

156 FERC ¶ 61,058  
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. ER16-791-000

ORDER GRANTING IN PART, AND DENYING IN PART, MOTION FOR  
CLARIFICATION

(Issued July 21, 2016)

1. On May 13, 2016, Southwest Power Pool, Inc. (SPP) filed a motion, pursuant to Rule 212 of the Commission's regulations,<sup>1</sup> requesting clarification of the Commission's March 25, 2016 order in this proceeding.<sup>2</sup> In the Settlement Revenue Order the Commission accepted and suspended in part, rejected in part, and set for hearing and settlement judge procedures SPP's proposed tariff revisions (Settlement Revenue Proposal) to distribute revenues (Settlement Revenues) owed to SPP from Midcontinent Independent System Operator, Inc. (MISO) and NRG Energy, Inc. pursuant to a settlement agreement.<sup>3</sup> SPP seeks clarification that it can withhold Settlement Revenues from non-jurisdictional transmission owning members of SPP (Non-jurisdictional Members) who have not committed to make refunds in the event that the Settlement Revenue Proposal is revised during the hearing and settlement judge procedures. In this order, we grant in part, and deny in part, SPP's motion for clarification, as discussed below.

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<sup>1</sup> 18 C.F.R. § 385.212 (2015).

<sup>2</sup> *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,237 (2016) (Settlement Revenue Order).

<sup>3</sup> The Commission accepted the settlement agreement in Docket No. ER14-1174-000 (MISO-SPP Settlement Agreement). *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,021 (2016) (Settlement Order).

## **I. Background**

2. On January 27, 2016, SPP filed the Settlement Revenue Proposal in which it proposed a new Attachment AU with a methodology for how SPP will distribute the Settlement Revenues. SPP explained that the Settlement Revenues will be distributed based on the ratio of each transmission owner's MW-mile impact to the total SPP system MW-mile impacts (i.e., based 100 percent on the estimated flow impacts of MISO's market dispatch across the SPP transmission system). SPP also explained that distributions to its transmission-owning members will be made monthly and subject to true-up or refund pursuant to the MISO-SPP Settlement Agreement.

3. On March 25, 2016, the Commission issued an order accepting and suspending in part, and rejecting in part, the Settlement Revenue Proposal.<sup>4</sup> The Commission accepted and suspended certain SPP tariff revisions subject to hearing and settlement judge procedures, and subject to refund, to be effective February 1, 2016.

## **II. Motion for Clarification**

4. SPP states that it began disbursing the Settlement Revenues with its May 2016 invoices, and will continue to do so, on a monthly basis, as Settlement Revenues are received.<sup>5</sup> However, SPP states that neither the Settlement Revenue Proposal nor the Settlement Revenue Order addressed issues concerning the administration of Settlement Revenues to its Non-jurisdictional Members. SPP explains that the obligation to distribute revenues to the Non-jurisdictional Members under an allocation methodology that remains "subject to refund" (and possible future modification) compelled SPP to request that the Non-jurisdictional Members provide SPP with a voluntary commitment to refund any amounts necessary to implement the terms of the allocation methodology ultimately approved by the Commission.<sup>6</sup>

5. SPP states that on April 8, 2016, it sent the Non-jurisdictional Members a refund commitment agreement to sign as a condition of receiving an allocable share of the

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<sup>4</sup> The Commission rejected SPP's proposal to allocate a portion of the Settlement Revenues to reimburse certain SPP transmission owners for their legal expenses in negotiating the MISO-SPP Settlement Agreement.

<sup>5</sup> Motion for Clarification at 7.

<sup>6</sup> *Id.*

Settlement Revenues. SPP states that many, but not all, of the Non-jurisdictional Members have signed the voluntary refund commitment. SPP states that on April 20, 2016, SPP sent a letter to the Non-jurisdictional Members who did not sign the voluntary refund commitment, stating that SPP would request Commission approval to hold the Settlement Revenues on their behalf, without interest, until an allocation methodology is finally and unconditionally approved.<sup>7</sup>

6. SPP explains that because the Commission accepted the Settlement Revenue Proposal, subject to refund, SPP could be required to revise the allocations to its transmission-owning members. Specifically, SPP states that if the settlement and hearing procedures ordered by the Commission result in a different allocation methodology being approved, certain transmission owners may be entitled to a greater share of Settlement Revenues (in the form of billing credits), whereas others may be required to refund overpaid amounts (in the form of billing surcharges). However, SPP states that the Non-jurisdictional Members are beyond the Commission's refund authority and may be subject to refunds (i.e., billing surcharges) only by virtue of their voluntary commitment.

7. SPP seeks clarification regarding the handling of the Settlement Revenues. SPP argues that it faces a dilemma whereby SPP cannot, on the one hand, disburse Settlement Revenues to Non-jurisdictional Members because the Commission cannot order refunds in the event of overpayment by SPP; yet, on the other hand, SPP lacks any explicit authority to hold Settlement Revenues on behalf of these entities.

8. In addition, SPP argues that the Settlement Revenues are not "increased rates or charges" subject to section 35.19a of the Commission's regulations<sup>8</sup> regarding payment of interest because they result from payments allocated to transmission owners as compensation for use of the transmission system and therefore SPP, as a non-profit entity, should not be required to provide interest on the funds held. SPP further states that equitable considerations weigh heavily against any interest obligations because the decision to not provide the requested refund commitment was made by the Non-jurisdictional Member and therefore the decision was not within SPP's control. Thus, SPP asserts that the retention of the Settlement Revenues by SPP is necessary to avoid unjust results if refunds are unavailable in the event the Commission revises the allocation methodology.

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<sup>7</sup> *Id.* at 5-6.

<sup>8</sup> 18 C.F.R. § 35.19a (2015).

9. No parties opposed SPP's motion.

### **III. Discussion**

10. We grant in part, and deny in part, SPP's motion for clarification. SPP attempted to obtain refund commitments from all Non-jurisdictional Members prior to commencing disbursement of the Settlement Revenues. However, some Non-jurisdictional Members refused to sign the refund commitment. We find that withholding the Settlement Revenues from those Non-jurisdictional Members that did not commit to payment of refunds will prevent SPP from being in a situation where it cannot obtain refunds from those Non-jurisdictional Members in the event that the allocation methodology changes as a result of the hearing and settlement judge procedures. Therefore, we grant SPP's motion with respect to withholding the Settlement Revenues.

11. However, we deny SPP's motion for clarification with respect to withholding the Settlement Revenues from the Non-jurisdictional Members who did not sign the refund commitment, without interest. SPP has not provided justification for it to withhold the settlement revenues without any interest. While we agree with SPP that the Settlement Revenues may not be "increased rates or charges" subject to section 35.19a of the Commission's regulations, if SPP is not required to pay to the Non-jurisdictional Members any interest that SPP earns on the Settlement Revenues SPP withholds, SPP or its other members would be unjustly enriched by receiving the benefit of the interest earned by SPP. In our view, the Settlement Revenues withheld by SPP are similar to financial security held by SPP under section 7.3 of the SPP Tariff,<sup>9</sup> and as such SPP should likewise pay the Non-jurisdictional Members any interest it earns. Therefore, we direct that the Settlement Revenues withheld by SPP pursuant to this order be paid to the Non-jurisdictional Members with actual interest earned, upon a final Commission order resolving the issues set for hearing and settlement judge procedures in this proceeding.

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<sup>9</sup> See, e.g., Southwest Power Pool, Inc., Open Access Transmission Tariff, section 7.3, Financial Security Held by SPP (provides that financial security held by SPP should be paid with actual interest earned).

The Commission orders:

SPP's motion for clarification is granted in part, and denied in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.