

162 FERC ¶ 61,214  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

South Central MCN LLC

Docket No. EC17-126-000

ORDER AUTHORIZING  
ACQUISITION OF FACILITIES

(Issued March 15, 2018)

1. On June 1, 2017, as amended on October 19, 2017, South Central MCN LLC (South Central) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization to permit South Central to acquire certain transmission lines and related assets (Nixa Assets) from the City of Nixa, Missouri (City of Nixa) (Proposed Transaction).
2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.<sup>2</sup> As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

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<sup>1</sup> 16 U.S.C. §824b(a)(1) (2012).

<sup>2</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); see also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

## **I. Background**

### **A. Description of the Parties to the Proposed Transaction**

#### **1. South Central**

3. South Central states that it is a transmission-only utility formed to partner with municipally owned electric utilities, joint action agencies, and electric cooperatives (collectively, Public Power) in the Southwest Power Pool, Inc. (SPP).<sup>3</sup> South Central explains that it and its affiliated transcos that have been formed to operate in other regional transmission organizations (RTOs) are wholly owned subsidiaries of GridLiance HoldCo, LP (GridLiance). South Central is a “Non-Transmission Owner” member of SPP and has a formula rate and protocols on file with the Commission (Formula Rate) to recover the costs of providing transmission service pursuant to the SPP open access transmission tariff (SPP Tariff).<sup>4</sup>

4. According to South Central, with the exception of a small interest owned by management, GridLiance’s shares are owned exclusively by Blackstone Power and Natural Resources, LP (Blackstone Power), which is controlled by its general partner, Blackstone Power and Natural Resources Holdco G.P., LLC (Blackstone HoldCo). Blackstone HoldCo, Blackstone Power, and Blackstone Power’s two limited partners are each affiliates of the Blackstone Group, L.P. (Blackstone). South Central states that Blackstone is not affiliated with any facilities for the generation or transmission of electric energy in SPP. Blackstone does, however, have energy-related investments in other areas of the country.<sup>5</sup>

#### **2. The City of Nixa**

5. South Central states that the City of Nixa is a municipality organized under the laws of Missouri that serves over 9,000 retail customers, but that, pursuant to FPA section 201(f),<sup>6</sup> as a municipal utility it is excluded from the Commission’s general authority under the FPA.

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<sup>3</sup> Application for Authorization to Acquire Transmission Facilities Pursuant to Section 203 of the Federal Power Act and Request for Certain Waivers at 1, Docket No. EC17-126-000 (June 1, 2017) (Application).

<sup>4</sup> *Id.* at 12.

<sup>5</sup> *Id.* at 8-9.

<sup>6</sup> 16 U.S.C. § 824(f) (2012).

## **B. Description of the Nixa Assets and the Proposed Transaction**

6. South Central states that the Nixa Assets are physically located in SPP and interconnect to transmission facilities in SPP Zone 10 (Southwestern Power Administration) and SPP Zone 3 (City Utilities of Springfield). While the Nixa Assets form an interconnection between the two zones, the Nixa Assets are not currently operated by SPP and the cost of service for the assets is not currently included in SPP rates.

7. Pursuant to an Asset Purchase Agreement between South Central and the City of Nixa, South Central will purchase the Nixa Assets from the City of Nixa. Although the final purchase price agreed to by South Central and the City of Nixa is in excess of the estimated net book value of the Nixa Assets, South Central's Annual Transmission Revenue Requirement for the Nixa Assets will be based on the net book value of the assets, as adjusted for further depreciation at the time of closing.<sup>7</sup> South Central states that it does not seek authorization to recover through rates any amount in excess of the estimated net book value that South Central may pay for the Nixa Assets.<sup>8</sup>

8. After the Proposed Transaction closes, South Central intends to transfer functional control of the Nixa Assets to SPP and incorporate them into Zone 10.<sup>9</sup> In Docket No. ER18-99-000, SPP filed tariff amendments to the SPP Tariff to incorporate South Central's annual transmission revenue requirement for the Nixa Assets into Zone 10 (South Central ATRR Filing).<sup>10</sup>

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

9. Notice of the Application was published in the *Federal Register*, 82 Fed. Reg. 26,677, with interventions and protests due on or before June 22, 2017.

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<sup>7</sup> South Central explains that it was necessary to estimate the original-cost-less-depreciation-value of the Nixa Assets because the City of Nixa's financial records are incomplete and do not account for all of the equipment and property rights that South Central will acquire pursuant to the Proposed Transaction. In addition, the City of Nixa operates a municipally owned electric utility that is not subject to the FPA and the Commission's Uniform System of Accounts. Application at 21.

<sup>8</sup> *Id.* at n.59.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> Southwest Power Pool, Inc., Submission of Tariff Revisions to Incorporate South Central MCN LLC's Formula Rate, Docket No. ER18-99-000 (Oct. 18, 2017).

10. A notice of intervention was filed by the Missouri Public Service Commission (Missouri Commission).
11. Motions to intervene were filed by SPP, Westar Energy, Inc., Southwestern Power Administration (Southwestern), Western Farmers Electric Cooperative, Sunflower Electric Cooperative, Mid-Kansas Electric Company, Kansas Power Pool, Arkansas Electric Cooperative Corporation, and the City of Nixa, Missouri.
12. Tri-County Electric Cooperative, Inc. (Tri-County) filed a motion to intervene and statement in support of the Proposed Transaction.
13. American Electric Power Service Corporation filed, on behalf of its affiliates Public Service Company of Oklahoma and Southwestern Electric Power Company, (collectively, American Electric Power) a motion to intervene and limited comments. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (together, Kansas City Power) also filed a motion to intervene and limited comments.
14. City Utilities of Springfield, Missouri (City Utilities) filed a motion to intervene and comments.
15. South Central filed a motion for leave to respond and response to the comments.
16. On October 4, 2017, the Director Electric Power Regulation – West issued a letter notifying South Central that the Application was deficient and that the Commission required additional information to process it.
17. On October 19, 2017, South Central filed a response to the Director’s letter.<sup>11</sup>
18. Notice of the Response was published in the *Federal Register*, 82 Fed. Reg. 49,602, with interventions and protests due on or before November 9, 2017.
19. Tri-County filed a second motion to intervene.
20. On January 10, 2018, South Central filed a letter requesting that the Commission expedite consideration of the Application and a related FPA section 205 filing and issue concurrent orders granting the authorizations requested in both filings on or before February 15, 2018.

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<sup>11</sup> South Central MCN LLC, Response to Deficiency Letter and Update to Application, Docket No. EC17-126-000 (Oct. 19, 2017) (Response).

### **III. Discussion**

#### **A. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept South Central's answer because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

##### **1. FPA Section 203 Standard of Review**

23. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.<sup>12</sup> The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.<sup>13</sup> FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."<sup>14</sup> The Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.<sup>15</sup>

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<sup>12</sup> 16 U.S.C. § 824b(a)(4) (2012). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Application at 18. Our findings under FPA section 203 do not affect those agencies' evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

<sup>13</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

<sup>14</sup> 16 U.S.C. § 824b(a)(4).

<sup>15</sup> 18 C.F.R. § 33.2(j) (2017).

## 2. Analysis of the Proposed Transaction

### a. Effect on Competition

#### i. South Central's Analysis

24. South Central claims that the Proposed Transaction will not have an adverse effect on competition and that the transaction does not raise any horizontal or vertical market power concerns. South Central notes that it is not affiliated with any GridLiance company operating in SPP, nor is its upstream owner Blackstone affiliated with any facilities for the generation or transmission of electric energy in the SPP region.

25. According to South Central, the Commission has previously found that anticompetitive effects are unlikely to arise with regard to Proposed Transactions that involve only the disposition of transmission facilities.<sup>16</sup> South Central explains that the Proposed Transaction involves only the disposition of transmission facilities, and that the Proposed Transaction involves no inputs to electricity products or electric power production, and that transmission service over the Nixa Assets will be provided pursuant to the SPP Tariff.<sup>17</sup> As a consequence, South Central claims that it cannot use the Nixa Assets to erect barriers to entry, exercise market power, or provide preferred access.

#### ii. Commission Determination

26. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the relevant geographic markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.<sup>18</sup>

27. We find that the Proposed Transaction will not have an adverse effect on horizontal competition because the Proposed Transaction does not involve any change in ownership or control of any generating facilities.

28. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as

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<sup>16</sup> Application at 19 (citing *ITC Holding Corp.*, 143 FERC ¶ 61,256, at P 60 (2013) (citations omitted); *DTE Energy Co.*, 97 FERC ¶ 61,330, at 62,572 (2001)).

<sup>17</sup> Application at 19.

<sup>18</sup> *Nev. Power Co.*, 149 FERC ¶ 61,079, at P 28 (2014).

transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.<sup>19</sup>

29. Because the Proposed Transaction does not involve the transfer of generation facilities or inputs to electric power generation, or the combination of transmission facilities with affiliated generation in the same market, we find that it will not have an adverse effect on vertical competition.

**b. Effect on Rates**

**i. South Central's Analysis**

30. South Central claims that the Proposed Transaction will not have an adverse impact on rates. According to South Central, although the Nixa Assets are currently interconnected with SPP, they are not under SPP control and are not subject to a stand-alone transmission rate or annual transmission revenue requirement. The City of Nixa recovers its costs to own and operate the Nixa Assets directly from retail customers via a bundled rate that includes the City of Nixa's costs for generation, transmission, and distribution service. After the Proposed Transaction closes, the annual transmission revenue requirement for transmission service using the Nixa Assets will be recovered pursuant to South Central's formula rate, under the SPP Tariff, from SPP ratepayers in Zone 10.<sup>20</sup> While South Central acknowledges that "there will be a 'rate impact' in the broadest sense" because of these new arrangements, South Central asserts that customers in Zone 10 will see only modest increases in their rates that are only in part tied to the Proposed Transaction, and that any such rate increases will be "very small" and offset by benefits of the Proposed Transaction.<sup>21</sup> South Central also asserts that the Commission

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<sup>19</sup> *Upstate N.Y. Power Producers, Inc.*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

<sup>20</sup> As noted above, SPP proposed to incorporate the South Central annual transmission revenue requirement for the Nixa Assets into Zone 10 in the South Central ATRR Filing, which is pending in Docket No. ER18-99-000 and is being addressed in an order issued concurrently with this order.

<sup>21</sup> Application at 20.

has distinguished between a “simple rate increase and an ‘adverse rate impact’” for purposes of FPA section 203, noting that the Commission has authorized a rate increase resulting from a different capital structure following the acquisition of transmission assets by a transco from a municipal utility, the same scenario at issue in the Application.<sup>22</sup>

(a) **Background on Zone 10**

31. In the response to the deficiency letter, South Central states that it learned new information about the structure of Zone 10 and the derivation of SPP rates for that zone that required updating the effect on rates analysis it provided in the Application.<sup>23</sup> The new information pertained to how Southwestern’s annual transmission revenue requirement is allocated to SPP rates, and the calculations of Network Service and point-to-point transmission service (Point-to-Point Service) charges within Zone 10.

32. According to South Central, Southwestern’s transmission system was constructed to deliver power and energy from hydro-electric resources to cooperative, municipal, and joint action agency customers under bundled agreements (Federal Preference Power). As a corollary to that service, Southwestern also delivers power from other suppliers using its Non-Federal Transmission Service (Non-Federal) tariff for certain customers. Many Non-Federal customers are served by Southwestern under grandfathered agreements. As a consequence of these arrangements, SPP’s zonal rates for service to load in Zone 10 are limited to the portion of Southwestern’s Non-Federal load that is not served through grandfathered agreements – approximately 166 megawatts (MW) of load (based on 1 non-coincident peak methodology), or 115 MW (based on SPP’s 12 coincident peak methodology). South Central states that the amount of Southwestern’s annual transmission revenue requirement allocated to Non-Federal customers that are not served by grandfathered agreements is likewise small, \$2.957 million out of a total Southwestern annual transmission revenue requirement of nearly \$50 million.<sup>24</sup>

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<sup>22</sup> *Id.* at 27 (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at PP 27-28 (2008)).

<sup>23</sup> South Central learned this new information during the SPP Transmission Owner Zonal Placement Process (Zonal Placement Process) for the Nixa Assets. That process, which was adopted by SPP in July 2017, provides the opportunity for SPP stakeholders to evaluate the impact of incorporating transmission assets into SPP. In addition to providing for the exchange of information and analysis, the process also provides for a period of negotiation with impacted parties. Response at 3.

<sup>24</sup> South Central observes that Zone 10 is the smallest zone in SPP based on the values used to calculate rates under the SPP Tariff, annual transmission revenue requirement, and load. *Id.* at 4.

33. South Central asserts that it is reasonable to expect that the amount of Network Service load and the proportion of Southwestern's annual transmission revenue requirement that will be allocated to that load will increase in the near term. South Central explains that, when grandfathered agreements with Southwestern expire, affected customers are required to obtain transmission service from SPP in Zone 10. South Central states that, eventually, all of the customers served under grandfathered agreements will convert and take SPP service in Zone 10, resulting in an increase in the amount of Southwestern's Non-Federal annual transmission revenue requirement that is collected from that zone.

**(b) Impact of the Proposed Transaction on Rates**

34. Given the expiration of the grandfathered agreements over the next several years, South Central analyzes the impacts of the Proposed Transaction based on the overall zonal transmission revenue requirement and service charges under three different scenarios. The scenarios vary depending on the amount of load taking service under the SPP Tariff in Zone 10. Scenario 1 only considers existing load in Zone 10, load that has already converted from grandfathered service to Network Service. Scenario 2 is based on the existing load in Scenario 1, but assumes the conversion of an additional 200 MW (based on 1 non-coincident peak) of load to Network Service.<sup>25</sup> Scenario 3 assumes all Non-Federal load converts to Network Service.

35. For purposes of performing its rate analysis, South Central also assumes that the City of Nixa has joined SPP (i.e. is an SPP member) and that the Nixa Assets are already part of SPP. According to South Central, these assumptions are reasonable because the City of Nixa "expects" that it would transfer functional control of the Nixa Assets to SPP, given that, absent the Proposed Transaction, it would have "financial incentives to do so."<sup>26</sup> South Central argues that comparing the Zone 10 annual transmission revenue requirement and transmission rates before and after the Proposed Transaction would incorrectly attribute to the Proposed Transaction the impact of transferring the Nixa Assets to SPP's functional control, which South Central asserts would "likely occur

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<sup>25</sup> South Central states that Scenario 2 matches "the expected near-term load transition" from grandfathered agreements that SPP used in a calculation during the Zonal Placement Process. *Id.* at 6.

<sup>26</sup> Application at 23. *See also* Application, Attachment 6: Prepared Direct Testimony of Doug Colvin, at 5:9 ("...[the City of] Nixa would seriously consider transferring the functional control of the Nixa Assets to SPP if the proposed sale to South Central was not completed") and 8-9.

regardless of whether the Nixa Assets are owned by South Central<sup>27</sup> or the City of Nixa. As a result of this assumption, South Central states that the impact on rates in Zone 10 is appropriately measured by the difference between (1) South Central's annual transmission revenue requirement for the Nixa Assets under SPP functional control (\$1.363 million) and (2) a hypothetical annual transmission revenue requirement, derived from a hypothetical formula rate, for the Nixa Assets if the City of Nixa retained ownership of them and placed them under SPP's functional control (\$1.276 million).<sup>28</sup>

36. South Central claims that the impact on rates of the Proposed Transaction is small. According to South Central, the estimated difference between the annual transmission revenue requirement under South Central ownership versus City of Nixa ownership is "minimal" – only \$87,000.<sup>29</sup> Likewise, South Central concludes that the changes in transmission service costs as a result of the Proposed Transaction are small for the typical customer under each of the scenarios described above. For Network Service, the changes range from 1.3 percent under Scenario 1 to 0.3 under Scenario 3; for Point-to-Point Service, the changes range from 2.6 percent under Scenario 1 to 0.7 percent under Scenario 3.<sup>30</sup>

(c) **Offsetting Benefits of the Proposed Transaction**

37. South Central notes that the Nixa Assets will be included in South Central's formula rate at net book value, and that the Proposed Transaction results in offsetting benefits. In particular, South Central argues that the Proposed Transaction results in the kind of non-quantifiable, offsetting benefits that have been recognized in the context of transactions that increase competition or enable more competitive markets.<sup>31</sup> South Central asserts that the Proposed Transaction will also further a number of Commission

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<sup>27</sup> Application at 24.

<sup>28</sup> South Central explains that it calculated a hypothetical annual transmission revenue requirement for the Nixa Assets to reflect the rate that the City of Nixa would recover if it were to become an SPP transmission owner. The hypothetical annual transmission revenue requirement, in turn, was calculated using a hypothetical formula for the City of Nixa. Application at 24-25. *See also* Response, Attachment 1: Revised and Restated Prepared Direct Testimony of John A. Krajewski, P.E., at 11:8-13.

<sup>29</sup> Response at 2.

<sup>30</sup> *Id.* at 7-8.

<sup>31</sup> *Id.* at 28.

goals, including promoting transco ownership of transmission facilities; enhancing the operations and efficiency of SPP; and increasing the participation of Public Power in SPP transmission planning and transmission development.

**ii. Comments**

38. City Utilities states that it has no objection to the Proposed Transaction so long as it is carried out subject to, and in full compliance with, a settlement agreement among South Central, the City of Nixa, and City Utilities (Settlement Agreement).<sup>32</sup> City Utilities requests that the Commission condition any authorization it may grant for the Proposed Transaction on South Central's full compliance with the conditions required in the Settlement Agreement because the conditions precedent in the Settlement Agreement to which South Central agreed have not yet occurred, and may not occur in advance of the date by which South Central seeks Commission action.

39. American Electric Power and Kansas City Power likewise do not object to, or at least do not take a position with respect to, the Proposed Transaction.<sup>33</sup> American Electric Power states that it seeks to ensure that any order authorizing the Proposed Transaction does not make any predeterminations concerning the treatment of the Nixa Assets for formula rate purposes. American Electric Power states that the justness and reasonableness of South Central's proposed inclusion of the Nixa Assets in Zone 10 and the associated formula rate should be reviewed in a subsequent FPA section 205 proceeding, and not this proceeding.<sup>34</sup> Kansas City Power also agrees that the question of whether adding South Central's annual transmission revenue requirement for the Nixa Assets to Zone 10 results in just and reasonable rates should be determined in a subsequent FPA section 205 proceeding.<sup>35</sup>

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<sup>32</sup> The Settlement Agreement states, in part, that closing cannot occur unless the City of Nixa shall have entered into a Network Service agreement with SPP pursuant to which, among other things, the Nixa Assets are incorporated into Zone 10 at rates acceptable to the City of Nixa. City Utilities of Springfield, Missouri, Motion to Intervene and Comments at 4, Docket No. EC17-126-000 (June 22, 2017).

<sup>33</sup> American Electric Power Service Corporation, Motion to Intervene and Limited Comments at 2, Docket No. EC17-126-000 (June 22, 2017) (American Electric Power Comments); Kansas City Power & Light Company, Motion to Intervene and Limited Comments, at 1, Docket No. EC17-126-000 (June 22, 2017) (Kansas City Power Comments).

<sup>34</sup> American Electric Power Comments at 2.

<sup>35</sup> Kansas City Power Comments at 3.

40. Kansas City Power also questions the need for South Central's analysis of impacts on ratepayers in Zone 10, and, to the extent such an analysis is deemed relevant, questions its accuracy and transparency. According to Kansas City Power, as none of the Nixa Assets are currently in a Zone 10 rate, the analysis of impacts on rates in Zone 10 is premature because the Proposed Transaction itself will not affect rates in Zone 10. Kansas City Power states that a subsequent FPA section 205 filing is required to add the annual transmission revenue requirement to Zone 10, and that any rate impacts would necessarily be evaluated under the just and reasonable test at that time.

41. Kansas City Power argues, however, that if the Commission decides that it is appropriate to consider impacts on Zone 10 ratepayers in this proceeding, the Commission cannot adequately address such impacts on existing Zone 10 customers based on the information submitted by South Central. Kansas City Power claims that South Central has provided insufficient detail to understand how its calculation was performed and only calculates part of the cost shift because it compares its annual transmission revenue requirement to a hypothetical annual transmission revenue requirement for the Nixa Assets, as if the assets were already part of SPP. Kansas City Power asserts that this analysis skips the cost shift that would occur if the Nixa Assets were added to Zone 10.

42. In its answer, South Central claims that none of the comments filed request denial of the Application, warrant treating it as contested, or raise any concerns as to whether the Proposed Transaction meets the FPA section 203 criteria for approval.<sup>36</sup> South Central asserts that City Utilities' comments do not establish a contested proceeding and that the Settlement Agreement, together with the closing conditions under the Asset Purchase Agreement, already ensure that the Nixa Assets will be incorporated into Zone 10. South Central further asserts that no party has submitted comments with respect to South Central's analysis for purposes of the Commission's FPA section 203 review.

### **iii. Commission Determination**

43. Based on South Central's representations, we find that the Proposed Transaction will not have an adverse effect on rates. As the Commission has explained on a number of occasions, its analysis of the effect on rates of a proposed transaction under section 203 differs from the analysis of whether rates are just and reasonable under section 205. The Commission's focus under section 203 is on the effect that a proposed transaction will have on rates, whether that effect is adverse, and whether any adverse effect will be

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<sup>36</sup> South Central MCN LLC, Motion for Leave to Respond and Response at 3, Docket No. EC17-126-000 (July 6, 2017).

offset or mitigated by benefits that are likely to result from the transaction.<sup>37</sup> In contrast, under section 205, the Commission examines whether a proposed rate is just and reasonable, and not unduly discriminatory or preferential, or otherwise unlawful.<sup>38</sup> Given the differences between the two standards, the Commission has also addressed the rate treatment of assets in separate proceedings under FPA section 205, not under FPA section 203.<sup>39</sup>

44. We find that, in the circumstances of this case, the potential rate increase in Zone 10 would primarily be due to incorporating the Nixa Assets into Zone 10, not the change in ownership due to the Proposed Transaction. South Central, a jurisdictional utility, proposes to acquire the transmission facilities of a non-jurisdictional utility and place those facilities under the control of SPP. We conclude that the justness and reasonableness of incorporating the facilities into SPP should be examined under FPA section 205 while the rate effects due to the change in ownership over the facilities should be examined under FPA section 203.

45. The Commission has found that, where, as here, ownership changes from a not-for-profit utility to a for-profit business with a different capital structure, tax obligations

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<sup>37</sup> See, e.g., *Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261, at P 65 (2013). See also *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,123 (“...even if certain aspects of a proposed merger are detrimental, the merger can still be consistent with the public interest if there are countervailing benefits that derive from the merger.”), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321.

<sup>38</sup> 16 U.S.C. § 824b (2012).

<sup>39</sup> *GridLiance West Transco LLC*, 160 FERC ¶ 61,002, at P 55 (2017); *NV Energy, Inc.*, 145 FERC ¶ 61,170, at P 51 (2013) (“Generally, the Commission does not address the rate treatment of assets in section 203 proceedings, but instead reserves such discussion for a section 205 proceeding”). See also *Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261 at P 67 (concluding that the FPA section 203 proceeding was not the appropriate forum for addressing rates applicants would charge for post-transaction transmission); *FirstEnergy Generation Corp.*, 141 FERC ¶ 61,239, at P 32 (2012) (issues related to rate treatment of assets at issue to be addressed in future rate proceeding); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009) (whether post-transaction rates are just and reasonable to be addressed in separate FPA section 205 proceeding).

and the need to earn a return, an increase in rates is not unexpected.<sup>40</sup> As South Central notes, one of the principal drivers for its annual transmission revenue requirement for the Nixa Assets will be the return on equity approved by the Commission under the Formula Rate. South Central states that the other driver, the annual transmission revenue requirement, will be limited to the estimated net book value of the Nixa Assets, and that it does not seek to recover through rates any amounts paid to the City of Nixa for the Nixa Assets in excess of their estimated net book value.<sup>41</sup> Based on these representations, we find that the change in rates resulting from the change in ownership due to the Proposed Transaction is not an adverse effect on rates.<sup>42</sup> As explained above, the rates associated with incorporating the Nixa Assets into SPP will be addressed in Docket No. ER18-99-000, regarding the South Central ATRR Filing. We find that our approach here is responsive to the issues raised by both American Electric Power and Kansas City Power.

46. We will not condition our approval as requested by City Utilities. As South Central acknowledges, the Settlement Agreement and the Asset Purchase Agreement establish existing legal obligations that are reflected in the Application.<sup>43</sup> The Commission has also explained, on prior occasions, that our approval under FPA section 203 does not affect any other necessary approvals, such as consent by a party to a

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<sup>40</sup> See, e.g., *GridLiance West Transco LLC*, 160 FERC ¶ 61,002 at P 52 (2017); *South Central MCN LLC*, 154 FERC ¶ 61,174, at P 49 (2016); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 20 (2009).

<sup>41</sup> Application at n.59. South Central explains that it had to estimate the net book value of the Nixa Assets because the City of Nixa's books and records provide an insufficient basis to reliably determine the original cost, less depreciation, of the assets. The estimated net book value is unchallenged, appears reasonable, and is permissible under the Commission's regulations. See 18 C.F.R. pt. 101, Electric Plant Instruction No. 5(B) (2017) ("The accounting for the acquisition shall then be completed as follows: (1) The original cost of the plant, *estimated if not known*, shall be credited to account 102...") (emphasis added). Application at 21.

<sup>42</sup> In reaching this determination, we did not consider the expiration of grandfathered agreements, as suggested by South Central. These changes are unrelated to the Proposed Transaction.

<sup>43</sup> See, e.g., South Central Answer at 4.

contract.<sup>44</sup> Further, although South Central does not object to City Utilities' request that we condition our authorization, we conclude that such a proposed condition would unnecessarily duplicate the preexisting obligations.

**c. Effect on Regulation**

**i. South Central's Analysis**

47. South Central argues that the Proposed Transaction will not have an adverse effect on regulation. South Central notes that, because the Nixa Assets are currently owned by a municipal utility, their use and the rates to recover the cost of service over them are not subject to regulation by either the Commission or the Missouri Commission. Upon closing of the Proposed Transaction, however, South Central states that its rates, including cost recovery for the Nixa Assets, and the terms and conditions of service over the Nixa Assets, will become subject to the Commission's jurisdiction. In addition, the Nixa Assets will be subject to SPP's control and the SPP Tariff. The Nixa Assets will also become subject to the Missouri Commission's jurisdiction. The Missouri Commission has already granted South Central a certificate of convenience and necessity to own and operate the Nixa Assets, and will also exercise certain other authority over South Central.<sup>45</sup>

**ii. Commission Determination**

48. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.<sup>46</sup> As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.<sup>47</sup> Based on South

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<sup>44</sup> *Commonwealth Atlantic Limited Partnership*, 97 FERC ¶ 61,375, at P 32 (2001). See also *American Electric Power Service Corp.*, 107 FERC ¶ 61,209, at P 17 (2004) (approval does not affect any other necessary approvals or contractual disputes between the parties).

<sup>45</sup> Application at 33-34.

<sup>46</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

<sup>47</sup> *Id.*

Central's representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. Finally, we note that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

**d. Cross-Subsidization**

**i. South Central's Analysis**

49. South Central states that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.<sup>48</sup> In support of this representation, South Central verifies that the Proposed Transaction will not result in: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under FPA sections 205 and 206.<sup>49</sup>

**ii. Commission Determination**

50. Based on South Central's representations,<sup>50</sup> we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

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<sup>48</sup> Application at 34. *See also*, Application, Exhibit M: Cross-Subsidization.

<sup>49</sup> 16 U.S.C. § 824e (2012).

<sup>50</sup> Application, Exhibit M.

### **3. Accounting Analysis**

51. Attachment 3 of the Application includes proposed accounting entries recording South Central's acquisition of assets. South Central's proposed journal entries clear the net book value of the purchase through Account 102, Electric Plant Purchased or Sold, and record the estimated original cost and accumulated depreciation of the facilities on its books consistent with Electric Plant Instruction No. 5, Electric Plant Purchased or Sold. Additionally, South Central's proposed journal entries record \$1,044,000 of goodwill in Account 186, Miscellaneous Deferred Debits, for the amount paid in excess of the depreciated original cost of the assets purchased. The Commission's accounting regulations require recording plant acquisition adjustments in Account 114, Electric Plant Acquisition Adjustments. Under Electric Plant Instruction No. 5 and the instructions in Account 114, the amount paid in excess of the depreciated original cost of the assets purchased should be recorded in Account 114, and must be amortized to Account 425, Miscellaneous Amortization, unless the utility has obtained rate recovery of the acquisition adjustment or reasonably expects recovery to be allowed by regulatory authorities having rate jurisdiction.

### **4. Other Considerations**

52. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.<sup>51</sup> Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

53. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to the Public Utility Holding Company Act of

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<sup>51</sup> 16 U.S.C. § 824(o) (2012).

2005 (PUHCA 2005)<sup>52</sup> are subject to the record-keeping and books and records requirements of PUHCA 2005.

54. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>53</sup> To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) South Central must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever not pending or may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) South Central shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) South Central shall notify the Commission within 10 days of the date on

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<sup>52</sup> 42 U.S.C. § 16451 *et seq.* (2012).

<sup>53</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005). *See* 18 C.F.R. § 35.42 (2017).

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which the Proposed Transaction is consummated.

(H) South Central shall account for the transaction in accordance with Electric Plant Instruction No. 5, and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. South Central shall submit the proposed accounting entries within six months of the date that the transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

By the Commission. Chairman McIntyre is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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162 FERC ¶ 61,215  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Southwest Power Pool, Inc.

Docket No. ER18-99-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 15, 2018)

1. On October 18, 2017, Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (Tariff) to add an annual transmission revenue requirement (ATRR) and implement a formula rate template and implementation protocols for transmission service using the facilities of South Central MCN LLC (South Central) when South Central transfers functional control of the transmission facilities that it proposes to acquire from the City of Nixa, Missouri (Nixa Assets) to SPP. In this order, we accept and suspend for a nominal period SPP's proposed revisions to its Tariff, to become effective the first day of the month after the date on which South Central acquires the Nixa Assets, as proposed in Docket No. EC17-126-000, subject to refund and subject to the outcome of the ongoing proceedings in Docket Nos. ER15-2594, ER17-953 and EL18-16, and establish hearing and settlement judge procedures.

**I. Background**

**A. SPP's Zonal Construct**

2. SPP's footprint is separated into a number of transmission pricing zones and the Tariff specifies a zonal ATRR for each zone that is based on the sum of the ATRR for each transmission owner in the zone.<sup>1</sup> The rates for Network Integration Transmission Service (network service) in a transmission pricing zone are calculated by multiplying a customer's percentage share of total load in the zone (i.e., its load-ratio share) by the zonal ATRR.<sup>2</sup> When a new transmission owner is added to an existing transmission

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<sup>1</sup> See SPP Transmittal at 2; SPP, Tariff at Attachment H.

<sup>2</sup> See SPP, Tariff, pt. III, § 34.1 Monthly Demand Charge (3.0.0).

pricing zone, its ATRR for transmission facilities in the zone and any associated load not already included in the zonal load are added to the existing zone's zonal ATRR and total load. Therefore, the addition of a new transmission owner to an existing transmission pricing zone will change network service rates for existing customers, unless the average cost of the new transmission owner's transmission system (i.e., its ATRR divided by its load) is exactly the same as the existing zone's average cost. Rates for Point-to-Point transmission service are also based on the zonal ATRR, and are set forth in Attachment T of the Tariff.<sup>3</sup>

### **B. South Central's Formula Rate**

3. On October 29, 2015, the Commission conditionally accepted South Central's proposed formula rate template and formula rate implementation protocols to establish a mechanism to recover costs associated with facilities in SPP that South Central intended to own in the future, to be effective once the template and protocols are filed with the Commission to become part of the SPP Tariff.<sup>4</sup> The Commission also set South Central's proposed return on equity (ROE) for hearing and settlement judge procedures.<sup>5</sup> On January 27, 2017, the Commission approved a settlement establishing the ROE to be used in South Central's formula rate.<sup>6</sup> Revisions implementing the terms of the settlement were accepted for filing on December 29, 2017.<sup>7</sup>

4. In response to directives set forth in the October 2015 Order, South Central submitted a compliance filing on November 30, 2015, in Docket No. ER15-2594-003, containing proposed revisions to its formula rate template and implementation protocols.<sup>8</sup> On February 9, 2017, South Central filed, in Docket No. ER17-953-000, proposed revisions to the affiliate cost allocation provisions in its distribution formula rate

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<sup>3</sup> See SPP Transmittal at 2.

<sup>4</sup> *South Central MCN LLC*, 153 FERC ¶ 61,099, at P 1 (2015) (October 2015 Order), *order on reh'g*, 154 FERC ¶ 61,271 (2016).

<sup>5</sup> October 2015 Order, 153 FERC ¶ 61,099 at P 45.

<sup>6</sup> *South Central MCN LLC*, 158 FERC ¶ 61,073 (2017).

<sup>7</sup> *South Central MCN LLC*, Docket No. ER17-1046-000 (Dec. 29, 2017) (delegated letter order).

<sup>8</sup> South Central, Compliance Filing, Docket No. ER15-2594-003 (filed Nov. 30, 2015) (November 30 Filing).

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Attachment A

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protocols and transmission formula rate protocols.<sup>9</sup> On March 3, 2017, South Central filed a supplement to its February 9 Filing to explain that it submitted the February 9 Filing's proposed revisions in Docket No. ER17-953-000 because it needed to create a new eTariff record to implement the proposed revisions to the distribution formula rate protocols, but that, in doing so, the February 9 Filing's proposed revisions to the transmission formula rate protocols were not reflected in Docket No. ER15-2594-003 due to limitations in the eTariff system.<sup>10</sup> South Central explained that it intended that the proposed revisions to the distribution formula rate protocols and transmission formula rate protocols be considered by the Commission together. Thus, South Central requested that any determination in Docket No. ER17-953-000 be subject to the outcome of Docket No. ER15-2594.

5. On October 19, 2017, the Commission issued an order that, among other things: (1) accepted, subject to condition, South Central's November 30 Filing in Docket No. ER15-2594-003; (2) instituted a paper hearing proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>11</sup> concerning South Central's proposed transmission formula rate protocols in Docket No. EL18-16-000; (3) accepted, subject to refund, and subject to the outcome of Docket Nos. ER15-2594 and EL18-16, South Central's February 9 Filing in Docket No. ER17-953.<sup>12</sup> On November 20, 2017, South Central filed a request for rehearing or clarification of the October 2017 Order, which remains pending.<sup>13</sup> Also on November 20, 2017, South Central filed proposed revisions to its transmission formula rate template and protocols to comply with the directives in the October 2017 Order.<sup>14</sup> The Commission has not yet acted on the November 20 Compliance Filing.

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<sup>9</sup> South Central, Tariff Filing, Docket No. ER17-953-000, at 1 (filed Feb. 9, 2017) (February 9 Filing).

<sup>10</sup> South Central, Supplemental Filing, Docket No. ER17-953-000, at 1 (filed March 3, 2017).

<sup>11</sup> 16 U.S.C. § 824e (2012).

<sup>12</sup> *South Central MCN LLC*, 161 FERC ¶ 61,053, at PP 2-4; Ordering Paragraphs (A)-(B), (D)-(E) (2017) (October 2017 Order).

<sup>13</sup> South Central, Request for Rehearing or Clarification, Docket Nos. ER15-2594-005 and ER17-953-001 (filed Nov. 20, 2017).

<sup>14</sup> South Central, Compliance Filing, Docket Nos. ER15-2594-006 and ER17-953-002 (filed Nov. 20, 2017) (November 20 Compliance Filing).

## II. SPP's Filing

6. In the instant filing, SPP proposes to revise its Tariff to incorporate South Central's previously-accepted formula rate and implementation protocols. SPP explains that the proposed Tariff revisions incorporate South Central's formula rate as populated with the ATRR for certain transmission facilities that South Central proposes to acquire from the City of Nixa, Missouri (Nixa Assets).<sup>15</sup> According to SPP, the Nixa Assets consist of approximately 10 miles of 69 kV transmission lines and associated transmission facilities.<sup>16</sup> SPP states that the Nixa Assets interconnect to facilities in two SPP transmission pricing zones, the Southwestern Power Administration (Southwestern) zone (Zone 10), and the City Utilities of Springfield zone (Zone 3), but the assets are not currently operated by SPP nor is the cost of service for the assets included in SPP rates. SPP proposes to include the Nixa Assets and their associated ATRR in SPP Pricing Zone 10, which currently consists of transmission facilities owned by Southwestern.<sup>17</sup> SPP states that it used its newly-revised Transmission Owner Zonal Placement Process<sup>18</sup> to review the zonal placement of the Nixa Assets and the rate impacts of such zonal placement. SPP states that the Transmission Owner Zonal Placement Process also sets forth notice and information exchange requirements for potential new transmission owners and establishes a negotiation period to address potential cost shifts.<sup>19</sup> SPP states that the Nixa Assets are the first facilities to be subject to the Transmission Owner Zonal Placement Process.<sup>20</sup>

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<sup>15</sup> South Central filed an application pursuant to section 203 of the FPA, 16 U.S.C. § 824b(a)(1), seeking authorization to acquire the Nixa Assets, which South Central will transfer to SPP's functional control immediately upon closing. *See* SPP Transmittal at 3; South Central MCN LLC, Application for Authorization to Acquire Transmission Facilities Pursuant to Section 203 of the Federal Power Act and Request for Certain Waivers, Docket No. EC17-126-000 (filed June 1, 2017). In an order in Docket No. EC17-126-000 being issued concurrently with this order, the Commission authorizes the transaction.

<sup>16</sup> *See* SPP Transmittal, Ex. No. SPP-1 at 5.

<sup>17</sup> SPP Transmittal at 6.

<sup>18</sup> SPP states that the Transmission Owner Zonal Placement Process was developed through the SPP stakeholder process and endorsed by the SPP Board of Directors on July 25, 2017. *Id.* at 8.

<sup>19</sup> SPP Transmittal, Ex. No. SPP-3.

<sup>20</sup> SPP Transmittal at 8.

7. SPP explains that, in determining zonal placement for a new transmission owner, SPP first determines whether the transmission facilities and ATRR of a new transmission owner should be placed in a new, separate zone. SPP states that, in order to make this determination, it applies the following criteria: (i) whether the new transmission owner's ATRR is less than the smallest three-year average zonal ATRR; (ii) the extent to which the new transmission owner's facilities substantively increase the SPP regional footprint; and (iii) the nature of the transmission service used to serve load prior to the expected transfer date.<sup>21</sup> If SPP determines that a new zone should not be established, it then determines in which existing zone the transmission facilities of the new transmission owner should be placed. In order to make this determination, SPP applies the following criteria: (i) the extent to which the new transmission owner's facilities are embedded in an existing zone; (ii) the extent to which such facilities are integrated within an existing zone; and (iii) the nature of the transmission service used to serve load prior to the expected transfer date. SPP states that other factors, such as regulatory conditions or Tariff requirements, also may be considered when determining zonal placement of a new transmission owner.<sup>22</sup>

8. SPP states that analysis of its internal criteria indicated that it would not be appropriate to place the Nixa Assets in a separate zone. SPP then explains that application of its remaining criteria identified two potential zones for placement of the Nixa Assets – Zone 3 and Zone 10 – but that the criteria did not indicate clearly in which of the two zones the Nixa Assets should be placed. SPP maintains that, in this case, the Tariff indicates that Zone 10 is the most appropriate zone for the Nixa Assets because the load served by the Nixa Assets (Nixa Load) is served by Zone 10.<sup>23</sup>

9. Specifically, SPP states that transmission service within Zone 10 is governed by Attachment AD of the Tariff, which contains provisions applicable to SPP's administration of transmission service in Zone 10 that is provided under the SPP Tariff, the Southwestern Open Access Transmission Service Tariff (Southwestern Tariff) and grandfathered contracts for the delivery of power to Southwestern's customers. SPP explains that Article II of Attachment AD contains the following provision:

It shall be the intent of this Article II that once point-to-point and network transmission transactions specifically expire or are terminated, they shall be allowed to transition to the SPP Tariff; Provided, [t]hat, any contract service to metered loads

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<sup>21</sup> *Id.* at 9.

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

<sup>23</sup> *Id.*

or Network Service under Southwestern's Tariff that are converted to transmission service under the SPP Tariff shall be considered in [Zone 10].<sup>24</sup>

10. SPP states that the Nixa Load falls under this provision of Article II of Attachment AD because when the Nixa Load transitioned to network service under the SPP Tariff, it was considered to be in Zone 10. SPP states that the City of Nixa transitioned its load from the Southwestern Tariff to SPP network service in Zone 10 on June 1, 2017. Accordingly, SPP asserts that the transmission facilities should follow the load that they serve to the same pricing zone.<sup>25</sup>

11. SPP asserts that its internal criteria, used in conjunction with the special Tariff requirements applicable to load like the Nixa Load that converts from service under the Southwestern Tariff to service under the SPP Tariff, requires placement of the Nixa Assets in Zone 10.<sup>26</sup> SPP states that it is clear that the size of the Nixa Assets ATRR and their geography dictate that the Nixa Assets should not be placed in a new zone. SPP further contends that the embeddedness, integration, and transmission service criteria indicate that Zone 10 is an appropriate candidate for zonal placement of the Nixa Assets. Finally, SPP argues that the Tariff requirement that the Nixa Load be located in Zone 10 indicates that placement of the Nixa Assets in Zone 10 is just and reasonable.<sup>27</sup>

12. SPP states that after it determined that the Nixa Assets should be placed in existing Zone 10, it conducted a cost shift and rate impact analysis pursuant to its Transmission Owner Zonal Placement Process. According to SPP, the analysis shows that inclusion of the Nixa Assets in Zone 10 will increase the rates in Zone 10 for network service under Schedule 9 of the Tariff by approximately 46 percent and rates for Point-to-Point transmission service under Schedule 7 of the Tariff by approximately 67 percent.<sup>28</sup> These increases result from South Central's ATRR of \$1.363 million being added to the current

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<sup>24</sup> *Id.* at 9-10.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 10.

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

<sup>28</sup> SPP explains that there will be a higher increase to Point-to-Point transmission rates because Zone 10 has an unusually large amount of Point-to-Point load relative to network service load, which results in a higher increase under SPP's Point-to-Point rate calculation. *Id.* at 13.

Southwestern ATRR of \$2.957 million for a total of \$4.320 million for the Zone 10 ATRR.<sup>29</sup>

13. SPP states that while these rate increases appear high, they are a result of Zone 10's small size, and thus even a small number of assets and associated ATRR would result in a large percentage rate increase. SPP notes that much of Southwestern's ATRR is not recovered through transmission service provided under the SPP Tariff because Southwestern delivers federal preference power from hydro-electric resources to cooperative, municipal, and joint action agency customers, and because Southwestern provides non-federal transmission service to many customers served under grandfathered agreements that are not under the SPP Tariff. SPP asserts that these grandfathered agreements will ultimately expire, and when they do, the affected customers will be required to obtain transmission service from SPP. SPP argues that these expirations will increase Zone 10's load in the future and decrease the effect of including the Nixa Assets in Zone 10 over time.<sup>30</sup>

14. Specifically, SPP explains that Southwestern has \$12.573 million of ATRR attributable to load in Zone 10 that is served under grandfathered agreements with Southwestern. SPP states that eventually most of this load served under grandfathered agreements will transition to SPP transmission service, and that several of the grandfathered agreements will expire within a few years. As an example, SPP explains that, if 200 MW of load served under grandfathered agreements were to transition to SPP transmission service, the addition of South Central's ATRR for the Nixa Assets would increase Zone 10's ATRR by approximately 21 percent, rather than 46 percent.<sup>31</sup>

15. SPP also asserts that its proposed inclusion of the Nixa Assets is just and reasonable based on the benefits the facilities will provide to the SPP region and Commission policy to promote participation in regional transmission organizations. In particular, SPP argues that placing the Nixa Assets under SPP's functional control will further the Commission's goals of promoting transmission-only company ownership of transmission facilities and increasing the participation of public power in SPP transmission planning. SPP also contends that adding the Nixa Assets will fill in a gap in the SPP footprint, and therefore allow for more efficient and cost-effective transmission

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<sup>29</sup> *Id.* at 12-13.

<sup>30</sup> *Id.* at 11-13.

<sup>31</sup> *Id.* at 12.

planning, including the identification of zonal transmission solutions to increase system reliability and reduce congestion.<sup>32</sup>

16. SPP requests waiver of any provisions of section 35.13 of the Commission's regulations, to the extent necessary, that may be deemed to require cost support in the form of cost-of-service statements for the proposed Tariff revisions. SPP explains that the proposed Tariff revisions do not modify applicable Commission-approved rates, but implement a formula rate template.<sup>33</sup>

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

17. Notice of SPP's October 18, 2017 filing was published in the *Federal Register*, 82 Fed. Reg. 49,606 (2017), with interventions and protests due on November 8, 2017.

18. The following entities filed timely motions to intervene: Westar Energy, Inc. (Westar); Southwestern; American Electric Power Service Corporation, on behalf of its affiliates Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, AEP); Arkansas Electric Cooperative Corporation; NextEra Energy Transmission Southwest, LLC; Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (jointly, KCP&L); People's Electric Cooperative; City Utilities of Springfield, Missouri; Sunflower Electric Power Corporation (Sunflower); Mid-Kansas Electric Company, LLC; Basin Electric Power Cooperative; KAMO Electric Cooperative, Inc.; Associated Electric Cooperative, Inc.; Xcel Energy Services Inc., on behalf of its utility operating company affiliate Southwestern Public Service Company (jointly, Xcel Energy); and the City of Nixa, Missouri. Western Farmers Electric Cooperative filed a motion to intervene out-of-time.

19. Certain SPP Transmission Owners (Specified TOs),<sup>34</sup> ARKMO Cities,<sup>35</sup> and South Central filed timely motions to intervene and comments. Nebraska Public Power District (NPPD) filed a timely motion to intervene, comments and protest.

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<sup>32</sup> *Id.* at 15.

<sup>33</sup> *Id.* at 19.

<sup>34</sup> Specified TOs are the following entities: AEP, KCP&L, Sunflower, Mid-Kansas Electric Company, Inc., Westar, and Xcel Energy.

<sup>35</sup> ARKMO Cities are the following entities: Paragould Light Water & Cable; Paragould Light Commission; Poplar Bluff Municipal Utilities; Kennett Board of Public Works; City of Piggott Municipal Light, Water & Sewer; and the City of Malden.

20. On November 22, 2017, SPP filed a limited answer to comments and protests. On January 10, 2018, South Central filed a letter requesting that the Commission expedite consideration of SPP's proposed Tariff revisions. On January 26, 2018, ARKMO Cities filed a letter in response to South Central's January 10, 2018 letter.<sup>36</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), we grant Western Farmers Electric Cooperative'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.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept SPP's answer because it has provided information that assisted us in our decision-making process.

##### **B. Responsive Pleadings**

###### **1. Comments and Protest**

24. Specified TOs take issue with the rate impact analysis that SPP conducted pursuant to its Transmission Owner Zonal Placement Process. Specified TOs argue that SPP's calculation of a 46 percent rate increase appears to be a simple comparison of total zonal ATRR before and after South Central's integration. They assert that because network service rates are based on ATRR and load ratio share, to accurately determine the rate impact, it is necessary to evaluate the ATRR and any associated changes in load. Specified TOs also contend that the rate impact on existing Zone 10 customers is further obfuscated by the fact that the City of Nixa load transitioned to SPP network service in June of 2017 but the transfer of the City of Nixa's transmission facilities and recovery of its ATTR through Zone 10 rates is not occurring until now. Further, Specified TOs argue that SPP attempts to downplay the rate impact by focusing on the expiration of grandfathered agreements in Zone 10, but they assert that speculation about future events

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<sup>36</sup> For purposes of this filing, ARKMO Cities does not include Paragould Light Water & Cable.

is not relevant to determining the actual cost shift that will occur based on the request in this proceeding. Specified TOs also argue that, to the extent that SPP attempts to justify the rate increase to existing customers, it does not quantify any alleged benefits, and thus provides no basis on which to weigh costs and benefits. With regard to SPP's Transmission Owner Zonal Placement Process, Specified TOs contend that this proceeding highlights that this process does not actually mitigate or address cost shifts caused by adding new transmission owners to existing zones.<sup>37</sup>

25. NPPD asserts that SPP's zonal placement decisions are based upon SPP's application of a series of internally-developed criteria, which are not included or otherwise referenced in the new SPP Transmission Owner Zonal Placement Process, and which have not been subject to the SPP stakeholder process, or otherwise filed with the Commission for approval. NPPD also contends that the criteria used by SPP in this proceeding differ meaningfully from the criteria it applied previously, because the criteria used in this case now considers "the nature of transmission service to serve load prior to the expected transfer date."<sup>38</sup> NPPD states that it supports the use of such criterion, which SPP did not apply in prior zonal placement cases. NPPD states that it opposes the new criteria because they fail to require SPP to analyze cost shifts prior to zonal placement and to consider the need to avoid or minimize cost shifts as a factor in determining the appropriate zonal placement.<sup>39</sup> NPPD also states that it is concerned that a Commission ruling in this proceeding may affect the outcome of the Commission's review of a pending case involving SPP's application of the previous set of internally-developed criteria governing the placement of a new transmission owner in the NPPD Zone (i.e., Zone 17) in SPP.<sup>40</sup>

26. ARKMO Cities argue that, while South Central's formula rate was previously accepted by the Commission, Zone 10 customers were not parties to that docket or to South Central's joint offer of settlement, and thus the settlement is not binding on ARKMO Cities. Further, ARKMO Cities argue that the instant filing does not provide sufficient evidence of the actual rate impact that adding the Nixa Assets to the Zone 10 rate would have on each city currently in Zone 10. They assert that, without evidence of the rate impact to each of the current Zone 10 cities, regardless of SPP's load growth prediction, it is factually impossible to ascertain whether the rate impact is just,

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<sup>37</sup> Specified TOs Comments at 1-3.

<sup>38</sup> NPPD Comments and Protest at 5 (citing SPP Transmittal at 9).

<sup>39</sup> *Id.* at 3-6.

<sup>40</sup> *Id.* at 4-5 (citing *Sw. Power Pool, Inc.*, 158 FERC ¶ 63,004 (2017) (Initial Decision currently pending on exceptions before the Commission.)).

reasonable, and not unduly discriminatory. ARKMO Cities further argue that SPP's projected cost increase to the Zone 10 customers is not commensurate with any potential economic benefit Zone 10 may receive, and that the shifting of legacy transmission asset costs to customers for whom such assets were not intended is contrary to Commission policies.<sup>41</sup>

27. South Central contends that Attachment AD of the Tariff required the City of Nixa to transition its load to SPP service in Zone 10, and thus Zone 10 is the reasonable place in which to place the Nixa Assets, which serve as the delivery points for the load.<sup>42</sup> South Central asserts that placing the Nixa Assets in a zone other than Zone 10 would create a disconnect between the Nixa Load and the associated Nixa Assets and violate the Commission's cost causation principles.<sup>43</sup> Further, South Central states that if the Nixa Assets were placed in a stand-alone zone, there would not be any load from which to recover South Central's ATRR. In addition, South Central notes that such a new stand-alone zone would be by far the smallest zone in SPP, even smaller than the current Zone 10, which is already the smallest zone by both ATRR and load.<sup>44</sup> South Central explains that although Zone 10 has a total ATRR of nearly \$50 million, only \$15 million of that ATRR is associated with non-federal transmission service, and of that \$15 million, only \$2.957 million is currently being recovered through transmission service provided under the SPP Tariff. South Central states that the difference between \$2.957 and \$15 million represents the ATRR attributable to load located in Zone 10 that is served under grandfathered agreements with Southwestern. South Central asserts that, as a result, the addition of even a small amount of assets and associated ATRR, like the \$1.363 million ATRR associated with the Nixa Assets, results in a relatively high zonal rate impact when measured as a percentage rate increase, even when the real dollars at issue are small.<sup>45</sup> South Central notes that South Central's ATRR of just \$1.363 million is substantially less than the smallest three-year average zonal ATRR, and the facilities that comprise the Nixa Assets, while connecting Zone 10 and Zone 3, do not substantively increase SPP's regional footprint.<sup>46</sup>

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<sup>41</sup> ARKMO Cities Comments at 6-7.

<sup>42</sup> South Central Comments at 2, 4.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> *Id.* at 5-6.

<sup>45</sup> *Id.* at 8-9.

<sup>46</sup> *Id.* at 6.

28. South Central also argues that, when identifying zonal rate impacts, the Commission should consider expected changes in Zone 10 that will influence the rate impact analysis over time. South Central notes that SPP expects approximately 200 MW of load will switch to SPP transmission service due to expiring grandfathered contracts in the next few years. South Central argues that eventually, most of the 872 MW of load taking service under grandfathered agreements with Southwestern will transition to SPP service in Zone 10.<sup>47</sup>

29. South Central contends that in this case, identifying the total rates paid by customers in Zone 10 is necessary to get an accurate view of the zonal rate impacts. South Central states that while SPP limited its calculations to Schedule 9 for network service customers, and Schedule 7 for Point-to-Point customers, all customers in Zone 10 also pay Schedule 1, Schedule 1A and Schedule 12 charges. South Central argues that when these additional charges are included in the calculations, the impacts on SPP customer rates in Zone 10 fall measurably. South Central asserts that, when including all schedules, the rate impacts fall between approximately 10 to 30 percent.<sup>48</sup>

## 2. SPP Answer

30. SPP states that it did not fail to calculate the impact of adding load, as Specified TOs suggest, because South Central is not a load-serving entity, and the Nixa Load has already initiated SPP service in Zone 10. Thus, SPP asserts that there was no change in load associated with the integration of the Nixa Assets into Zone 10 to include in the rate impact calculations. SPP further argues that the percentage of the rate increase for Zone 10 customers would have been lower than what SPP calculated if SPP had excluded the Nixa Load from Zone 10 in the calculation of cost for the base case. Accordingly, SPP contends that the information it supplied did not understate the rate impacts as Specified TOs seem to imply. In response to ARKMO Cities' assertion that the filing is incomplete because SPP did not provide sufficient evidence of the actual rate impact that adding the Nixa Assets to the Zone 10 rate would have on each city currently in Zone 10, SPP notes that it provided such information directly to each SPP transmission customer in Zone 10 during the Transmission Owner Zonal Placement Process, including to each of the ARKMO Cities. SPP also provides this information in its answer.<sup>49</sup>

31. In response to ARKMO Cities' argument that it is contrary to Commission policies to shift legacy transmission costs to customers for whom those assets were not

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<sup>47</sup> *Id.* at 9-10.

<sup>48</sup> *Id.* at 10-13.

<sup>49</sup> SPP Answer at 3-5.

intended, SPP asserts that the Nixa Assets were first connected to the transmission system of Southwestern, which is now in Zone 10, and it was not until several decades later that the Nixa Assets were extended to connect with the transmission system of City Utilities of Springfield. SPP also contends that the general policy arguments advanced by Specified TOs and NPPD regarding cost shifts that may occur when new transmission owners are added to existing zones are outside the scope of this proceeding.<sup>50</sup>

### C. Commission Determination

32. We find that SPP's proposed Tariff revisions 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.

33. 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 and suspend for a nominal period the proposed Tariff revisions, to become effective the first day of the month after the date on which South Central acquires the Nixa Assets as proposed in Docket No. EC17-126-000, subject to refund and, as discussed further below, subject to the outcome of the ongoing proceedings in Docket Nos. ER15-2594, ER17-953 and EL18-16, and set them for hearing and settlement judge procedures.

34. To the extent that ARKMO Cities dispute provisions of South Central's unpopulated formula rate template and implementation protocols that were approved in Docket Nos. ER15-2594 and ER17-953, we dismiss those arguments as outside the scope of this proceeding. In this proceeding, SPP does not propose any changes to the previously-approved provisions of the formula rate template and protocols. Instead, SPP proposes Tariff revisions that will populate the previously-approved formula rate template with specific costs, and incorporate the template and protocols into the SPP Tariff. Accordingly, the merits of the previously-approved provisions of the unpopulated formula rate template and protocols are not before the Commission in this proceeding, and we dismiss arguments regarding those provisions as outside the scope of this proceeding.

35. As noted above, South Central's formula rate implementation protocols are the subject of an ongoing proceeding pursuant to section 206 of the FPA in Docket No. EL18-16-000. In addition, certain proposed revisions to South Central's formula rate template and implementation protocols are pending in compliance filings before the Commission in Docket Nos. ER15-2594-006 and ER17-953-002. South Central also filed a request for rehearing or clarification of the October 2017 Order that included those

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<sup>50</sup> *Id.* at 6-7.

compliance directives, and this request remains pending before the Commission. Accordingly, certain provisions of South Central's previously-approved formula rate template and implementation protocols could change based on the outcome of those proceedings. Therefore, because SPP's proposed Tariff revisions in this proceeding would incorporate South Central's previously-approved formula rate template and implementation protocols into the SPP Tariff, and certain provisions of South Central's formula rate template and implementation protocols could change based on the outcome of those proceedings, our acceptance of SPP's proposed Tariff revisions in this proceeding is also subject to the outcome of the ongoing proceedings in Docket Nos. ER15-2594, ER17-953, and EL18-16. Therefore, we remind SPP that it must submit a future compliance filing in the instant proceeding to amend its proposed Tariff revisions if such amendment is necessary to make the revisions consistent with the Commission's directives in Docket Nos. ER15-2594, ER17-953, and EL18-16, as applicable.

36. 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 commence. 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>51</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.<sup>52</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (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.

37. We grant SPP's requested waiver of section 35.13 of the Commission's regulations regarding the provision of cost-of-service statements, consistent with our prior approval of formula rates.<sup>53</sup> However, to the extent that parties at the hearing can

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<sup>51</sup> 18 C.F.R. § 385.603 (2017).

<sup>52</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>).

<sup>53</sup> See, e.g., *South Central MCN LLC*, 153 FERC ¶ 61,099 at P 141, *order on reh'g*, 154 FERC ¶ 61,271; *Xcel Energy Transmission Development Co., LLC*, 149 FERC (continued ...)

show the relevance of additional information needed to evaluate the proposal, the Administrative Law Judge can provide for appropriate discovery of such information.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted and suspended for a nominal period, to become effective the first day of the month after the date on which South Central acquires the Nixa Assets as proposed in Docket No. EC17-126-000, subject to refund and subject to the outcome of the ongoing proceedings in Docket Nos. ER15-2594, ER17-953 and EL18-16, as discussed in the body of the order.

(B) SPP's request for waiver of section 35.13 of the Commission's regulations is hereby granted, 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 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, 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 (2017), the Chief 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.

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(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. Chairman McIntyre is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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