

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Xcel Energy Services, Inc.

Docket No. ER08-313-000

ORDER ACCEPTING AND SUSPENDING PROPOSED FORMULA RATES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 5, 2008)

1. On December 7, 2007, Xcel Energy Services, Inc. (Xcel) filed revised tariff sheets on behalf of Southwestern Public Service Company (SPS). The revised tariff sheets implement a transmission cost of service formula rate for transmission services over the transmission facilities of SPS.¹ In this order, we conditionally accept the revised tariff sheets, suspend the proposed rates for five months, to become effective July 6, 2008, and establish hearing and settlement judge procedures.

I. Background

2. On December 7, 2007, Xcel filed with the Commission under section 205 of the Federal Power Act (FPA)² a new Attachment O-Southwestern Public Service Company (Attachment O) to Xcel's Open Access Transmission Tariff (OATT). The revised tariff sheets implement a transmission cost of service formula rate for transmission services over the SPS transmission facilities. SPS states that it currently recovers its transmission costs under stated rates,³ and that it is proposing to move from stated rates to a formula rate in order to facilitate a major transmission expansion program that SPS expects to begin in 2008.⁴

¹ Cover Letter at 1.

² 16 U.S.C § 824d (2000).

³ Cover Letter at 1. *See Xcel Energy Services, Inc.*, 115 FERC ¶ 61,011 (2006).

⁴ Cover Letter at 1.

3. SPS states that it is basing the components of the proposed formula rate in Attachment O on FERC Form No. 1 costs for the previous year, plus projected capital additions for the current year. The formula rate contains a true-up mechanism that reflects any differences from actual costs during the rate period in an adjustment (with interest) in the next rate period.

4. SPS further states that Attachment O includes placeholders that will allow future recovery of certain incentive-based rate treatments under Order No. 679,⁵ such as increased returns on equity (ROE), recovery of Construction Work in Progress (CWIP) in rate base, and recovery of abandoned plant. SPS notes that in this filing it is *not* seeking to recover any incentive-based rate treatments, other than a 50 basis point ROE adder for participation in a Regional Transmission Organization (RTO). SPS states that it will maintain a value of zero in the placeholders until it receives separate Commission approval under section 205 of the FPA to populate the placeholders with costs.⁶

5. SPS asks that the Commission accept the tariff sheets without suspension, or with a nominal suspension, to become effective February 1, 2008.⁷

A. Description of Xcel and SPS

6. Xcel states that it is a public utility holding company that is organized around four utility operating companies including SPS. SPS states that it is engaged in, *inter alia*, the generation, purchase, transmission, distribution, and sale of electric energy in portions of Texas, New Mexico, Oklahoma and Kansas. SPS states that it is a transmission-owning member of the Southwest Power Pool (SPP), which is a Commission-approved RTO.⁸

7. SPS notes that, since June of 2000, SPP has provided transmission service over its transmission system under the SPP Regional Open Access Transmission Tariff (SPP Regional OATT).⁹ SPS states that Attachment H of the SPP Regional OATT reflects the

⁵ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on rehearing and clarification*, 119 FERC ¶ 61,062 (2007).

⁶ Cover Letter at 2.

⁷ *Id.*

⁸ The Commission approved the transfer of functional control of SPS facilities (69 kV and above) to the SPP in *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

⁹ Cover Letter at 4.

annual transmission revenue requirement (ATRR) for each SPP pricing zone, and that, until now, SPS has recovered its ATRR through stated rates.¹⁰

B. SPS's Transmission Expansion Program

8. SPS states that it is undertaking a major transmission expansion program to increase its ability to provide transmission services and to maintain and improve reliability on its transmission system. SPS asserts that, to accommodate load growth, it has planned several large transmission expansion projects to add capacity to its system so that it can continue to reliably serve new loads and increasing existing loads. Accordingly, SPS plans to invest about \$291 million in capital additions to its transmission system over the next five years, including \$166 million on four large transmission expansion projects in northern Texas, Oklahoma, and New Mexico.¹¹

9. SPS asserts that it plans to expand its transmission system even more over a longer planning horizon to accommodate growing load, as well as additional wind generation.¹² As noted above, SPS is proposing to adopt a formula rate in Attachment O in order to facilitate the construction of new transmission.¹³

C. The Proposed Formula Rate

10. The formula rate in Attachment O has three components: first, a calculation of the ATRR and the resulting rate that SPS proposes to charge for network integration transmission service (NITS) in the SPS zone; second, worksheets detailing various line-item calculations detailing the break-out of specific costs that the formula rate contains; and, third, formula rate implementation procedures describing how SPS will update the formula in future years.¹⁴ These procedures also explain what the review procedures are, how customer challenges will be resolved, and how any changes to the annual rate restatements will be implemented.

11. In the formula rate, SPS proposes to use actual cost data from the prior year SPS FERC Form No. 1, plus projected current year capital additions, with a true-up beginning on July 1 of each year, after the FERC Form 1 data becomes available for the prior year. SPS will use the net annual transmission revenue requirement for network transmission service that the formula produces, together with the prior year's zonal 12 coincident peak (12-CP) load to calculate rates for point-to-point service.

¹⁰ *Id.*

¹¹ *Id.* at 1, 4-5.

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *Id.* at 6; Verified Statement of Heintz (Attachment 2) at 5.

12. SPS is seeking an ROE of 12.7 percent (12.2 percent base with a 50 basis point adder for continued participation in the SPP RTO).¹⁵ The formula includes placeholders for the future recovery of transmission rate incentives, such as inclusion of 100 percent CWIP in rate base, accelerated depreciation, and recovery of plant abandoned for reasons outside of the transmission owner's control, should the Commission, in future proceedings, grant SPS those incentives pursuant to Section 219 of the FPA and the Commission's Order No. 679.¹⁶

13. For the present, SPS will maintain a value of zero in these placeholders in the formula rate.¹⁷ SPS is not seeking Commission approval in this filing to recover under the formula rate any costs associated with incentive-based rate treatments for any specific projects.¹⁸

14. SPS is excluding from the formula the costs of certain radial lines. It intends to assign the costs of these radial lines directly to the applicable customers through the use of an annual carrying charge.¹⁹

15. SPS's proposed formula rate also includes a meter charge. SPS is proposing to move the delivery point meter costs from the production rate to the transmission rate. The meter charge will be cost-based and assessed to each customer based on the number of delivery points the customer has on the SPS system. SPS intends to assign each customer the cost of each meter that SPS uses to measure the electric energy that the customer transmits.²⁰ The meter charge is \$93 per delivery point per month.

16. In the formula rate, SPS intends to use blended depreciation rates based on a blending of different retail and wholesale transmission depreciation rates, depreciation reserve balances and depreciation expenses.²¹

17. SPS states that it will make its cost estimates under the formula rate and the supporting data available to its customers by May 25 of each year and will hold a meeting

¹⁵ *Id.* at 7-9.

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 10-11.

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 11. *See* Cap Rock Energy Corporation Motion to Intervene at 11.

²⁰ *Id.* at 11-12.

²¹ *Id.* at 12.

with customers to discuss the cost estimates no later than June 25 of each year. Under SPS's proposed schedule, the new rates would go into effect on July 1 of each year.²²

18. The formula rate contains a true-up mechanism under which SPS will incorporate into the next Attachment O formula rate calculation any difference between SPS's projected and actual revenue requirement in a given year. The true-up amount will include interest at the Commission's required interest rate under 18 C.F.R. § 35.19a (2007). SPS proposes that the initial true-up of over-or-under recoveries take effect on July 1, 2009.

19. SPS seeks waiver of the Commission's 60-day prior notice requirement to achieve an effective date of February 1, 2008.²³

20. SPS estimates that for the initial period of the formula rate, February 1, 2008 through June 30, 2008, its annual transmission revenue requirement would increase from \$65.5 million to \$80.5 million or by \$15 million.²⁴

21. In addition to waiver of the Commission's prior notice requirement, SPS seeks the following waivers: (a) waiver of the requirement to file full Period I and Period II data; (b) waiver of the requirement of attestation; and (c) waiver of requirement to determine whether the filing constitutes a rate increase.²⁵

II. Notice of Filing and Responsive Pleadings

22. Notice of Xcel's filing was published in the Federal Register,²⁶ with interventions and protests due on or before December 28, 2008. On December 27, 2007, Kansas City Power & Light Company filed a motion to intervene in this proceeding. On December 28, 2007, West Texas Municipal Power Agency (WTMPA), Golden Spread Electric Cooperative, Inc. (Golden Spread), Tri-County Electric Cooperative, Inc. (Tri-County), Occidental Permian Ltd. and Occidental Power Marketing, L.P. (Occidental) and New Mexico Cooperatives²⁷ filed motions to intervene and protests. On January 7, 2008, Arkansas Electric Cooperative Corporation (Arkansas Electric) filed a motion to

²² *Id.* at 12-13.

²³ *Id.* at 13, 16.

²⁴ *Id.*

²⁵ *Id.* at 17.

²⁶ 72 Fed. Reg. 71,885 (2007).

²⁷ New Mexico Cooperatives consists of Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc.

intervene out of time. On January 8, 2007, Cap Rock Energy Corporation (Cap Rock) filed a motion to intervene out of time. On January 11, 2008, Southwest Power Pool (SPP) filed a motion to intervene out of time. On January 14, 2008, SPS filed an answer to protests (Answer). On January 29, 2008, New Mexico Cooperatives filed an Answer to the Answer.

III. Protests

23. Intervenors raise several concerns about SPS's proposed formula rate including: (a) whether SPS has correctly characterized the data that forms the basis for its formula rate calculation; (b) whether SPS's proxy group reflects SPS's risk profile; (c) whether SPS should use in its calculation of rate base 13-month balances rather than year-end rate base; (d) whether SPS's proposed formula contains a temporal mismatch between load and projected costs that will allow SPS to systematically over-recover costs; (e) whether SPS has supported its proposed reclassification of transmission facilities; (f) whether SPS has adequately described the land held for future use, the cost of which it intends to include in the rate base in its formula rate; (g) whether the proposed meter charge will lead to double recovery; (h) whether SPS has provided sufficient information to ensure that it will include all transmission network load in the formula rate divisor; (i) whether, under the formula rate, wholesale customers will subsidize benefits that accrue to retail load; (j) whether SPS has correctly accounted for certain costs, such as industry association dues, accumulated depreciation and depreciation expense, accumulated deferred income taxes, transmission operations and maintenance expense, rents, and revenue derived from point-to-point transmission; (k) whether SPS's proposed customer-protection processes are adequate; (l) whether the Commission should require annual informational filings; (m) whether the provisions for discovery under the formula rate are adequate; (n) whether the Commission should waive its prior notice requirement; and (o) whether the proposed rate increase will be sufficiently excessive to warrant a five-month suspension.

A. Data Included in the Formula

24. Golden Spread asserts that substantial elements of the formula rate rely on data that SPS does not report on FERC Form No. 1.²⁸ Also, Golden Spread asserts that the direct assignment of radial line facilities depends upon a filing that SPS has yet to make with the Commission.²⁹ Golden Spread argues that the Commission should not allow SPS to file a formula rate with incomplete support.³⁰

²⁸ Golden Spread Protest at 6-7.

²⁹ Golden Spread Protest at 7-8. *See* Transmittal Letter at 11.

³⁰ Golden Spread Protest at 8.

25. In its answer, SPS responds that the most reasonable and efficient way to address these issues concerning data used in the formula rate and ATRR calculations is through settlement discussions among SPS and the interested parties, including FERC Staff.³¹

B. Proxy Group

26. WTMPA and Golden Spread argue that the inclusion in SPS's proxy group of utilities that are located outside of the SPP RTO is contrary to Commission precedent, which requires that, absent a compelling showing in favor of including other companies, the proxy group should include only those companies with a direct link to the RTO in which the company under consideration is located. WTMPA and Golden Spread contend that SPS has not made a compelling showing for including other companies outside of the SPP RTO in its proxy group and that the SPP RTO has sufficiently diverse utilities within its footprint to support a proxy group of companies comprised of utilities with transmission assets in SPP.³²

27. WTMPA and Golden Spread further argue that MISO and PJM are not sufficiently similar to SPP to include transmission owners in those RTOs in a proxy group for an entity operating exclusively within the SPP RTO.³³ They note that MISO and PJM have been operating centralized markets for years, while SPP is just beginning to operate a centralized market.³⁴ Also, according to WTMPA, Tri-County and Golden Spread, it would be particularly inappropriate to include transmission owners in PJM in a proxy group for SPS's ROE, because: (a) PJM is not directly linked to SPP; (b) PJM's markets are distant from SPP; and (c) several of the companies in PJM, such as Constellation, Exelon, P S Enterprise Group, and PPL, are predominantly unregulated, competitive generation and marketing entities, so their business profiles are unlike SPS's business model.³⁵

28. Additionally, Golden Spread argues that the requested ROE is excessive. Golden Spread maintains that a properly-calculated DCF analysis would support a 9.6 percent

³¹ Answer at P 5.

³² WTMPA protest at 5, 9-12, citing *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at P 79 (2007) (*Commonwealth Edison*); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, order on reh'g, 121 FERC ¶ 61,009 (2007) (*Trans-Allegheny*); Golden Spread Protest at 14-15.

³³ WTMPA Protest at 9; Golden Spread Protest at 14-15.

³⁴ *Id.*

³⁵ WTMPA Protest at 12. See also Golden Spread Protest at 15-21; Tri-County Protest at 3.

ROE, rather than the 12.7 percent ROE requested.³⁶ Golden Spread argues that the base ROE should be the median cost of equity results calculated for SPS's TO Proxy Group, as properly constituted with companies of comparable risk. According to Golden Spread, that median is 9.1 percent.³⁷ Golden Spread contends that, allowing a 50 basis point incentive for membership in an RTO, the resulting, properly-calculated ROE is 9.6 percent, which is roughly 30 percent lower than the ROE requested, and would result in an annual transmission revenue requirement of \$10.4 million, or 69 percent of the requested increase.³⁸

29. Golden Spread submits that SPS's risk will decrease when it converts from stated, fixed transmission rates to formula rates that virtually eliminate the uncertainty regarding recovery of costs and regulation of profits by virtue of an annual true-up that will ensure collection of prudently incurred actual costs, including the cost of common equity.³⁹

30. Golden Spread further argues that the Commission should give significant weight to the mid-point of the range of ROE for SPS's parent company, Xcel Energy, which is 9.3 percent. According to Golden Spread, the 9.3 midpoint for the ROE of SPS's parent company corroborates the reasonableness of a 9.1 (9.6 with 50 basis point RTO adder) ROE for SPS.⁴⁰

31. Golden Spread notes that SPS's proxy group contains companies located as far away from SPS and the SPP RTO as Hawaii, California, and New Mexico.⁴¹ Golden Spread further argues that several of the companies that SPS uses as proxy companies for SPS have risk, especially from unregulated and often foreign-based business ventures, that are substantially different from and higher than the risk that SPS faces in its domestic transmission enterprise.⁴²

³⁶ Golden Spread Protest at 8.

³⁷ *Id.* at 8-9, 20-24.

³⁸ *Id.*; *see also* New Mexico Cooperatives Protest at 11.

³⁹ Golden Spread Protest at 10; *see also* New Mexico Cooperatives Protest at 10-11.

⁴⁰ Golden Spread Protest at 10-11.

⁴¹ *Id.* at 21.

⁴² *Id.* at 15-21; *see also* New Mexico Cooperatives Protest at 10-11.

32. Golden Spread asks for a maximum, five-month suspension, under the Commission's *West Texas* rule.⁴³ Golden Spread further asks that the Commission order a hearing on these ROE issues.⁴⁴

33. In its answer, SPS asserts that Commission precedent does not require SPS to use an SPP-only proxy group; rather, the Commission has upheld proxy groups with utilities located in a different region than the applicant.⁴⁵ SPS further states that the Commission has previously recognized that small proxy groups are more likely to yield less reliable results than larger proxy groups.⁴⁶

34. With regard to suspension, SPS responds that the Commission should only impose a nominal suspension. SPS asserts that a maximum suspension sends the wrong signal to the industry about the Commission's desire for transmission expansion.⁴⁷

C. Expected Earnings Method and Capital Asset Pricing Model

35. Golden Spread argues that the Commission should reject SPS's use of an expected earnings method and capital asset pricing model (CAPM), because they do not conform to the Commission's preferred one-step DCF analytical method for determining a proper ROE.⁴⁸ Golden Spread states that the Commission has consistently rejected the use of CAPM, finding it inadequate in determining the allowed ROE for electric utilities.⁴⁹ Golden Spread also notes that the Commission has recently reaffirmed, in Order No. 679,

⁴³ Golden Spread Protest at 23, *citing West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

⁴⁴ *Id.* at 24.

⁴⁵ Answer at 19, *citing Bangor Hydro Electric Co.*, 117 FERC ¶ 61,129 at P8 (2006), *Southern California Edison Co.*, 92 FERC ¶ 61,070 (2000), and *Consumers Energy Co.*, 98 FERC ¶ 61,333 at 62,411-12 (2002).

⁴⁶ Answer at 19-20.

⁴⁷ Answer at 15.

⁴⁸ Golden Spread Protest at 11, *citing Southern California Edison Co.*, 92 FERC ¶ 61,070 at p. 61,260-263 (2000); *System Energy Resources, Inc.*, Opinion No. 446, 92 FERC ¶ 61,119 at 61,446 (2000); *New York State Electric & Gas Corp.*, Opinion 447, 92 FERC ¶ 61,169 (2000); *Allegheny Power*, Opinion No. 469, 106 FERC ¶ 61,241 (2004), *reh'g denied*, Opinion No. 469-A, 108 FERC ¶ 61,151 (2004), *dismissed in part, vacated in part and remanded, Allegheny Power v. FERC*, 437 F.3d 1219 (D.C. Cir. 2006).

⁴⁹ *Id.* at 12, *citing Consumers Energy Co.*, Opinion No. 429, 85 FERC ¶ 61,100 at 61,361-362 (1998).

its long-standing preference for the one-step DCF analysis in determining the appropriate ROE for electric utility companies, stating that “[o]ur past practice of using the DCF approach has yielded just and reasonable results and is consistent with long-standing ratemaking principles.”⁵⁰

36. In its answer, SPS responds that, although it relied primarily on the DCF methodology, it also demonstrated that the CAPM and the expected earnings method also support its recommended ROE. In its answer, SPS further states that it has made a reasonable estimate of its base ROE, and has properly applied the Commission’s preferred one-step DCF analysis for determining the cost of common equity.⁵¹

D. Rate Base Calculation

37. WTMPA and Golden Spread contend that SPS’s use of year-end rate base contravenes Commission policy, which requires an average of 13 monthly balances. WTMPA and Golden Spread submit that the Commission’s use of 13 monthly balances more accurately indicates the rate base in actual use during the year, because transmission investment tends to be lumpy rather than uniform, reflecting the additions of a few large projects at specific times, rather than an even addition to transmission facilities throughout the year.⁵²

38. WTMPA and Golden Spread note that while, beginning July 1, 2008, SPS will recover its 2007 Form 1 costs plus estimated 2008 transmission investments, the divisor for the rate will be based on 2007 load data. They argue that, as load is growing in SPS, the divisor will be too small relative to the projected 2008 costs that SPS seeks to recover. As a result they argue that, year in and year out, so long as load grows, SPS will systematically over-recover its costs.⁵³

39. Golden Spread and New Mexico Cooperatives note that the true-up mechanism rolls forward any discrepancy between recovery and actual cost into the next year. They argue that the true-up mechanism delays the refund of over-collected monies and leaves open the potential that those who recover the over-collections will not always be those

⁵⁰ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs., ¶ 31,222, at P 102 (2006), *order on reh’g*, Order No. 679-A, FERC Stats. & Regs., ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007) (Order No. 679).

⁵¹ Answer at 18.

⁵² WTMPA Protest at 17-18, *citing American Electric Power Service Corp.*, 121 FERC ¶ 61,245 at P 12 (2007). *See also* Golden Spread Protest at 27-28.

⁵³ WTMPA Protest at 18; Golden Spread Protest at 28-29, 37. *See also* Tri-County Protest at 4.

who paid them.⁵⁴ WTMPA and Golden Spread assert that the Commission should either require SPS to use projected load as the divisor, when calculating the rate, or provide that refunds in the annual true-up include interest at SPS's overall cost of capital.⁵⁵

40. SPS responds that the use of thirteen monthly plan balances rather than year-end balances is an issue that should be set for hearing and settlement judge procedures. SPS states that using the year-end balances reported in the FERC Form No. 1, rather than the average of thirteen monthly balances, to determine transmission plant in service is reasonable for a formula rate like the one proposed by SPS because it is a hybrid formula rate that uses both historical costs and projected costs.⁵⁶

E. Reclassification of Transmission Facilities

41. WTMPA and Golden Spread contend that SPS has not supported its reclassification of transmission facilities.⁵⁷ They submit that it is unclear from SPS's filing whether SPS is removing the correct facilities (generator step-up facilities and radial lines) from SPS's transmission rate base. Golden Spread contends that SPS's explanation of its identification of the reassignment of radial lines lacks any testimonial support, source data, or reference to loads studied in making the reassignment determinations.⁵⁸ WTMPA and Golden Spread argue that further information and analysis is necessary before the Commission can determine whether SPS is reclassifying the appropriate facilities.⁵⁹

42. New Mexico Cooperatives state that SPS's filing provides no data identifying which radial lines are serving which customers.⁶⁰ Golden Spread notes that it appears that SPS assigns the same transmission facilities to both wholesale and retail loads.⁶¹ Golden Spread and Tri-County also argue that SPS has provided insufficient information to ensure that it will include all transmission network load in the formula rate divisor.⁶²

⁵⁴ Golden Spread Protest at 29; New Mexico Cooperatives Protest at 13. *See also* Tri-County Protest at 5.

⁵⁵ WTMPA Protest at 19.

⁵⁶ Answer at 9-10.

⁵⁷ WTMPA Protest at 20; Golden Spread Protest at 40-54.

⁵⁸ Golden Spread Protest at 42. *See also* New Mexico Cooperatives Protest at 7-8.

⁵⁹ WTMPA Protest at 20-21; Golden Spread Protest at 54.

⁶⁰ New Mexico Cooperatives Protest at 7, referencing Ex. XES-8-Worksheet K.

⁶¹ Golden Spread Protest at 50

⁶² Golden Spread Protest at 33-35; Tri-County Protest at 4.

43. SPS responds that no party has stated that SPS should have eliminated from transmission rates additional lines or facilities that no longer meet the definition of Transmission Facilities. SPS states that the parties argue that the costs of certain radial lines that have been excluded from transmission rates should remain in transmission rates and should not be directly assigned to specific customers. SPS asserts that if it did remove costs of radial lines that should remain classified as Transmission Facilities, the effect would be that the transmission rates under the proposed formula rate are too low, not too high.⁶³

F. Land Held for Future Use

44. WTMPA submits that the description “various” plant that SPS expects to use in transmission projects is an insufficient description of the property that SPS is including in the rate base portion of its formula rate.⁶⁴ WTMPA asks the Commission to direct SPS to describe the land that it is including in rate base and indicate definitive plans for its future use in transmission-related projects.⁶⁵

G. Meter Charge

45. Golden Spread, Tri-County, and New Mexico Cooperatives note that SPS currently collects its meter charge as part of its production costs.⁶⁶ They argue that, until SPS realigns its production cost recovery to remove the meter charge, SPS’s proposal to recover a meter charge in transmission rates will lead to double recovery.⁶⁷ They ask the Commission to reject the proposed recovery of a meter charge in transmission rates until SPS removes this charge from its collection of its production costs.⁶⁸

46. SPS agrees that it should not be allowed to double recover meter costs in both transmission rates and production rates charged to particular customers. SPS states that issues regarding potential double recovery of meter costs for particular customers could more appropriately be resolved through settlement discussions.⁶⁹

⁶³ Answer at 26-27.

⁶⁴ WTMPA Protest at 21-22.

⁶⁵ *Id.* at 22.

⁶⁶ Golden Spread Protest at 24; Tri-County Protest at 4; New Mexico Cooperatives Protest at 8.

⁶⁷ Golden Spread Protest at 24-25; Tri-County Protest at 4; New Mexico Cooperatives Protest at 8.

⁶⁸ *Id.*

⁶⁹ Answer at 14.

H. Accounting

47. WTMPA and Golden Spread contend that SPS has incorrectly accounted for certain costs, such as industry association dues, accumulated depreciation and depreciation expense, accumulated deferred income taxes, transmission operations and maintenance expense, rents, and revenue derived from point-to-point transmission.⁷⁰

48. SPS responds that its proposed formula rate uses the FERC-approved depreciation rate. SPS further states that it has included only accumulated deferred taxes for the FERC wholesale jurisdiction in the proposed formula rate. SPS asserts that for book purposes, the pension plan expense accrual is based on an actuarial estimate. SPS states that for tax purposes, only actual payments (funding) made to the pension trust are deductible. SPS further states that the only rent revenues recorded were associated with Distribution and Administrative & General facilities.⁷¹

I. Potential Cross-subsidization

49. Golden Spread and Tri-County note that, according to SPS, about 64 percent of SPS's load is retail load, which does not take service either under the Xcel Energy OATT or the SPP Regional OATT. Intervenors maintain that many of the transmission improvements that transmission customers will be paying for under the formula rate also provide benefits to retail load, which will pay nothing for them, as retail customers do not participate in the formula rate. Golden Spread and Tri-County argue that this is inherently unduly discriminatory and preferential, particularly because there is no indication that SPS will, in the near future, implement any similar type of forward-looking formula rate to its retail load and cause that load to shoulder its share of the cost for transmission improvements.⁷²

50. New Mexico Cooperatives state that the divisor that SPS uses in its formula does not appear to include contract reservations for point-to-point service. New Mexico Cooperatives argue that, if the divisor lacks such reservations, the formula would under-allocate costs to point-to-point service and overstate network service rates.⁷³

⁷⁰ WTMPA Protest at 22-26; Golden Spread Protest at 26-27.

⁷¹ Answer 28-31.

⁷² Golden Spread Protest at 39; *see also* Tri-County Protest at 4.

⁷³ New Mexico Cooperatives Protest at 12-13.

J. Consumer Protection Process

1. Informational Filings

51. WTMPA maintains that SPS's proposed consumer-protection processes are inadequate. It asks the Commission to require informational filings of SPS's annual rate updates, especially because, according to WTMPA, the exceptions to the Form 1 cost data that SPS includes in its formula rate require the completion of 14 complex worksheets.⁷⁴ WTMPA further asks the Commission to direct SPS to present sufficiently detailed, timely information to allow customers to verify SPS's calculations before its rates go into effect. WTMPA says that it would be particularly appropriate to provide this information in this case, because SPS's proposed formula rate would recover a combination of prior calendar year costs and current calendar year capital additions.⁷⁵

52. WTMPA asks the Commission to require the following information on May 1 of each year *i.e.*, one month before the June customer meeting:

SPS shall make available to customers information regarding the portion of the revenue requirement associated with capital additions made or to be made in the current calendar year. Such information shall include, but shall not be limited to, workpapers regarding costs and/or projected costs of plant added or to be added in the current calendar year, expected construction schedules and in-service dates, and a description of the basis on which SPS or the transmission provider planned the projects. The workpapers shall include all elements of the formula rate in sufficient detail to identify the components of SPS's revenue requirement.⁷⁶

Golden Spread and Tri-County also ask the Commission to require an annual informational filing regarding the annual update of the formula rate.⁷⁷

53. SPS responds that it may be willing to agree to revise the proposed formula rate to add a requirement for some form of annual notice or filing with the Commission, provided that the requirement is properly crafted and limited to make clear that it is not a

⁷⁴ WTMPA Protest at 27-28. WTMPA cites *Idaho Power Co.*, 115 FERC ¶ 61,281 at P 29 (2006); *Trans-Allegheny*, 119 FERC ¶ 61,219 at P 59 (2007).

⁷⁵ *Id.* at 28-30. WTMPA cites *Michigan Electric Transmission Co. LLC*, 119 FERC ¶ 61,203 at P 9 (2007); *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 70 (2007).

⁷⁶ *Id.* at 30.

⁷⁷ Golden Spread Protest at 56-57 citing *Idaho Power Co.*, 115 FERC ¶ 61,281, at P 29 (2006); Tri-County Protest at 5.

filing under FPA section 205 with public notice and docketing every year. SPS asserts that, absent such limitations, there is a risk that the annual informational filing could defeat an important benefit of formula rates.⁷⁸

2. Limitation of the Time in Which to File a Complaint

54. WTMPA, Golden Spread and Tri-County object to SPS's proposed limitation of 13 months from publication of the annual update for customers to challenge that update of the formula rate.⁷⁹ They argue that this limitation contravenes the FPA, which places no limitation on the time in which a customer can challenge the application of a formula rate. Moreover, they contend that the FPA sets no time limit on the period during which a company using a formula rate may need to correct its computations and issue refunds accordingly.⁸⁰ Golden Spread notes that the Commission has accepted complaints challenging the application of formula rates reaching back many years and, in some cases, decades.⁸¹

K. Discovery

55. Golden Spread states that section 3.b of the formula rate, as proposed (Original Sheet No. 344 MM), would preclude requests for information regarding costs or allocations that have been the subject of final Commission or court action. Golden Spread argues that this provision is unreasonable, because it would prevent an interested party from seeking information to determine whether changed circumstances regarding a particular cost or allocation had occurred that would warrant revisiting the treatment of that cost or allocation under the formula rate.⁸²

56. WTMPA also asks the Commission to require that SPS's customer protection procedures include the appointment of a neutral third party who would make binding rulings in discovery disputes, so that SPS does not have sole authority to determine which information is "relevant" to the proper implementation of the proposed formula rate.⁸³ WTMPA urges the Commission to require SPS to clarify that customers can use all

⁷⁸ Answer at 13-14.

⁷⁹ WTMPA Protest at 32; Golden Spread Protest at 57-59; Tri-County Protest at 5.

⁸⁰ WTMPA Protest at 32.

⁸¹ Golden Spread Protest at 55-62, *citing Cities and Villages of Albany v. Interstate Power Co.*, 61 FERC ¶ 61,037 (1992); *Public Service Co. of New Hampshire*, Opinion No. 37, 6 FERC ¶ 61,299, *reh'g denied*, 9 FERC ¶ 61,202 (1979); *Seminole Electric Cooperative, Inc. v. Florida Power & Light Co.*, 69 FERC ¶ 61,011 (1994).

⁸² *Id.* at 62.

⁸³ WTMPA Protest at 33-34.

responses to discovery requests in any challenges to the annual update of the SPS formula rate.⁸⁴

57. In its answer, SPS states that it is willing to respond to all reasonable requests for information during the settlement discussions.⁸⁵

L. Waiver of Prior Notice and Suspension Period

1. Waiver of Commission's Prior Notice Requirement

58. WTMPA and Golden Spread oppose SPS's request for the waiver of the Commission's prior notice requirement and ask that the Commission suspend the proposed formula rate for five months.⁸⁶ WTMPA and Golden Spread argue that SPS has failed to demonstrate good cause for waiver of the Commission's prior notice requirement.⁸⁷ Golden Spread asserts that SPS has not given a reason why it could not have filed its proposed formula rate four days earlier, and maintains that the proposed formula rate does not fall into any of the situations in which the Commission will grant waiver of its prior notice requirement.⁸⁸

59. Golden Spread challenges SPS's statement that its customers had actual notice of the proposed formula rate since October 21, 2007, when it appeared on the SPS page of the SPP OASIS. Golden Spread states that all that SPS posted on the SPP OASIS was a one page indication that SPS intended to file a transmission formula rate to become effective February 1, 2008. Golden Spread contends that this announcement gave SPS's customers no notice of what the proposed formula rate would contain when filed with the Commission.⁸⁹ Golden Spread maintains that SPS has not made a plausible demonstration of good cause to waive the Commission's prior notice requirements, much less the strong showing that *Central Hudson* requires.⁹⁰

⁸⁴ *Id.* at 34.

⁸⁵ Answer at 4.

⁸⁶ WTMPA Protest at 35-37.

⁸⁷ Golden Spread Protest at 62-63.

⁸⁸ *Id.* at 62-64, citing *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*); *Xcel Energy Services, Inc.*, 111 FERC ¶ 61,206 at P 20 (2005).

⁸⁹ Golden Spread Protest at 65-66.

⁹⁰ *Id.*

2. Suspension Period

60. WTMPA, Golden Spread and Tri-County argue that the proposed formula rate would result in a rate that is more than a ten percent increase as compared with prior rates; they request a suspension of five months.⁹¹ Golden Spread and WTMPA assert that correcting the requested ROE to conform to Commission precedent would reduce the requested annual transmission revenue requirement by more than ten percent.⁹² WTMPA adds that SPS's ATRR is excessive because it improperly includes costs that SPS already recovers through the Schedule 1 ancillary service charge. Additionally, according to Golden Spread, properly assigning radial lines would reduce the requested annual transmission revenue requirement still further.⁹³

61. In its answer, SPS states that it discovered an error in the method for revenue-crediting Schedule 1 revenues under the proposed formula rate. SPS states that it only revenue-credited Schedule 1 revenues from point-to-point transactions, and that it should have included Schedule 1 revenues from network customers as well.⁹⁴ SPS commits to correct this error and adjust its ATRR.

M. Golden Spread's Motion for Partial Summary Disposition

62. In its motion for summary disposition, Golden Spread asks the Commission to require SPS to use 13-month balances in its formula rate; make annual informational filings; and remove the proposed meter charge from production costs. Golden Spread requests hearing on all other elements of the proposed formula rate.⁹⁵

N. New Mexico Cooperatives' Motion to Reject

63. New Mexico Cooperatives argue that SPS's filing lacks sufficient data from which the Commission could adequately analyze the proposed formula rate and determine its probable effect.⁹⁶ New Mexico urges the Commission to reject the filing without prejudice to SPS's re-filing its proposed formula rate with sufficient supporting detail.⁹⁷

⁹¹ Golden Spread Protest at 69; Tri-County Protest at 5; WTMPA Protest at 36.

⁹² Golden Spread Protest at 70-71; WTMPA Protest at 37.

⁹³ *Id.* at 71-72.

⁹⁴ Answer at 27-28.

⁹⁵ Golden Spread Protest at 67-68.

⁹⁶ New Mexico Cooperatives Protest at 6-9.

⁹⁷ *Id.* at 9.

64. In response to New Mexico Cooperatives' Motion to Reject, SPS states that these issues should be addressed during settlement discussions.

IV. Discussion

A. Procedural Matters

65. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

66. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214(d) (2007), the Commission will grant the late-filed motions to intervene of Arkansas Electric, SPP, and Cap Rock, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

67. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2007), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We find that good cause exists in this proceeding to allow SPS's answer because it aids us in our understanding of the issues raised in this proceeding. We are not persuaded to accept the New Mexico Cooperative's answer and will, therefore, reject it.

B. Proposed Formula Rate Filing

68. For the reasons discussed below, we will accept SPS's proposed formula rate, including up to a 50 basis point adder for RTO participation, suspend it for five months, to become effective, subject to refund, on July 6, 2008, and establish hearing and settlement judge procedures. Our preliminary analysis of the components of SPS's proposed formula rate, including its proposed ROE, reclassification of transmission facilities, limitation on the time for filing a complaint with the Commission, and certain other elements of SPS's proposed filing, indicate that these components of the proposed formula have not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will set these, as well as other issues identified below, for hearing.

69. In *West Texas*, the Commission explained that, when its preliminary examination indicates that the proposed rates may be unjust and unreasonable and substantially excessive, as defined in *West Texas*, the Commission will impose a maximum, five month suspension.⁹⁸ In the instant proceeding, our preliminary analysis indicates that the proposed rates may be substantially excessive. SPS's proposed revenue requirement is \$80,526,652, an increase of \$15,026,652, which amounts to a 23 percent increase above

⁹⁸ *West Texas*, 18 FERC ¶ 61,189, at pp. 61,374-75 (1982).

the existing revenue requirement. Therefore, we will accept SPS's filing, as discussed below, suspend it for five months, to become effective July 6, 2008, subject to refund, and set it for hearing and settlement judge procedures.⁹⁹

70. As noted, intervenors raise numerous issues of material fact regarding the reasonableness of the proposed formula rate that we cannot resolve based on the record before us and that are more appropriately addressed in the hearing and settlement procedures that we order below.

C. Specific Findings

1. ROE

71. We will grant up to 50 basis points of incentive ROE for participation in SPP, subject to suspension and the zone of reasonable returns determined at the hearing that we will order below.¹⁰⁰ Our decision to grant SPS an incentive for participation in the SPP RTO is consistent with the stated purpose of section 219 of the FPA¹⁰¹ - that the incentive applies to all utilities joining the transmission organization - and is intended to encourage SPS's continued involvement with SPP.¹⁰² Granting up to 50 basis points of incentive ROE does not imply that SPS would ultimately receive that amount. Nor does granting up to 50 basis points of incentive remove any issue pertaining to the ROE from

⁹⁹ See *Xcel Energy Services, Inc.*, 109 FERC ¶ 61,284 at P 20 (2004); *American Electric Power Service Corp.*, 120 FERC ¶ 61,205, at P 27 (2007), *order on reh'g*, 121 FERC ¶ 61,245, at P 8 (2007); *San Diego Gas & Electric Co.*, 118 FERC ¶ 61,073, at P 39 (2007) (*SDG&E*). Our decision to impose a maximum, five-month suspension period moots SPS's request to waive the Commission's prior notice requirement and allow an earlier effective date.

¹⁰⁰ See, e.g., *SDG&E*, 118 FERC ¶ 61,073 at P 25-26 (2007); *American Electric Power Service Corp.*, 120 FERC ¶ 61,205 at P 34 (2007); *order on reh'g*, 121 FERC ¶ 61,245, at P 4 (2007). We recognize that the amount of the 50 basis point incentive that SPS could receive may exceed the top of the zone of reasonableness that we ultimately adopt in this proceeding after hearing. Accordingly, we grant SPS the full 50 basis point ROE incentive for participation in the SPP RTO only so long as the additional 50 basis points do not result in a final ROE above the zone of reasonableness, as determined in the hearing ordered below. See *SDG&E*, 118 FERC ¶ 61,073 at P 25 & n.30 (2007).

¹⁰¹ 16 U.S.C § 824s (2000 & Supp. V 2005).

¹⁰² See *SDG&E*, 118 FERC ¶ 61,073 at P 26 (2007) (finding that there are considerable benefits associated with a utility's membership in a transmission organization).

consideration during the hearing and settlement procedures. We will set for hearing all aspects of SPS's proposed ROE, including the composition of its proxy group.¹⁰³

2. Placeholders for Other Incentives

72. We will direct SPS, in its formula template, to maintain a value of zero in all incentive placeholders. When SPS applies for authorization to recover incentives, SPS can also apply under section 205 to replace the zero values in the placeholders with the approved amounts.¹⁰⁴ We also direct the parties at hearing to ensure that the formula components, including the placeholders for future incentives, will work as intended and will calculate the incentives correctly when authorized for specific projects. For example, the formula should be able to track incentives for individual projects, because SPS may not obtain approval for incentives for all of the projects that it proposes, and/or may not obtain the same incentives for all projects.¹⁰⁵ With respect to the proposed CWIP incentive, SPS will have to demonstrate in a future filing that it meets the applicable requirements.¹⁰⁶

¹⁰³ *Midwest Independent Transmission System Operator*, 100 FERC ¶ 61,292, at P 12 (2002); *order on reh'g*, 102 FERC ¶ 61,143 (2003), *order on remand*, 106 FERC ¶ 61,302, *aff'd in part and reversed in part sub nom. Public Service Commission of Ky. v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005); *Trans-Allegheny*, 119 FERC ¶ 61,219, at P 40 (2007); *Commonwealth Edison*, 119 FERC ¶ 61,238, at P 77-79 (2007); *Duquesne*, 118 FERC ¶ 61,087, at P 73 (2007).

¹⁰⁴ New Mexico Cooperatives argue that in allowing "zero-value" placeholders for future incentives, we are, in effect, approving those incentives and reversing the burden of proof, since customers could only then challenge the incentives under section 206 of the FPA, 16 U.S.C. § 824e (2000). New Mexico Cooperatives Protest at 14. New Mexico Cooperatives are incorrect. In permitting the placeholders for future incentives, we are not prejudging the outcome of SPS's future requests for authorization for such incentives. To obtain these incentives, SPS will have to meet its burden under section 205 of the FPA, 16 U.S.C. § 824d.

¹⁰⁵ *See American Electric Power Service Corp.*, 120 FERC ¶ 61,205, at P 36 (2007), *order on reh'g*, 121 FERC ¶ 61,242 (2007); *SDG&E*, 118 FERC ¶ 61,073, at P 23 (2007); *Arizona Public Service Co.*, 120 FERC ¶ 61,262, at P 26 (2007).

¹⁰⁶ *Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, 48 *Fed. Reg.* 24,323, *FERC Statutes and Regulations, Regulations Preambles 1982-1985* ¶ 30,455 at p. 30,534, *order on reh'g*, Order No. 298-A, 48 *Fed. Reg.* 46,012, *FERC Statutes and Regulations, Regulations Preambles 1982-1985* ¶ 30,500, *order on reh'g*, Order No. 298-B, 48 *Fed. Reg.*, 55,281, *FERC Statutes and Regulations, Regulations Preambles 1982-1985* ¶ 30,524 (1983).

3. Expected Earnings Method and Capital Asset Pricing Model

73. As noted earlier, SPS asserts that it supported its recommended ROE using the CAPM and the Expected Earnings Method while making a reasonable estimate of its base ROE using the Commission's preferred one-step DCF analysis. We have recently reaffirmed our preference for the one-step DCF analysis in determining the appropriate ROE for electric utility companies¹⁰⁷ and believe that SPS's departure from that method of analyzing an appropriate return on equity in its formula rate is unlikely to produce a just and reasonable result.¹⁰⁸

4. Matters Set For Hearing

74. We are setting for hearing all issues that SPS' filing raises, including the following: (a) the use of a year-end rate base, in lieu of 13 monthly balances; (b) the reclassification of transmission facilities, especially its reclassification of radial lines; (c) whether and how the formula rate divisor will include all transmission network load; (d) the placing of a proposed meter charge in a transmission rate; (e) the method of filing Annual Updates to its formula rate; (f) section 3.b of the formula rate, as proposed (Original Sheet No. 344 MM), which precludes requests for information regarding costs or allocations that have been the subject of final Commission or court action; (g) the potential for cross-subsidization between wholesale and retail ratepayers; (h) the accounting matters that intervenors have identified, such as such as industry association dues, accumulated depreciation and depreciation expense, accumulated deferred income taxes, transmission operations and maintenance expense, rents, and revenue derived from point-to-point transmission; (i) the necessity of a neutral third party to make binding rulings in discovery disputes; (j) those elements of the formula rate that rely on data that

¹⁰⁷ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 99, 102 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007) (Order No. 679).

¹⁰⁸ *Consumers Energy Co.*, Opinion No. 429, 85 FERC ¶ 61,100 at 61,361-362 (1998); *System Energy Resources, Inc.*, Opinion No. 446, 92 FERC ¶ 61,119 at 61,446 (2000).

SPS does not report on FERC Form No. 1; (k) value of land held for future use;¹⁰⁹ and (l) limitations on the time for filing a complaint.

5. Requested Waivers

75. We deny SPS's request for a waiver of filing an attestation as required in 18 C.F.R. §35.13(d)6 (2007). SPS has provided no justification for the requested waiver. We will grant the remaining waivers, consistent with our prior approval of formula rates.¹¹⁰

D. New Mexico Cooperative's Motion to Reject and Golden Spread's Motion for Summary Disposition

76. We disagree with New Mexico Cooperatives that SPS's filing is so lacking in supporting detail that we must reject it. We note that SPS has filed seven sets of testimony providing an overview of SPS's rate change and explaining the formula rate methodology, including SPS's Annual Transmission Revenue Requirement. SPS's testimony also describes SPS's proposed expansion program and how a formula rate will enhance SPS's financial strength. We find that, though it is incomplete, SPS's filing is not so patently deficient as to warrant rejection. Accordingly, we will deny New Mexico Cooperative's motion. Because Golden Spread did not provide sufficient factual support for its motion for summary dismissal of certain issues, we will deny the motion and set these issues for hearing.

E. Hearing and Settlement Judge Procedures

77. SPS's proposed formula rate raises issues of material fact that cannot be resolved on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

¹⁰⁹ With respect to the inclusion of the value of land held for future use in the formula rate, we note that: (a) SPS's description of this element of the formula is vague ("*i.e.*, "various" plant); (b) there is no requirement that SPS obtain a certificate of public convenience and necessity for transmission use before including the value of land in the formula rate; and (c) SPS does not include the appropriate accounts under the Commission's regulations, Part 101, Account 105, (electric plant held for future use) to address land that SPS sells rather than uses for transmission purposes. *See SDG&E*, 118 FERC ¶ 61,073 at P 27-28; *see also* 18 C.F.R. Part 101, Account No. 105 (electric plant held for future use) (2007).

¹¹⁰ *See e.g., American Electric Power Service Corp.*, 120 FERC ¶ 61,205, at P 40-41 (2007); *Trans-Allegheny*, 119 FERC ¶ 61,219 at P 57 (2007); *Allegheny Power System Operating Cos.*, 111 FERC ¶ 61,308 at P 55-56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Commonwealth Edison*, 119 FERC ¶ 61,238 at P 93-94 (2007).

78. As noted above, our preliminary analysis indicates that SPS's proposed formula rate has not been shown just and reasonable and may be unjust, unreasonable, substantially excessive, unduly discriminatory, preferential or otherwise unlawful. Therefore, we will accept SPS's formula rate, suspend it for five months, to become effective, subject to refund, on July 6, 2008, and set it for hearing and settlement judge procedures.

79. While we are setting this matter for a trial-type evidentiary hearing, we encourage participants to make every effort to settle this dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹¹¹ If the parties desire, they may, by mutual agreement, request a special judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹¹² The settlement judge shall report to the Chief Judge and to the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions.

80. 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.

The Commission orders:

- (A) New Mexico Cooperative's motion to reject is hereby denied.
- (B) Golden Spread's motion for partial summary disposition is hereby denied.
- (C) SPS's proposed formula rate is hereby accepted for filing and suspended for five months, to become effective July 6, 2008, subject to refund, as discussed in the body of this order.
- (D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure, and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a

¹¹¹ 18 C.F.R. § 385.603 (2007).

¹¹² 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 days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their backgrounds and experience (www.ferc.gov – click on Office of Administrative Law Judges).

public hearing shall be held concerning SPS's proposed formula rate. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and with 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.

(G) 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 this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.