

151 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER15-1499-000

ORDER ACCEPTING TARIFF REVISIONS AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued June 12, 2015)

1. On April 13, 2015, Southwest Power Pool, Inc. (SPP) filed on behalf of SPP member, the City of Independence, Missouri (Independence), pursuant to section 205 of the Federal Power Act (FPA),¹ and Part 35 of the Commission's regulations,² revisions to SPP's Open Access Transmission Tariff (Tariff) to implement Independence's stated transmission service rate to accommodate recovery of its annual transmission revenue requirement to be included in the Kansas City Power and Light Company (KCP&L) pricing zone (Zone 6) under the Tariff (April 13 Filing). As discussed below, we accept the proposed Tariff revisions, to be effective June 1, 2015, as requested, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. In its April 13 Filing, SPP explains that, as a Regional Transmission Organization (RTO), it administers its Tariff on a regional basis across the facilities of SPP's transmission owners. SPP states that it also administers the Integrated Marketplace through centralized day ahead and real-time energy and operating reserve markets with locational marginal pricing and market-based congestion management. According to SPP, Independence is a market participant in the Integrated Marketplace that owns and operates, through its Power and Light Department, a municipal electric system which serves over 56,000 retail electric customers within the City of Independence, and

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2014).

maintains and operates 11 generating units, 15 major substations, 25.19 miles of 161 kV and 50.86 miles of 69 kV transmission lines, and more than 790 miles of distribution lines. SPP states that Independence serves its load through a mix of the generation it owns and operates, and purchased power.³

3. SPP explains that Independence's transmission facilities are directly connected to the SPP transmission system as well as the transmission system of Associated Electric Cooperative, Inc. SPP states that Independence joined SPP in 1970, but on April 8, 2015, Independence executed the SPP Membership Agreement as a transmission owner, and transferred functional control of the transmission facilities that are the subject of this filing, all of which are owned by Independence, to SPP. According to SPP, Independence has historically taken firm point-to-point service under the SPP Tariff to deliver resources located on the SPP transmission system to the city's transmission system. However, SPP states that, as of June 1, 2015, Independence will begin taking network transmission service under the SPP Tariff.⁴

4. SPP states that Independence has requested that SPP implement these Tariff changes. SPP adds that it is not independently supporting or justifying the Independence annual transmission revenue requirement, but merely modifying the Tariff to accommodate Independence's recovery of transmission service revenues for its transmission facilities.⁵

II. SPP's Filing

5. In the April 13 Filing, SPP submits proposed Tariff modifications to Attachment H to accommodate Independence's recovery of revenues for its transmission facilities. Specifically, SPP proposes to revise Attachment H, Section I, Table 1 to specify the revenue requirement to be included as Line 6b in Zone 6, Independence Zonal Annual Transmission Revenue Requirement. SPP also proposes to revise Table 1 to direct interested parties to the rates and revenue requirement file on SPP's website which contains the allocations of annual transmission revenue requirement consistent with the methodology established in the Tariff. Additionally, SPP requests to revise Attachment T to add Independence to the KCP&L rate sheet for point-to-point transmission service. SPP asserts that the Commission has previously approved similar modifications to the Tariff in order to accommodate zones that include multiple owners. SPP notes that it

³ April 13 Filing at 2.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

distributes transmission service revenues to multi-owner zones in accordance with the provisions of Attachment L, Treatment of Revenues, of the Tariff.⁶

6. In addition, the April 13 Filing includes prepared direct testimony and supporting exhibits from: (1) Independence Power and Light Department Deputy Director, Mr. Paul Mahlberg, and (2) Executive Consultant with NewGen Strategies & Solutions, LLC, Mr. Timothy Corrigan, which provide background on Independence and on the facilities and proposed rates involved in the April 13 Filing. SPP states that the prepared testimony of Mr. Mahlberg explains Independence's operations, the relationship between the Independence and SPP, the specific transmission assets which Independence has transferred to SPP's functional control, and the refund commitment with interest made by Independence.⁷ SPP further explains that the prepared direct testimony of Mr. Corrigan describes how Independence develops the cost of service and calculates an annual transmission revenue requirement of \$7,237,454 for which it seeks recovery through the stated rates in the April 13 Filing.⁸

7. SPP requests that the Commission waive its prior notice requirement and accept the proposed Tariff revisions effective June 1, 2015, less than 60 days after filing. SPP states that good cause exists to allow the proposed revisions to be effective on the date requested in accordance with the waiver of notice requirement in the Commission's regulations, 18 C.F.R. § 35.11. In support of the request for waiver, SPP explains that Independence was not able to execute SPP's Membership Agreement until after Independence's governing board approved such action on April 6, 2015. SPP adds that its transmission billing systems will not easily systematically accommodate partial month billing cycles and that a mid-month billing cycle would necessitate manual billing entries for potentially thousands of transactions impacting the KCP&L pricing zone.⁹ SPP also requests waiver of any provisions of section 35.13 of the Commission's regulations that may be deemed to require cost support in the form of cost of service statements in support of the proposed revisions.¹⁰

⁶ *Id.* at 4-5.

⁷ *Id.* at 5 (citing Ex. 1, Direct Testimony of Mr. Mahlberg at 3-8).

⁸ *Id.* (citing Ex. 2, Direct Testimony of Mr. Corrigan at 3-21).

⁹ *Id.*

¹⁰ *Id.* at 6.

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 22,172 (2015), with interventions and protests due on or before May 4, 2015. Motions to intervene were filed by the Western Area Power Administration, American Electric Power Service Corporation, and Westar Energy, Inc. (Westar). The Missouri Public Service Commission and the Kansas Corporation Commission filed notices of intervention. On May 14, 2015, Oklahoma Gas and Electric Company (OG&E) filed a motion to intervene out of time. Independence filed a motion to intervene and comments. Westar also filed comments. KCP&L filed a motion to intervene and protest. Kansas Electric Power Cooperative (KEPCo) filed a motion to intervene, protest, and joinder with KCP&L's protest. On May 19, 2015, Independence filed an answer. On May 20, 2015, SPP filed an answer. On May 29, 2015, KCP&L filed an answer.

9. Independence supports SPP's filing and requests that the Commission accept it without modification or hearing. Independence asserts that the SPP transmittal, and the testimony and exhibits of Independence's expert witnesses, show that it is appropriate for Independence's transmission facilities to be included in the existing KCP&L pricing zone because Independence's interconnections are primarily with KCP&L and Independence's transmission facilities are limited in scope, and thus unsuitable to constitute a separate pricing zone.¹¹ Independence argues that the April 13 Filing also shows that the facilities Independence has transferred to SPP's functional control meet the criteria for transmission facilities set forth in Attachment AI, Transmission Definition, of SPP's Tariff and that the cost of service for Independence's transmission facilities is fully supported and just and reasonable.¹²

10. Westar asserts that Independence has not shown that its system serves any customers other than Independence. Westar also alleges that Independence has not provided maps and other information showing how the lines interconnect to the SPP system. Westar adds that Independence has failed to meet the requirements of the Commission's seven factor test such that the facilities would qualify as transmission facilities under the SPP Tariff.¹³

¹¹ Independence Comments at 2-3.

¹² *Id.* at 3.

¹³ Westar Comments at 1.

11. KEPCo argues that the inclusion of Independence's annual transmission revenue requirement in the KCP&L Zone 6 pricing zone would shift substantial costs to KCP&L, thereby increasing KCP&L's transmission rates and the revenue responsibility of KEPCo for delivery of resources to its member load in the KCP&L area. KEPCo contends that such an involuntary cost shift is both unprecedented within SPP and unjust and unreasonable on its face. KEPCo urges the Commission to reject the filing, without prejudice to a new filing reflecting Independence as a separate pricing zone. In the absence of rejection, KEPCo argues that the filing should be suspended for the maximum five months provided under the FPA, with rates to be collected thereafter subject to refund. Finally, KEPCo joins KCP&L in its protest and supports the arguments presented by KCP&L for rejecting the Independence filing.¹⁴

12. KCP&L, along with KEPCo, argue that the nonconsensual zonal integration of Independence into the KCP&L pricing zone is not authorized by the SPP Tariff and would result in an unjust, unreasonable, and unduly discriminatory cost shift. According to KCP&L, such action would violate its rights and the limitations on SPP's authority under the SPP Membership Agreement and FPA, as well as violate KCP&L's statutory right to decline increased operational coordination with Independence.¹⁵ Specifically, KCP&L states that, if Independence is added to Zone 6, Independence would pay about \$2.7 million of the combined Zone 6 revenue requirement and the rest of Independence's approximately \$7.2 million proposed annual transmission revenue requirement would be shifted to existing Zone 6 customers, which would produce a net cost shift of approximately \$4.5 million per year.¹⁶ KCP&L argues that SPP has declined to address the fact that the creation of a new, separate pricing zone for Independence would afford Independence all the benefits of network service within SPP without unjustly shifting most of the cost of its legacy transmission system to KCP&L customers.¹⁷ KCP&L witness Mr. Darrin Ives explains in his affidavit that another SPP transmission owner, City of Springfield, has an annual transmission revenue requirement that is comparable to Independence's requested \$7.2 million revenue requirement, and has its own pricing zone.¹⁸ KCP&L also contends that the SPP Membership Agreement does not permit SPP to unilaterally mingle transmission service territories into a single zone and shift costs

¹⁴ KEPCo Protest at 2-3.

¹⁵ KCP&L Protest at 7.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 8.

¹⁸ *Id.* (citing Ex. No. K-1, affidavit of Mr. Ives at 2).

accordingly. Rather, according to KCP&L, the SPP Membership Agreement provides a narrow, enumerated list of the activities that SPP is allowed to engage in as related to the rates, terms, and conditions of the SPP Tariff, and nowhere in the enumerated list is SPP allowed to do what it proposes here.¹⁹ KCP&L also argues that *Southwest Power Pool, Inc.*, 120 FERC ¶ 61,297 (2007), which SPP references, cites Attachment L as containing criteria for when zonal integration is appropriate, but does not discuss any specific language that provides support for these criteria.²⁰

13. According to KCP&L, the proposed addition of Independence to Zone 6 by SPP violates KCP&L's unilateral right under the SPP Membership Agreement to file modifications to change the rates or rate structure for transmission service over its tariff facilities.²¹ KCP&L also asserts that the proposed addition of Independence to the KCP&L pricing zone violates its rights under sections 202 and 205 of the FPA.²²

14. KCP&L further argues that Independence's proposed annual transmission revenue requirement has not been shown to be just, reasonable, and not unduly discriminatory. Specifically, KCP&L notes that Mr. Corrigan's testimony explained that he had undertaken a detailed examination of Independence's plant accounting which revealed fourteen adjustments involving six accounts that were needed before development of the annual transmission revenue requirement. KCP&L states, however, that none of the Independence plant accounting materials that Mr. Corrigan examined were independently verified by customers and the Commission. KCP&L asserts that more information about these adjustments must be submitted before the filing can be said to be adequately supported.²³

15. KCP&L also argues that the filing does not include sufficient information to conclude that 50 percent of Construction Work In Progress is appropriately included in the rate base for Independence. KCP&L states that Independence has not provided anything more than a list of facilities for which it is seeking Construction Work In Progress rate treatment, which is insufficient to determine if Construction Work In

¹⁹ *Id.* at 9 (citing SPP Membership Agreement, § 3.0(a) Commitments, Rights, Powers and Obligations of Member).

²⁰ *Id.* at 9-10.

²¹ *Id.* at 12.

²² *Id.* at 12-16.

²³ *Id.* at 17-18.

Progress recovery is appropriate. Thus, KCP&L argues that the filing is deficient on its face and should be rejected.

16. If the Commission does not reject the filing, KCP&L asserts that a hearing should be established to address the issues raised above and to otherwise investigate the justness and reasonableness of the proposed rate, including the following significant irregularities: (1) overstatement of transmission labor expense; (2) the inclusion of payroll taxes and payment in lieu of property tax amounts in the calculation of cash working capital; (3) high depreciation rates for transmission facilities; and (4) the improper inclusion of a nine percent gross receipts tax into the revenue requirement.²⁴

17. KCP&L notes that the April 13 Filing and Independence's testimony from Mr. Mahlberg state that Independence commits to provide refunds. However, KCP&L asserts that the SPP Membership Agreement provides that a non-jurisdictional member such as Independence shall not be bound by any Commission order that conflicts with applicable federal law. KCP&L explains that a refund order could conflict with federal law because the Commission has found that it does not have authority under FPA section 205 to order refunds from a non-jurisdictional municipality.²⁵ KCP&L argues that, therefore, unless SPP and Independence enter into, and file with the Commission, an enforceable contract binding Independence to keep its refund commitment, the Commission would not be able to guarantee its ability to ensure a just, reasonable and non-discriminatory rate. KCP&L also argues that since more than 10 percent of the proposed increase is excessive and the increase does not correspond to new or improved service, the Commission should suspend it for the maximum period of five months.²⁶

18. Finally, KCP&L argues that the Commission should deny SPP's request for waiver of the Commission's prior notice requirement because SPP has not demonstrated good cause.²⁷

19. In its answer, Independence argues that KCP&L's reading of SPP's rate-filing authority under the SPP Membership Agreement is at odds with the fundamental

²⁴ *Id.* at 18-21.

²⁵ *Id.* at 21 (citing *City of Vernon, California*, Opinion No. 479-A, 112 FERC ¶ 61,207, at PP 76-79 (2005); *City of Vernon, California*, Opinion No. 479-B, 115 FERC ¶ 61,297, at PP 30-44 (2006)).

²⁶ *Id.* at 21-23.

²⁷ *Id.* at 23-24.

requirement of independence of a RTO as set forth in Order No. 2000,²⁸ the terms of the SPP Membership Agreement, and the Commission's interpretation of that agreement.²⁹ Independence asserts that Order No. 2000 confirmed that an RTO needs to be independent in both reality and perception, and that allowing a transmission owner such as KCP&L to veto SPP's section 205 filing rights to establish zonal rates to be charged to transmission customers under SPP's Tariff would seriously compromise SPP's independence. Independence states that, while it is true that transmission owners within an RTO retain section 205 authority to seek recovery from the RTO of the revenue requirements associated with the transmission facilities that they own, the RTO must have the authority to make filings to establish its own rates without needing to obtain permission from its transmission owner members.³⁰ Independence contends that, consistent with the Order No. 2000 requirements, the SPP Membership Agreement vests SPP with broad authority to formulate and implement its Tariff, and to make rate filings.³¹

20. Independence asserts that SPP's authority to make filings to modify its Tariff and establish the rates for transmission service thereunder must encompass the right to make a filing to incorporate the transmission facilities and annual transmission revenue requirement of a new transmission owner into an existing pricing zone, without being required to obtain the consent of the primary transmission owner in that zone. Independence argues that SPP has previously done this, despite a protest by the primary transmission owner in the existing pricing zone.³² Specifically, Independence states that SPP filed to include Westar as an additional transmission owner in pricing Zone 7, and to incorporate Westar's annual transmission revenue requirement associated with its facilities located in Zone 7 into the zonal rates. Independence explains that the principal transmission owner in Zone 7, OG&E, protested the proposal, arguing that the SPP Tariff did not automatically authorize the establishment of a Westar sub-zone within the OG&E

²⁸ *Regional Transmission Organizations*, Order No. 2000 FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

²⁹ Independence Answer at 2-3.

³⁰ *Id.* at 3.

³¹ *Id.* at 4 (citing SPP Membership Agreement, §§ 2.1.1.(a), 2.1.1.(h), 2.2.1).

³² *Id.* at 6-7 (citing *Southwest Power Pool, Inc.*, 120 FERC ¶ 61,297 (2007)).

zone. Despite this protest, Independence states that the Commission summarily approved the addition of Westar as a transmission owner in Zone 7.³³

21. Independence asserts that the zonal rates are charged by SPP and SPP has the right to determine its own rates and rate design. Independence argues that the proposal in this case does not infringe on KCP&L's rights because merely including an additional component of the Zone 6 total annual transmission revenue requirement and rates, as SPP proposes to do here, does not diminish KCP&L's ability to file for any changes it wishes to make with respect to its own component of the Zone 6 rates.

22. Independence contends that, if the Commission were to accept KCP&L's position in this case, any principal transmission owner in an SPP pricing zone would be free to unilaterally reject the incorporation into that pricing zone of a smaller transmission owner's facilities and revenue requirement. Independence states that the foreseeable result of allowing transmission owners to exercise such veto power would be contentious proceedings before the Commission and likely an unworkable proliferation of tiny pricing zones for SPP to administer.³⁴

23. In response to Westar's concern that Independence has not provided maps and other information showing how the lines interconnect to the SPP system, Independence provides a map of the Independence transmission system. Independence states that the map shows that its transmission system is completely surrounded by the retail service territories of KCP&L and its affiliate, KCP&L-Greater Missouri Operations Company (KCP&L-GMO).³⁵

24. Independence argues that, contrary to Westar's claims, it does not need to show that its facilities meet the requirements of the Commission's seven-factor test or that its system serves customers other than the City of Independence in order to qualify as transmission facilities under the SPP Tariff. Independence states that Attachment AI of the SPP Tariff requires a seven-factor analysis only for facilities rated below 60 kV, but all of the Independence facilities that are the subject of the April 13 Filing are rated at 69 kV or 161 kV. Independence asserts that Attachment AI would require a showing that its transmission facilities serve customers other than Independence only as to radial lines,

³³ *Id.*

³⁴ *Id.* at 9.

³⁵ *Id.* at 15.

but it does not propose to include any radial lines in its annual transmission revenue requirement.³⁶

25. Independence contends that KCP&L's proposal to incorporate Independence into SPP as a new, separate pricing zone should be rejected because a new pricing zone consisting solely of the transmission facilities owned by Independence would be the smallest SPP pricing zone by a substantial margin, and would constitute a significant departure from the practice and apparent policy of SPP.³⁷ Independence notes that KCP&L's witness Mr. Ives states that the City of Springfield, which is in its own pricing zone, is comparable to Independence. However, Independence explains that SPP has recently filed to change Springfield's annual transmission revenue requirement to an amount that would be approximately 166 percent of Independence's proposed revenue requirement. Independence argues that its facilities are more comparable to those of East Texas Electric Cooperative, Inc., which was incorporated into pricing Zone 1, and not established as a separate zone. Independence states that the only occasions that have prompted SPP to add a new pricing zone have been when SPP has undertaken a major geographical expansion of its footprint.³⁸

26. Independence acknowledges that some cost-shifting will occur if its transmission facilities are added to Zone 6, but argues that the integrated operations of KCP&L and Independence provide significant benefits to KCP&L's customers and justifies rolling the costs of Independence's facilities into the Zone 6 rates.³⁹ Independence states that KCP&L depends on Independence's system to serve 15 MW of KCP&L load. In addition, Independence explains that it provides service over its facilities to 86 KCP&L customers and that KCP&L uses its facilities to provide service to 66 Independence customers. Independence asserts that the operational coordination between Independence and KCP&L is also shown by the parties' joint ownership of two 161 kV transmission lines.⁴⁰ Independence further states that it provides back-up service to a KCP&L customer and a KCP&L substation, and voltage support to KCP&L. In addition, Independence explains that it has funded the construction of transmission facilities that benefit KCP&L and the region without compensation from KCP&L or other SPP

³⁶ *Id.* at 15-16.

³⁷ *Id.* at 17.

³⁸ *Id.* at 21.

³⁹ *Id.* at 25.

⁴⁰ *Id.* at 29-30.

transmission owners. Independence also notes that KCP&L has historically used the Independence transmission system multiple times per year so that KCP&L can conduct maintenance on its transmission facilities.⁴¹

27. Independence further argues that KCP&L's specific criticisms of Independence's proposed annual transmission revenue requirement do not have merit. Independence asserts that the depreciation rates used are its actual depreciation rates and should not be lowered.⁴² Independence states that its transmission labor expense is not overstated and that including payroll taxes and payment in lieu of property tax amounts in the calculation of cash working capital is appropriate because it makes these payments monthly and therefore has the same working capital requirements for the payments as it does for other operations and maintenance costs.⁴³ Independence also argues that the gross receipts tax is properly included in its revenue requirement because it is not an add-on to customer bills like a sales tax, but rather a payment based on all revenues of the utility, including wholesale revenues.⁴⁴ Independence further asserts that KCP&L has not pointed to any specific basis for challenging Construction Work In Progress eligibility for any of the listed projects, and KCP&L's argument on that point should therefore be rejected.⁴⁵

28. Independence contends that the Commission should reject KCP&L's request for a five-month suspension of Independence's proposed annual transmission revenue requirement because the Commission has previously found that it does not have the jurisdiction to grant such requests.⁴⁶ Independence also argues that there is no basis for KCP&L's assertion that the Commission must require Independence to formalize its voluntary refund commitment in a contract because the Commission's prior orders have

⁴¹ *Id.* at 30; Affidavit of Mr. James Franklin at 2-4.

⁴² *Id.* at 35.

⁴³ *Id.* at 35-36.

⁴⁴ *Id.* at 36.

⁴⁵ *Id.* at 37.

⁴⁶ *Id.* at 38 (citing, *e.g.*, *Southwest Power Pool, Inc.*, 142 FERC ¶ 61,135, at P 15 (2013)).

repeatedly accepted the statements of non-jurisdictional transmission owners that they will refund revenues that exceed those ultimately determined to be just and reasonable.⁴⁷

29. In its answer, SPP asserts that there is no merit to KCP&L's claims that the SPP governing documents do not permit SPP to integrate Independence's facilities into an existing pricing zone.⁴⁸ SPP notes that the SPP Membership Agreement provides that SPP, on behalf of its members, may propose "such transmission pricing for transmission service as is necessary to fulfill its obligations" under the Membership Agreement, and "such changes in prices, pricing methods, terms, and conditions as are necessary to continue to fulfill such obligations." SPP states that one of its enumerated obligations under the SPP Membership Agreement is to "receive funds from Transmission Customers relating to transmission service over Tariff Facilities and distribute funds to the Transmission Owner." SPP argues that, accordingly, the proposed Tariff revision to integrate a new transmission owner's annual transmission revenue requirement for its transmission facilities is precisely the type of action authorized by the SPP Membership Agreement.⁴⁹

30. SPP asserts that, pursuant to the Commission's regulations, it has the ability "to propose rates, terms and conditions of transmission service provided over the facilities it operates," and this ability permits it to integrate new transmission facilities into an existing zone under its Tariff when appropriate.⁵⁰

31. SPP argues that the proposed integration of Independence as a transmission owner into Zone 6 does not violate KCP&L's section 205 rights because it preserves KCP&L's rights to file rates and terms for services rendered with its assets. SPP states that the April 13 Filing does not impact KCP&L's annual transmission revenue requirement associated with its transmission facilities, nor does it change KCP&L's formula rate structure.⁵¹

⁴⁷ *Id.* at 38-39 (citing, *e.g.*, *Southwest Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 n.40 (2014)).

⁴⁸ SPP Answer at 3.

⁴⁹ *Id.* at 3-4.

⁵⁰ *Id.* at 4-5.

⁵¹ *Id.* at 6-7.

32. SPP contends that, consistent with SPP's longstanding policy, SPP included Independence as a transmission owner in Zone 6 because its transmission facilities are significantly integrated with the transmission facilities of KCP&L, its integration did not result in a significant geographic expansion of the SPP footprint or Zone 6, and its revenue requirement is small compared to existing SPP zones.⁵²

33. SPP further argues that it is not necessary to meet the requirements of the Commission's seven-factor test to show that Independence's facilities are transmission facilities, as Westar contends. SPP states that, while parties are not precluded from using the seven-factor test in seeking a determination as to whether any facility above or below 60 kV is transmission, its use is not mandatory to demonstrate that facilities above 60 kV are transmission facilities under the SPP Tariff. SPP asserts that the definition set forth in section II of Attachment AI of the Tariff is used to make this determination and Independence has presented evidence that its facilities meet the relevant criteria in that section.⁵³

34. In its answer, KCP&L argues that the Independence and SPP answers do not provide justification for the approximately \$4.5 million per year cost shift from Independence to KCP&L and its customers.⁵⁴ KCP&L asserts that the interconnected operations of the KCP&L and Independence systems do not justify the cost shift that would occur because, while there is always some benefit from interconnected operations, merely being part of the same interconnected network does not authorize a substantial cost shift like the one that KCP&L alleges would occur if Independence joins Zone 6.⁵⁵ KCP&L states that it does not oppose Independence joining Zone 6 so long as KCP&L and its customers are held harmless from this unwarranted cost shift.⁵⁶

35. KCP&L argues that the new affidavit and arguments in Independence's answer must be viewed as an amendment to the initial rate filing package that restarts the FPA's 60-day clock for purposes of establishing an effective date.⁵⁷ KCP&L further contends

⁵² *Id.* at 7-8.

⁵³ *Id.* at 12.

⁵⁴ KCP&L Answer at 2.

⁵⁵ *Id.* at 5.

⁵⁶ *Id.* at 4.

⁵⁷ *Id.* at 8.

that the Commission should establish a 21-day comment period for the Independence answer because without a new comment period, or hearing, KCP&L will be deprived of necessary due process.⁵⁸ In the alternative, KCP&L requests that the Commission strike the new affidavit and the arguments it supports for the same due process reasons.⁵⁹

IV. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and 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) (2014), the Commission will grant OG&E'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.

37. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by SPP, Independence, and KCP&L in this case because they have provided information that assisted us in our decision-making process.

B. Standard of Review

38. 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).⁶⁰ In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to the Commission's FPA section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its transmission revenue requirement as a component of the California Independent System Operator Corporation's (CAISO) jurisdictional rate, Vernon's transmission revenue requirement

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 8.

⁶⁰ 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).

was “subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate.”⁶¹ The Commission explained that, in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia 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.”⁶² Subsequently, the court upheld the Commission’s decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such as Vernon) to a full section 205 review is “the only way to ensure that CAISO’s rate is just and reasonable.”⁶³

39. 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.⁶⁴ The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”⁶⁵

40. Therefore, while Independence 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 stated rates filed on behalf of Independence. To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

41. Furthermore, Independence is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA. However, we note that Independence has committed to provide refunds, with interest, in the event that the

⁶¹ *Id.* P 44.

⁶² *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

⁶³ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

⁶⁴ *Id.* at 673-74.

⁶⁵ *Id.* at 674.

annual transmission revenue requirement ultimately adopted in this proceeding is less than the annual transmission revenue requirement reflected in the April 13 Filing.⁶⁶

C. Analysis

42. We find that SPP's proposed Tariff revisions on behalf of Independence raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

43. 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, to be effective June 1, 2015, as requested, subject to refund, and set them for hearing and settlement judge procedures. We find that SPP has provided good cause to justify waiver of the Commission's 60-day prior notice requirement set forth in 18 C.F.R. § 35.3⁶⁷ and will, therefore, grant SPP's request for such waiver. SPP filed the proposed revisions before Independence began taking network transmission service under the SPP Tariff and granting the requested waiver will help facilitate Independence's integration into the SPP RTO.⁶⁸

44. We will accept Independence's commitment to provide refunds, with interest, as of June 1, 2015. KCP&L argues that the SPP Membership Agreement could be read to require Independence to file a contract with the Commission that binds Independence to its refund commitment in order to make the refund commitment in its testimony enforceable. However, as noted above, Independence 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

⁶⁶ April 13 Filing at 5, Ex. 1, Direct Testimony of Mr. Mahlberg at 7-8.

⁶⁷ See *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

⁶⁸ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339 (1992) *order on reh'g*, 61 FERC ¶ 61,089 (1992) (finding that the Commission will grant waiver of the 60-day prior notice requirement if good cause is shown and the agreement is filed prior to the commencement of service).

will refund the difference between the proposed rate and the rate ultimately determined by the Commission to be just and reasonable.⁶⁹

45. 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.⁷⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁷¹ 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.

46. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because Independence 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.

47. We deny KPC&L's request for a new 21-day comment period and new effective date 60 days from the date of Independence's answer, and its alternative motion to strike, upon finding Independence's answer does not constitute an amendment to the initial rate filing package. Independence's answer did not change the rates or Tariff revisions that were proposed in the initial rate filing package in the April 13 Filing.

⁶⁹ See, e.g., *Southwest Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 n.40 (2014).

⁷⁰ 18 C.F.R. § 385.603.

⁷¹ 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>).

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted for filing, to be effective June 1, 2015, subject to refund, as discussed in the body of this order.

(B) KPC&L's request for a new comment period and new effective date, or in the alternative, motion to strike, is hereby denied, as discussed in the body of this order.

(C) 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 SPP's proposed Tariff revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), 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 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.

(E) 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.

(F) 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.

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