

165 FERC ¶ 61,248  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Nebraska Public Power District

Docket No. EL18-194-000

v.

Tri-State Generation and Transmission Association, Inc.,  
Southwest Power Pool, Inc.

ORDER DENYING COMPLAINT

(Issued December 20 2018)

1. On August 21, 2018, pursuant to sections 206 and 306 of the Federal Power Act (FPA)<sup>1</sup> and Rules 206 and 212 of the Commission's Rules of Practice and Procedure,<sup>2</sup> NPPD filed a complaint (Complaint) requesting that the Commission determine that the inclusion of certain costs in Tri-State's Annual Transmission Revenue Requirement (ATRR), and failure to credit certain revenues to Tri-State's Schedule 1 revenue requirements for network integration transmission service (network service), causes the rates for transmission service under SPP's Open Access Transmission Tariff (Tariff) to be unjust and unreasonable. We deny the Complaint, as discussed below.

**I. Background**

2. On October 30, 2015, in Docket No. ER16-204-000, SPP submitted revisions to its Tariff to include a formula rate template and formula rate protocols in order to establish an ATRR for Tri-State and to incorporate the Tri-State transmission facilities

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e (2012).

<sup>2</sup> 18 C.F.R. §§ 385.206, 385.212 (2018).

into SPP transmission pricing Zone 17 (SPP Zone 17).<sup>3</sup> NPPD protested SPP's proposed placement of Tri-State's transmission facilities in SPP Zone 17. On December 30, 2015, the Commission accepted the filing and set it for hearing and settlement judge procedures.<sup>4</sup>

3. On February 22, 2017, SPP filed a joint offer of partial settlement (Settlement Agreement) between NPPD, Tri-State, and SPP, among others, which settled all issues related to Tri-State's formula rate template, formula rate protocols, and ATRR, but which reserved for litigation the issue of whether SPP's proposed placement of Tri-State's transmission facilities and ATRR in SPP Zone 17 was just and reasonable. The Commission approved the Settlement Agreement on April 28, 2017.<sup>5</sup>

4. With respect to Tri-State's zonal placement, a presiding judge conducted a hearing on whether Tri-State's transmission facilities should be incorporated into SPP Zone 17 and issued an initial decision on February 23, 2017.<sup>6</sup> On May 17, 2018, the Commission issued Opinion No. 562 finding that SPP's placement of Tri-State's transmission facilities and ATRR in SPP Zone 17 was just and reasonable.<sup>7</sup>

## II. Complaint

5. In its complaint, NPPD alleges that it is unjust and unreasonable for Tri-State to: (1) include in its ATRR the costs recorded in Account No. 565 (Transmission of Electricity by Others) under two Grandfathered Agreements (GFAs) listed on Attachment W of SPP's Tariff; (2) include in its ATRR the costs of Tri-State facilities not physically connected to the SPP transmission system because other SPP customers cannot use them; and (3) exclude Schedule 1 (Scheduling, System Control, and Dispatch Service) point-to-

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<sup>3</sup> SPP uses a license-plate rate design, also called a zonal rate design, pursuant to which its Regional Transmission Organization (RTO) footprint is separated into a number of transmission pricing zones (zones). Customers taking transmission service for delivery to load within SPP pay a rate for certain transmission services based on the cost of the transmission facilities in the zone where the load is located. SPP Zone 17 transmission owners consist of NPPD, Tri-State, and the Central Nebraska Public Power and Irrigation District.

<sup>4</sup> *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,366 (2015).

<sup>5</sup> *Sw. Power Pool, Inc.*, 159 FERC ¶ 62,098 (2017).

<sup>6</sup> *Sw. Power Pool, Inc.*, 158 FERC ¶ 63,004 (2017).

<sup>7</sup> *Sw. Power Pool, Inc.*, 163 FERC ¶ 61,109 (2018).

point revenue from the revenue credits applicable to the Schedule 1 revenue requirements for network service, which allegedly results in an over-collection of Tri-State's actual Schedule 1 costs. NPPD requests that the Commission order Tri-State and SPP to remove all costs related to the two GFAs and the facilities not physically connected to the SPP transmission system from Tri-State's ATRR and SPP's Zone 17 rates and to include Schedule 1 point-to-point revenue as a credit to Tri-State's Schedule 1 revenue requirement for network service.

6. First, with regard to Account No. 565 generally, NPPD avers that the costs of transmission provided by others must be excluded from transmission rates if they "are not incurred in order to provide transmission service to tariff customers."<sup>8</sup> NPPD states that the Commission has found that recovery of payments for transmission by others is allowed "only when the facilities are used either on a day-to-day basis to transmit power and energy *for tariff customers*, or when they form part of the pertinent company's integrated transmission system."<sup>9</sup>

7. NPPD alleges that Tri-State's GFAs 496 and 494 fail to meet that standard. According to NPPD, GFA 496 is a contract that NPPD and Basin Electric Power Cooperative (Basin Electric), as operating agent for the Missouri Basin Power Project and its joint owners,<sup>10</sup> entered into on April 29, 1977. Missouri Basin Power Project consists of three coal-fired generation units with a total capacity of 1,710 MW. Unit 1 of Missouri Basin Power Project is a 570 MW generating unit that is connected to Missouri Basin Power Project's Sidney Substation by three 345 kV transmission lines used to deliver the power of four joint owners who have electric loads in the Eastern Interconnection. NPPD and Basin Electric entered into GFA 496 under which Basin Electric, on behalf of itself and the other Missouri Basin Power Project joint owners, paid NPPD a \$54.4 million capital payment to effect the construction of NPPD transmission facilities needed to transmit Unit 1 power from the Sidney Substation to a point of interconnection with the Integrated System at the Grand Island substation. Due to this capital payment that Missouri Basin Power Project's joint owners made, in lieu of paying NPPD's full transmission rate, GFA 496 requires the Missouri Basin Power Project joint owners to pay for their pro rata share of the operating and maintenance expenses of the

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<sup>8</sup> NPPD Complaint at 18-19 (citing *Ne. Utils. Servs. Co.*, 62 FERC ¶ 61,294, at 62,908 (1992)).

<sup>9</sup> *Id.* at 18-19 (citing *N.Y. State Elec & Gas Corp.*, Opinion No. 447, 92 FERC ¶ 61,169, at 61,584 (2000), *order on reh'g*, Opinion No. 447-A, 100 FERC ¶ 61,021, *reh'g denied*, Opinion No. 447-B, 101 FERC ¶ 61,037 (2002), *order on reh'g*, Opinion No. 447-C, 103 FERC ¶ 61,321, at P 8 (2003) (emphasis added)).

<sup>10</sup> Tri-State is one of the six joint owners of the Missouri Basin Power Project.

transmission facilities NPPD constructed.<sup>11</sup> NPPD avers that Tri-State pays NPPD nothing under GFA 496; instead Tri-State pays Basin Electric for sales service. NPPD also states that Tri-State has determined its share of Basin Electric's \$1,957,464 annual operating and maintenance expenses under GFA 496 to be \$402,596 in 2017. NPPD alleges that the Commission has found under similar circumstances that such third party payment is unrelated to providing transmission service to customers under a tariff. NPPD argues that the Commission has disallowed the inclusion of such costs where customers receive no benefits, and that, here, SPP tariff customers receive no benefits from Basin Electric's wholesale sales service or related payments under GFA 496. NPPD purports that the sole beneficiary of Tri-State's portion of Basin Electric's GFA 496 payment is Tri-State and its load.<sup>12</sup>

8. NPPD adds that GFA 494 is the Western Nebraska Joint Transmission Agreement (NETS Agreement) between NPPD and Tri-State, dated June 8, 1989, which provides for the joint use and planning of transmission facilities separately owned by NPPD and Tri-State in Western Nebraska (NETS facilities). Under the NETS Agreement, the party making the greater use of the NETS facilities is required to pay an annual cost equalization payment to the other party, as measured by the coincident peak day use by Tri-State and NPPD loads. According to NPPD, pursuant to the terms of the NETS Agreement, Tri-State makes an annual cost equalization payment to NPPD for the use that Tri-State makes of NPPD facilities. NPPD argues that the inclusion of the annual cost equalization payment in Tri-State's ATRR and in the related SPP Zone 17 rates is unjust and unreasonable because SPP's Zone 17 customers receive no benefits from the annual cost equalization payment. NPPD contends that the sole beneficiary of that payment is Tri-State load.<sup>13</sup>

9. Next, NPPD claims that Tri-State's ATRR includes costs related to transmission facilities that Tri-State owns that are not physically connected to the SPP transmission system but rather are physically connected to transmission facilities owned by the Western Area Power Administration–Rocky Mountain Region (Western-RMR). NPPD states that Basin Electric, Tri-State's requirements supplier, serves Tri-State's load at six delivery points on Tri-State transmission facilities not physically connected to the SPP transmission system by utilizing SPP network service to deliver power to the edge of the SPP transmission system. According to NPPD, from that point, Basin Electric

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<sup>11</sup> SPP, Joint Offer of Partial Settlement and Request for Shortened Procedures and Waiver of Settlement Comment Period, Docket Nos. ER14-2850-007 and ER14-2851-007, at Appendix B (Stipulated Facts), PP 9-10 (filed Mar. 24, 2016).

<sup>12</sup> NPPD Complaint at 20-23.

<sup>13</sup> *Id.* at 23-24.

utilizes network service that Tri-State obtains from Western-RMR to transmit electricity from the SPP transmission system to Tri-State facilities connected to the Western-RMR facilities. NPPD avers that it is unjust and unreasonable to include the costs related to Tri-State facilities not physically connected to the SPP transmission system because SPP's other customers cannot access the delivery points located on those Tri-State facilities.<sup>14</sup>

10. Finally, NPPD asserts that Tri-State failed to credit Schedule 1 point-to-point revenue to its Schedule 1 revenue requirements for network service. NPPD states that Tri-State credited \$415,096 of point-to-point wheeling revenue to its gross revenue requirement for network service but did not credit \$20,999 in point-to-point Schedule 1 revenue to the Schedule 1 revenue requirements. NPPD argues that not including the Schedule 1 point-to-point revenue as a credit to the Schedule 1 revenue requirements for network service is contrary to fundamental ratemaking principles. NPPD asserts that just and reasonable rates are derived by dividing the total cost-of-service by total load or, alternatively, by crediting the total cost-of-service with the revenue generated by certain services and then dividing the net cost-of-service by the remaining load. NPPD contends that Tri-State has not followed either of these approaches. NPPD asserts that the failure to include such amounts as a credit to the Schedule 1 revenue requirements will result in an over-collection of Tri-State's actual Schedule 1 costs, which NPPD alleges will result in unjust and unreasonable rates.<sup>15</sup>

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

11. Notice of the Complaint was published in the *Federal Register*, 83 Fed. Reg. 43,861 (2018), with interventions and protests due on or before September 10, 2018. Western Farmers Electric Cooperative, Heartland Consumers Power District, and Missouri River Energy Services filed timely motions to intervene.

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<sup>14</sup> *Id.* at 24-28.

<sup>15</sup> *Id.* at 28-29.

12. On August 31, 2018, Tri-State filed a motion for extension of time, requesting an extension of the answer period until September 17, 2018. The period for answers was subsequently extended to September 17, 2018.<sup>16</sup>

13. On September 17, 2018, Tri-State filed its answer to the Complaint (Tri-State Complaint Response), and SPP filed a motion to dismiss and alternative answer to complaint (SPP Complaint Response). On September 24, 2018, NPPD filed an answer to Tri-State's and SPP's responses to the Complaint, and on October 2, 2018, Tri-State filed an answer to NPPD's answer.

**A. Tri-State Complaint Response**

14. Tri-State argues that the Complaint is a collateral attack on the Settlement Agreement because the issues that NPPD raises are components of that agreement, which NPPD joined as a settling party. First, Tri-State argues that the inclusion of Tri-State's Account 565 costs related to GFAs 496 and 494 was clearly part of the Settlement Agreement in Appendix 1, which includes the formula rate template and accompanying worksheets.<sup>17</sup> Second, in regard to NPPD's allegation that certain facilities are not physically connected to the SPP transmission system and do not qualify as transmission facilities under the SPP Tariff, Tri-State explains that these facilities were listed as Tri-State's SPP assets in the initial filing in Docket No. ER16-204, as well as during discovery in the Docket No. ER16-204 proceeding.<sup>18</sup> Tri-State also avers that as part of the Settlement Agreement, Tri-State agreed to prepare a Schedule 1 revenue requirements worksheet and also update its Worksheet M to add the SPP point-to-point wheeling and SPP Schedule 1 point-to-point rates. Tri-State explains that the formula rate template to which the parties agreed under the Settlement Agreement excluded a line item crediting the Schedule 1 point-to-point revenues. According to Tri-State, NPPD should not have

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<sup>16</sup> See Notice of Extension of Time, Docket No. EL18-194-000 (issued Sept. 6, 2018).

<sup>17</sup> Tri-State Complaint Response at 9-10 (citing *e.g.*, SPP, Settlement Agreement, Docket No. ER16-204-002 at Appendix 1, Worksheet O at lines 2-3, 16-17 (filed Feb. 22, 2017)). In addition, Tri-State asserts that these costs have been part of Tri-State's ATRR since SPP's initial filing in the Docket No. ER16-204 proceeding. *Id.* (citing SPP, Ex. SPP-10, Docket No. ER16-204-000, at 7:9-16 (filed Oct. 30, 2015)).

<sup>18</sup> *Id.* at 10-11 (citing SPP, Ex. SPP-6, Docket No. ER16-204-000 (filed Oct. 30, 2015); Tri-State, Docket No. ER16-204-001, Ex. TS-07 (filed Sept. 28, 2016)).

agreed to be a settling party if it had concerns with the treatment of these cost components.<sup>19</sup>

15. In addition to arguing that the issues that NPPD raises are components of the Settlement Agreement, Tri-State further asserts that NPPD's arguments are without merit because the inclusion of each of the disputed cost components in its ATRR is just and reasonable. With regard to NPPD's allegations concerning Account No. 565, Tri-State argues that GFA 496 and 494 costs are appropriately included in that account if the facilities either: (1) are used by the transmission provider on a day-to-day basis to serve all transmission customers or (2) the facilities effectively constitute part of the transmission provider's transmission system.<sup>20</sup> Tri-State argues that under GFA 496, Basin Electric, as the Missouri Basin Power Project operating agent, pays NPPD a prorated share of its annual operation and maintenance costs. Tri-State avers that it is appropriate to include these costs in Tri-State's ATRR because the costs are for operation and maintenance of critical NPPD 345 kV facilities that are under the functional control of SPP and are available to all SPP transmission customers on a day-to-day, nondiscriminatory basis.<sup>21</sup>

16. Regarding GFA 494, Tri-State explains that the NETS Agreement allows both parties (Tri-State and NPPD) to use specific facilities owned by the other party. Tri-State further explains that NPPD and Tri-State placed their GFA 494 facilities under the functional control of SPP in 2009 and 2016, respectively. Tri-State asserts that, as a result, both the NPPD and Tri-State GFA 494 facilities are available for the use of all SPP transmission customers on a day-to-day, nondiscriminatory basis, and their costs, including the annual cost equalization payment, are properly included in NPPD's and Tri-State's ATRRs.<sup>22</sup> Tri-State argues that it is appropriate to include these costs because Tri-State planned and constructed its facilities covered under the NETS Agreement for both itself and NPPD, with the expectation that both its customers and NPPD's customers would pay for them pursuant to the NETS Agreement. Tri-State also contends that because NPPD uses the facilities to serve its load under the NETS Agreement, the cost

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<sup>19</sup> *Id.* at 11.

<sup>20</sup> *Id.* at 12-13 (citing *New England Power Co.*, 65 FERC ¶ 61,153, at 61,756 (1993); *Ne. Utils. Serv. Co.*, 62 FERC ¶ 61,294 at 62,908; *N.Y. State Elec. & Gas Corp.*, Opinion No. 447, 92 FERC ¶ 61,169, *order on reh'g*, Opinion No. 447-A, 100 FERC ¶ 61,021, *reh'g denied*, Opinion No. 447-B, 101 FERC ¶ 61,037, *order on reh'g*, Opinion No. 447-C, 103 FERC ¶ 61,321).

<sup>21</sup> *Id.* at 14-17.

<sup>22</sup> *Id.* at 13.

causation principle supports allocating the associated costs to all SPP Zone 17 customers.<sup>23</sup>

17. Next, Tri-State disputes NPPD's allegation that Tri-State's ATRR should not include costs related to transmission facilities that Tri-State owns that are not physically connected to the SPP transmission system. Tri-State argues that the transmission facilities in question qualify for inclusion in its ATRR under Attachment AI (Transmission Definition) of the SPP Tariff and are accessible to other SPP transmission customers and are under SPP's functional control. Tri-State further states that during the Docket No. ER16-204 proceeding, Commission Trial Staff reviewed these transmission facilities and concluded that they qualified for inclusion under the Tariff pursuant to Attachment AI. In addition, Tri-State explains that four of the facilities at issue are included in the NETS Agreement for the "Parties' mutual benefit and joint use," while the other two facilities at issue are listed as "on-system (Zone 17) delivery points in the NPPD [network service] Agreement."<sup>24</sup>

18. Finally, Tri-State argues that neither the SPP Tariff nor Commission precedent requires it to credit Schedule 1 point-to-point revenues against its Schedule 1 revenue requirement. Tri-State argues that the SPP Tariff requires point-to-point revenues received under Schedules 7 (Long-term Firm and Short-term Firm Point-to-Point Transmission Service) and 8 (Non-firm Transmission Service) to be credited against the Schedule 9 (Network Integration Transmission Service) ATRR. Tri-State argues that, in contrast, the SPP Tariff does not require crediting of point-to-point revenues received under Schedule 1 to the Schedule 1 revenue requirement. Tri-State avers that it is not over-recovering its Schedule 1 revenue requirement because Schedule 1 has a fundamentally different purpose than Schedule 9, because Schedule 1 is intended to recover the costs of scheduling the movement of power and not to recover the cost of using a transmission facility.<sup>25</sup>

## **B. SPP Complaint Response**

19. SPP requests that the Commission dismiss SPP as a respondent to the Complaint, arguing that SPP has no right to set or determine Tri-State's ATRR, nor is it the beneficiary of any revenues from Tri-State's ATRR or Tri-State's recovery of costs. SPP asserts that each of its transmission owners calculates its own ATRR in conformance with the procedures set forth in the SPP Tariff and that it merely bills for transmission

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<sup>23</sup> *Id.* at 17-21.

<sup>24</sup> *Id.* at 21-25.

<sup>25</sup> *Id.* at 25-30.

services taken under the Tariff, using Commission-approved rates, and distributes the resulting revenues to its transmission owners accordingly. According to SPP, none of the revenues from a transmission owner's ATRR belong to or benefit SPP and, because SPP recovers its costs under other portions of the Tariff, the outcome of this Complaint proceeding will not affect the recovery of its costs. Thus, SPP argues, it has no material or financial stake in the issues in this case and should not be obliged to expend its resources to participate in this proceeding as a respondent.<sup>26</sup>

20. SPP further notes that as the administrator of its Tariff, it is unnecessary for SPP to be a named respondent to this proceeding in order to implement the resolution of any issue that the Commission directs. SPP states that section 3.10 of the SPP Membership Agreement gives non-jurisdictional transmission owners, such as Tri-State, a unilateral right to file the rates applicable to their transmission facilities, as well as the right to compel SPP to submit a rate filing on their behalf. SPP adds that it has no right to set or otherwise dictate Tri-State's rates or ATRR, nor does it have the authority to deny or reject components of Tri-State's ATRR.<sup>27</sup> SPP argues that the Commission has in the past dismissed RTOs as respondents to complaints where the RTO is not a true party in interest to the issues raised in those proceedings and, therefore, SPP requests that the Commission dismiss SPP as a party to this Complaint.<sup>28</sup>

21. SPP states that if the Commission does not dismiss SPP as a respondent to the Complaint, the Commission should deny the Complaint on the merits with regard to SPP. SPP asserts that NPPD alleges no facts, impropriety, or omissions by SPP with respect to the SPP Tariff or any provision of the FPA or any other governing statute or regulation. Accordingly, SPP argues, NPPD has not satisfied its burden under section 206 of the FPA and the Commission's regulations and urges the Commission to deny the Complaint as regards SPP.<sup>29</sup>

22. Finally, given that it is a revenue-neutral RTO with no independent source of funds, SPP requests that the Commission expressly clarify that SPP is not liable to pay

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<sup>26</sup> SPP Complaint Response at 3-4.

<sup>27</sup> *Id.* at 3-5.

<sup>28</sup> *Id.* at 6 (citing *Golden Spread Elec. Coop., Inc. v. Sw. Pub. Serv. Co.*, 147 FERC ¶ 61,239, at P 24 (2014) (dismissing "conditional complaint" against SPP, stating that dismissal is appropriate when "the independent system operator is not a beneficiary to the [rate component] at issue" and "the transmission owners are the true parties in interest"))).

<sup>29</sup> *Id.* at 6, 7.

any refunds that may result from this proceeding unless or until it receives such refunded revenues from Tri-State.<sup>30</sup>

### C. NPPD Answer

23. NPPD reiterates arguments it made in the Complaint, asserts that the Complaint is not a collateral attack on the Settlement Agreement, and states that it opposes SPP's motion to dismiss on the grounds that SPP is a necessary party. NPPD argues that the fact that the three issues it raised in its Complaint are, in varying degrees, components of the Settlement Agreement does not prohibit NPPD from challenging the justness and reasonableness of such components under section 206 of the FPA. NPPD asserts that collateral estoppel applies only to issues that have been actively litigated and determined. NPPD indicates that none of those three issues was litigated or determined on the merits.<sup>31</sup>

24. Concerning the inclusion of the costs associated with GFAs 496 and 494 in Tri-State's ATRR, NPPD asserts that Tri-State's reliance on *Northeast Utilities* and *New England Power Co.* is misplaced because those cases addressed payments made by the transmission provider to third parties for transmission service that the transmission provider could not otherwise provide.<sup>32</sup> According to NPPD, the costs associated with GFA 496 do not meet this criterion because SPP Tariff customers receive no benefits from the costs that Tri-State incurs under GFA 496 and the costs associated with GFA 496 represent a contractual obligation rather than the cost of providing transmission service to customers under the SPP Tariff.<sup>33</sup> Likewise, NPPD argues that the costs associated with GFA 494 should be excluded from Tri-State's ATRR because SPP does not use the NETS Agreement to provide transmission service to SPP's tariff customers. NPPD represents that Tri-State's payment to NPPD compensates NPPD for Tri-State's use of the facilities; however, once Tri-State transferred functional control of its NETS Agreement facilities to SPP, all SPP customers had access to both NPPD and Tri-State

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

<sup>31</sup> NPPD Answer at 2-5 (citing *Tex. E. Transmission Corp.*, 69 FERC ¶ 61,309, at 62,182 (1994); *Norfolk and W. Ry. Co. v. United States*, F.2d 373 (D.C. Cir. 1985)).

<sup>32</sup> *Id.* at 6 (citing *Ne. Utils. Serv. Co.*, 62 FERC ¶ 61,294 at 62,908; *New England Power Co.*, 65 FERC ¶ 61,153 at 61,755).

<sup>33</sup> NPPD Answer at 7-10.

facilities, regardless of GFA 494. Consequently, NPPD states, other SPP customers receive no benefit from GFA 494.<sup>34</sup>

25. NPPD reiterates that the transmission facilities not physically connected to the SPP transmission system do not qualify for inclusion in Tri-State's ATRR under Attachment AI of the SPP Tariff. NPPD further notes that Tri-State has not addressed NPPD's assertions that the six facilities it identified are not physically connected to the SPP transmission system.<sup>35</sup>

26. Next, NPPD argues that Tri-State fails to recognize that its Schedule 1 revenues allow a transmission owner to recover the costs associated with the provision of scheduling and dispatch services, including a return on net intangible plant allocated to Schedule 1.<sup>36</sup> NPPD argues that Tri-State's failure to credit the point-to-point Schedule 1 revenue of \$20,999 to its Schedule 1 revenue requirement results in collection of the entire Schedule 1 revenue requirement from network customers, which is an over-collection of this amount.<sup>37</sup>

27. Finally, NPPD indicates that the Commission should deny SPP's request to be dismissed as a respondent to the Complaint, arguing that SPP is in the best position to verify or deny Tri-State's claims regarding the costs included in Tri-State's ATRR. NPPD also asserts that SPP is qualified to explain whether transmission facilities that are not physically connected to the SPP transmission system can qualify as transmission facilities under Attachment AI of SPP's Tariff.<sup>38</sup>

#### **D. Tri-State Answer**

28. Tri-State reiterates that NPPD's Complaint is a collateral attack on the Settlement Agreement and asserts that NPPD ignores the Commission's holding in *Texas Eastern* that resurrecting challenges forgone in settlement negotiations undermines the settlement

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<sup>34</sup> *Id.* at 11-12.

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.* at 15.

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

<sup>38</sup> *Id.* at 16.

process.<sup>39</sup> With regard to the GFAs, Tri-State argues that the facilities under these GFAs were and remain necessary to serve SPP loads. Tri-State asserts that even if the Commission were to accept NPPD's argument that the GFAs are no longer necessary to serve load that is now served by SPP transmission facilities, it is appropriate to evaluate the long-term contracts using the life-of-the-contract standard because to do otherwise "improperly presumes that the benefits and burdens are somehow equal in each year throughout the life of the contract."<sup>40</sup> Tri-State argues that excluding the GFA costs from the SPP Zone 17 ATRR means that SPP Zone 17 customers would not pay for the full costs of the facilities used to serve them.<sup>41</sup>

29. In addition, concerning NPPD's argument that costs associated with transmission facilities that are not physically connected to the SPP transmission system should not be included in Tri-State's ATRR, Tri-State asserts that whether the transmission facilities are listed as "on-system" or "off-system" is irrelevant, because they were transferred to SPP's functional control and qualify as transmission facilities under Attachment AI of the SPP Tariff.<sup>42</sup>

30. Finally, Tri-State argues that NPPD's Answer does not provide any support for the position that Schedule 1 revenues should be credited in Tri-State's ATRR.<sup>43</sup>

#### **IV. Discussion**

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

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

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to an answer unless otherwise ordered by the

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<sup>39</sup> Tri-State's October 2 Answer at 3 (citing *Tex. E. Transmission Corp.*, 69 FERC ¶ 61,309 at 62,182).

<sup>40</sup> *Id.* at 3-4 (citing *San Diego Gas & Elec. Co.*, 95 FERC ¶ 61,073, at 61,202 (2001)).

<sup>41</sup> *Id.* at 4-8.

<sup>42</sup> *Id.* at 8-9.

<sup>43</sup> *Id.* at 10.

decisional authority. We accept both answers because they provided information that assisted us in our decision-making process.

**B. Substantive Matters**

33. As discussed below, our review of the Settlement Agreement and the associated appendices<sup>44</sup> indicates that each of the disputed cost components that NPPD raises in its complaint was covered by the Settlement Agreement. Article 8.1 of the Settlement sets forth the standard of review for any changes to the Settlement Agreement.<sup>45</sup> Consistent with that provision, as a party to the Settlement Agreement, NPPD must demonstrate that its proposed modifications to the ATRR and underlying rates satisfy the “public interest” application of the just and reasonable standard. NPPD has failed to do so.

34. NPPD argues that it is unjust and unreasonable for Tri-State to include in its ATRR the costs associated with GFAs 496 and 494 recorded in Account 565 and the costs of Tri-State facilities not physically connected to the SPP transmission system, and to exclude Schedule 1 point-to-point revenue from the revenue credits applicable to the Schedule 1 revenue requirements. We find that the Settlement Agreement covered each of these disputed cost components. First, the costs related to GFAs 496 and 494 were included in Appendix 1 of the Settlement Agreement, which sets forth the formula rate

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<sup>44</sup> Article 10.1 of the Settlement Agreement states: “[t]his Partial Settlement Agreement, including the appendices hereto, constitutes the entire agreement among the Settling Parties with respect to the subject matter addressed herein...”

<sup>45</sup> Article 8.1 of the Settlement Agreement, provides that:

The standard of review for any change to this Partial Settlement Agreement proposed by a party to this proceeding shall be the “public interest” application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) (*Morgan Stanley*) and *NRG Power Marketing v. Maine Pub. Utilities Commission*, 558 U.S. 165 (2010) (*NRG*). The standard of review for any modifications to this Partial Settlement Agreement requested by a non-party to this proceeding or initiated by the Commission is the just and reasonable standard.

template and accompanying worksheets. Specifically, Worksheet O in Appendix 1 of the Settlement Agreement includes line items for each of the Account 565 costs. Lines 2 and 16 of Worksheet O list the NPPD transmission payments under GFA 496. Lines 3 and 17 of Worksheet O list the NPPD equalization payment under GFA 494.

35. Second, NPPD alleges that certain facilities are not physically connected to the SPP transmission system and their associated costs should not be included in Tri-State's ATRR. However, the facilities that make up Tri-State's ATRR were listed in Exhibit SPP-6 as Tri-State's SPP assets in the initial filing in Docket No. ER16-204, and in Exhibit TS-07 during discovery in the Docket No. ER16-204 proceeding.<sup>46</sup> Furthermore, the formula rate template provided in the Settlement Agreement includes Worksheets U and V for SPP Qualified Transmission Substations and SPP Qualified Transmission Lines, respectively. Although these worksheets do not specify the individual facilities, the expenses provided on these worksheets are derived from the inclusion of the costs of the facilities provided in Exhibit TS-07 and, thus, inclusion of these expenses was part of the formula rate template included in the Settlement Agreement.

36. Finally, although NPPD argues that Tri-State should be required to credit its Schedule 1 point-to-point revenue against its Schedule 1 revenue requirement, the formula rate template agreed upon by NPPD and other parties to the Settlement Agreement did not include a line item to account for such crediting. NPPD fails to recognize that although Tri-State credited the \$415,096 of point-to-point wheeling revenue to its gross revenue requirement for network service consistent with the agreed-upon formula rate, the Settlement Agreement, to which NPPD is a party, does not require such revenue crediting of the Schedule 1 revenue requirement.

37. Each of these disputed cost components that NPPD raises in its complaint is covered in the Settlement Agreement, and the Settlement Agreement requires a party proposing changes to the Settlement Agreement to meet the public interest application of the just and reasonable standard. Therefore, NPPD must make a showing sufficient to demonstrate that, without the proposed changes, the Settlement Agreement "seriously harms the public interest."<sup>47</sup> We find that NPPD has not made such a showing, and accordingly, we deny the Complaint.

38. In addition, even if NPPD was not required to satisfy the public interest application of the just and reasonable standard, NPPD has failed to demonstrate that including the disputed cost components in Tri-State's ATRR and not crediting Schedule 1

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<sup>46</sup> SPP, Ex. SPP-6, Docket No. ER16-204-000; Tri-State, Ex. TS-07, Docket No. ER16-204-001.

<sup>47</sup> *NRG*, 558 U.S. at 167 (citing *Morgan Stanley*, 554 U.S. at 530).

point-to-point revenue to Tri-State's Schedule 1 revenue requirements for network service renders the associated rates for transmission service unjust and unreasonable. In particular, Commission policy permits a transmission provider to include costs in Account No. 565 in its ATRR if the costs are related to third-party facilities used by the transmission provider as grid facilities on a day-to-day basis to transmit power for customers under a tariff, or if these facilities effectively constitute part of the transmission provider's transmission system.<sup>48</sup> NPPD has not demonstrated that, despite the fact that SPP has functional control of the GFA facilities, Tri-State retains any of its preexisting entitlements under GFAs 496 and 494, such that the capacity provided under the GFAs is not fully available for service to eligible SPP tariff customers on a day-to-day, nondiscriminatory basis.

39. Similarly, with regard to NPPD's allegation that Tri-State's ATRR inappropriately includes the costs of transmission facilities that are not physically connected to the SPP transmission system, NPPD failed to support its arguments to rebut Tri-State's statement that the facilities in question were found to meet the criteria for qualification as transmission facilities described in section II of Attachment AI to the SPP Tariff.

40. In addition, NPPD fails to support its claim that Tri-State's not crediting the point-to-point Schedule 1 revenue to its Schedule 1 revenue requirements would result in Tri-State over-collecting its Schedule 1 revenue requirements from SPP Zone 17 network customers. We agree with Tri-State that SPP's Tariff does not require that it credit the charges. NPPD did not show that the present circumstances require crediting of Schedule 1 point-to-point revenue.

41. Finally, because we are denying the Complaint, we find it unnecessary to address SPP's motion to be dismissed as a respondent to the Complaint and therefore dismiss it as moot.

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<sup>48</sup> *Ne. Utils. Serv. Co.*, 62 FERC ¶ 61,294 at 62,908; *New England Power Co.*, 65 FERC ¶ 61,153 at 61,755-56; *N.Y. State Elec. & Gas Corp.*, Opinion No. 447, 92 FERC ¶ 61,169.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.  
Commissioner McNamee is voting present.

( S E A L )

Kimberly D. Bose,  
Secretary.