

156 FERC ¶ 61,056  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Southwest Power Pool, Inc.

Docket No. ER16-1774-000

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

(Issued July 21, 2016)

1. In this order, we accept Southwest Power Pool, Inc.'s (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) to adopt a formula rate template and implementation protocols and to update the annual transmission revenue requirement of SPP member Western Farmers Electric Cooperative (Western Farmers),<sup>1</sup> effective July 1, 2016, subject to refund, and establish hearing and settlement judge procedures.

**I. Background**

**A. The Instant Filing**

2. On May 24, 2016, SPP made the instant rate filing on behalf of Western Farmers, pursuant to section 205 of the FPA<sup>2</sup> and Part 35 of the Commission's regulations.<sup>3</sup> In the instant filing, SPP submits proposed modifications to Attachment H of its Tariff to accommodate Western Farmers' recovery of its revenue requirement for transmission

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<sup>1</sup> Western Farmers is a rural electric cooperative that provides wholesale electric power to 21 distribution cooperative member-owners and Altus Air Force Base. SPP states that Western Farmers is not subject to the Commission's jurisdiction over public utilities pursuant to section 201(f) of the Federal Power Act (FPA), 16 U.S.C. § 824(f) (2012). SPP Transmittal at 3.

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> 18 C.F.R. pt. 35 (2015).

service using its transmission facilities through a formula rate.<sup>4</sup> Specifically, SPP proposes to include as Addendum 39 to Attachment H Western Farmers' formula rate template and formula rate protocols used to calculate Western Farmers' revenue requirement. Additionally, SPP requests approval to revise Attachment T, Rate Sheet for Point-To-Point Transmission Service, to add a reference to the Western Farmers formula rate template to the Western Farmers rate sheet.

3. In support of the proposed formula rate, SPP has submitted, on behalf of Western Farmers, testimony from Ms. Julie A. Tackett, Mr. Darryl W. Boggess, Mr. Bernard A. Cevera, and Mr. Robert C. Smith. Mr. Cevera's testimony argues that the proposed formula rate template and formula rate protocols are just and reasonable.<sup>5</sup> Mr. Cevera's testimony argues that the proposed formula rate is similar to those approved by the Commission in other proceedings.<sup>6</sup>

4. Western Farmers requests a base return on equity (ROE) of 10.37 percent, with a 50 basis point Regional Transmission Organization (RTO) participation adder, for a total ROE of 10.87 percent. Western Farmers asserts that the requested base ROE is based on average ROEs in effect for existing, similar non-independent transmission owners within SPP, and that the Commission has permitted non-jurisdictional transmission owners within RTOs to apply the same overall rate of return as that used by the applicable transmission zone's dominant transmission owner.<sup>7</sup> Western Farmers proposes an equity ratio of the higher of Western Farmers' actual equity ratio or 50 percent. Western Farmers notes that its current actual equity ratio is approximately 30 percent.<sup>8</sup> Western Farmers asserts that this equity ratio is low compared to other utilities in the SPP region, which are in the range of 40 to 60 percent.<sup>9</sup> Western Farmers asserts that its requested equity ratio will put it on par with the nine utilities that Mr. Smith used to develop

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<sup>4</sup> Currently, Western Farmers recovers its revenue requirement for transmission service through a stated rate. SPP Transmittal at 3.

<sup>5</sup> SPP Transmittal at 6-7.

<sup>6</sup> Ex. SPP-9 at 9; *see also* SPP Transmittal at 7 (citing *Am. Transmission Co. LLC*, 97 FERC ¶ 61,139 (2001)).

<sup>7</sup> SPP Transmittal at 8.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> Ex. SPP-13 at 7.

Western Farmers' proposed ROE, and that this will make the resulting revenue requirement just and reasonable.

5. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of Western Farmers' revenue requirement, formula rate template, and formula rate protocols, Western Farmers has voluntarily agreed to allow its revenue requirement, formula rate template, and formula rate protocols to be treated as being accepted subject to refund with interest at the Commission interest rate.<sup>10</sup> SPP notes that Western Farmers makes this commitment without waiving, limiting, or altering its non-jurisdictional status.

6. SPP states that it has filed these proposed revisions to its Tariff at Western Farmers' request and on Western Farmers' behalf. SPP adds that it is not independently supporting or justifying the Western Farmers revenue requirement, formula rate template, or formula rate protocols, but is merely modifying the Tariff to implement Western Farmers' recovery of transmission service revenue requirements for its transmission facilities under the Tariff.<sup>11</sup>

7. SPP requests a partial waiver of the cost-of-service filing requirements of section 35.13 of the Commission's regulations.<sup>12</sup> SPP asserts that the Commission regularly grants such waiver requests in formula rate cases and that waiver is appropriate given Western Farmers' reliance on publically-available Rural Utilities Service report data.

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

8. Notice of SPP's filing was published in the *Federal Register*, 81 Fed. Reg. 35,008 (2016), with interventions and protests due on or before June 14, 2016. Timely motions to intervene were filed by American Electric Power Service Corporation, Oklahoma Municipal Power Authority, South Central MCN, LLC, Western Farmers, and Xcel

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<sup>10</sup> SPP Transmittal at 9 n.37. We note that Ms. Tackett's testimony states regarding the interest rate on refunds, that "[i]nterest on any refunds will be based on Western Farmers' actual short-term debt costs, capped at the [Commission] interest rate." Ms. Tackett asserts that the Commission has accepted this interest rate for one other SPP transmission owner. Ex. SPP-1 at 6 (citing SPP, Tariff, Attachment H, § II.3.2(2)).

<sup>11</sup> SPP Transmittal at 4.

<sup>12</sup> 18 C.F.R. § 35.13 (2015).

Energy Services Inc. KAMO Electric Cooperative, Inc. (KAMO) filed a motion to intervene out-of-time.

## II. Commission Determination

### A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), 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) (2015), the Commission will grant KAMO's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

### B. Standard of Review

10. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional transmission revenue requirements in an opinion reviewing the transmission revenue requirement filed by the City of Vernon, California (Vernon).<sup>13</sup> In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to the Commission's jurisdiction under FPA section 205. However, the Commission noted that because Vernon voluntarily submitted its transmission revenue requirement as a component of California Independent System Operator Corporation's (CAISO) jurisdictional rate, Vernon's transmission revenue requirement was "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."<sup>14</sup> The Commission explained that, in *Pacific Gas & Electric Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission had statutory authority to review Vernon's transmission revenue requirement "to the extent necessary to ensure that the CAISO rates are just and reasonable."<sup>15</sup> Subsequently, the court upheld the Commission's decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such

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<sup>13</sup> See *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

<sup>14</sup> Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

<sup>15</sup> *Id.* P 43 (quoting *Pac. Gas and Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

as Vernon) to a full section 205 review is “the only way to ensure that CAISO’s rate is just and reasonable.”<sup>16</sup>

11. However, in *TANC*, the court rejected the Commission’s authority to order Vernon to pay refunds under FPA section 205. The court held that the structure of the FPA clearly reflects Congress’s intent to exempt governmental entities and non-public utilities from the Commission’s refund authority under FPA section 205 over wholesale electric energy sales.<sup>17</sup>

12. Therefore, while Western Farmers is not within the Commission’s jurisdiction under FPA section 205, we find that, based on the precedent cited above, it is appropriate to apply the just and reasonable standard of FPA section 205 to SPP’s proposed rates filed on behalf of Western Farmers.<sup>18</sup> To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

13. Furthermore, Western Farmers is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.<sup>19</sup> However, we note that Western Farmers has voluntarily agreed to allow its revenue requirement, formula rate template, and implementation protocols to be treated as being accepted, subject to refund with interest at Commission interest rates.<sup>20</sup>

### **C. RTO Participation Adder**

14. As discussed below, we conditionally grant Western Farmers’ request for a 50-basis point adder to its base ROE for its participation in SPP. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission

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<sup>16</sup> *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

<sup>17</sup> *Id.* at 673-674.

<sup>18</sup> *See, e.g., Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

<sup>19</sup> *Id.* P 41.

<sup>20</sup> SPP Transmittal at 9 n.37.

congestion.<sup>21</sup> The purpose of the rule that FPA section 219 directed the Commission to establish is, *inter alia*, to promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in electric transmission infrastructure.<sup>22</sup> The Commission subsequently issued Order No. 679,<sup>23</sup> which sets forth processes by which a public utility may seek transmission rate incentives, pursuant to section 219 of the FPA.

15. We find that, as conditioned below, Western Farmers' requested 50 basis point adder is consistent with section 219 of the FPA and Commission precedent.<sup>24</sup> However, we condition our approval on the adder being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash flow analysis, and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis, as those may be determined in the hearing and settlement procedures ordered below.<sup>25</sup> Further, our approval of this incentive is conditioned on Western Farmers' continued membership in SPP.

#### **D. Formula Rate and Base ROE**

16. We find that, apart from the RTO participation adder issue addressed above, SPP's proposed Tariff revisions filed on behalf of Western Farmers raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below. These issues include, but are not limited to: (1) Western Farmers' proposed ROE is based on an average of other SPP transmission owner ROEs, which is not a Commission approved methodology for calculating an appropriate ROE; (2) Western Farmers has proposed depreciation rates that are unsupported; and (3) it appears Western Farmers has failed to

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<sup>21</sup> 16 U.S.C. § 824s(a), (b) (2012).

<sup>22</sup> *Id.*

<sup>23</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>24</sup> *See, e.g., Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245, at P 30 (2014) (granting 50 basis point adder for continued RTO participation); *Valley Elec. Ass'n, Inc.*, 141 FERC ¶ 61,238, at P 26 (2012) (granting 50 basis point adder for RTO participation); *Pac. Gas and Elec. Co.*, 141 FERC ¶ 61,168, at P 25 (2012).

<sup>25</sup> *See Sw. Power Pool, Inc.*, 153 FERC ¶ 61,281, at P 11 (2015).

propose accounting procedures to ensure that wholesale customers will not be charged for both capitalized Accumulated Funds Used During Construction and Construction Work in Progress.

17. Our preliminary analysis indicates that SPP's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Tariff revisions, effective July 1, 2016, as requested, subject to refund, and set them for hearing and settlement judge procedures.

18. We will accept Western Farmers' commitment to provide refunds, with interest, as of July 1, 2016. Western Farmers is not subject to Commission-imposed refund obligations under section 205 of the FPA and the Commission has previously accepted commitments by non-jurisdictional transmission owners that they will refund the difference between the proposed rate and the rate ultimately determined by the Commission to be just and reasonable.<sup>26</sup> While Ms. Tackett's testimony states that the interest rate on any refunds will be based on Western Farmers' actual short-term debt costs, capped at the Commission interest rate, the formula rate protocols state that any refunds required as a result of changes to the formula rate in a section 205 or section 206 proceeding will be made at the Commission interest rate.<sup>27</sup> Therefore, because the formula rate protocol language filed with the Commission is controlling, the interest on any refunds will be at Commission interest rates set forth in 18 C.F.R § 35.19a of the Commission's regulations.

19. While we are setting SPP's proposed Tariff revisions for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>28</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the

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<sup>26</sup> See, e.g., *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,144, at P 32 (2015); *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

<sup>27</sup> See SPP, Open Access Transmission Tariff, Sixth Revised Volume No. 1, Attachment H Add. 39 Pt 2, Attachment H Addendum 39 (WFEC) Part 2, (0.0.0) at §§ III.s, IV.E.4, and IV.E.5. Further, SPP's transmittal letter states that the interest rate shall be the interest rate in the Commission regulations, consistent with the language in the formula rate protocols.

<sup>28</sup> 18 C.F.R. § 385.603 (2015).

proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.<sup>29</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

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

The Commission orders:

(A) SPP's proposed tariff revisions are hereby accepted for filing, to become effective July 1, 2016, as requested, subject to refund, as discussed in the body of the order.

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

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), 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

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<sup>29</sup> 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>).

designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.