

(i) Subject to the provisions of this Agreement and the Tariff, and without waiving, limiting or altering Transmission Owner's non-jurisdictional status, the non-jurisdictional Transmission Owner agrees to refund, consistent with a refund order issued by FERC, any amount collected by SPP on behalf of and distributed to such non-jurisdictional Transmission Owner, in excess of the rate ultimately determined by FERC to be just and reasonable. Any such refund shall include interest calculated in accordance with the FERC refund order. Nothing in this paragraph (i) shall be deemed to amend or supersede the applicability of any provision of this Agreement or the Tariff.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA POWER
ADMINISTRATION-UPPER GREAT PLAINS REGION**

A1.12. Western-UGP's Agreement to Pay Refunds

In the event FERC issues an order under section 205 or 206 of the Federal Power Act directing SPP to pay refunds, and SPP seeks a portion of those refunds from Western-UGP, Western-UGP agrees to pay such portion upon request from SPP. However, Western-UGP's agreement to pay any such refund is limited by the following:

- a) Western-UGP does so without waiving, limiting or altering its non-jurisdictional status or its rate review described in Sections 3.10 and 3.11 of the Agreement;
- (b) Western-UGP's obligation to pay a refund shall only be prospective from the date of an initial FERC order establishing the date of any refund;
- (c) Western-UGP shall only make a refund if such refund is not otherwise covered by Western-UGP's statutory and regulatory requirements for refunds described in Section 3.10 of the Agreement; and,
- (d) Any disputes under this contract provision between Western-UGP and SPP shall be resolved in accordance with Federal contract law, and Western-UGP's potential interest due on the refund shall be capped at the Prompt Payment Act interest rates as published by the Secretary of Treasury and published by the Bureau of Fiscal Service semi-annually in the Federal Register, and the forum for any disputes shall be the applicable Federal court.

(i) Subject to the provisions of this Agreement, prior Amendments to this Agreement and/or the Tariff, and without waiving, limiting or altering Member's non-jurisdictional status, a non-jurisdictional Member agrees to refund any amount collected by SPP on behalf of and distributed to such non-jurisdictional Member, (1) resulting from any overcharge caused by any billing or computation error as agreed by SPP and a non-jurisdictional Member; (2) resulting from a refund order issued by the FERC relating to any overcharges caused by inclusion by a non-jurisdictional Member of costs of facilities that are not Transmission Facilities as allowed by Attachment AI of the Tariff; or (3) in excess of the rate ultimately determined in any other order issued by the FERC to be just and reasonable, provided, however, that if a non-jurisdictional Member cannot issue refunds required by such other order described under (3) because, (i) its rates are subject to a state regulatory authority authorized by state statute to set transmission rates that are subject to judicial review and (ii) the refund order issued by the FERC is inconsistent with applicable state law, regulation or regulatory determination, SPP will provide to the FERC any difference identified by the non-jurisdictional member between the FERC-ordered refund and the state-law, regulation or regulatory determination as uncollectible and not otherwise owed by SPP. Determinations of inconsistency with applicable state law shall be made pursuant to the process and rights in accordance with Sections 3.11 and 3.12 of this Agreement and prior Amendments to this Agreement. Any such refund shall include interest calculated in accordance with the FERC refund order. Nothing in this paragraph shall be deemed to amend or supersede the applicability of any provision of this Agreement, prior Amendments to this Agreement and/or the Tariff.

NPPD PRESENTATION

October 19 Compliance Order

Pages 6 – 10 of SPP Staff’s presentation summarizes FERC’s October 19 Compliance Order. NPPD would like to focus on the following paragraphs which make clear FERC’s flexibility regarding the scope of the refund commitment:

- **Paragraph 33:**

“SPP and its stakeholders have initiated a stakeholder process to explore possible changes to the SPP Tariff or governing documents . . .”

“. . . to allow this stakeholder process to continue its discussions, we will hold the FPA Section 206 paper hearing in abeyance.”

“We will require SPP to submit a compliance filing . . . by February 28, 2018 explaining how its proposal satisfies the Commission’s concerns in the July 2016 Order . . . or show cause as to why revisions to the SPP Tariff or other governing documents are not necessary.”

- **Paragraph 50:**

“Given our finding to hold the paper hearing in abeyance pending stakeholder proceedings to explore possible changes to the SPP Tariff or governing documents to address the lack of a refund commitment for non-public utility transmission owning members, we decline to make findings on the scope of the refund commitment in this order.”

Issues Not Ruled On Relating to “Scope of Refund Commitment”

- **Paragraph 40:**

“NPPD, APPA and OPPD are concerned that a broad refund requirement on all non-public utilities could cause certain non-public utilities to be in conflict with state law.”

“NPPD and OPPD . . . cannot agree to an unknown level of retroactive refund liability flowing from a future potential FPA Section 206 proceeding because their revenue requirements and rates must be approved by their publicly-elected Board of Directors.”

- **Paragraph 43:**

“NPPD states that its concerns could be addressed by providing a process for obtaining limited waivers of such obligation for non-public utility transmission owning members that have procedures already in place to maintain the justness and reasonableness of rates. NPPD states that the existing provisions in the governing documents that address resolution of conflicts between revisions to the SPP Tariff and state laws must remain in place. NPPD states that these provisions allow non-public utilities to remain compliant with state law while working on ways to resolve such conflict at the Commission.”

Issues Not Ruled On Relating to “Scope of Refund Commitment” (cont’d)

- **Paragraph 38:**

“According to SPP, a blanket refund obligation, tailored to address the various non-public utility restrictions currently contained in the SPP Tariff and governing documents, would avoid these burdens and better ensure just and reasonable rates, terms, and conditions under the SPP Tariff.”

- **Paragraph 46:**

“SPP Indicated Transmission Owners state that, unless the Commission were to require a refund commitment from non-public utility transmission owning members, others in SPP may end up paying for unlawful rates.”

SPP Stakeholder Process

- SPP Staff indicates on Slide 11 that the Staff Compliance Proposal was supported by a majority of Transmission Owners . . . But fails to mention it was opposed by several non-jurisdictional Transmission Owners in Nebraska and Kansas.
- NPPD made four revisions to SPP Staff's November 2 proposal. The first two revisions are in direct response to the October 19 Order requiring non-jurisdictional Transmission Owners to contractual commitment to make refunds. The third revision responds to SPP's position that the refund commitment should be tailored to address the various non-public utility restrictions in the SPP Tariff. The fourth revision responds to the other SPP Transmission Owner concerns about paying for refund obligations attributable to non-public utilities.
- No one on the final conference call negotiating the NPPD language indicated they opposed submitting the NPPD Proposal to FERC.

SUMMARY OF NPPD REVISIONS

- The first revision reflects agreement to make refunds of any overcharges caused by billing or computational errors.
- The second revision reflects agreement to refund any overcharges caused by inclusion in the non-jurisdictional Transmission Owner's ATRR of costs of facilities that are not Transmission Facilities as defined by Attachment AI of the Tariff.
- The third revision reflects non-jurisdictional Transmission Owner agreement to a general refund commitment while expressly preserves the existing provisions of SPP Membership Agreement approved by FERC which make clear that the general refund commitment does not include any refunds determined to be inconsistent with state law or regulation. These provisions have already been approved by FERC “to accommodate the participation of state and federal public power entities in other regional transmission organizations.”

Southwest Power Pool, Inc., 125 FERC ¶61,239 (2008) citing, *TRANSLink Transmission Co., L.L.C., et al.*, 101 FERC ¶61,140, at P 26 (2002); *TRANSLink Development Co., LLC*, 104, FERC ¶ 61,148, at P 9 (2003); *Southwest Power Pool, Inc.*, 109 FERC ¶61,010, at P 108 (2004).

- The fourth revision is designed to keep other Transmission Owners whole (i.e. shielded from any shifting of a refund obligation). This objective is accomplished by declaring the amount of any refund that cannot be paid because of a determination there is conflict with state regulatory authority to be “uncollectible and not otherwise owed by SPP.”
- This approach and language is taken directly from the WAPA Amendments to SPP’s Membership Agreement approved by FERC relating to NERC penalties that are inconsistent with Federal law governing WAPA’s revenue requirements and rates.
- Section A1.11 of the WAPA-UGP Amendments to the SPP Membership Agreement provides that WAPA has not accepted any liability, responsibility or obligation to pay civil monetary penalties or fines imposed by NERC and the SPP will identify any amount not paid by WAPA as “uncollectible and not otherwise owed by SPP.”
- Treating refunds that cannot be paid by a non-jurisdictional Member as “uncollectible” addressed the concerns expressed by other Transmission Owners. No refunds would be shifted to any other Transmission Owner.

CGC OPTIONS

- SPP Staff indicates on Slide 17 that SPP legal assesses a higher chance of FERC acceptance of the Staff Proposal.
- The fact that NPPD's proposal may present lower chance of receiving FERC approval is not a reason for filing the SPP Staff Proposal.
- SPP Staff Proposal would force NPPD to choose between violating state law or terminating its membership in SPP . . . A Hobson's Choice . . . NPPD cannot be in violation of state law.
- The Amendments to NPPD's Membership Agreement approved by FERC, as well as Sections 3.11 and 3.12 of the Membership Agreement, recognize the need for NPPD to remain compliant with state law.
- NPPD's proposal balances the new refund commitment with the existing need to remain compliant with state law.