

165 FERC ¶ 61,066  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

Southwest Power Pool, Inc.

Docket No. ER18-2358-000

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

(Issued October 31, 2018)

1. On August 30, 2018, Southwest Power Pool, Inc. (SPP) submitted, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed revisions to its Open Access Transmission Tariff (Tariff) to add an annual transmission revenue requirement (ATRR) for certain facilities of GridLiance High Plains LLC (GridLiance) located in the Oklahoma panhandle (Oklahoma Assets)<sup>2</sup> once GridLiance transfers functional control of those facilities to SPP.<sup>3</sup> In this order, we accept and suspend for a nominal period SPP's proposed revisions to its Tariff, to become effective November 1, 2018, subject to refund, 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 ATRRs for

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> GridLiance has recently been constructing upgrades to the assets at issue in this proceeding. Ex. SPP-1 at 5; *see infra* P 26. We refer to the assets before GridLiance's upgrades as the "Pre-Upgrade Oklahoma Assets."

<sup>3</sup> SPP proposes to calculate the ATRR for the Oklahoma Assets using GridLiance's formula rate contained in Addendum 43 to Attachment H of the Tariff.

each transmission owner in the zone.<sup>4</sup> Generally, the charges 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>5</sup> When a new transmission owner is added to an existing transmission pricing zone, the ATRR for its 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 the existing customers' charges for network service, 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>6</sup>

## **B. Oklahoma Assets**

3. GridLiance acquired the Pre-Upgrade Oklahoma Assets from Tri-County Electric Cooperative, Inc. (Tri-County) in 2016.<sup>7</sup> Prior to the acquisition, in 2012, SPP filed Tariff revisions to add an ATRR for transmission service over the Pre-Upgrade Oklahoma Assets and place them in SPP transmission pricing Zone 11. The Commission found that the Pre-Upgrade Oklahoma Assets were not "Transmission Facilities" under Attachment AI of the SPP Tariff or transmission facilities under the Commission's seven-factor test; therefore, the revenue requirements associated with the Pre-Upgrade Oklahoma Assets were ineligible for inclusion in SPP's transmission pricing Zone 11 ATRR.<sup>8</sup> Consistent with the Commission's findings that the Pre-Upgrade Oklahoma Assets are not transmission facilities, GridLiance currently uses the Oklahoma Assets to provide wholesale distribution service to Tri-County.<sup>9</sup>

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<sup>4</sup> See SPP Transmittal at 2; SPP, Tariff at Attachment H.

<sup>5</sup> See SPP, Tariff, pt. III, § 34.1 Monthly Demand Charge (3.0.0).

<sup>6</sup> See SPP Transmittal at 3.

<sup>7</sup> The Commission authorized GridLiance's acquisition of the Pre-Upgrade Oklahoma Assets in Docket No. EC15-206-000. *South Central MCN LLC*, 154 FERC ¶ 61,174 (2016).

<sup>8</sup> *Sw. Power Pool, Inc.*, Opinion No. 535, 149 FERC ¶ 61,051, at P 180 (2014).

<sup>9</sup> SPP Transmittal at 3-4; *South Central MCN LLC*, 154 FERC ¶ 61,090 (2016) (accepting wholesale distribution agreements and formula rate template and protocols).

### C. GridLiance's Formula Rate

4. On October 29, 2015, the Commission issued an order that, among other things, conditionally accepted, subject to a compliance filing, GridLiance's filing of a proposed formula rate template and implementation protocols to establish a mechanism to recover costs associated with transmission facilities in SPP that GridLiance intended to own in the future, to be effective once SPP filed the template and protocols with the Commission to become part of the SPP Tariff.<sup>10</sup> The Commission also set GridLiance's proposed return on equity (ROE) for hearing and settlement judge procedures.<sup>11</sup> On January 27, 2017, the Commission approved a settlement establishing the ROE to be used in GridLiance's formula rate.<sup>12</sup> Revisions implementing the terms of the settlement were accepted for filing on December 29, 2017.<sup>13</sup>

5. On October 19, 2017, the Commission issued an order<sup>14</sup> that, among other things: (1) accepted, subject to condition, GridLiance's filing in Docket No. ER15-2594-003 to revise the formula rate template and implementation protocols, which GridLiance submitted in compliance with the October 2015 Order; (2) instituted a paper hearing proceeding in Docket No. EL18-16-000 pursuant to section 206 of the FPA<sup>15</sup> concerning GridLiance's proposed transmission formula rate protocols; (3) accepted, subject to refund, and subject to the outcome of Docket Nos. ER15-2594-000 and EL18-16-000, GridLiance's filing in Docket No. ER17-953-000 of proposed revisions to the affiliate cost allocation provisions in its distribution and transmission formula rate protocols.

6. On March 15, 2018, the Commission issued an order that, among other things, accepted and suspended for a nominal period SPP's proposal to incorporate GridLiance's formula rate template and implementation protocols as part of the SPP Tariff, subject

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<sup>10</sup> *South Central MCN LLC*, 153 FERC ¶ 61,099 (2015) (October 2015 Order), *order on reh'g*, 154 FERC ¶ 61,271 (2016).

<sup>11</sup> October 2015 Order, 153 FERC ¶ 61,099 at P 45.

<sup>12</sup> *South Central MCN LLC*, 158 FERC ¶ 61,073 (2017).

<sup>13</sup> *South Central MCN LLC*, Docket No. ER17-1046-000 (Dec. 29, 2017) (delegated order).

<sup>14</sup> *South Central MCN LLC*, 161 FERC ¶ 61,053 (2017).

<sup>15</sup> 16 U.S.C. § 824e (2012).

to refund and subject to the outcome of proceedings in Docket Nos. ER15-2594-000, ER17-953-000 and EL18-16-000, and established hearing and settlement judge procedures.<sup>16</sup>

## II. SPP's Filing

7. In its filing, SPP states that GridLiance seeks to transfer functional control of the Oklahoma Assets to SPP in two phases.<sup>17</sup> SPP proposes to integrate the Oklahoma Assets into SPP and place them in SPP transmission pricing Zone 11, the Southwestern Public Service Company (SPS) transmission pricing zone.<sup>18</sup> To accomplish this, SPP states that its proposed Tariff revisions update: (1) Table 1 of Attachment H to include GridLiance's zonal ATRR within Zone 11; (2) Table 3 of Attachment H to acknowledge that the provisions of section I.7 of Attachment H are not applicable to GridLiance because it has a formula rate with annual update of point-to-point revenue credits; and (3) the Zone 11 rate sheet for point-to-point transmission service contained in Attachment T to include GridLiance's point-to-point transmission service rates.<sup>19</sup> SPP states that the GridLiance ATRR will recover the cost of the Oklahoma Assets using GridLiance's current transmission formula rate in Addendum 43 to Attachment H of the Tariff.<sup>20</sup>

8. SPP states that the Oklahoma Assets qualify as transmission facilities for placement under SPP's functional control and inclusion under the Tariff for rate recovery. SPP explains that Attachment AI of its Tariff contains six criteria for inclusion of transmission facilities as part of SPP's transmission system, and a facility is eligible for transmission rate cost recovery if it meets any single criterion. SPP claims that the Oklahoma Assets qualify as transmission facilities under Attachment AI because the Oklahoma Assets include: (1) non-radial facilities that are operated at 60 kV or higher; (2) substation control equipment necessary to control and protect the non-radial

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<sup>16</sup> *Sw. Power Pool, Inc.*, 162 FERC ¶ 61,215 (2018).

<sup>17</sup> SPP states that the first phase will occur upon the effective date of the instant filing, and the second phase will occur in 2019 when GridLiance completes construction of certain facility upgrades. SPP Transmittal at 6.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.* at 16.

facilities operated at 60 kV and above; and (3) only facilities on the high side above the transformer isolation equipment.<sup>21</sup>

9. SPP explains that it used its zonal placement process, which the SPP Board of Directors has endorsed, to determine the zonal placement of the Oklahoma Assets.<sup>22</sup> SPP states that, pursuant to its zonal placement process, it determined whether to place the Oklahoma Assets and ATRR in their own separate pricing zone by applying the following criteria: (1) whether the new transmission owner's ATRR is less than the smallest three-year average zonal ATRR in 2017, adjusted for subsequent zonal ATRR changes; (2) the extent to which the new transmission owner's facilities substantively increase the SPP regional footprint; and (3) the nature of transmission service to serve load prior to the expected transfer date. SPP asserts that the projected ATRR for the Oklahoma Assets is smaller than the three-year average zonal ATRR benchmark and that the geographical footprint of the Oklahoma Assets is embedded in SPP's footprint; therefore, according to SPP, the above criteria indicate that the Oklahoma Assets should not be placed in a new, separate transmission pricing zone.<sup>23</sup>

10. SPP further states that to determine the existing transmission pricing zone into which it should place the Oklahoma Assets and ATRR, it applied the following criteria: (1) the extent to which the transferring facilities are embedded in an existing zone; (2) the extent to which the transferring facilities are integrated within an existing zone; and (3) the nature of transmission service to serve load prior to the expected transfer date. SPP states that, based on these criteria, the Oklahoma Assets should be placed in Zone 11 because they are interconnected solely with the facilities of a Zone 11 transmission owner, they are not interconnected with facilities of any other transmission owner, and the interconnected load historically has been included in Zone 11 through network service charges.<sup>24</sup>

11. SPP states that it analyzed the rate impacts of placing the Oklahoma Assets in Zone 11. SPP explains that Zone 11 currently has two transmission owners with a total zonal ATRR of approximately \$112 million as of July 2018. SPP also states that inclusion of the Oklahoma Assets' ATRR in Zone 11 results in an increase in Zonal ATRR and Schedule 9 (Network Integration Transmission Service) charges in Zone 11 of approximately 6.9 percent. SPP adds that this increase in network integration

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<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.*

transmission service charges is approximately 2.8 percent if the ATRR of transmission facilities whose costs are recovered under Schedule 11 (Wholesale Distribution Service) is included in the determination of rate impacts.<sup>25</sup>

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

12. Notice of SPP's filing was published in the *Federal Register*, 83 Fed. Reg. 45,438 (2018), with interventions and protests due on or before September 20, 2018. On September 12, 2018, Xcel Energy Services Inc. (Xcel) filed a request for an extension of time to file comments. GridLiance opposed the request. On September 19, 2018, the Commission denied the request for extension of time.

13. The following entities filed timely motions to intervene: American Electric Power Service Corporation; Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc. (collectively, New Mexico Cooperatives); City Utilities of Springfield, Missouri; Golden Spread Electric Cooperative, Inc. (Golden Spread); GridLiance; Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and Westar Energy, Inc.; Mid-Kansas Electric Company, Inc.; Nebraska Public Power District; Oklahoma Gas & Electric Company; Southwestern Power Administration; Sunflower Electric Power Corporation; Tri-County; Western Farmers Electric Cooperative; and West Texas Municipal Power Agency.

14. Indicated SPP Transmission Owners;<sup>26</sup> Midwest Energy, Inc. (Midwest Energy); Municipal Energy Agency of Nebraska (MEAN); New Mexico Cooperatives; and Xcel<sup>27</sup> filed protests. The Public Utility Commission of Texas (Texas Commission) filed a notice of intervention and protest.

15. On October 5, 2018, GridLiance, Golden Spread, and Tri-County filed answers to the protests. SPP filed an answer to the protests on October 9, 2018. On October 10, 2018, GridLiance and Tri-County filed a joint answer to the Texas Commission's protest.

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<sup>25</sup> *Id.* at 12.

<sup>26</sup> Indicated SPP Transmission Owners are the following entities: American Electric Power Service Corporation; Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; Mid-Kansas Electric Company, Inc.; Oklahoma Gas & Electric Company; Sunflower Electric Power Corporation; Westar Energy, Inc.; and Western Farmers Electric Cooperative.

<sup>27</sup> Xcel filed its protest on behalf of SPS, its utility operating company affiliate.

On October 19, 2018, Xcel filed an answer to the answers to its protest. On October 23, 2018, GridLiance filed an answer to Xcel's answer.

#### **IV. Discussion**

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

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept GridLiance's, Golden Spread's, SPP's, Tri-County's, and Xcel's answers because they have provided information that assisted us in our decision-making process.

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

###### **1. Protests**

18. Protesters argue that SPP has not demonstrated that its filing is just and reasonable because it has not supported its proposal. Protesters claim that SPP neither mentions nor explains how the upgrades GridLiance made to the Oklahoma Assets benefit existing Zone 11 customers. Indicated SPP Transmission Owners, Midwest Energy, the New Mexico Cooperatives, and Xcel argue that without such an analysis of benefits, the Commission cannot determine whether the cost shift to existing Zone 11 customers is roughly commensurate with the benefits that they receive, as the cost-causation principle requires.<sup>28</sup>

19. MEAN, the Texas Commission, and Xcel argue that SPP has not demonstrated that the upgrades to the Oklahoma Assets were prudent investments, alleging that GridLiance developed those upgrades unilaterally without their consideration through a Commission-approved transmission planning process (such as an Order No. 890<sup>29</sup>-

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<sup>28</sup> Indicated SPP Transmission Owners Protest at 4; Midwest Energy Protest at 4-5; New Mexico Cooperatives Protest at 3; Xcel Protest at 19-21.

<sup>29</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B,

compliant transmission planning process). As a result, MEAN and the Texas Commission state, existing Zone 11 customers and other SPP stakeholders had no opportunity to participate in the planning or review of the upgrades, nor to assess the need for the upgrades or benefits that they provide.<sup>30</sup> Xcel claims that the Commission has found that any work considered to expand the grid should be subject to Order No. 890's transmission planning requirements<sup>31</sup> and that GridLiance developed the Oklahoma Assets without meeting Order No. 890's basic requirements of coordination, openness, transparency, and information exchange.<sup>32</sup> Xcel further states that if the Oklahoma Assets are part of the Bulk Electric System, then under the North American Electric Reliability Corporation (NERC) reliability standards (specifically, requirement R8 of TPL-001-4), GridLiance should have provided for third-party review and feedback from adjacent planning coordinators and transmission planners with respect to the upgrades.<sup>33</sup>

20. Relatedly, Xcel claims that GridLiance did not have a tariff on file with the Commission during the time that it planned and developed the upgrades to the Oklahoma Assets, despite the fact that it was required, due to an interconnection request, to file a tariff with the Commission.<sup>34</sup> According to Xcel, GridLiance may have pursued different upgrades had those upgrades been considered through a local or regional transmission planning process that complied with Order Nos. 890 and 1000.<sup>35</sup> Xcel also states that GridLiance planned and constructed more than \$50 million of facilities outside the SPP regional transmission planning process even though the Tri-County load has decreased by

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123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>30</sup> MEAN Protest at 5-6; Texas Commission Protest at 11-12.

<sup>31</sup> Xcel Protest at 40 (citing *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161, at P 69 (2018)).

<sup>32</sup> Xcel Protest at 40-43.

<sup>33</sup> *Id.* at 30.

<sup>34</sup> *Id.* at 30-31.

<sup>35</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

approximately 23 to 29 MW since 2016.<sup>36</sup> Xcel argues that GridLiance unnecessarily upgraded the Oklahoma Assets for cost-shifting purposes as part of its business model, an argument that Xcel asserts is supported by GridLiance's ability to require Tri-County to repossess the Oklahoma Assets if the Commission rejects their inclusion in an SPP transmission pricing zone.<sup>37</sup>

21. MEAN, the Texas Commission, Xcel, and the New Mexico Cooperatives argue that SPP lacks supporting evidence or analysis, such as independent testimony, that the Oklahoma Assets qualify as transmission facilities eligible for transmission cost recovery pursuant to Attachment AI and the Commission's seven-factor test.<sup>38</sup> Specifically, Xcel states that a facility-by-facility analysis is necessary to determine whether the Oklahoma Assets satisfy the criteria in Attachment AI and the seven-factor test, considering that the Commission previously found in Opinion No. 535 that the Oklahoma Assets did not qualify as transmission pursuant to Attachment AI.<sup>39</sup> The New Mexico Cooperatives state that they are unable to verify SPP's assertions that the Oklahoma Assets are non-radial and qualify as transmission facilities because of SPP's request to treat the map of the Oklahoma Assets as privileged Critical Energy/Electric Infrastructure Information (CEII).<sup>40</sup>

22. Several commenters address SPP's zonal placement criteria and process. MEAN and Midwest Energy argue that SPP provided insufficient information to support its zonal placement decision, and that SPP's internal zonal placement process limits the availability of such information.<sup>41</sup> Indicated SPP Transmission Owners and Midwest Energy argue that the Commission should require SPP to file its zonal placement process in a section 205 filing.<sup>42</sup> Indicated SPP Transmission Owners further state that SPP's rate

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<sup>36</sup> *Id.* at 2, 44.

<sup>37</sup> *Id.* at 26.

<sup>38</sup> MEAN Protest at 2-4; New Mexico Cooperatives Protest at 2-3; Texas Commission Protest at 2, 8; Xcel Protest at 2, 32-38.

<sup>39</sup> Xcel Protest at 35.

<sup>40</sup> New Mexico Cooperatives Protest at 2-3.

<sup>41</sup> MEAN Protest at 3; Midwest Energy Protest at 4.

<sup>42</sup> Indicated SPP Transmission Owners Protest at 1-2, 5-8; Midwest Energy Protest at 3, 5.

proposal may not be just and reasonable because SPP does not consider rate impacts in its zonal placement process.<sup>43</sup>

23. Xcel states that the proposed ATRR amount is unclear because SPP provided different figures in its filing. Xcel claims that SPP's proposed ATRR for 2018 is stated as \$4.6 million in Mr. Hooton's testimony and \$6.147 million in the populated formula rate template. Similarly, Xcel claims that the proposed ATRR for 2019 is stated as both \$9.5 million and \$8.9 million in SPP's transmittal letter.<sup>44</sup>

24. With respect to SPP's analysis of the effect on rates of placing the Oklahoma Assets in Zone 11, Indicated SPP Transmission Owners, Midwest Energy, and MEAN state that SPP failed to provide the supporting data and calculation methodology.<sup>45</sup> Indicated SPP Transmission Owners and MEAN further argue that SPP diluted the rate increase for existing Zone 11 customers by including Schedule 11 charges in its analysis, which are unaffected by the proposal.<sup>46</sup> Indicated SPP Transmission Owners and Midwest Energy claim that SPP did not demonstrate that its proposed cost shift is just and reasonable because SPP did not provide the corresponding rate decrease for the original customers who caused the costs to be incurred for construction of, and benefited from, the Oklahoma Assets' upgrades.<sup>47</sup>

25. Midwest Energy, the Texas Commission, and Xcel state that the Commission should reject SPP's cost allocation proposal due to insufficient information, or in the alternative, set the matter for hearing to develop a full and complete record.<sup>48</sup> Indicated SPP Transmission Owners also state that the lack of information renders SPP's filing patently deficient, and that it should be rejected.<sup>49</sup> The New Mexico Cooperatives and

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<sup>43</sup> Indicated SPP Transmission Owners Protest at 7.

<sup>44</sup> Xcel Protest at 46.

<sup>45</sup> Indicated SPP Transmission Owners Protest at 2; Midwest Energy Protest at 4; MEAN Protest at 4.

<sup>46</sup> Indicated SPP Transmission Owners Protest at 3; MEAN Protest at 4.

<sup>47</sup> Indicated SPP Transmission Owners Protest at 3; Midwest Energy Protest at 5.

<sup>48</sup> Midwest Energy Protest at 5; Texas Commission Protest at 12; Xcel Protest at 3-4.

<sup>49</sup> Indicated SPP Transmission Owners Protest at 2.

MEAN also request that the Commission deny SPP's request to place the Oklahoma Assets into SPP transmission pricing Zone 11.<sup>50</sup>

## 2. Answers

26. Both GridLiance and Tri-County address protesters' arguments that the upgrades to the Oklahoma Assets were imprudent and planned outside of any Commission-approved transmission planning process. First, GridLiance states that it and Tri-County planned and constructed upgrades to the Oklahoma Assets to address longstanding reliability issues that resulted from a non-networked system, such as outages from ice and wind storms. Specifically, GridLiance explains that the upgrades it has been constructing include (1) the Power Corner and Hovey substations, two new substations where 69 kV and 115 kV lines cross without intersecting; (2) rebuilding an existing 8-mile 69 kV line to 115 kV between the Power Corner and Hovey substations; (3) the Panhandle substation, a new 115/69 kV substation; (4) a new 15-mile 115 kV line from the Power Corner substation to Four Corners Line Tap; and (5) a double-circuit 115 kV and 69 kV line from Four Corners Line Tap to the Panhandle substation.<sup>51</sup>

27. In response to Xcel's argument regarding NERC reliability standards, GridLiance states that the majority of upgrades in SPP are not constructed because of NERC standards. In response to Xcel's argument that the Oklahoma Asset upgrades were imprudent because they were constructed outside of an Order No. 890 transmission planning process, GridLiance contends that the upgrades were needed for reliability purposes and that GridLiance was not subject to Order No. 890 transmission planning requirements at the time given the Commission's waiver of the requirement for GridLiance to file a tariff. While GridLiance acknowledges that it mistakenly delayed filing its tariff after receiving a request for interconnection service, GridLiance asserts that the upgrades were planned before it was required to file.<sup>52</sup>

28. Tri-County explains that its decision to sell its transmission assets to GridLiance was solely based on reducing transmission costs, increasing reliability, and earning a return on co-owned projects to offset transmission costs. Tri-County states that it was unable to address reliability issues itself and that SPS would not make upgrades to increase reliability for Tri-County.<sup>53</sup> Tri-County also states that the costs of the facilities

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<sup>50</sup> New Mexico Cooperatives Protest at 5; MEAN Protest at 6.

<sup>51</sup> GridLiance October 5, 2018 Answer at 5-7 & n.16.

<sup>52</sup> *Id.* at 6, 8-11.

<sup>53</sup> Tri-County Answer at 2-3.

are in line with industry practice.<sup>54</sup> In response to Xcel's argument that Tri-County's load is decreasing and that therefore the upgrades were unnecessary, Tri-County asserts that any decline in load was attributable to low oil prices and that because oil prices are now increasing, Tri-County expects load to increase as well. Additionally, Tri-County notes that a new casino, proposed gas compression plant, and pork plant refrigeration expansion will increase Tri-County's load and that greater reliability on Tri-County's system will enable it to attract new economic growth.<sup>55</sup>

29. Regarding the question of whether the Oklahoma Assets qualify as transmission assets, SPP, GridLiance, and Tri-County also maintain that there is no requirement for the facilities to meet the Commission's seven-factor test because the Oklahoma Assets satisfy the criteria in Attachment AI of the SPP Tariff and therefore qualify as transmission facilities.<sup>56</sup>

30. With respect to its zonal placement process, SPP asserts that the Commission should not entertain any arguments raised by protesters regarding that process that the Commission has previously rejected.<sup>57</sup> Similarly, Golden Spread requests that the Commission continue to review zonal placement proposals on a case-by-case basis. Golden Spread asserts that rejecting SPP's filing on the grounds that SPP's zonal placement process is not in its Tariff could limit the ability of entities to become new transmission owners in SPP. Specifically, Golden Spread contends that incumbent transmission owners seek to replace SPP's independent process with their own more onerous process that includes scrutiny of assets that does not apply to the incumbents.<sup>58</sup> GridLiance states that SPP's zonal placement process was transparent and involved multiple meetings and information exchanges among SPP, GridLiance, and Xcel regarding zonal placement, rate impacts, and the cost and configuration of the facilities. GridLiance contends that the information SPP provided regarding the facilities being

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<sup>54</sup> *Id.* at 5.

<sup>55</sup> *Id.* at 5-6.

<sup>56</sup> SPP Answer at 10-12; GridLiance/Tri-County October 10, 2018 Answer at 3.

<sup>57</sup> SPP Answer at 3-7 (citing *Indicated SPP Transmission Owners v. Sw. Power Pool, Inc.*, 162 FERC ¶ 61,213, *reh'g denied*, 165 FERC ¶ 61,005 (2018); Opinion No. 535, 149 FERC ¶ 61,051).

<sup>58</sup> Golden Spread Answer at 3-5.

transferred and rate impacts is consistent with what it has provided in other zonal placement proceedings.<sup>59</sup>

31. SPP states that, pursuant to its zonal placement process criteria, it determined that the Oklahoma Assets and ATRR do not have sufficient size or scope to merit their own transmission pricing zone. SPP states that it further determined that placing the Oklahoma Assets in Zone 11 is appropriate because the Oklahoma Assets only interconnect with an SPP transmission owner in Zone 11 and the load associated with the Oklahoma Assets is currently located in Zone 11 and served by Zone 11 transmission service.<sup>60</sup>

32. With respect to its analysis of the effect on rates of placing the Oklahoma Assets in Zone 11, SPP contends that its rate impact analysis does not influence its zonal placement decisions and that any perceived lack of rate impact information does not make SPP's filing deficient.<sup>61</sup> GridLiance asserts that if the Oklahoma Assets were placed in a new transmission pricing zone, there would still be a cost shift because Tri-County would no longer be a Zone 11 transmission customer or pay Zone 11 rates, leading to an increase in Zone 11 rates.<sup>62</sup>

33. GridLiance and Tri-County also address the benefits that they argue the Oklahoma Assets provide. GridLiance asserts that the relatively minor rate impacts that result from placing the Oklahoma Assets in Zone 11 are just and reasonable based on the benefits the facilities will provide the SPP region. GridLiance adds that these benefits include allowing Tri-County to avoid paying pancaked rates, enhancing competition by expanding the Regional Transmission Organization (RTO)/ Independent System Operator (ISO), enhancing competition by increasing transmission ownership by independent transmission companies, and allowing for more efficient and cost-effective transmission planning by increasing the facilities considered in SPP's transmission planning processes. Additionally, GridLiance contends that placing the Oklahoma Assets in Zone 11 will further Commission policy goals, such as promoting participation in RTOs/ISOs, promoting transmission company ownership of transmission facilities, increasing participation of public power in SPP transmission planning, and amplifying the voice of

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<sup>59</sup> GridLiance October 5, 2018 Answer at 21-22.

<sup>60</sup> SPP Answer at 7-9.

<sup>61</sup> *Id.* at 9-10.

<sup>62</sup> GridLiance October 5, 2018 Answer at 23.

cooperative and public power utilities in the regional transmission planning process.<sup>63</sup> Tri-County asserts that the Oklahoma Assets provide benefits to Zone 11 because they meet the requirements under Attachment AI of the SPP Tariff. Additionally, Tri-County maintains that GridLiance's upgrades have allowed Tri-County to more safely perform maintenance and replace equipment and avoid service interruptions.<sup>64</sup>

34. Additionally, GridLiance asserts that Xcel and other incumbent transmission owners in SPP are attempting to block new entry and limit nonincumbents' transmission expansion opportunities.<sup>65</sup> GridLiance requests that the Commission accept SPP's filing without modification and without setting this proceeding for hearing and settlement procedures. GridLiance asserts that any issues of material fact would be best addressed through hearing and settlement procedures.<sup>66</sup>

35. In response to GridLiance's assertion that it upgraded the Oklahoma Assets to address reliability issues, Xcel states that GridLiance provides no evidence showing that reliability was a concern nor does it explain how the level of reliability was not comparable to other SPP transmission owners.<sup>67</sup> Xcel also argues that SPP and GridLiance did not provide any facility-by-facility analysis explaining why the Oklahoma Assets meet the requirements of Attachment AI of the SPP Tariff.<sup>68</sup> Additionally, Xcel states that even though GridLiance has a formula rate, it must still demonstrate that the inputs into the formula rate are just and reasonable and that the transmission plant in rate base was prudent.<sup>69</sup>

36. In response to Xcel's answer, GridLiance states that the criteria in Attachment AI of SPP's Tariff were developed so that a facility-by-facility analysis would not be necessary and that applying additional criteria would be inconsistent with the SPP Tariff,

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<sup>63</sup> *Id.* at 15-16.

<sup>64</sup> Tri-County Answer at 4-5.

<sup>65</sup> GridLiance October 5, 2018 Answer at 3-4.

<sup>66</sup> *Id.* at 1, 24; GridLiance October 23, 2018 Answer at 4-5.

<sup>67</sup> Xcel Answer at 4, 11.

<sup>68</sup> *Id.* at 10-11.

<sup>69</sup> *Id.* at 19.

unduly discriminatory, and a collateral attack on the Commission's approval of Attachment AI.<sup>70</sup>

### **C. Commission Determination**

37. 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.

38. 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 November 1, 2018, subject to refund, and set them for hearing and settlement judge procedures.

39. 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>71</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>72</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.

40. 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

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<sup>70</sup> GridLiance October 23, 2018 Answer at 3.

<sup>71</sup> 18 C.F.R. § 385.603 (2018).

<sup>72</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>).

prior approval of formula rates.<sup>73</sup> However, to the extent that parties at the hearing can show the relevance of additional information needed to evaluate the proposal, the Administrative Law Judge can provide for appropriate discovery of such information.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted and suspended for a nominal period, to become effective November 1, 2018, as requested, subject to refund, as discussed in the body of this 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 (2018), 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 discussion 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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<sup>73</sup> See, e.g., October 2015 Order, 153 FERC ¶ 61,099 at P 141; *Xcel Energy Transmission Development Co., LLC*, 149 FERC ¶ 61,181, at P 54 (2014).

(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. Commissioner McIntyre is not voting on this order.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.