

170 FERC ¶ 61,070  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Southwest Power Pool, Inc.

Docket No. ER20-453-000

ORDER REJECTING PROPOSED TARIFF REVISIONS

(Issued January 31, 2020)

1. On November 22, 2019, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission’s regulations,<sup>2</sup> Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (Tariff) to eliminate transmission revenue credits under Attachment Z2 of the Tariff. As discussed below, we reject SPP’s proposed Tariff revisions, without prejudice.

**I. Background**

2. Attachment Z2 (Revenue Crediting for Upgrades) provides that transmission customers, generator interconnection customers, and entities that fund a sponsored upgrade<sup>3</sup> (collectively, upgrade sponsors) may receive revenue credits to reimburse them for the cost of network upgrades, with interest, that have been directly assigned to them (Creditable Upgrades). The Attachment Z2 revenue credits provided to an upgrade sponsor that has been directly assigned network upgrade costs are funded by, and recoverable from, transmission customers taking new transmission service that could not have been provided “but for” the Creditable Upgrade, in the form of credit payment obligations.

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. § 35.13 (2019).

<sup>3</sup> Sponsored upgrades are “Network Upgrades, requested by a Transmission Customer or other entity, which do not meet the definition of any other category of Network Upgrades.” SPP Tariff, § I.1 (Definitions). The entity that requests the sponsored upgrade “must be willing to assume the cost of such Sponsored Upgrade, study costs, and any cost associated with such necessary mitigation.” SPP Tariff, attachment O, § IV.1.

3. In 2014, SPP implemented its Integrated Marketplace, which is a centralized day-ahead and real-time energy and operating reserve market with locational marginal pricing and market-based congestion management.<sup>4</sup> As part of that implementation, SPP was required to comply with Order No. 681,<sup>5</sup> which required regional transmission organizations (RTOs) and independent system operators (ISOs) with organized electricity markets to make available long-term firm transmission rights and to award transmission rights to entities that fund transmission upgrades and expansions through direct cost assignment. SPP implemented Long-Term Congestion Rights (LTCRs)<sup>6</sup> in 2015 to comply with Order No. 681.<sup>7</sup> In addition, SPP proposed to rely on its Attachment Z2 revenue crediting process to comply with Order No. 681, Guideline 3, which requires that “long-term transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization’s prevailing cost allocation methods for upgrades or expansions.”<sup>8</sup> The Commission conditionally accepted SPP’s initial compliance filing finding that SPP’s reliance on its Attachment Z2 transmission revenue crediting process was insufficient because it did not grant LTCRs to “any party” that funds upgrades.<sup>9</sup> On further compliance, SPP proposed to provide upgrade sponsors the option to receive Incremental LTCRs (ILTCR),<sup>10</sup> upon request, as an alternative to

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<sup>4</sup> The terms and conditions of the Integrated Marketplace are found in Attachment AE of the Tariff.

<sup>5</sup> *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 116 FERC ¶ 61,077, *reh’g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh’g and clarification*, Order No. 681-B, 126 FERC ¶ 61,254 (2009).

<sup>6</sup> LTCR holders are entitled to the difference in the congestion component of locational marginal price between the source and the sink specified in the transmission congestion right, which may result in either a payment or charge. *See, e.g.*, SPP Tariff, attachment AE, §§ 7.2.4, 8.5.11.

<sup>7</sup> *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,076 (2014), *order on reh’g and compliance*, 152 FERC ¶ 61,034 (2015).

<sup>8</sup> Order No. 681, 116 FERC ¶ 61,077 at P 210.

<sup>9</sup> *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,076 at PP 33-34.

<sup>10</sup> ILTCRs are similar to LTCRs and are specifically available to upgrade sponsors required to build network upgrades with directly assigned upgrade costs that increase available transfer capacity on the SPP transmission system as a compensation mechanism for the directly assigned upgrade costs.

receiving revenue credits under Attachment Z2. Subsequently, the Commission accepted SPP's further compliance filing.<sup>11</sup>

4. Under the Tariff, ILTCRs have a term of at least ten (10) years and not more than twenty (20) years.<sup>12</sup> An upgrade sponsor may request that SPP evaluate up to three source-to-sink paths to determine the amount of incremental available transfer capability created on the transmission paths as a result of the portion of the upgrade associated with the directly assigned upgrade costs. SPP determines the minimum increase in available transfer capability on each of the requested paths over a ten (10) year period and provides the MW amounts to the upgrade sponsor. The upgrade sponsor then may select one of the requested paths on which candidate ILTCRs are desired and the candidate ILTCRs on that path will be equal to the minimum increase in available transfer capability on that selected path.<sup>13</sup> Feasible portions of nominated candidate ILTCRs would be awarded during the annual LTRC allocation process.<sup>14</sup> If the upgrade sponsor does not confirm selection of ILTCRs, then the upgrade sponsor is eligible for revenue credits under Attachment Z2.

## II. SPP's Filing

5. SPP proposes to eliminate the option for upgrade sponsors to receive revenue crediting under Attachment Z2 and proposes to change the existing option for upgrade sponsors to obtain ILTCRs by modifying the compensation term for ILTCRs to not exceed twenty (20) years or until the upgrade sponsor recovers the costs of the upgrade (including interest) that were directly assigned to it, whichever occurs earlier.<sup>15</sup> SPP explains that in March 2018, its Board of Directors (Board) and Members Committee created the Holistic Integrated Tariff Team (HITT)<sup>16</sup> to comprehensively review SPP's processes and to make high-level recommendations aimed toward the continued reliable and cost-effective delivery of electricity to end-use customers. SPP further states that the HITT conducted 17 meetings between April 2018 and June 2019, during which it held

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<sup>11</sup> *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,034 at PP 39-41, 48.

<sup>12</sup> SPP Tariff, attachment J, §§ V.A-C.

<sup>13</sup> SPP Tariff, attachment Z2, § IV.

<sup>14</sup> SPP Tariff, attachment AE, § 7.1.

<sup>15</sup> Proposed Tariff, attachment Z2, § IV.A.e.

<sup>16</sup> SPP states that the Board appointed 15 stakeholders to the HITT, including board members, state regulators, and representatives of diverse sectors within SPP's membership. Filing at 3.

educational sessions, reviewed numerous requests for information, and heard stakeholder presentations before drafting comprehensive recommendations. SPP adds that in July 2019, at the conclusion of more than a year's work, the HITT presented 21 high-level recommendations for the Board's consideration, including the proposal to eliminate revenue crediting as an option for compensating upgrade sponsors.<sup>17</sup> SPP states that the HITT concluded that the revenue crediting approach under Attachment Z2 has increased transmission service rates by roughly two percent on average and has created additional directly assigned upgrade costs.<sup>18</sup> SPP further states that the Board approved the HITT's recommendation, thus resulting in the instant filing.<sup>19</sup>

6. SPP explains that the Commission did not mandate the current Attachment Z2 revenue crediting process, but rather SPP and its stakeholders developed the revenue crediting process and added it to the Tariff in 2005 as part of the aggregate transmission service study process. SPP states that it and its stakeholders have determined that the Attachment Z2 revenue credits should no longer be retained for new upgrades due to the substantial complexity and uncertainty the process has created.<sup>20</sup> SPP states that, while it proposes to eliminate one form of compensation for upgrade sponsors of new network upgrades (i.e., Attachment Z2 revenue crediting), the ILTCR option will remain in the Tariff, which SPP states is a viable, Commission-required compensation option. Additionally, SPP states that providing compensation to upgrade sponsors through candidate ILTCRs is consistent with the requirements of Order No. 2003, which requires that the interconnection customer receive valuable, well-defined financial rights.<sup>21</sup> SPP states that with its proposed revisions, upgrade sponsors will continue to receive well-defined capacity rights for the upgrades.

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<sup>17</sup> *Id.* at 4. On July 23, 2019, the HITT published the Holistic Integrated Tariff Team Report (HITT Report), <https://spp.org/documents/60372/hitt%20report%2020190730.pdf>.

<sup>18</sup> *Id.* at 14.

<sup>19</sup> *Id.* at 3-5.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> *Id.* at 16 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

7. Concerning its proposal to modify the existing term of compensation for ILTCRs, SPP notes that the limitation of the term to the period over which the upgrade sponsor fully recovers its costs, with interest, is consistent with the current term limitation in the Attachment Z2 revenue crediting process as well as with the Tariff's current provisions for a candidate ILTCR. SPP argues that this is appropriate because once the upgrade sponsor is fully compensated, then ILTCRs should be terminated to allow load serving entities to obtain the associated capacity.<sup>22</sup>

8. To maintain consistency with the proposed changes to the term in Attachment Z2, SPP proposes to modify the term of the candidate ILTCR in Attachment J, including in the sponsored upgrade agreement in Schedule 1 of Attachment J.<sup>23</sup> SPP states that section V of Attachment J specifies that if a project sponsor, transmission customer, or interconnection customer is receiving candidate ILTCRs in accordance with section IV of Attachment Z2, then the candidate ILTCR megawatt and source to sink paths related to the candidate ILTCRs shall be included in the applicable sponsored upgrade agreement, service agreement for point-to-point transmission, network integration transmission service agreement, or generator interconnection agreement. SPP states that it previously added a placeholder for this information to the sponsored upgrade agreement and therefore proposes to modify the placeholder in the sponsored upgrade agreement to clarify that the term of the candidate ILTCR that is specified in the agreement is the "Maximum Term" in years from the in-service date of the sponsored upgrade.<sup>24</sup> SPP states that given the continuing need to compensate sponsors of existing Creditable Upgrades through Attachment Z2 revenue credits, it is necessary to retain certain provisions of Attachment J and Attachment Z2 of the Tariff.<sup>25</sup>

9. SPP requests an effective date of February 1, 2020 for its proposed Tariff revisions. Specifically, SPP proposes that a network upgrade with an agreement authorizing construction of the upgrade with an execution date prior to February 1, 2020 will continue to be eligible for compensation through either Attachment Z2 revenue credits or candidate ILTCRs. SPP proposes that such a network upgrade with an agreement authorizing construction of the upgrade with an execution date on or after

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<sup>22</sup> *Id.* at 16, 18.

<sup>23</sup> Proposed Tariff, attachment J, § V.A-C, Schedule 1 (Agreement for Sponsored Upgrade).

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

<sup>25</sup> Filing at 19-20; *see* Tariff, attachment J, § V.B; *id.*, attachment Z2, §§ I-III.

February 1, 2020 will only receive ILTCRs. SPP also clarifies that if the agreement is filed unexecuted with the Commission, the applicable date is the effective date granted by the Commission in an order accepting the agreement.

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

10. Notice of SPP's filing was published in the *Federal Register*, 84 Fed. Reg. 66,180 (2019), with interventions and protests due on or before December 13, 2019. Notices of intervention were filed by the Public Utility Commission of Texas and the Louisiana Public Service Commission. Timely motions to intervene were filed by: NextEra Energy Resources, LLC; Evergy Kansas Central, Inc., Evergy Metro, Inc., and Evergy Missouri West, Inc.; ITC Great Plains, LLC; American Electric Power Service Corporation; Golden Spread Electric Cooperative, Inc.; Western Farmers Electric Cooperative (Western Farmers); Oklahoma Gas & Electric Company; Mid-Kansas Electric Company, Inc.; Sunflower Electric Power Corporation; Southern Power Company; Lincoln Electric System; BHE Renewables, LLC, Grande Prairie Wind, LLC, and Marshall Wind Energy LLC; Enel North America, Inc. and Enel Green Power North America, Inc. (collectively, Enel); EDF Renewables, Inc. (EDFR); CPV Keenan II Renewable Energy Company, LLC; Kansas Power Pool; Oklahoma Municipal Power Authority; Missouri Joint Municipal Electric Utility Commission; City of Independence, Missouri; American Wind Energy Association, Solar Energy Industries Association, and Advanced Power Alliance; Omaha Public Power District; and EDP Renewables North America LLC (EDP). Xcel Energy Services, Inc. (Xcel) filed a motion to intervene out of time. On December 13, 2019, Renewable Developers<sup>26</sup> filed a joint protest, sPower Development Company, LLC (sPower) filed a timely motion to intervene and limited comments, and Kansas Electric Power Cooperative, Inc. (KEPCo) filed a timely motion to intervene and comments. On January 3, 2020, SPP filed a motion for leave to answer and answer. On January 21, 2020, Western Farmers filed an answer to SPP's answer.

### **IV. Protests and Answers**

#### **A. Renewable Developers**

11. Renewable Developers argue that SPP's filing provides insufficient justification for eliminating Attachment Z2 revenue credits. Renewable Developers assert that the HITT recommended eliminating Attachment Z2 revenue credits because Attachment Z2 revenue crediting has added substantial complexity and uncertainty to the transmission settlements process, increased transmission service rates by roughly two percent on average, and created additional directly assigned upgrade costs.<sup>27</sup> Renewable Developers

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<sup>26</sup> Renewable Developers are EDFR, EDP, and Enel.

<sup>27</sup> Renewable Developers Protest at 43 (citing Filing at 14).

argue that that these reasons fail to demonstrate that it is just and reasonable to eliminate Attachment Z2 revenue credits because the problems related to their complexity and uncertainty have been resolved and SPP has been paying Attachment Z2 revenue credits successfully for a couple years. Further, Renewable Developers contend that neither SPP's filing nor the HITT Report provide any evidence to support SPP's other two stated reasons for proposing to eliminate the credits.

12. Renewable Developers contend that the proposed modification to ILTCRs violates Order No. 681 because the proposal caps an upgrade sponsor's recovery at the cost of the upgrade. According to Renewable Developers, in response to SPP's initial Order No. 681 compliance filing the Commission explained that SPP's proposal to use Attachment Z2 revenue credits to comply with Order No. 681 would not serve as an incentive for financial entities that fund transmission projects to sponsor any upgrades because the most such entities could receive would be their initial investment with no opportunity to make a profit, thus violating Order No. 681. Renewable Developers argue that SPP's proposal to cap cost recovery under ILTCRs fails to meet Guideline 3 of Order No. 681, which according to Renewable Developers, requires SPP to grant an entity electing candidate ILTCRs the opportunity to earn a profit.<sup>28</sup> Renewable Developers also rebut SPP's justification for the cap on recovery as consistent with the current term limitation for Attachment Z2 revenue credits. Renewable Developers argue that the term limitations for Attachment Z2 revenue credits were approved based on the Commission's cost allocation policies, not based on compliance with Order No. 681; instead, the Commission required SPP to revise the Tariff to add the current version of ILTCRs to comply with Order No. 681, which do not contain a cap on recovery.<sup>29</sup>

13. Renewable Developers also argue that the Commission has repeatedly found that Attachment Z2 revenue credits comply with Order No. 2003 and the Commission's interconnection pricing policy as an "independent entity variation," but the Commission has never found that candidate ILTCRs comply with Order No. 2003. Renewable Developers assert that SPP's filing fails to demonstrate that the candidate ILTCRs constitute "valuable transmission rights" that are "well-defined, long-term, and tradeable" and that send efficient price signals for interconnection customers as required by Order No. 2003.<sup>30</sup> Renewable Developers argue that ILTCRs are not "valuable" as evidenced by SPP staff's own statements that ILTCRs are unpredictable and risky and the fact that no SPP customer has ever elected the candidate ILTCR option over Attachment Z2 revenue credits. Renewable Developers also argue that SPP stakeholders recognize that

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<sup>28</sup> *Id.* at 41.

<sup>29</sup> *Id.* at 40-41.

<sup>30</sup> *Id.* at 34-35 (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 695, 700).

the ILTCR rules are currently inadequate and thus are evaluating a proposal to reform them to increase their value.<sup>31</sup>

14. Renewable Developers contend that it is likely that SPP will find most candidate ILTCRs to be infeasible, which would generate zero revenue for upgrade sponsors. Renewable Developers aver that SPP is the only RTO/ISO among those it studied<sup>32</sup> that treat financial transmission rights in this way (i.e., possibility of generating zero revenue). Renewable Developers also argue that with the elimination of Attachment Z2, SPP would no longer permit upgrade sponsors to receive direct payments from third-parties who benefit from the upgrade, which Renewable Developers argue is something that PJM, ISO-NE, NYISO, and MISO each allow for interconnection customers. Additionally, Renewable Developers assert that SPP's candidate ILTCRs cannot be converted into incremental auction revenue rights, which limits the optionality of ILTCR holders. Renewable Developers aver that SPP's proposed process for how an upgrade sponsor chooses which source-to-sink path to select for a candidate ILTCR is significantly more limited than the other RTOs/ISOs, which Renewable Developers argue makes it difficult, if not impossible, to make informed decisions regarding the rights being selected.<sup>33</sup> Renewable Developers also assert that ILTCRs are tradeable in only an extremely limited sense and that they fail to support market efficiency.

15. In addition, Renewable Developers contend that eliminating Attachment Z2 revenue credits for Creditable Upgrades violates the Commission's "beneficiary pays" cost allocation policy because transmission customers that subsequently benefit from the upgrade do not have to pay for their share of the cost by reimbursing the upgrade sponsor. According to Renewable Developers, the Commission's cost allocation policy provides that those who use or benefit from facilities should pay a rate that is roughly commensurate with such use or benefit. Renewable Developers argue that any crediting approach for these upgrades therefore must include a requirement that entities paying for such upgrades receive appropriate reimbursement from all third-party beneficiaries.<sup>34</sup> Renewable Developers assert that SPP's proposal to use a congestion hedging product (i.e., ILTCRs) would not ensure that all beneficiaries of a sponsored upgrade pay a rate

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<sup>31</sup> *Id.* at 35.

<sup>32</sup> Renewable Developers state that they examined the following four RTOs/ISOs: PJM Interconnection L.L.C. (PJM); ISO New England Inc. (ISO-NE); New York Independent System Operator, Inc. (NYISO); and Midcontinent Independent System Operator, Inc. (MISO).

<sup>33</sup> *Id.* at 36-39.

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



that is commensurate with the benefits they receive from the upgrade.<sup>35</sup> Renewable Developers add that under Attachment Z2, transmission customers whose service could not be provided but for a Creditable Upgrade will become free-riders if the Commission approves SPP's proposed Tariff revisions.

16. Renewable Developers argue that the Commission should reject SPP's proposed Tariff revisions.<sup>36</sup> Renewable Developers contend that SPP's proposal to eliminate Attachment Z2 revenue credits for several categories of upgrades makes each such category part of an integrated set of elements, making it impractical to accept certain aspects of this filing but not others. Thus, Renewable Developers argue that if any aspect of SPP's filing is found to be unjust and unreasonable, the Commission would have to reject the entire proposal.<sup>37</sup>

17. Renewable Developers request that, in the event the Commission does not reject SPP's proposed Tariff revisions, the Commission suspend the proposed Tariff revisions for the maximum five-month period. Renewable Developers argue that they, and others, will face irreparable harm if SPP's proposed Tariff revisions take effect pending the outcome of hearing and settlement judge procedures because the resulting uncertainty may cause customers to indefinitely delay their projects until they know for certain whether they can select the Attachment Z2 revenue credit option.<sup>38</sup>

18. In addition to arguing that the Commission should reject SPP's filing on its merits, Renewable Developers also argue that the Commission should reject SPP's filing as a legal nullity because the Board did not vote on the Tariff sheets included in SPP's filing as required by the SPP Bylaws and Membership Agreement, and the Revision Request Process.<sup>39</sup> Renewable Developers contend that both the Bylaws and Membership Agreement have been accepted by the Commission and therefore constitute the filed rate.

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<sup>35</sup> *Id.* at 32.

<sup>36</sup> *Id.* at 44-46.

<sup>37</sup> *Id.* at 45-46 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 116-17 (D.C. Cir. 2017) (*NRG*)).

<sup>38</sup> *Id.* at 46-47.

<sup>39</sup> The Revision Request Process is set forth in the Revision Request Process document, which is a guidance document that describes, among other things, how revision requests will advance through the stakeholder process and potentially be filed with the Commission, [https://www.spp.org/documents/26093/spp%20mopc%20revision%20request%20process\\_v7.pdf](https://www.spp.org/documents/26093/spp%20mopc%20revision%20request%20process_v7.pdf).

Renewable Developers assert that section 4.1(o) of the Bylaws requires the Board to “[a]uthorize filings with regulatory bodies” and “solicit and consider a straw vote from the Members Committee as an indication of the level of consensus among Members in advance of taking any actions.”<sup>40</sup> Renewable Developers also argue that the Board did not solicit a straw vote from the Members Committee on the filing, as required by the Bylaws. Further, Renewable Developers argue that section 2.1.1. of the Membership Agreement requires SPP staff to obtain Board approval before submitting a section 205 filing to the Commission.<sup>41</sup>

19. Renewable Developers also assert that the Revision Request Process document provides that a proposal to amend the Tariff approved by the MOPC “must be submitted to the SPP [Board] for review and action.”<sup>42</sup> Renewable Developers argue that the MOPC did not submit the proposed Tariff revisions to the Board, and thus the Board did not act on them.

20. Renewable Developers note that on December 4, 2018, the Board issued a policy statement relating to the authorization of regulatory filings.<sup>43</sup> The SPP Policy Statement states that “[i]f the [MOPC] approves an action and such action is not appealed pursuant to section 3.10 of the Bylaws, the action is deemed to be approved by the [Board], and SPP staff is authorized to submit the requisite regulatory filing(s).”<sup>44</sup> However, Renewable Developers argue that the SPP Policy Statement is null and void because it conflicts with the Bylaws, Membership Agreement, and Revision Request Process document, which Renewable Developers contend prohibits the Board from delegating its duty to authorize regulatory filings to the MOPC.<sup>45</sup>

21. Renewable Developers also argue that approval of an FPA section 205 filing by the independent Board plays a critical step in SPP’s role as an RTO because

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<sup>40</sup> Renewable Developers Protest at 17 (citing SPP Tariff, Bylaws § 4.1).

<sup>41</sup> Section 2.1.1 of the Membership Agreement states “SPP shall propose and file with FERC pursuant to Section 205 of the Federal Power Act modifications to the OATT and make any other necessary filings subject to approval by the Board of Directors.”

<sup>42</sup> Renewable Developers Protest at 18 (citing Revision Request Process document at 11).

<sup>43</sup> *See id.*, attachment 2, SPP Board of Directors Policy Statement Authorization of Regulatory Filings (SPP Policy Statement).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 19-22.

Order No. 2000 requires that an RTO demonstrate its independence by having a decision-making process that is independent of control by any market participant or class of participants.<sup>46</sup>

22. In addition, Renewable Developers argue that SPP's filing should be rejected as a nullity because the Board failed to consider a valid appeal EDFR submitted under the Revision Request Process. According to Renewable Developers, the Revision Request Process grants "Qualified Entities" a right to appeal any action taken or recommended by the MOPC to the Board. Renewable Developers argue that, although the Revision Request Process only provides a broad definition for "Qualified Entities," EDFR meets the broad definition because its subsidiaries are parties to transactions under the Tariff. Renewable Developers state that EDFR submitted its written appeal three business days after the MOPC minutes were posted and sent its written appeal directly to the MOPC staff secretary. Renewable Developers state that it is EDFR's understanding that SPP would not accept the appeal is because EDFR is not an SPP Member.<sup>47</sup>

23. Renewable Developers also argue that the Board's vote to approve the HITT Report, including the elimination of Attachment Z2 revenue credits, does not serve as a substitute for its requirement to vote on SPP's proposed Tariff revisions. According to Renewable Developers, neither the Board nor the Members Committee evaluated the recommendations in the HITT Report on an individual basis, including elimination of Attachment Z2 revenue crediting, but instead approved the HITT Report by an "all-or-nothing" vote.<sup>48</sup> Renewable Developers argue that once the Board approved the HITT Report, the proposed Tariff revisions to eliminate Attachment Z2 revenue credits were "rubber-stamped" through the stakeholder process and skipped any consideration or vote by the Board before SPP submitted the filing to the Commission.<sup>49</sup>

## **B. sPower**

24. sPower requests that the Commission require that SPP implement a transition mechanism that allows current interconnection customers in the SPP study queue to retain the right to receive Attachment Z2 revenue credits for directly assigned upgrade costs. sPower is concerned that SPP's proposal and the lack of a transition period will negatively affect interconnection customers that relied on the availability of

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<sup>46</sup> *Id.* at 21 (citing 18 C.F.R. § 35.34(j)(1) (2019)).

<sup>47</sup> *Id.* at 23-24.

<sup>48</sup> *Id.* at 24-26. The HITT Report included 21 high-level recommendations in four categories for the Board's consideration.

<sup>49</sup> *Id.* at 27-29.

Attachment Z2 revenue credits when evaluating the economic viability of projects with significant directly assigned network upgrade cost responsibility. sPower argues that this is especially true for customers with later-stage development projects that now must reevaluate the economics and viability of their projects. sPower states the Commission has recognized that reforms affecting interconnection requests in the later stages of the interconnection process create special circumstances that require careful considerations, because such reforms significantly disrupt the activities of customers who may have relied upon the existing process.<sup>50</sup>

**C. KEPCo**

25. KEPCo states that it is concerned that SPP must continue to administer the backlog of transmission revenue crediting for more than a decade's worth of network upgrades. KEPCo argues that a Commission order requiring an annual compliance filing by SPP that reports on its administration of revenue crediting for these grandfathered transmission upgrades would be appropriate considering the substantial complexity and uncertainty of the transmission revenue crediting mechanism. KEPCo argues that the compliance filings would advance the public interest by enhancing transparency and providing appropriate regulatory oversight of SPP's administration of transmission revenue crediting.<sup>51</sup>

**D. SPP Answer**

26. SPP argues that the reimbursement regime that Attachment Z2 establishes is entirely voluntary, noting that the Commission expressly acknowledged that SPP's adoption of Attachment Z2 revenue crediting was discretionary and not required by the Commission when the Commission accepted SPP's Order No. 681 compliance filing.<sup>52</sup> SPP contends that because it has now established a congestion hedging market (i.e., the Integrated Marketplace), Attachment Z2 revenue crediting is no longer required for it to comply with any Commission policy.<sup>53</sup> SPP avers that, while Attachment Z2 revenue crediting represented a just and reasonable way for SPP to accomplish multiple goals and

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<sup>50</sup> sPower Protest at 3 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,247, at P 95 (2016)).

<sup>51</sup> KEPCo Protest at 5.

<sup>52</sup> SPP Answer at 8.

<sup>53</sup> *Id.* at 9.

comply with certain Commission requirements when it was adopted, its removal in favor of using ILTCRs exclusively to comply with those Commission requirements does not render SPP's proposal unjust and unreasonable.<sup>54</sup>

27. SPP also disputes Renewable Developers' allegation that ILTCRs do not comply with the Commission's requirements set forth in Order No. 681.<sup>55</sup> SPP states that, while Renewable Developers are correct that SPP has modified one aspect of its ILTCR provisions to limit ILTCRs to the value that the holder paid in directly assigned upgrade costs plus interest, upgrade sponsors currently are only entitled to Attachment Z2 revenue credits up to the amount they paid in directly assigned upgrade costs plus interest. SPP contends that eliminating Attachment Z2 revenue crediting and capping the ILTCRs to the value of directly assigned upgrade costs provides the upgrade sponsor with eligibility for precisely the same level of recovery. SPP argues that, with regard to interconnection customers and transmission service customers, this is especially appropriate, as nothing in Order No. 2003 suggests that the Commission only authorized "but for" participant funding of network upgrades in exchange for the promise that the interconnection customer would receive compensation above and beyond what it paid in upgrade costs. However, SPP states that, to the extent the Commission believes that the proposed limit on ILTCRs to the value that the holder paid in directly assigned upgrade costs plus interest runs afoul of the Commission's findings in its orders addressing SPP's compliance with Order No. 681, SPP is willing to submit a compliance filing to remove this limitation if so ordered by the Commission. With regard to *NRG* concerns, SPP argues that eliminating the limitation would be a relatively minor modification and would not constitute "an entirely new rate scheme."<sup>56</sup>

28. SPP states that, contrary to the Renewable Developers' contentions, ILTCRs are valuable rights that are well-defined, long-term, and tradeable.<sup>57</sup> SPP asserts that, in Order No. 2003, the Commission did not establish a minimum level of perceived value that a congestion right must provide in order to be considered "valuable," nor did the Commission require that a congestion right be more valuable than an alternative. SPP states that ILTCRs provide the opportunity for upgrade sponsors to receive a stream of congestion revenues for the incremental capacity that their upgrade creates, which provides value to the upgrade sponsor in exchange for paying the directly assigned upgrade cost. SPP states that the Commission previously has found that there is no

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<sup>54</sup> *Id.* at 12.

<sup>55</sup> *Id.* at 22-23.

<sup>56</sup> *Id.* at 24 (citing *NRG*, 862 F.3d 108).

<sup>57</sup> *Id.* at 18.

requirement in Order No. 2003 that the congestion rights awarded to an interconnection customer “have equal value to the cost of the Network Upgrades.”<sup>58</sup>

29. Similarly, SPP asserts that the Commission stated that the congestion rights must be “well-defined,” but did not elaborate on what was meant by “well-defined.”<sup>59</sup> SPP states that the ILTCR process is set forth in detail in Attachment AE of the Tariff, each ILTCR is defined based on its specific source and sink, amount (megawatts), and term, and, once candidate ILTCRs are awarded, they are reflected in the customer’s agreement with SPP, which is filed with the Commission. Thus, SPP argues that ILTCRs are “well-defined.”

30. SPP also avers that ILTCRs meet the Commission’s requirement that they be “tradeable.”<sup>60</sup> SPP explains that all awarded ILTCRs are directly converted to transmission congestion rights. SPP further explains that holders of these transmission congestion rights may then, if they choose, sell them back to the market during the annual or monthly transmission congestion rights auctions, or sell them on SPP’s secondary market for transmission congestion rights.<sup>61</sup> SPP further argues that customers are given information comparable to the level of information provided by other RTOs.<sup>62</sup>

31. SPP argues that the Commission expressed flexibility for RTOs and declined to mandate specific design elements either for the RTOs’ interconnection pricing methodologies or the RTOs’ congestion rights. In response to Renewable Developers’ discussion of other RTOs’/ISOs’ congestion hedging products, SPP contends that in those proceedings, the Commission’s orders relied generally on the availability of congestion hedging products, and not on any specific design elements of such products, in approving independent entity variations in other RTOs, contrary to the suggestion of Renewable Developers that certain specific elements that other RTOs have adopted are necessary for compliance with Order No. 2003.<sup>63</sup>

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<sup>58</sup> *Id.* at 22 (citing *PJM Interconnection L.L.C.*, 108 FERC ¶ 61,025, at PP 19-20 (2004)).

<sup>59</sup> *Id.* at 17 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at PP 692, 695).

<sup>60</sup> *Id.* at 21.

<sup>61</sup> *Id.* at 21-22.

<sup>62</sup> *Id.* at 27.

<sup>63</sup> *Id.* at 20-21.

32. SPP also disagrees with Renewable Developers' claims that SPP's proposal is inconsistent with the Commission's policies, including the beneficiary pays and cost causation policies.<sup>64</sup> SPP argues that the Commission's cost causation principle does not require the Commission "to allocate costs with exacting precision," but instead demands only that costs must be allocated in a manner "roughly commensurate" with benefits.<sup>65</sup> Therefore, SPP argues that there is no requirement that the Commission seek out and impose costs on every potential beneficiary of a transmission facility, no matter how remote. SPP argues that the upgrades at issue here are "but for" upgrades that are necessitated by interconnection requests, transmission service requests, or requests from entities for a sponsored upgrade. As such, SPP asserts that the requesting entities are the primary cost causers/beneficiaries of the upgrades and therefore should be primarily responsible for the costs.<sup>66</sup> SPP contends that, to the extent that the upgrades provide incremental capacity, ILTCRs are available to the upgrade sponsor, which are funded by congestion charges paid by entities that are transacting in the SPP markets and paying congestion costs associated with those transactions.<sup>67</sup> SPP concludes that this combination of imposing costs primarily on the primary beneficiaries and providing some relief from these costs by secondary benefitting entities fully comports with the requirement that rates reflect cost causation to some degree and that costs be allocated in a manner roughly commensurate with benefits.

33. SPP disagrees with Renewable Developers' assertions that the Commission should reject SPP's filing as a legal nullity. SPP argues that the authorization process for its filing adhered to all applicable provisions of the Tariff, Bylaws, and Membership Agreement on file with the Commission as well as with the terms of its non-Tariff SPP Revision Request Process document. SPP notes that the Board voted to approve the SPP Policy Statement following straw votes by the Members Committee as well as the policy recommendation that led to the instant filing. SPP notes that, under the SPP Policy Statement, SPP staff is only authorized to make a filing if no Member appeals the action according to the Bylaws and no Board member places the item on the Board meeting agenda.<sup>68</sup> SPP asserts that nothing about the deemed approval outlined in the SPP Policy Statement violates the SPP Bylaws, Membership Agreement, or any other part of the Tariff, arguing that the relevant sections of the Bylaws do not prescribe the way the

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<sup>64</sup> *Id.* at 24.

<sup>65</sup> *Id.* at 25.

<sup>66</sup> *Id.* at 25-26.

<sup>67</sup> *Id.* at 26.

<sup>68</sup> *Id.* at 4-5 (citing SPP Tariff, Bylaws § 3.10; Renewable Developers Protest, attachment 2, SPP Policy Statement).

Board is required to authorize regulatory filings. SPP contends that, while the SPP Policy Statement is not part of SPP's Commission-filed governing documents, the SPP Policy Statement reflects the Board's performance of its approval and authorization functions as set forth in SPP's governing documents.<sup>69</sup> SPP argues that the SPP Policy Statement does not threaten its independence, noting, among other things, that the MOPC consists of representatives from every SPP Member.<sup>70</sup>

34. SPP further argues that the lack of a separately conducted straw poll on the proposed Tariff revisions themselves is immaterial because the Board took a straw vote of the Members Committee prior to approving the recommendations of the HITT Report, which included approval of the elimination of Attachment Z2 revenue crediting and limitation of total compensation through ILTCRs to an upgrade's directly assigned upgrade cost, plus interest. SPP contends that because these are the only material changes to the Tariff contained in this filing, this filing meets the straw vote and Board approval requirements of the Bylaws, as do all subsequent Tariff changes made to effectuate recommendations from the HITT Report.<sup>71</sup>

35. Regarding the SPP Revision Request Process document cited by Renewable Developers, SPP argues that it complied with the requirements of that document as well. SPP contends that the MOPC did submit the revision request to the Board because the MOPC made a report to the Board including a record showing that the MOPC approved the revision request, which would allow any Board member to place it on the agenda for the Board meeting.<sup>72</sup>

36. SPP argues that Renewable Developers have not been denied appropriate access to the stakeholder process, noting that EDFR made a presentation to the MOPC opposing the revision request.<sup>73</sup> Additionally, SPP notes that only EDFR attempted to appeal the revision request to the Board, and SPP argues, this attempt was fatally flawed. Among other things, SPP notes that EDFR was not an SPP Member and thus, while certain other Renewable Developers are SPP Members and thus had the right to appeal, EDFR did not have such a right.<sup>74</sup> SPP asserts that although the Revision Request Process document,

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<sup>69</sup> *Id.* at 28-31.

<sup>70</sup> *Id.* at 36-37.

<sup>71</sup> *Id.* at 31-32.

<sup>72</sup> *Id.* at 34-35.

<sup>73</sup> *Id.* at 35-36.

<sup>74</sup> *Id.* at 36-38.



which grants Qualified Entities the right to appeal, conflicts with the Bylaws, the Bylaws are controlling because they are filed with the Commission. SPP adds that EDFR was not a Qualified Entity and thus did not have the right to appeal even under the Revision Request Process document.<sup>75</sup> SPP also contends that even were an appeal to be properly made, the Board had no obligation to act on it.<sup>76</sup>

37. SPP argues that the Commission should not require it to provide a transition period away from Attachment Z2 revenue crediting as sPower requests. SPP notes that when it proposed modification to eliminate Attachment Z2 compensation eligibility for certain upgrades, the Commission accepted SPP's proposed bright-line effective date tied to the effectiveness of an interconnection agreement, despite protestors' objections and concerns over delays in the generator interconnection process.<sup>77</sup>

38. Concerning KEPCO's request for annual compliance reports on the administration of revenue crediting for grandfathered transmission upgrades, SPP contends that the Commission should not impose an additional compliance directive. SPP avers that its continued compliance with Attachment Z2 for legacy upgrades is beyond the scope of this proceeding. SPP argues that it is sufficient that it will make updates to stakeholders periodically and upon request.<sup>78</sup>

#### **E. Western Farmers Answer**

39. Western Farmers states that it is not taking a position as to whether SPP's proposal is just and reasonable or should be approved by the Commission.<sup>79</sup> However, Western Farmers contends that it does not agree with SPP's suggestion that, even if Tariff revisions approved through the stakeholder processes are given due deference, such revisions should not necessarily outweigh other Tariff requirements, contractual commitments, and Commission precedent. Western Farmers asserts that, to the extent that SPP is bound by contract or the terms of its Tariff to fulfill certain commitments to transmission owners or other SPP members, it should not be able to nullify those commitments through the use of the stakeholder process.

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<sup>75</sup> *Id.* at 38-40.

<sup>76</sup> *Id.* at 38.

<sup>77</sup> *Id.* at 42-43 (citing *Sw. Power Pool, Inc.*, 163 FERC ¶ 61,092, at P 81 (2018)).

<sup>78</sup> *Id.* at 42.

<sup>79</sup> Western Farmers Answer at 4.

**V. Discussion****A. Procedural Matters**

40. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

41. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Xcel's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

42. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We accept SPP's and Western Farmers' answers because they have provided information that assisted us in our decision-making process.

**B. Substantive Matters**

43. We find that SPP has not shown its proposal to modify the existing term of compensation for ILTCRs (i.e., 10 to 20 years) to twenty (20) years or until the upgrade sponsor recovers the directly assigned upgrade costs with interest, whichever occurs earlier, to be just and reasonable. Therefore, we reject SPP's filing, without prejudice to SPP submitting a revised proposal that does not impose a cap that limits the term and potential value of ILTCRs. We note that the Commission previously found that a similar cap on recovery only up to the cost of the facility would not serve as an incentive for entities to build merchant transmission projects and that an LTCR could provide such an incentive if the value of the LTCR is greater than the cost of the investment.<sup>80</sup> In the instant proceeding, SPP has provided no justification to depart from that prior finding, and in fact, in its answer, SPP expresses its willingness to remove the proposed cap if the Commission finds that the proposed cap runs afoul of previous Commission orders.

44. Because we find that SPP's proposal has not been shown to be just and reasonable and are therefore rejecting it, we will not address sPower's request to establish a transition mechanism that allows current interconnection customers in the SPP study queue to retain the right to receive Attachment Z2 revenue credits for directly assigned upgrade costs. Similarly, we will not address the other arguments raised by Renewable Developers in their protest.

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<sup>80</sup> *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,076 at P 33 & n.41.

45. Further, we deny KEPCo's request that the Commission require an annual compliance filing by SPP that reports on SPP's administration of revenue crediting for grandfathered transmission upgrades still subject to Attachment Z2 revenue crediting. We agree with SPP that such a request is beyond the scope of this proceeding,<sup>81</sup> which addresses only whether the prospective elimination of Attachment Z2 revenue crediting is just and reasonable.

The Commission orders:

SPP's proposed Tariff revisions are hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>81</sup> SPP Answer at 42.