sell to LPL its distribution facilities in the City of Lubbock, Texas, (Lubbock) and transfer its retail load in Lubbock to LPL. SPS states that as part of the transaction, LPL agreed to purchase wholesale electric production service for the loads formerly served at retail by SPS, but now served at retail by LPL, for an initial twenty-five year term commencing June 1, 2019, and expiring May 31, 2044. SPS states that it entered into the Transaction Agreement with LPL on November 12, 2009 and that the Transaction Agreement included, as attachments, the production formula rate template (Production Template), formula rate implementation procedures (Protocols), and wholesale fuel cost and economic purchased power adjustment clause (Fuel Clause) in effect for other SPS wholesale requirements

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2018).

customers at that time.³ SPS states that the Transaction Agreement provides that rates for sales under the Transaction Agreement “will be developed annually pursuant to a formula rate template modeled on the templates widely used for SPS’s other wholesale formula rate customers,” and allows SPS to unilaterally apply to the Commission for a change in rates under section 205 of the FPA, including any component of the formula rate.⁴

3. SPS states that after the Transaction Agreement was accepted in 2011, SPS filed numerous changes to the Production Templates, Protocols, and Fuel Clauses of other SPS wholesale formula rate customers. SPS states that on April 1, 2019, in Docket No. ER19-1502-000, SPS filed revisions to the Transaction Agreement to replace the Production Template, Protocols, and Fuel Clauses attached to the version of the Transaction Agreement that was accepted for filing in Docket No. ER11-2374-000 with tariff provisions similar to the Production Templates, Protocols, and Fuel Clauses in effect for SPS’s other requirements customers as of April 1, 2019, so that the rates and terms of service to LPL would be comparable to those currently in effect for SPS’s requirements customers as of the date of the filing.⁵

4. SPS states that the proposed revisions to the Transaction Agreement incorporate revisions to the Production Templates, Protocols, and Fuel Clauses for SPS’s other requirements customers from a settlement approved by the Commission in Docket No. ER18-228-000,⁶ which reflect impacts of excess/deficient accumulated deferred income taxes resulting from the Tax Cut and Jobs Act of 2017⁷ and revise the Protocols related to depreciation rates. SPS states that these proposed revisions are estimated to reduce the annual charges to LPL by approximately \$467,000.⁸ SPS states that the proposed revisions to the Transaction Agreement also incorporate revisions to the

³ SPS Transmittal at 3 (citing *Sw. Pub. Serv. Co.*, Docket No. ER11-2374-000 (Feb. 3, 2011) (delegated order)).

⁴ *Id.* at 3-4.

⁵ SPS’s filing in Docket No. ER19-1502-000 was accepted by delegated letter order on May 24, 2019. See *Sw. Pub. Serv. Co.*, Docket No. ER19-1502-000 (May 24, 2019) (delegated order).

⁶ *Sw. Pub. Serv. Co.*, 167 FERC ¶ 61,010 (2019).

⁷ 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).

⁸ SPS Transmittal at 5-6.

Production Templates, Protocols, and Fuel Clauses for SPS's other requirements customers contained in SPS's April 18, 2019 filing in Docket No. ER19-1613-000, which provide for the recovery of the costs of, and establish the wholesale ratemaking treatment of the benefits associated with, a 478 MW SPS-owned wind generation facility located in Hale County, Texas, which is expected to be placed in service in late June 2019 (Hale Wind Project).⁹ SPS states that these proposed revisions are estimated to reduce the annual charges to LPL by approximately \$530,000.¹⁰

5. SPS requests waiver of the Commission's prior notice requirements to permit the proposed revisions to become effective June 1, 2019, less than 60 days after filing. SPS also requests waiver of its Transaction Agreement Protocols to allow SPS to use the revised Transaction Agreement Production Templates and Protocols to calculate the estimated charges effective June 1, 2019, as SPS states that its Protocols do not contemplate mid-year rate changes.¹¹ SPS further requests waiver, to the extent necessary, to allow it to calculate the 2019 annual true-up consistent with a note in a new table to the Transaction Agreement Production Templates, which would ensure that the costs of the Hale Wind Project are allocated on an energy basis for all of 2019. In addition, SPS requests waiver of any requirement to submit cost-of-service statements.¹² SPS states that the Commission has routinely granted such waiver requests in similar proceedings where a party has proposed to implement or modify a formula rate.¹³

6. Notice of SPS's April 30, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 19,776 (2019), with interventions and protests due on or before May 21, 2019. LPL filed a timely motion to intervene and comments.

⁹ SPS's filing in Docket No. ER19-1613-000 was accepted by the Commission in an order issued on June 17, 2019. *See Sw. Pub. Serv. Co.*, 167 FERC ¶ 61,226 (2019).

¹⁰ SPS Transmittal at 6.

¹¹ The Transaction Agreement uses a July-to-June rate year, so a change effective June 1 would be a mid-year rate change.

¹² Specifically, SPS requests waiver of the following sections of the Commission's regulations: sections 35.13(d)(1)-(2) (Period I and II data for Statements AA through BM), section 35.13(d)(5) (workpapers related to Period I and II data), and section 35.13(h) (cost-of-service statements).

¹³ SPS Transmittal at 9 (citing *Pub. Serv. Co. of Colo.*, 166 FERC ¶ 61,156, at P 37 (2019)).

7. LPL notes that the proposed changes at issue in this proceeding related to the Hale Wind Project are the same changes at issue in Docket No. ER19-1613-000. Accordingly, LPL requests that the Commission address the instant filing consistent with the Commission's resolution in Docket No. ER19-1613-000. LPL maintains that SPS's proposal to pass-through federal production tax credits is a major source of value to LPL. LPL notes that Exhibit SPS-0003 of SPS's filing, and additionally the testimony filed in Docket No. ER19-1613-000, state that:

the [production tax credits] will be grossed-up for the income tax effect to ensure the full value of the [production tax credits] is passed on to the Requirements Customers. Because SPS can use the [production tax credits] to reduce its federal income tax expense, it is appropriate to "gross-up" the value of the [production tax credits] to account for this savings to SPS.^[14]

LPL requests that the Commission's approval of SPS's proposal in this proceeding be expressly contingent on SPS's commitment to provide full production tax credits to customers, including LPL.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motion to intervene serves to make LPL a party to this proceeding.

9. We find that SPS's proposed revisions to the Transaction Agreement are just and reasonable and accept them, effective June 1, 2019, as requested.¹⁵ We note that the proposed revisions in the instant proceeding regarding the treatment of production tax credits are consistent with those accepted in Docket No. ER19-1613-000, which should address LPL's concerns regarding the treatment of production tax credits. In particular, the proposed revisions to the Protocols and Fuel Clause include language providing that the base fuel cost calculation will net any gross-up of federal production tax credits associated with generation from the Hale Wind Project, consistent with the revisions

¹⁴ LPL Comment at 3 (citing SPS Filing at SPS-0003 at 4, also citing SPS, Filing, Docket No. ER19-1613-000, Berger Testimony at 16 (filed Apr. 18, 2019)).

¹⁵ We do not agree that SPS requires a waiver of its Protocols to allow it to use the revised Production Template and Protocols to calculate the estimated charges effective June 1, 2019 or a waiver to allow it to calculate the 2019 annual true-up consistent with the note in new Table 17.1. SPS's Protocols do not preclude mid-year updates submitted pursuant to section 205 of the FPA, and SPS's instant filing and proposed note satisfy all necessary requirements.

accepted in Docket No. ER19-1613-000.¹⁶ As SPS explained in Docket No. ER19-1613-000, these revisions will ensure that the full value of the production tax credits are passed on to requirements customers.¹⁷ Accordingly, based on this and SPS's representation that the proposed revisions represent a rate decrease, we grant SPS's request for waiver of prior notice to allow the requested effective date of June 1, 2019.¹⁸

10. We grant SPS'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.¹⁹ SPS proposed 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 SPS's proposed formula rate revisions.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ SPS, FERC FPA Electric Tariff, Production Tariffs, SPS-LPL Implementation Procedures (0.2.0), § 1.d, SPS-LP&L, Exhibit SSA-2 – FCA and FCA Protocols (0.2.0), § 2(ix).

¹⁷ SPS, Filing, Docket No. ER19-1613-000, at 14-15 & Berger Testimony at 16 (filed Apr. 18, 2019).

¹⁸ *Cent. 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”).

¹⁹ *See, e.g., S. Cal. Edison Co.*, 136 FERC ¶ 61,074, at P 29 (2011); *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,098, at P 75 (2008); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at PP 93-94 (2007); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 57 (2007); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at PP 40-41 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at PP 55-56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006).