

155 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Southwest Power Pool, Inc.

Docket No. ER16-209-001

ORDER GRANTING CLARIFICATION AND DENYING REHEARING

(Issued June 16, 2016)

1. On December 30, 2015, the Commission issued an order accepting Southwest Power Pool, Inc.'s (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) to add a formula rate template and implementation protocols to accommodate the recovery of an annual transmission revenue requirement for SPP member Central Power Electric Cooperative, Inc. (Central Power), effective January 1, 2016, subject to refund, and establishing hearing and settlement judge procedures.¹ Requests for clarification and rehearing were filed by Otter Tail Power Company (Otter Tail), and the Minnesota Public Utilities Commission (Minnesota Commission), North Dakota Public Service Commission (North Dakota Commission), and South Dakota Public Utilities Commission (South Dakota Commission and collectively, the Joint State Commissions). As discussed below, we grant the requests for clarification and deny the requests for rehearing.

I. Background

2. On October 30, 2015, SPP filed, on behalf of Central Power, pursuant to section 205 of the Federal Power Act (FPA)² and Part 35 of the Commission's regulations,³ a proposed formula rate for transmission service using the facilities of Central Power. SPP explained that Central Power proposed to become a SPP

¹ *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,367 (2015) (December 30 Order).

² 16 U.S.C. § 824d (2012).

³ 18 C.F.R. pt. 35 (2015).

transmission owner and transfer functional control of its transmission facilities to SPP on January 1, 2016.⁴

3. SPP stated that Central Power is a borrower from the Rural Utilities Service and therefore is not subject to the Commission's ratemaking jurisdiction under sections 205 and 206 of the FPA⁵ because it is not a public utility. However, SPP explained that the Commission does have jurisdiction over the rates for transmission service provided by SPP and that, when a non-jurisdictional transmission owner such as Central Power voluntarily joins a Regional Transmission Organization (RTO), the Commission can ensure that the RTO's rates are just and reasonable by examining the non-jurisdictional utility's revenue requirement.⁶

4. Otter Tail protested the filing and each of the Joint State Commissions filed comments in support of Otter Tail's protest. Specifically, Otter Tail requested that the Commission condition the inclusion of Central Power's facilities under the SPP Tariff on a requirement that SPP and Central Power hold Otter Tail harmless from the operational and financial impacts of Central Power joining SPP.⁷ Otter Tail stated that Central Power and Otter Tail have a highly integrated, jointly owned transmission system referred to as the Integrated Transmission System.⁸ Otter Tail is a Midcontinent Independent System Operator, Inc. (MISO) member and, therefore, certain parts of the Integrated Transmission System fall under the MISO tariff. According to Otter Tail, Central Power's decision to join SPP would isolate those parts of the Integrated Transmission System under the MISO tariff from the remainder of the MISO system, which would adversely affect Otter Tail. For example, Otter Tail stated that it would have to take SPP transmission service at pancaked rates for certain loads that would be isolated from the rest of the MISO system, thus, requiring it to pay two service providers (SPP and MISO) for the same service.⁹ In addition, Otter Tail asserted that its loads that are usually serviced by MISO could be switched into SPP during contingencies in limited circumstances and the SPP Tariff requires Otter Tail to pay for SPP service for those

⁴ SPP Transmittal at 1, 5.

⁵ 16 U.S.C. §§ 824d, 824e.

⁶ SPP Transmittal at 3.

⁷ Otter Tail Protest at 2.

⁸ *Id.* at 3-5.

⁹ *Id.* at 17.

loads at all times to ensure continued reliable service, even if Otter Tail never uses that SPP service.¹⁰

5. The Minnesota Commission, North Dakota Commission, and South Dakota Commission noted that Otter Tail's customers in Minnesota, North Dakota, and South Dakota would suffer negative rate impacts from Central Power joining SPP because Otter Tail would be forced to take transmission service from SPP at pancaked rates. They also supported Otter Tail's request for hold harmless treatment.¹¹

6. In the December 30 Order, the Commission found that SPP's proposed Tariff revisions raised issues of material fact and set the proposed Tariff revisions for hearing and settlement judge procedures.¹² The Commission also declined to impose a hold harmless condition and rejected the request to address rate pancaking resulting from Central Power's membership in SPP.¹³ The Commission explained that

to the extent that Otter Tail has facilities that are highly integrated with facilities in the expanded SPP transmission system as a result of joint planning and ownership, and is concerned that the integration of Central Power into SPP will introduce duplicative or pancaked rates that did not previously exist for use of such jointly planned and owned facilities, Otter Tail may address in the hearing and settlement judge procedures whether any provision is needed in its service agreement with SPP to mitigate such impacts in order to ensure just and reasonable rates.¹⁴

The Commission also stated that the parties "may raise in the hearing and settlement judge procedures the issue of transmission facilities credits under section 30.9 [of the SPP

¹⁰ *Id.* at 23-24.

¹¹ Minnesota Commission Comments at 2-3; North Dakota Commission Comments at 2-3; South Dakota Commission Comments at 2-3.

¹² December 30 Order, 153 FERC ¶ 61,367 at P 44.

¹³ *Id.* P 47.

¹⁴ *Id.*

Tariff] as a way to receive recognition of the integrated facilities that they contribute after the integration of Central Power into SPP.”¹⁵

II. Requests for Clarification and Rehearing

7. On January 29, 2016, Otter Tail filed a motion for clarification and request for rehearing of the December 30 Order. Otter Tail requests that the Commission clarify that it intended to include in the hearing and settlement judge procedures issues relating to the Integrated Transmission System, regardless of whether the individual facilities within the Integrated Transmission System are jointly owned.¹⁶ In the alternative, Otter Tail requests that the Commission grant rehearing and find that the Integrated Transmission System facilities are included in the hearing and settlement judge proceedings, regardless of whether individual facilities are jointly owned.¹⁷

8. Otter Tail also requests rehearing of the Commission’s decision to decline Otter Tail’s request that it be held harmless from the operational and financial impacts of Central Power joining SPP.¹⁸ Finally, Otter Tail requests rehearing of the Commission’s decision to decline to address rate pancaking that results from Central Power’s membership in SPP.¹⁹

9. On January 28, 2016, the Joint State Commissions filed a request for clarification and rehearing of the December 30 Order. The Joint State Commissions request clarification that the December 30 Order’s statement that “Otter Tail may address” whether any service agreement provision is needed to address duplicative or pancaked rates on the Integrated Transmission System was not intended to exclude other parties from also addressing these issues in the hearing and settlement judge procedures.²⁰ The Joint State Commissions also request rehearing of the Commission’s decision to decline to impose a hold harmless condition.²¹

¹⁵ *Id.*

¹⁶ Otter Tail Request for Rehearing at 5, 7.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 8-9.

¹⁹ *Id.* at 8, 11.

²⁰ Joint State Commissions Request for Rehearing at 2-3.

²¹ *Id.* at 3-5.

III. Discussion

A. Procedural Matters

10. On February 16, 2016, SPP filed an answer to the requests for rehearing and Otter Tail's motion for clarification. Central Power filed an answer to Otter Tail's motion for clarification and request for rehearing on February 16, 2016. On March 1, 2016, Otter Tail filed an answer to SPP's answer.

11. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015), prohibits answers to requests for rehearing. Accordingly, we reject SPP's and Central Power's answers to the requests for clarification and rehearing, and Otter Tail's answer to SPP's answer.

B. Requests for Clarification

12. As discussed further below, we grant the requests for clarification.

1. Otter Tail's Request for Clarification

a. Request for Clarification

13. Otter Tail states that, while the Integrated Transmission System as a whole has been described as a jointly owned transmission system, the individual facilities that comprise the Integrated Transmission System are not jointly owned. Otter Tail notes that the December 30 Order stated that Otter Tail could address in the hearing and settlement judge procedures whether any service agreement provisions were needed to mitigate the impacts of duplicative or pancaked rates for the use of "jointly planned and owned facilities." Otter Tail asserts that Central Power and SPP have cited this "jointly planned and owned" phrase to argue that Otter Tail should be barred from addressing its concerns relating to the integration of Central Power into SPP because the individual facilities that make up the Integrated Transmission System are not jointly owned.²² Accordingly, Otter Tail requests that the Commission clarify that it intended to include in the hearing and settlement judge procedures issues relating to the Integrated Transmission System, regardless of whether the individual facilities within the Integrated Transmission System are jointly owned.²³

14. Otter Tail asserts that, if the Commission had intended to limit the scope of hearing to address only facilities that meet a black letter legal criterion such as tenancy in

²² Otter Tail Request for Rehearing at 4-5.

²³ *Id.* at 5, 7.

common or joint tenant ownership, it could have done so.²⁴ Otter Tail also argues that excluding individual facilities that are not jointly owned would make the Commission's order internally inconsistent. Otter Tail explains that this would occur because it would mean that the same sentence that sets Otter Tail's concerns regarding the Integrated Transmission System for hearing also excludes those same Integrated Transmission System facilities and the issues related thereto from the scope of the proceedings.²⁵

b. Commission Determination

15. We grant Otter Tail's request for clarification that the Commission intended to include in the hearing and settlement judge procedures the issue of whether any service agreement provisions are needed to mitigate the impact of duplicative or pancaked rates on the Integrated Transmission System, regardless of whether the individual facilities within the Integrated Transmission System are jointly owned. In the December 30 Order, the Commission stated that the parties could address whether any service agreement provisions are needed to mitigate the impact of duplicative or pancaked rates

to the extent that Otter Tail has facilities that are highly integrated with facilities in the expanded SPP transmission system as a result of joint planning and ownership, and is concerned that the integration of Central Power into SPP will introduce duplicative or pancaked rates that did not previously exist for use of such jointly planned and owned facilities.²⁶

The use of the phrases "as a result of joint planning and ownership" and "jointly planned and owned facilities" was not intended to restrict the parties to only addressing the impact of duplicative or pancaked rates on facilities that are jointly owned. Rather, the Commission intended to allow the parties to address the impact of duplicative or pancaked rates on the Integrated Transmission System generally, not only on individual facilities that are jointly owned. Accordingly, we clarify that the parties may address in the hearing and settlement judge procedures the issue of whether any service agreement provisions are needed to mitigate the impact of duplicative or pancaked rates on the Integrated Transmission System, regardless of whether the individual facilities within the Integrated Transmission System are jointly owned.

²⁴ *Id.* at 5.

²⁵ *Id.* at 14-15.

²⁶ December 30 Order, 153 FERC ¶ 61,367 at P 47.

2. The Joint State Commissions' Request for Clarification

a. Request for Clarification

16. The Joint State Commissions note that the December 30 Order found that “Otter Tail may address in the hearing and settlement judge procedures whether any provision is needed in its service agreement with SPP”²⁷ to address duplicative or pancaked rates on the Integrated Transmission System resulting from Central Power’s integration into SPP. The Joint State Commissions explain that they are concerned that some parties may assert that, because the December 30 Order stated that “Otter Tail may address” these issues in hearing and settlement judge procedures, the Commission intended to preclude the Joint State Commissions from raising these issues. Accordingly, the Joint State Commissions request clarification that this language was not intended to exclude other parties from also addressing these issues in the hearing and settlement judge procedures.²⁸

b. Commission Determination

17. We grant the Joint State Commissions’ request for clarification that the December 30 Order does not prohibit parties other than Otter Tail from addressing whether any service agreement provisions are necessary to mitigate the impacts of duplicative or pancaked rates on the Integrated Transmission System that did not exist before Central Power’s integration into SPP. Specifically, we clarify that the Commission’s statement that “Otter Tail may address in the hearing and settlement judge procedures whether any provision is needed in its service agreement with SPP” to mitigate the impacts of duplicative or pancaked rates was not intended to limit the parties that could address that issue to Otter Tail. Thus, we find that the Joint State Commissions, Otter Tail, and the other parties to this proceeding may address that issue in the hearing and settlement judge procedures.

C. Requests for Rehearing

18. As discussed further below, we deny the requests for rehearing.

²⁷ Joint State Commissions Request for Rehearing at 2 (citing December 30 Order, 153 FERC ¶ 61,367 at P 47).

²⁸ *Id.* at 2-3.

1. Hold Harmless Condition

a. Requests for Rehearing

19. Otter Tail argues that the Commission erred by dismissing Otter Tail's request for a hold harmless condition without articulating a reasoned explanation for diverging from controlling precedent.²⁹ Otter Tail asserts that its protest discussed a line of cases in which the Commission found a hold harmless remedy appropriate in similar circumstances. Specifically, Otter Tail states that where one utility's choice of RTO will isolate the load of a non-joining utility from the remainder of its RTO, the Commission has found that a hold harmless condition is necessary to mitigate the geographic separation caused by the utility's decision to join an RTO.³⁰ Otter Tail argues that this precedent applies here because Central Power's choice of RTO will leave Otter Tail load isolated from the rest of MISO and subject to pancaked rates. Otter Tail asserts that nothing in the December 30 Order explains why a hold harmless remedy would be inappropriate here or explains the Commission's decision to depart from its past precedent.³¹

20. In particular, Otter Tail cites the *Alliance* order³² in which various parties proposed to join MISO or PJM Interconnection, L.L.C. (PJM).³³ In that case, the Commission imposed a hold harmless condition to "hold harmless utilities in Wisconsin and Michigan from any loop flows or congestion that results from the proposed configuration."³⁴ Otter Tail also cites to *Commonwealth Edison Co.*³⁵ in which the Commission was asked to determine if a compliance filing designed to address the

²⁹ Otter Tail Request for Rehearing at 8.

³⁰ *Id.* at 10.

³¹ *Id.* at 10-11.

³² *Id.* at 10 (citing *Alliance Cos.*, 100 FERC ¶ 61,137 (2002) (*Alliance*), *order on clarification*, 102 FERC ¶ 61,214, *order on reh'g and clarification*, 103 FERC ¶ 61,274, *order denying reh'g and granting clarification*, 105 FERC ¶ 61,215 (2003), *appeal docketed sub nom. American Electric Power Service Corp. v. FERC*, No. 03-1223 (D.C. Cir. Aug. 1, 2003)).

³³ *Id.*

³⁴ *Alliance*, 100 FERC ¶ 61,137 at P 53.

³⁵ Otter Tail Request for Rehearing at 10 (citing Otter Tail Protest at 20-25).

Commission's *Alliance* hold harmless requirement was just and reasonable.³⁶ In *Commonwealth Edison Co.*, the Commission stated that "the purpose of the hold harmless condition is to protect Wisconsin and Michigan utilities from the financial impacts associated with loop flows and congestion created by [the parties'] RTO choices."³⁷ Otter Tail further cites to *ITC Holdings Corp.*,³⁸ in which the Commission explained that the hold harmless remedy established in *Alliance* and *Commonwealth Edison Co.* "for utilities in Wisconsin and Michigan was developed to mitigate the geographic separation of utilities in those two states."³⁹ Otter Tail notes that the Commission has recently stated that a hold harmless remedy may be appropriate to address unique seams issues that arose when certain utilities indicated their intent to join SPP in a region of Montana and North Dakota that had a highly intertwined system.⁴⁰

21. Otter Tail argues that Central Power's choice of RTO will leave Otter Tail load isolated from the rest of MISO and subject to pancaked rates, which, under the Commission's precedent, is the type of situation where a hold harmless remedy should be considered.⁴¹ Otter Tail also asserts that it would suffer adverse financial and operational impacts as a result of Central Power's choice of RTO. In particular, Otter Tail states that Central Power's decision to join SPP would require Otter Tail to take network integration transmission service from both MISO and SPP to serve the same load.⁴² In addition, Otter Tail asserts that its loads that are usually serviced by MISO could be switched into SPP during contingencies in limited circumstances and the SPP Tariff requires Otter Tail to pay for SPP service for those loads at all times to ensure continued reliable service, even if Otter Tail never uses that SPP service.⁴³

³⁶ See *Commonwealth Edison Co.*, 106 FERC ¶ 61,250, at PP 1, 3, 12 (2004).

³⁷ *Id.* P 52.

³⁸ Otter Tail Request for Rehearing at 10 (citing Otter Tail Protest at 20-25).

³⁹ *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 148 (2013).

⁴⁰ Otter Tail Request for Rehearing at 10 (citing *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,051, at P 61 (2015)).

⁴¹ *Id.*

⁴² *Id.* at 3.

⁴³ *Id.*

22. The Joint State Commissions also request rehearing of the Commission's decision to decline to impose a hold harmless condition.⁴⁴ The Joint State Commissions argue that the December 30 Order did not substantively address the arguments that they raised regarding the potential rate impact on their ratepayers or their request that Otter Tail be held harmless from the rate impacts of Central Power joining SPP.⁴⁵ In their comments on SPP's initial filing, each of the Joint State Commissions asserted that Central Power's integration into SPP will force Otter Tail to take transmission service from SPP at pancaked rates in order to reach other areas of MISO, which they stated would have an estimated impact of \$2.96 million annually on Otter Tail's native load customers.⁴⁶ The Joint State Commissions assert that the December 30 Order's failure to address these arguments is grounds for granting rehearing and, on rehearing, the Commission should follow its existing precedent and find that a hold harmless remedy is appropriate and necessary to mitigate the impacts of Central Power's decision to join SPP on Minnesota, North Dakota, and South Dakota ratepayers.⁴⁷

b. Commission Determination

23. As discussed below, we deny Otter Tail and the Joint State Commissions' requests for rehearing on this issue and decline to impose a hold harmless condition in this case. We note that the Commission has declined to impose hold harmless conditions to address the creation of a seam in other cases.⁴⁸ Moreover, we find that the precedent that Otter Tail cites in support of its request for hold harmless treatment is distinguishable and does not support imposing a hold harmless condition in this case.

⁴⁴ Joint State Commissions Request for Rehearing at 4-5.

⁴⁵ *Id.* at 4.

⁴⁶ *See* Minnesota Commission Comments at 3; North Dakota Commission Comments at 3; South Dakota Commission Comments at 2-3.

⁴⁷ Joint State Commissions Request for Rehearing at 4-5.

⁴⁸ *See, e.g., ITC Holdings Corp.*, 143 FERC ¶ 61,257, at PP 147-153 (2013) (declining to impose a hold harmless condition to address MISO and SPP seams issues resulting from integration of an entity into MISO); *Cal. Independent Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 195 (2007) (declining to impose a hold harmless condition to address seams issues associated with market redesign and finding "no merit in the argument that a 'hold harmless' standard should apply to the development of seams mitigation procedures.").

24. In *Alliance* and *Commonwealth Edison Co.*, MISO member utilities in Michigan and Wisconsin were isolated from the rest of MISO because the intervening transmission systems owned by American Electric Power Service Corporation (AEP), Commonwealth Edison Company (ComEd), and Illinois Power Company (Illinois Power) became part of PJM.⁴⁹ Specifically, the RTO configuration resulting from the choices of AEP, ComEd, and Illinois Power to join PJM resulted in a seam at the already highly constrained southern interface of the Wisconsin-Upper Michigan System. The Commission noted that one of the goals of RTO formation is to internalize congestion and loop flows so that they can be efficiently managed, and a seam at such a critically constrained interface is cause for concern with respect to adverse congestion and loop flow impacts.⁵⁰ The Commission found that utilities in Wisconsin and Michigan should be held harmless from any adverse operational and financial impacts related to loop flow and congestion resulting from the choices of AEP, ComEd, and Illinois Power to join PJM.⁵¹ In addition, the Commission explained that the hold harmless condition imposed in that case was only intended to be a temporary solution until coordination agreements were implemented between MISO and PJM.⁵²

25. The facts here differ. In *Alliance*, the facts centered on holding entities harmless from loop flow and congestion issues due to the location of a seam until market-to-market seams issues could be addressed. In this case, SPP and MISO have seams agreements in place to address loop flow and congestion issues that were present in *Alliance*. Otter Tail's concerns are unrelated as it is not being subjected to loop flow and seams issues as a result of being isolated because the owner of a separate, intervening transmission system joined a different RTO. Rather, Otter Tail is faced with issues involving the use and operation of the jointly planned and owned Integrated Transmission System.⁵³ Therefore, we find that the *Alliance* and *Commonwealth Edison Co.* precedent

⁴⁹ See, e.g., *Alliance Cos.*, 102 FERC ¶ 61,214 at P 2.

⁵⁰ *Id.* P 6.

⁵¹ *Id.* P 7.

⁵² *ITC Holdings Corp.*, 146 FERC ¶ 61,111, at P 65 (2014) (“[T]he hold harmless condition imposed by the Commission was intended to be a short-lived solution and not a long-term solution to managing the MISO-PJM seam. The long-term solution was, and is, the MISO-PJM JOA.” (citing *Alliance Cos.*, 103 FERC ¶ 61,274, at PP 41, 44 (2003) (clarifying that the hold harmless condition applied only during the interim period prior to the commencement of the Joint and Common Market)).

⁵³ See, e.g., Otter Tail Protest at 4 (“Central Power and Otter Tail sought a way to avoid duplicating transmission development efforts and to capitalize on the economies of joint transmission development.”).

does not support the hold harmless treatment requested by Otter Tail and the Joint State Commissions.

26. While we decline to impose a hold harmless condition, we recognize the nature of the jointly planned Integrated Transmission System and acknowledge that there may be unique seams issues that require mitigation. Therefore, the parties may discuss in the hearing and settlement judge procedures whether provisions to address the historic arrangement are needed in Otter Tail's service agreement with SPP in order to ensure just and reasonable rates.

2. Rate Pancaking

a. Request for Rehearing

27. Finally, Otter Tail requests rehearing of the Commission's decision in the December Order to reject its request to address rate pancaking that results from Central Power's membership in SPP.⁵⁴ Otter Tail acknowledges that the Commission's precedent does not prohibit inter-RTO rate pancaking, but asserts that it has generally attempted to eliminate rate pancaking where possible.⁵⁵ In support of this assertion, Otter Tail argues that in *Alliance*, the Commission attempted to eliminate rate pancaking along RTO seams in a situation where one utility's choice of RTO results in another utility's load being isolated from the remainder of its RTO. Otter Tail asserts that the December 30 Order justifies its decision not to address rate pancaking issues with a single sentence and citation to one Commission decision. Otter Tail argues that neither that sentence nor the case cited therein provides a reasoned explanation for the Commission's departure from its past precedent, in which it has consistently attempted to eliminate unreasonable rate pancaking.⁵⁶

28. Otter Tail asserts that it does not challenge the idea that SPP is permitted to collect transmission charges when its transmission system is used, but the fact that Central Power's integration means that Otter Tail's only feasible option to continue to provide reliable service to its customers under the SPP Tariff is to pay for year-round SPP network integration transmission service, even if Otter Tail never uses that service.⁵⁷ In addition, Otter Tail argues that the December 30 Order is problematic because it states

⁵⁴ Otter Tail Request for Rehearing at 11.

⁵⁵ *Id.*

⁵⁶ *Id.* at 11-12.

⁵⁷ *Id.* at 12.

that the parties may raise the issue of transmission facilities credits under section 30.9 of the SPP Tariff as a potential remedy, but this offers no remedy to Otter Tail because section 30.9 credits are available only for facilities operated at 60 kV or above, and the Otter Tail transmission facilities that comprise the portions of the Integrated Transmission System are operated at 41.6 kV.⁵⁸

b. Commission Determination

29. We deny Otter Tail's request for rehearing on rate pancaking. As discussed below and as stated by Otter Tail, the Commission's precedent does not prohibit inter-RTO rate pancaking.⁵⁹ Otter Tail points to *Alliance* to argue that, even though inter-RTO rate pancaking is permitted, the Commission has attempted to eliminate such rate pancaking where one utility's choice of RTO results in another utility's load being isolated from the remainder of its RTO.⁶⁰ As discussed *supra*, we find that the facts at hand are not analogous to those in the *Alliance* case, therefore Otter Tail's citation to *Alliance* is inapposite. In addition, the December 30 Order reiterated our previous finding that separate inter-RTO transmission charges are consistent with Commission precedent, which permits RTOs to collect transmission charges from a load-serving entity for every transmission system that the load-serving entity uses.⁶¹ In support of this finding the Commission cited a case in which the Commission found that inter-RTO transmission charges are consistent with Commission precedent,⁶² which relied upon another case that similarly explained that inter-RTO rate pancaking is permitted.⁶³ The Commission's

⁵⁸ *Id.* at 12-13.

⁵⁹ *See id.* at 11 (“[T]he Commission's precedent does not prohibit inter-RTO rate pancaking.”).

⁶⁰ *Id.*

⁶¹ December 30 Order, 153 FERC ¶ 61,367 at P 47.

⁶² *See id.* (citing *Sw. Power Pool, Inc.* 153 FERC ¶ 61,051 at P 52 (“[T]hese separate ‘inter-RTO’ transmission charges are consistent with Commission precedent, which allows RTOs to collect transmission charges from a load-serving entity for every transmission system that the load-serving entity uses.”)).

⁶³ *See Sw. Power Pool, Inc.* 153 FERC ¶ 61,051 at P 52 (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231, at P 155 (2014) (“As a matter of policy, the Commission generally has not required the elimination of inter-RTO rate pancaking, but has required the elimination of intra-RTO rate pancaking.”)).

finding that inter-RTO transmission charges are permitted is consistent with that precedent, which Otter Tail has failed to distinguish.

30. Otter Tail's arguments that it will have to pay for year-round SPP network integration transmission service, even if Otter Tail never uses that service, and that section 30.9 of the SPP Tariff offers no remedy to Otter Tail appear in the section of Otter Tail's rehearing request that challenges the Commission's decision to not address inter-RTO rate pancaking.⁶⁴ However, it is not clear if Otter Tail intended these arguments as support for its rehearing request on that point. To the extent that was Otter Tail's intent, we find those arguments unpersuasive because, as described *supra*, Commission precedent makes it clear that separate inter-RTO transmission charges are permitted.

31. In addition, we disagree with Otter Tail's contention that the December 30 Order is problematic because section 30.9 of the SPP Tariff only makes transmission facilities credits available for facilities operated at 60 kV or above. Under criterion 6 of Attachment AI of the SPP Tariff, a facility operated below 60 kV that has been determined to be transmission by the Commission pursuant to the seven factor test qualifies as a transmission facility.⁶⁵ Therefore, the issue of transmission facilities credits under section 30.9 may be addressed in the hearing and settlement proceedings.

32. To the extent that Otter Tail is asserting that the section 30.9 facility credit issues and having to pay for year-round SPP network integration transmission service are unjust and unreasonable results of SPP's proposed Tariff revisions in this proceeding, we find that Otter Tail may address those concerns in the hearing and settlement judge procedures. We note that in rejecting the request to address rate pancaking that results from Central Power's membership in SPP, the Commission declined to require the elimination of any such inter-RTO rate pancaking because inter-RTO transmission charges are consistent with Commission precedent. It did not intend to preclude Otter Tail or other parties from addressing any other aspects of SPP's proposed Tariff revisions that may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

⁶⁴ Otter Tail Request for Rehearing at 12-13.

⁶⁵ See SPP Open Access Transmission Tariff, Sixth Revised Vol. No. 1, Attachment AI, Section II.6 (defining a transmission facility to include "[a] facility operated below 60 kV that has been determined to be transmission by the Commission pursuant to the seven (7) factor test set forth in Commission Order No. 888.>").

The Commission orders:

(A) The requests for clarification are hereby granted, as discussed in the body of the order.

(B) The requests for rehearing are hereby denied, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.