

152 FERC ¶ 61,143  
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. ER15-1777-000

ORDER ACCEPTING TARIFF REVISIONS AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued August 21, 2015)

1. In this order, we accept Southwest Power Pool, Inc.'s (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) to add a formula rate template and implementation protocols to accommodate the recovery of an annual transmission revenue requirement for SPP member Heartland Consumers Power District (Heartland),<sup>1</sup> effective October 1, 2015, subject to refund, and establish hearing and settlement judge procedures.

**I. Background**

**A. The Integrated System**

2. The Integrated System is the backbone of the bulk electric transmission system across seven states in the Upper Great Plains region consisting of approximately 9,500 miles of transmission lines rated 115 kV through 345 kV. Spanning the Eastern and Western Interconnections of the U.S. electric grid, the Integrated System includes the

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<sup>1</sup> Heartland is a public corporation and political subdivision of the State of South Dakota, established under South Dakota's Consumers Power District Law in 1969. SPP states that, as a political subdivision of a state, Heartland is not subject to the Commission's jurisdiction under the Federal Power Act 16 U.S.C. § 824(f) (FPA). Instead, Heartland is subject to the exclusive regulatory authority of its Board of Directors.

combined transmission facilities of Western Area Power Administration-Upper Great Plains region, Basin Electric Power Cooperative (Basin Electric) and Heartland (collectively, Integrated System Parties). It also includes, through facility credits, facilities owned by NorthWestern Energy and Missouri River Energy Services (Missouri River). The collaborative development of the Integrated System has resulted in transmission facilities that are highly integrated, and in some instances jointly owned, among the Integrated System Parties and with other transmission owners in the region. The Integrated System is planned to be transferred to the functional control of SPP effective October 1, 2015.

### **B. The Instant Filing**

3. On May 22, 2015, SPP made the instant rate filing on behalf of Heartland, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations. SPP's proposed revisions to its Tariff are designed to govern SPP's transmission service using the facilities of Heartland when Heartland transfers functional control of its facilities to SPP.<sup>2</sup>

4. In the instant filing, SPP submits proposed Tariff modifications to Attachment H to accommodate Heartland's recovery of its revenue requirement for its transmission facilities. Specifically, SPP proposes to include as Addendum 23 to Attachment H, Heartland's formula rate and formula rate protocols which calculates Heartland's revenue requirement. Additionally, SPP requests approval to revise Attachment T to add a reference to the Heartland formula rate template to the Upper Missouri Zone (Zone 19) rate sheet. SPP asserts that the Commission has previously approved similar modifications to the Tariff to accommodate zones that include multiple owners.<sup>3</sup> Finally, SPP requests approval to revise Addendum 2 of Attachment O to include Heartland as a participant in SPP's planning region.<sup>4</sup>

5. In support of its filing, SPP has submitted testimony and supporting exhibits from: (1) Nate Jones, Heartland's Chief Operations Officer; (2) Micheal Malone, Heartland's Chief Financial Officer; and (3) James Pardikes, Vice President and head of the Transmission Strategy Practice at MCR Performance Solutions.<sup>5</sup>

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<sup>2</sup> SPP Transmittal at 1.

<sup>3</sup> *Id.* at 9, n.19.

<sup>4</sup> *Id.* at 8-9.

<sup>5</sup> *Id.* at 8.

6. Heartland states that all of its transmission assets are jointly owned with other parties. Heartland explains that of the roughly \$16.7 million of gross transmission plant on its balance sheet, about \$9.9 million will be transferred to SPP's functional control. Heartland contends that SPP staff has reviewed the transmission facilities of Heartland that will be transferred to SPP's functional control and agrees that all such facilities meet the definition of "transmission facilities" under Attachment AI.<sup>6</sup>

7. Heartland explains that it will use a debt service recovery formula rate based on forward-looking data to calculate the revenue requirement for the Heartland-owned transmission facilities in Zone 19. According to Heartland, this approach recovers transmission related costs including total debt service, plus a margin on the debt service.<sup>7</sup> Heartland states that it is proposing to use a margin requirement of 20 percent, and the margin requirement cannot be changed absent another section 205 filing that is accepted by the Commission.<sup>8</sup>

8. Heartland states that there are three primary reasons why it is justified in using a 1.20 fixed charge coverage ratio as its basis for calculating its margin requirement under the debt service recovery method in its revenue requirement. First, Heartland explains that it sets its wholesale customer rates to cover all of its obligations, including costs associated with both off- and on-balance sheet debt, and that the fixed charge coverage ratio formula reflects both types of obligations. Second, Heartland explains that using the fixed charge coverage ratio ensures that its customer rates are aligned with the coverage metric that independent credit rating agencies use to evaluate Heartland's credit rating. Heartland also notes that the 1.20 fixed charge coverage ratio that it proposes to use is consistent with Heartland's Board of Directors' near term goal of restoring Heartland's credit rating to A3 for Moody's and A- for S&P.<sup>9</sup> Third, Heartland contends that use of a fixed charge coverage ratio is consistent with methodologies approved by the Commission for other non-jurisdictional entities.<sup>10</sup> Heartland explains that if it seeks to base its SPP margin requirement on something other than the fixed charge coverage ratio, this would require Commission approval following a section 205 filing.<sup>11</sup>

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<sup>6</sup> Ex. No. SPP-1, Direct Testimony of Nate Jones, at 9-11.

<sup>7</sup> Ex. No. SPP-2, Direct Testimony of Micheal Malone, at 3.

<sup>8</sup> *Id.* at 9-10.

<sup>9</sup> Ex. No. SPP-4, Direct Testimony of James Pardikes, at 5-7.

<sup>10</sup> *Id.* at 5, 11-13.

<sup>11</sup> *Id.* at 15-16.

9. Heartland explains that it is a member of Public Power Generation Agency (PPGA),<sup>12</sup> an inter-local agency created under Nebraska statute to build Whelan Energy Center 2 (WEC2), a 200 megawatt coal-fired facility near Hastings, Nebraska. The PPGA contract obligates Heartland to make take-or-pay payments to PPGA for power supply and transmission for the WEC2 unit. The transmission related debt service for 2015 related to the PPGA contract is about \$587,000, or roughly one third of Heartland's total debt service included in its revenue requirement.<sup>13</sup>

10. Heartland explains that it is a non-jurisdictional entity, and thus it does not complete a FERC Form No. 1. To support its revenue requirement, Heartland completes work papers that detail the inputs and assigns them to FERC Uniform System of Accounts. The inputs for the formula rate are the projected data for the calendar year, and are developed as part of Heartland's annual budgeting process, which Heartland's Board of Directors must approve.<sup>14</sup> Heartland explains that the transmission operations and maintenance (O&M) expense forecasts for the vast majority of Heartland's facilities are performed and provided by Basin Electric and Western, with Basin Electric and Western providing Heartland with the projected O&M expenses for the facilities they each maintain.<sup>15</sup> The primary sources of the actual revenue requirement used in the annual true-up are Heartland's audited financial statements in conjunction with these work papers. Heartland states that its financial statements are audited by an objective third party audit firm, and this audit is also reviewed by South Dakota Department of Legislative Audit prior to its completion per South Dakota statute.<sup>16</sup>

11. Heartland explains that its formula rate sets the wages and salary allocator equal to the gross plant allocator. Heartland explains that use of the gross plant allocator in lieu of the wages and salary allocator has previously been approved by the Commission, and that the *pro forma* cash flow formula rate template currently used in the Midcontinent Independent System Operator, Inc. (MISO) provides for the use of the gross plant

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<sup>12</sup> In addition to Heartland, the other participants of PPGA are Municipal Energy Agency of Nebraska, Hastings Utilities, Grand Island Utilities, and City of Nebraska City.

<sup>13</sup> Ex. No. SPP-2, Direct Testimony of Micheal Malone, at 5-6, and Ex. No. SPP-3, Attachment H Workpapers for the 12 months ended December 31, 2015, at 3 and 11.

<sup>14</sup> Ex. No. SPP-2, Direct Testimony of Micheal Malone, at 10 and 21.

<sup>15</sup> *Id.* at 21.

<sup>16</sup> *Id.* at 17-18.

allocator: “If the utility has more employees assigned to [administrative and general] than to the sum of production, transmission, and distribution, set the [wages and salaries] allocator... equal to the gross plant allocator.”<sup>17</sup>

12. SPP states that, in the event the Commission determines further proceedings are necessary in order to complete its evaluation of Heartland’s revenue requirement, formula rate and formula rate protocols, Heartland has voluntarily agreed to allow its revenue requirement, formula rate and formula rate protocols to be treated as being accepted, subject to refund with interest at Commission interest rates. SPP further states that Heartland has informed SPP that Heartland makes this voluntary commitment without waiving or in any way limiting or altering Heartland’s non-jurisdictional status.<sup>18</sup>

13. SPP states that it has filed these proposed revisions to its Tariff at Heartland’s request and on Heartland’s behalf. SPP adds that it is not independently supporting or justifying the Heartland annual transmission revenue requirement, formula rate, or protocols, but merely modifying the Tariff to accommodate Heartland’s recovery of transmission service revenues for its transmission facilities.<sup>19</sup>

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

14. Notice of SPP’s filing was published in the Federal Register, 80 Fed. Reg. 31,027 (2015), with interventions and protests due on or before June 12, 2015. Motions to intervene were filed by Western Area Power Administration (Western) and South Central MCN, LLC. A notice of intervention and protest was filed by Missouri Public Service Commission (Missouri Commission) and Kansas Corporation Commission (Kansas Commission) filed a notice of intervention and comments. Basin Electric, Heartland, and Xcel Energy Services, Inc. (Xcel) filed timely motions to intervene and comments. Missouri River filed a timely motion to intervene and a protest. On June 19, 2015, NorthWestern Corporation (NorthWestern) filed a late-filed motion to intervene. On June 26, 2015, Heartland filed an answer.

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<sup>17</sup> *Id.* at 19-20 (citing Note L, page 32 of 91 of the MISO Attachment O Cash Flow Formula Rate Template).

<sup>18</sup> SPP Transmittal at 10 & n.20.

<sup>19</sup> *Id.* at 8.

## II. Discussion

### A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant NorthWestern's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Heartland's answer because it has provided information that assisted us in our decision-making process.

### B. Responsive Pleadings

#### 1. Comments and Protests

17. Western and Heartland both submitted comments urging the Commission to accept the proposed Tariff revisions without suspension or hearing. Western states that it fully supports the transfer of functional control to SPP of the Integrated System Parties' eligible transmission facilities within the multi-owner Zone 19.<sup>20</sup> Heartland contends that the filing and attached testimonies support the filing as just and reasonable.<sup>21</sup>

18. Kansas Commission states that it appreciates Heartland's moderate proposal to only use a 20 percent margin requirement.<sup>22</sup> Similarly, Xcel supports Heartland's proposal to make any changes in Heartland's margin requirement contingent on a section 205 filing and Commission approval.<sup>23</sup>

19. Kansas Commission is concerned that the proposed protocols may be based on an earlier and less stringent generation of decisions of what constitutes just and reasonable protocols and may serve to undermine the advances in transparency and enforceability

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<sup>20</sup> Western Comments at 4-6.

<sup>21</sup> Heartland Comments at 5-6.

<sup>22</sup> Kansas Commission Protest at 3-4.

<sup>23</sup> Xcel Comments at 4-5.

attained in the MISO formula rate protocol proceedings<sup>24</sup> and the SPP formula rate protocol proceedings.<sup>25</sup>

20. Missouri River alleges that Heartland must make the private internal company documents from which it draws its inputs to the formula rate template publicly available. Missouri River explains that without access to the documents from which the formula rate inputs are sourced, Heartland's proposed formula rate is deficient for lack of transparency.<sup>26</sup> Missouri River further asserts that Heartland's use of various allocators has not been supported or explained.<sup>27</sup> Missouri River also asserts that Heartland's formula rate template should be filed in working Excel format instead of the unworkable pdf format in which it was filed.<sup>28</sup>

21. Missouri River contends that Heartland's treatment of its arrangement with PPGA and WEC2 raises a number of questions. Missouri River notes that it appears that the WEC2 power plant and its associated transmission facilities appear to be located entirely within the existing Nebraska Zone (Zone 17) of SPP, but Heartland seeks to recover the costs of PPGA's transmission assets entirely from transmission customers in Zone 19. Missouri River asserts that Heartland should identify the PPGA transmission plant, and specifically identify the PPGA transmission plant located in Zone 19 for which functional control will be turned over to SPP. Missouri River asserts that if no PPGA transmission plant is located in Zone 19, there should be no costs associated with PPGA allocated to transmission in Zone 19. Missouri River argues that Heartland must provide a full explanation of the O&M and administrative and general expenses associated with Heartland's arrangement with PPGA so the allocation of these costs can be made appropriately. Finally, Missouri River alleges that Heartland needs to demonstrate that both the transmission assets it owns within Zone 19 and those within Zone 17 are

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<sup>24</sup> Kansas Commission Protest at 4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) and *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014)).

<sup>25</sup> *Id.* (citing *The Empire District Electric Co.*, 148 FERC ¶ 61,030 (2014); *Louisville Gas and Electric Co. & Kentucky Utilities Co.*, 148 FERC ¶ 61,031 (2014); *UNS Electric, Inc.*, 148 FERC ¶ 61,032 (2014); *Westar Energy, Inc.*, 148 FERC ¶ 61,033 (2014); *Kansas City Power & Light Co., KCP&L Greater Missouri Operations Co.*, 148 FERC ¶ 61,034 (2014); *Black Hills Power, Inc.*, 148 FERC ¶ 61,035 (2014)).

<sup>26</sup> Missouri River Protest at 5-6.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.* at 7-8.

network facilities that satisfy the seven-factor tests under Order No. 888. According to Missouri River, Heartland or SPP should provide geographic one-line diagrams of those facilities and the surrounding networks along with documentation of SPP's related determinations.<sup>29</sup>

22. Missouri Commission asserts that the Heartland protocols contain provisions that may not provide interested parties an adequate opportunity to review and seek additional information related to the annual true-up and projected revenue requirement submissions. Specifically, Missouri Commission contends that Heartland should be required to provide notice of postings to interested parties within ten days of the publication of its annual true-up and projected revenue requirement on SPP's website and allow interested parties to subscribe either through SPP or Heartland to receive notification directly. Missouri Commission argues that this would be consistent with the Commission's determination in Empire District Electric Company's protocol review case.<sup>30</sup>

23. According to Missouri Commission, Heartland should be required to provide remote access to its annual meetings.<sup>31</sup> Specifically, Missouri Commission contends that Heartland should be required to coordinate a public meeting with other SPP transmission owners that use the same regional-cost-sharing mechanism, similar to the Commission's requirement on other SPP transmission owners.<sup>32</sup>

24. Missouri Commission alleges that the final challenge notification date for any interested party occurs before Heartland's response date to informal discovery. Missouri Commission asserts that Heartland should be required to allow for informal challenges to extend at least through the date that it intends to last provide informal discovery responses, although Missouri Commission expresses a preference for 30 days from that date.<sup>33</sup> Further, Missouri Commission alleges that the proposed protocols do not clearly allow for interested parties to make a formal challenge after the date of the informational filing, March 15. Missouri Commission argues that this is inconsistent with the Commission's determination in *Empire*, where the Commission required The Empire

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<sup>29</sup> *Id.* at 6-7.

<sup>30</sup> Missouri Commission Protest at 2-3 (citing *The Empire District Electric Co.*, 150 FERC ¶ 61,200 (2015) (*Empire*)).

<sup>31</sup> *Id.* at 3-4 (citing *Empire*, 150 FERC ¶ 61,200).

<sup>32</sup> *Id.* at 4.

<sup>33</sup> *Id.*



District Electric Company to submit its informational filing by January 15 to assure at least 60 days for informal discovery and another 60 days for formal challenges.<sup>34</sup>

## 2. Answer

25. Heartland asserts that its proposal to develop its revenue requirement and true-up process is based upon appropriate data and is consistent with Commission precedent. Heartland also contends that its reliance on data approved by the Board of Directors to develop its projected revenue requirement is appropriate given its non-jurisdictional status. According to Heartland, interested parties will have ample opportunity to fully examine and vet Heartland's projected revenue requirement before it goes into effect. Further, Heartland explains that the actual data used in the true-up will be based on publicly available data in Heartland's audited financial statements and supported by work papers that follow the Commission's Uniform System of Accounts. Heartland asserts that there is no support for the contention that Heartland's formula rate relies upon invalid data or improper data sources.<sup>35</sup> Further, Heartland contends that because its proposed formula rate is forward-looking, there are no "publicly available" documents for the forecasted data which form the basis of its revenue requirement.<sup>36</sup> In addition, Heartland states that its allocators are fully supported and explained in its filing.<sup>37</sup>

26. Heartland argues that it is just and reasonable to allocate its revenue requirement entirely to Zone 19 despite the PPGA facilities lying in Zone 17. Heartland contends that there is no established method in the SPP Tariff for allocating costs between pricing zones for a transmission owner with existing transmission assets physically located in two different SPP pricing zones. In this absence, Heartland explains that SPP has exercised its discretion and expertise to identify the appropriate zone in which to allocate Heartland's revenue requirement, and that this decision is fully consistent with the fact that "SPP's [Tariff] uses zonal transmission rates based on the zone in which the point of delivery or load is located."<sup>38</sup> Heartland asserts that SPP's Tariff makes clear that a transmission customer is charged for network service under the Tariff based on where

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<sup>34</sup> *Id.* at 4-5 (citing *Empire*, 150 FERC ¶ 61,200).

<sup>35</sup> Heartland Answer at 3-7.

<sup>36</sup> *Id.* at 7-8.

<sup>37</sup> *Id.* at 8-11.

<sup>38</sup> *Id.* at 11-13 (citing *Sw. Power Pool, Inc.*, 120 FERC ¶ 61,297, at P 3 (2007)).

that customer's load is located, rather than on where the generation or transmission facilities used to provide the service are located.<sup>39</sup>

27. Heartland also contends that the Commission has previously accorded SPP discretion in deciding how to administer its Tariff. Heartland notes that the Commission has stated that its "reading of the revised Membership Agreement is that SPP may make any [s]ection 205 filing it deems appropriate."<sup>40</sup> Heartland asserts that such authority must extend to SPP decision-making as to how best to revise its Tariff for the purpose of determining in which zone to place an incorporating entity's revenue requirement. Heartland explains that its existing transmission assets are predominantly located in Zone 19. Heartland argues that while it has no load in Zone 17, its transmission costs associated with its facilities in Zone 17 have historically provided significant benefits to the Integrated System region, the predecessor of Zone 19.<sup>41</sup> Additionally, Heartland clarifies that it is not requesting recovery of administrative and general or O&M costs associated with the WEC2 transmission facilities.<sup>42</sup>

28. Heartland states that all of its facilities included in its revenue requirement and formula rate are non-radial and are operated at greater than 60 kV.<sup>43</sup> According to Heartland, SPP has reviewed its facilities and determined that they meet the "Transmission Facilities" definition in Attachment AI of the Tariff. Further, Heartland contends that the WEC2 transmission facilities are already under SPP's functional control. Finally, Heartland asserts that it need not demonstrate that its facilities meet the seven-factor test because they already qualify under other criteria of Attachment AI.<sup>44</sup>

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<sup>39</sup> *Id.* at 13 (noting SPP Tariff at Schedule 9, stating that "[t]he [t]ransmission [c]ustomer taking [network service] shall pay a monthly demand charge for the Zone where the load is located.").

<sup>40</sup> *Id.* at 13-14 (citing *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 98 (2004)).

<sup>41</sup> *Id.* at 14. *See also* Heartland Answer at 16-17 and Attachment A, Affidavit of Nate Jones, describing the benefits the PPGA facilities confer on Zone 19.

<sup>42</sup> *Id.* at 18.

<sup>43</sup> *Id.* at 19 (citing Ex. No. PP-1 at 10-11 and Ex. No. HCPD-1).

<sup>44</sup> *Id.* at 18-19.

29. Heartland contends that it already provided Missouri River with a workable Excel version of its formula rate template. Heartland states that because the Commission's e-Library does not accept Excel files, SPP's standard protocol is to file with the Commission formula rate templates in pdf format and then make the Excel version available on SPP's website.<sup>45</sup>

30. Heartland states that it is amenable to making the protocol changes requested by Missouri Commission regarding notice, remote access, and a joint informational meeting with other transmission owners. However, Heartland argues that extending the time period for informal challenges for an additional 30 days beyond the time period allowed for discovery responses is not required under Commission precedent.<sup>46</sup> Finally, Heartland clarifies that the deadline for interested parties to file formal challenges should be March 15; however, Heartland states that it is amenable to extending the deadline for filing formal challenges to May 15, as requested by Missouri Commission.

### C. Standard of Review

31. 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>47</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>48</sup> The Commission explained that, in *Pac. 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

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<sup>45</sup> *Id.* at 20.

<sup>46</sup> *Id.* at 21-22 (citing *Kansas City Power and Light Co., et al.*, 150 FERC ¶ 61,201 at P 58 (2015)).

<sup>47</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>48</sup> *Id.* P 44.

reasonable.”<sup>49</sup> 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.”<sup>50</sup>

32. 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>51</sup> The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”<sup>52</sup>

33. Therefore, while Heartland 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 Heartland.<sup>53</sup> To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

34. Furthermore, Heartland is not subject to Commission-imposed rate suspension and refund obligations under section 205 of the FPA.<sup>54</sup> However, we note that Heartland has voluntarily agreed to allow its revenue requirement, formula rate, and formula rate protocols to be treated as being accepted, subject to refund with interest at Commission interest rates.<sup>55</sup>

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<sup>49</sup> *Id.* P 43 (quoting *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

<sup>50</sup> *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

<sup>51</sup> *Id.* at 673-74.

<sup>52</sup> *Id.* at 674.

<sup>53</sup> *See Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211, at PP 38-41 (2015).

<sup>54</sup> *Id.* P 41.

<sup>55</sup> SPP Transmittal at 10, n.20.

#### **D. Hearing and Settlement**

35. We find that SPP's proposed Tariff revisions filed on behalf of Heartland 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.

36. 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 October 1, 2015, as requested, subject to refund, and set them for hearing and settlement judge procedures.

37. We will accept Heartland's commitment to provide refunds, with interest, as of October 1, 2015. Heartland 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>56</sup>

38. 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>57</sup> 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.<sup>58</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.

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<sup>56</sup> See, e.g., *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,003, at P 19 & n.40 (2014).

<sup>57</sup> 18 C.F.R. § 385.603 (2015).

<sup>58</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>).

39. We grant SPP's requested waiver of section 35.13 of the Commission's regulations. Because SPP's proposed rate is based on the cost of Heartland's facilities, and Heartland 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 Tariff proposed tariff revisions are hereby accepted for filing, to become effective October 1, 2015, 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 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,

Docket No. ER15-1777-000

- 15 -

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.

Document Content(s)

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