

163 FERC ¶ 61,111  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

Southwest Power Pool, Inc.	Docket Nos.	EL16-110-002
Buffalo Dunes Wind Project, LLC, Enel Green Power North America, Inc., Alabama Power Company, and Southern Company Services, Inc.		EL17-69-001  (not consolidated)

v.

Southwest Power Pool, Inc.

ORDER DENYING REHEARING

(Issued May 17, 2018)

1. On October 19, 2017, the Commission issued an order in Docket No. EL16-110-000<sup>1</sup> finding section 34.6 of Southwest Power Pool, Inc.’s (SPP) Open Access Transmission Tariff (Tariff), regarding Network Integration Transmission Service (network service) subject to redispatch,<sup>2</sup> to be unjust and unreasonable and unduly discriminatory or preferential to the extent that it allowed SPP to provide Auction Revenue Rights (ARRs) and Long-Term Congestion Rights (LTCRs) to network service customers with service subject to redispatch while necessary transmission upgrades are constructed on the same basis as it provides ARRs and LTCRs to network service customers not subject to redispatch. The same day, the Commission issued an order in

---

<sup>1</sup> *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,071 (2017) (Paper Hearing Order).

<sup>2</sup> As explained in the Paper Hearing Order, we use “subject to redispatch” to describe the process under the SPP Tariff when a firm transmission service request requires new transmission upgrades, but SPP is able to address the constraint identified in the system impact studies through redispatch until the transmission upgrades are placed into service. *Id.* P 1 n.4.

Docket No. EL17-69-000<sup>3</sup> denying a complaint and motion for interim relief filed by Enel Green Power North America, Inc. (Enel), on behalf of its subsidiary Buffalo Dunes Wind Project, LLC, and Southern Company Services, on behalf of its subsidiary Alabama Power Company (Alabama Power) (collectively, Joint Parties), and finding that SPP was not barred by its Tariff from allocating ARRs and LTCRs to customers with network service subject to redispatch for the amounts and periods subject to redispatch during the 2017-2018 annual allocation process.<sup>4</sup>

2. On November 20, 2017, Xcel Energy Services Inc. (Xcel), on behalf of its affiliate Southwestern Public Service Company (Southwestern) filed a request for rehearing of the Paper Hearing Order, and Joint Parties filed a request for rehearing of the Paper Hearing Order and Complaint Order.

3. For the reasons discussed below, we deny the requests for rehearing.

## **I. Background**

### **A. ARR and LTCR Eligibility for Transmission Service Subject to Redispatch**

4. Section 13.5 of SPP's Tariff provides that customers taking point-to-point transmission service subject to redispatch are only eligible to be allocated ARRs for service that is not taken subject to the redispatch obligation, and are not eligible for LTCR allocation.<sup>5</sup> Prior to the Paper Hearing Order, however, Tariff section 34.6 contained no such limitation on ARR and LTCR eligibility for *network* service customers

---

<sup>3</sup> *Buffalo Dunes Wind Project, LLC v. Sw. Power Pool, Inc.*, 161 FERC ¶ 61,074 (2017) (Complaint Order).

<sup>4</sup> As discussed in section I.D below, on October 19, 2017, the Commission issued another related order in Docket No. ER17-1575-000. *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,075 (2017) (Tariff Revision Order).

<sup>5</sup> SPP, Tariff, Pt. II, § 13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs (2.1.0) ("Transmission Customers having Firm Point-To-Point Transmission Service subject to redispatch will be eligible to nominate Candidate Auction Revenue Rights associated with that service only for those times of the year and for only the amounts of service that are not subject to redispatch. Long-Term Firm Point-to-Point Transmission Service with a redispatch requirement will not be eligible for any Candidate Long-Term Congestion Rights because it does not have continuous service covering the entirety of the associated Transmission Congestion Right year.").

subject to redispatch. SPP had previously interpreted this silence to mean that customers with network service subject to redispatch were eligible to nominate ARR and LTCR on the same basis as customers with network service not subject to redispatch. In March 2016, SPP submitted a filing in Docket No. ER16-1286-000 proposing, as relevant here, to revise section 34.6 of its Tariff to include additional language that stated that customers with network service subject to redispatch are eligible to obtain ARR and LTCR associated with that service. The Commission rejected this proposal in an order issued on September 23, 2016<sup>6</sup> and instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>7</sup> in Docket No. EL16-110-000 to examine whether the then-current version of section 34.6 was unjust and unreasonable to the extent it could be read to extend the eligibility for ARR and LTCR to network customers with service subject to redispatch (paper hearing proceeding).<sup>8</sup>

5. In the paper hearing proceeding, SPP stated that it had commenced a stakeholder process for vetting Tariff revisions addressing the concerns in the September 2016 Order, and anticipated filing proposed revisions by May 1, 2017, “with a requested effective date 60 days thereafter.”<sup>9</sup> Enel expressed concern that SPP’s proposal would not timely address the issues noted by the Commission in the September 2016 Order, as the ARR and LTCR auction for the 2017-2018 allocation year would begin in April 2017, and further argued that applying an effective date to any new Tariff provisions later than the September 29, 2016 refund effective date established in the September 2016 Order would improperly extend an unjust and unreasonable practice.<sup>10</sup> Alabama Power argued that SPP’s Tariff already provided that network customers with service subject to redispatch should not be eligible for ARR or LTCR during periods of redispatch, and argued that the Commission should require SPP to enforce the Tariff as of the refund effective date established in the September 2016 Order to avoid perpetuating the adverse effects of SPP’s failure to implement its Tariff.<sup>11</sup> Xcel, on the other hand, argued in its brief that all customers with reservations for network service subject to redispatch confirmed by SPP

---

<sup>6</sup> *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,217 (2016) (September 2016 Order).

<sup>7</sup> 16 U.S.C. § 824e (2012).

<sup>8</sup> September 2016 Order, 156 FERC ¶ 61,217 at P 29.

<sup>9</sup> SPP, Initial Brief, Docket No. EL16-110-000, at 5 (filed Nov. 30, 2016).

<sup>10</sup> Enel, Reply Brief, Docket No. EL16-110-000, at 4-5 (filed Dec. 21, 2016).

<sup>11</sup> Alabama Power, Reply Brief, Docket No. EL16-110-000, at 1 (filed Dec. 21, 2016).

prior to the September 2016 Order should remain eligible for ARR and LTCR and not be subject to any changes made as a result of the proceeding.<sup>12</sup>

## **B. Paper Hearing Order**

6. In the Paper Hearing Order, the Commission found Tariff section 34.6 to be unjust and unreasonable and unduly discriminatory or preferential to the extent that it allowed SPP to provide ARR and LTCR to network service customers subject to redispatch while network transmission upgrades were under construction on the same basis as these rights are provided to firm transmission customers not subject to redispatch.<sup>13</sup> The Commission directed SPP to revise Tariff section 34.6 on compliance to reflect the same limitation on ARR and LTCR eligibility found in Tariff section 13.5 for point-to-point service subject to redispatch. The Commission also held that, going forward from the effective date of these Tariff revisions, it would not be reasonable for SPP to allocate to customers with network service subject to redispatch any additional LTCRs nor any ARRs on the same basis as firm transmission customers not subject to redispatch.<sup>14</sup>

7. The Commission found it reasonable, however, to permit network customers with service subject to redispatch to retain: (1) any LTCRs that had already been granted until the transmission upgrades are placed into service; and (2) any ARRs that had already been granted for times and amounts of service in which they were subject to a redispatch obligation until the end of the allocation year following the effective date of the revisions to section 34.6.<sup>15</sup> The Commission determined that SPP's interpretation of its Tariff was reasonable, as the Tariff expressly limited the eligibility for ARRs and LTCRs for point-to-point service subject to redispatch but contained no similar limitation for network service subject to redispatch, and declined to attempt to undo allocations already granted under this interpretation.<sup>16</sup> The Commission held that this limited grandfathering, in conjunction with preventing the future allocation of ARRs or LTCRs on the same basis as firm transmission customers not subject to redispatch, "appropriately balance[d] the interests of network customers with service subject to redispatch who were granted ARRs

---

<sup>12</sup> See Xcel, Initial Brief, Docket No. EL16-110-000, at 11 (filed Nov. 30, 2016) (Xcel Initial Brief).

<sup>13</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at P 33.

<sup>14</sup> *Id.* PP 33, 38.

<sup>15</sup> *Id.* PP 49-50.

<sup>16</sup> *Id.* P 49.

or LTCRs based on SPP's interpretation of its Tariff with the need to prevent ARRs and LTCRs from continuing to be awarded in an unjust and unreasonable and unduly discriminatory or preferential manner."<sup>17</sup>

### **C. Complaint Order**

8. On May 1, 2017, Joint Parties filed a complaint in Docket No. EL17-69-000 alleging that SPP had violated its Tariff and the September 2016 Order by granting new ARRs for network service reservations subject to redispatch during the 2017-2018 annual ARR and LTRC allocation process.<sup>18</sup> On October 19, 2017, the Commission denied Joint Parties' complaint, finding that Joint Parties failed to demonstrate that SPP was prohibited by either the SPP Tariff or the September 2016 Order from allocating new ARRs and LTCRs for amounts and periods of service subject to redispatch for the 2017-2018 allocation year.<sup>19</sup> The Commission noted that the required changes to SPP's Tariff and ARR and LTRC allocation practices required in the Paper Hearing Order applied prospectively, from the effective date of the revisions to Tariff section 34.6 required in that order, and thus did not apply to the 2017-2018 annual allocation process.<sup>20</sup>

### **D. Tariff Revisions in Docket No. ER17-1575-000**

9. In May 2017, after conducting the stakeholder process that it initiated in response to the September 2016 Order, SPP filed proposed Tariff revisions to bring the eligibility for ARRs and LTCRs of customers taking network service subject to redispatch in line with the provisions in its Tariff governing ARR and LTRC eligibility for customers taking point-to-point transmission service subject to redispatch. SPP proposed, however, to grandfather the ability of network service subject to redispatch confirmed prior to the July 15, 2017 requested effective date of the proposed Tariff revisions to be eligible for ARRs. In light of its determination in the concurrently issued Paper Hearing Order, the Commission rejected the proposed Tariff revisions on the basis that SPP's proposed

---

<sup>17</sup> *Id.* P 51.

<sup>18</sup> Joint Parties Complaint, Docket No. EL17-69-000, at 1-3 (filed May 1, 2017).

<sup>19</sup> Complaint Order, 161 FERC ¶ 61,074 at P 34.

<sup>20</sup> *Id.* P 39.

grandfathering provisions would inappropriately extend practices found unjust and unreasonable in the Paper Hearing Order.<sup>21</sup>

## II. Rehearing Requests

10. On rehearing of the Paper Hearing Order, Xcel argues that the Commission erred by: (1) disregarding Southwestern's contractual rights;<sup>22</sup> and (2) concluding that network service subject to redispach is not similarly situated to network service not subject to redispach.<sup>23</sup> Xcel requests that the Commission grant rehearing of the Paper Hearing Order and direct SPP to permit all existing network customers with service subject to redispach to retain their eligibility to receive ARRs and LTCRs even during periods of redispach.<sup>24</sup> In the alternative, Xcel asks that the Commission allow all network service transactions subject to redispach that were confirmed by SPP prior to the September 29, 2016 refund effective date established in the September 2016 Order to retain their eligibility to be allocated ARRs and LTCRs through the terms of their agreements, even during times of redispach.<sup>25</sup>

11. By contrast, Joint Parties assert in their request for rehearing that the Commission erred in permitting SPP to allocate any additional ARRs and LTCRs to network customers with service subject to redispach for the portions of their service subject to redispach after May 31, 2017 (the end of the 2016-2017 ARR allocation year).<sup>26</sup> Joint Parties seek rehearing of both the Paper Hearing Order and Complaint Order to impose a May 31, 2017 effective date for SPP's revisions to section 34.6 of its Tariff.<sup>27</sup>

---

<sup>21</sup> Tariff Revision Order, 161 FERC ¶ 61,075 at P 43.

<sup>22</sup> Xcel Rehearing Request at 8, 9-15.

<sup>23</sup> *Id.* at 8, 15-21. Xcel also submitted a rehearing request in Docket No. ER17-1575-002 seeking rehearing of the Tariff Revision Order on these same bases. An order addressing that rehearing request is being issued concurrently in Docket No. ER17-1575-002.

<sup>24</sup> Xcel Rehearing Request at 10, 21-22.

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

<sup>26</sup> *See* Joint Parties Rehearing Request at 4.

<sup>27</sup> *Id.* at 14.

### **III. Commission Determination**

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

12. On December 20, 2017, Joint Parties submitted a motion for leave to answer and answer to Xcel's request for rehearing.<sup>28</sup> Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2017), prohibits an answer to a request for rehearing. Accordingly, we deny Joint Parties' motion to answer and reject their answer to Xcel's rehearing request.

#### **B. Substantive Matters**

##### **1. Contract Rights**

13. Xcel contends the Commission erred in the Paper Hearing Order by failing to address Southwestern's contract rights to be eligible to receive ARR and LTRs.<sup>29</sup> We disagree. The Commission considered Xcel's argument in its initial brief that Southwestern relied on the availability of rights to hedge congestion costs in entering into its transmission arrangements, but ultimately concluded that the limited grandfathering permitted in the Paper Hearing Order struck the appropriate balance between the interests of customers who relied on SPP's interpretation of its Tariff and the need to prevent the continuation of a practice found to be unjust and unreasonable and unduly discriminatory or preferential.<sup>30</sup>

14. Moreover, Xcel fails to show that SPP's Tariff provided Southwestern with a contractual right that was abrogated by the Paper Hearing Order. According to Xcel, "the contract rights at issue are [Southwestern's] eligibility for LTRs and ARRs," arising from the fact that, as a customer with a firm transmission service reservation, Southwestern is deemed an "Eligible Entity" and thus "permitted to nominate candidate LTRs and/or ARRs" under section 7.1 of Attachment AE if it meets the conditions in section 7.1.1.<sup>31</sup> We do not question that these provisions, coupled with SPP's interpretation of its Tariff, could create an expectation that Southwestern would be eligible to nominate and receive ARRs and LTRs. However, Xcel disregards the

---

<sup>28</sup> Joint Parties also submitted this answer in Docket No. ER17-1575-002.

<sup>29</sup> Xcel Rehearing Request at 8, 10-15.

<sup>30</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at P 51.

<sup>31</sup> Xcel Rehearing Request at 11.

Commission's statutory duty under the FPA to prevent utilities from charging rates that are not just and reasonable and unduly discriminatory or preferential.<sup>32</sup> Indeed, as Xcel acknowledges, the terms of Southwestern's transmission service agreement incorporate by reference the terms and conditions in SPP's Tariff.<sup>33</sup> In other words, the rights arise under the terms and conditions of SPP's Tariff, which must be just and reasonable, and which are subject to change.

15. In this regard, Xcel errs in contending that the Commission "ignore[d] the substantial financial cost to SPP and its requirements wholesale and retail native load customers" from the loss of ARR and LTCR for confirmed transmission arrangements for service subject to redispatch.<sup>34</sup> The Commission weighed customers' expectations based on SPP's Tariff interpretation against the prospect of continuing an unjust and unreasonable allocation of ARR and LTCR.<sup>35</sup> We continue to find that it was reasonable for the Commission to limit the grandfathering permitted in the Paper Hearing Order to customers who had already been granted ARR and LTCR under SPP's prior interpretation of its Tariff. Neither Xcel's expected increase in costs<sup>36</sup> nor "[t]he fact that

---

<sup>32</sup> We also note that Xcel does not cite any precedent, in its initial brief or on rehearing, to support the contention that the Commission's findings in the Paper Hearing Order impermissibly abrogate a bilateral contract.

<sup>33</sup> Xcel Rehearing Request at 11.

<sup>34</sup> *Id.* at 9-10. Xcel estimates in its request for rehearing that Southwestern could incur "up to \$4 million or more per year in congestion costs that were not anticipated at the time SPS contracted for the resource." *Id.* at 13-14. While Xcel alleged in its initial brief in this proceeding that Southwestern would be harmed due to unhedged congestion costs if the Commission did not accept SPP's grandfathering proposal, it quantifies this harm for the first time on rehearing, which prevents other parties from responding to this estimate on the record. *See* Xcel Initial Brief at 15; 18 C.F.R. § 385.713(d)(1) (2017).

<sup>35</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at P 51. *See also* Tariff Revision Order, 161 FERC ¶ 61,075 at P 46 (explaining that the Commission "balanced the interests of customers with network service subject to redispatch" with the Commission's finding that Tariff revisions were necessary).

<sup>36</sup> As noted in the Paper Hearing Order, allocating ARR and LTCR to customers with network service subject to redispatch on the same basis as network service customers not subject to redispatch could reduce the portion of ARR and LTCR allocated to network service customers not subject to redispatch. *See* Paper Hearing Order, 161 FERC ¶ 61,071 at P 34. Given the Commission's finding that network service subject to redispatch is similarly situated to network service not subject to

Xcel may have expected to receive ARR and LTCR under a provision of the Tariff that the Commission has now found to be unjust and unreasonable and unduly discriminatory or preferential” means that Xcel’s contract rights have been abrogated.<sup>37</sup>

16. Furthermore, the fact that the Commission found that SPP did not violate its Tariff by offering ARR and LTCR in the past to customers with firm network service subject to redispatch does not, as Xcel suggests, undermine the Commission’s conclusion that it would not be reasonable to continue allocating ARR and LTCR in this manner.<sup>38</sup> In the Paper Hearing Order, the Commission held that “going forward from the effective date of revisions to section 34.6 required in this order,” it would not be reasonable for SPP to allocate any additional LTCR to customers with network service subject to redispatch, and ARR for times and amounts subject to redispatch.<sup>39</sup> The Commission found that, because SPP’s Tariff did not previously contain the same limitation in the language on network service subject to redispatch as in the provision regarding point-to-point service subject to redispatch, SPP did not violate its Tariff.<sup>40</sup> After considering the record established in the paper hearing proceeding, however, the Commission directed SPP to revise its Tariff to align the two provisions, and found that it would not be reasonable to continue allocating ARR and LTCR under the old allocation method once the revised provisions were effective.<sup>41</sup> Neither the fact that SPP did not violate its Tariff, nor the fact that the Commission permitted customers that had already been granted ARR and

---

redispatch only for those times of year and in those amounts of service that can be provided without redispatch, Xcel fails to explain why it is just and reasonable to increase costs for customers with network service not subject to redispatch by continuing to allocate ARR and LTCR to customers with network service subject to redispatch on this basis.

<sup>37</sup> Tariff Revision Order, 161 FERC ¶ 61,075 at P 46.

<sup>38</sup> See Xcel Rehearing Request at 12 (citing *Ala. Power Co. v. Sw. Power Pool, Inc.*, 161 FERC ¶ 61,073, at P 25 (2017) (*Alabama Power*); Complaint Order, 161 FERC ¶ 61,074 at P 36 n.56).

<sup>39</sup> See Paper Hearing Order, 161 FERC ¶ 61,071 at P 33 (emphasis added).

<sup>40</sup> See *Alabama Power*, 161 FERC ¶ 61,073 at PP 24-26; Paper Hearing Order, 161 FERC ¶ 61,071 at P 36.

<sup>41</sup> See Paper Hearing Order, 161 FERC ¶ 61,071 at PP 51-52.

LTCRs to retain those rights,<sup>42</sup> requires the Commission to permit what it has found to be an unjust and unreasonable practice to continue indefinitely.

17. To the extent Xcel further suggests that the Commission's rejection of SPP's grandfathering proposal violates the requirements of FPA section 217,<sup>43</sup> as addressed in Order No. 681,<sup>44</sup> by impairing Southwestern's ability to hedge long-term power supply arrangements,<sup>45</sup> we note that network service customers with service subject to redispatch will still be eligible to obtain ARR's during times and for amounts of service not subject to redispatch while the transmission upgrades are being constructed, and will be fully eligible for ARR's and LTCRs after the transmission upgrades are placed into service.<sup>46</sup> In compliance with Guideline 4 of Order No. 681, SPP proposed to tie the award and duration of LTCRs to the underlying firm transmission service, and the Commission accepted this proposal.<sup>47</sup> As the Commission held in the Paper Hearing Order and as we

---

<sup>42</sup> See Xcel Rehearing Request at 13.

<sup>43</sup> 16 U.S.C. § 824q (2012).

<sup>44</sup> *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), Order No. 681-B, 126 FERC ¶ 61,254 (2009). Under Guideline 4 of Order No. 681, the Commission required that long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load-serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation.

<sup>45</sup> Xcel Rehearing Request at 14-15.

<sup>46</sup> See September 2016 Order, 156 FERC ¶ 61,217 at P 28 ("we do not agree with commenters who allege that SPP's proposal to limit LTCRs is overly restrictive, because point-to-point transmission service customers can still nominate candidate ARR's for periods when their service is not subject to redispatch until the transmission upgrade is placed into service and then nominate candidate LTCRs thereafter"); *id.* P 33 (denying network service customers subject to redispatch any LTCRs until the transmission upgrades are placed into service and the service is no longer subject to redispatch would not unduly harm network service customers with service subject to redispatch "because they can continue to obtain ARR's during those periods and for those amounts of service not subject to redispatch until the transmission upgrades are placed into service, and then obtain LTCRs thereafter").

<sup>47</sup> See *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,076, at PP 37-38 (2014).

affirm below, network service subject to redispatch is a form of conditional service, and is similarly situated to network service not subject to redispatch during those times of year and amounts of service that can be provided without redispatch.<sup>48</sup> Xcel's argument fails to recognize that, because network service subject to redispatch cannot be simultaneously feasible without leaning on the capacity of other firm transmission customers not subject to redispatch, the allocation of LTCRs to network customers with service subject to redispatch could decrease the LTCRs allocated to transmission customers with confirmed firm network or point-to-point transmission service not subject to redispatch,<sup>49</sup> reducing their ability to hedge long-term power supply arrangements.

## 2. Nature of Network Service Subject to Redispatch

18. Xcel argues that the Commission fundamentally mischaracterized the nature of redispatch service in concluding that customers taking network service subject to redispatch were not similarly situated to network service customers not subject to redispatch.<sup>50</sup> As an initial matter, we note that Xcel did not make this argument in its brief in this proceeding,<sup>51</sup> even though the September 2016 Order instituted the paper hearing proceeding “to consider whether to require SPP to limit the eligibility for ARRs and LTCRs for network service subject to redispatch so that service is treated comparably with point-to-point transmission service subject to redispatch with respect to ARR and LTCR eligibility.”<sup>52</sup> As a rule, we reject requests for rehearing that raise a novel issue, unless we find that the issue could not have been previously presented, e.g., claims based

---

<sup>48</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at PP 33-34.

<sup>49</sup> *See id.*

<sup>50</sup> Xcel Rehearing Request at 15-21.

<sup>51</sup> Xcel cites to two sentences from its brief, in which it states that SPP only offered Southwestern service subject to redispatch after concluding that it was feasible to provide Southwestern's requested firm service. *See id.* at 17 (citing Xcel Initial Brief at 20). Xcel did not argue in its brief that customers with network service subject to redispatch were similarly situated to customers taking network service not subject to redispatch or *not* similarly situated to customers taking point-to-point transmission service subject to redispatch.

<sup>52</sup> *See* September 2016 Order, 156 FERC ¶ 61,217 at P 26; *id.* P 31 (“We are concerned that network service subject to redispatch is not similarly situated to network service subject only to a reliability-based redispatch obligation.”).

on information that only recently became available or concerns prompted by a change in material circumstances.<sup>53</sup>

19. We nevertheless have considered the merits of Xcel's argument, and deny rehearing. Xcel primarily reiterates arguments raised by SPP and rejected by the Commission in prior orders. For example, Xcel revives a point from SPP's July 25, 2016 deficiency letter response in Docket No. ER16-1286-001 to argue that network service subject to redispach should be treated differently from point-to-point transmission service subject to redispach because point-to-point service is "path-based," whereas network service may use paths throughout the transmission system.<sup>54</sup> The Commission addressed this argument in the September 2016 Order, explaining that when customers' requested service can be provided only through redispach, both point-to-point and network customers use alternate parts of the network for service when SPP redispaches the system as a result of constrained facilities, meaning that ARRs and LTCRs could be over-allocated when such redispach occurs for both point-to-point *and* network service.<sup>55</sup> Xcel's request for rehearing provides no reason to revisit this determination.

20. Xcel asserts that network service subject to redispach is not a conditional service.<sup>56</sup> We continue to disagree.<sup>57</sup> As we have explained, network service subject to redispach is offered where "SPP has determined it cannot provide the requested service

---

<sup>53</sup> Rule 713(c)(3) of the Commission's Rules of Practice and Procedure states that any request for rehearing must "[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order." 18 C.F.R. § 385.713(c)(3) (2017). *See, e.g., Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 250 (2016) (novel issues raised on rehearing are rejected "because our regulations preclude other parties from responding to a request for rehearing and such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision") (internal quotations omitted).

<sup>54</sup> Xcel Rehearing Request at 20 (citing September 2016 Order, 156 FERC ¶ 61,217 at P 15).

<sup>55</sup> September 2016 Order, 156 FERC ¶ 61,217 at P 34.

<sup>56</sup> Xcel Rehearing Request at 16.

<sup>57</sup> *See* Paper Hearing Order, 161 FERC ¶ 61,071 at P 33 ("As the Commission stated in the September 2016 Order, network service subject to redispach is a form of conditional service.").

without redispatch because the service would cause transmission constraints, and the service is granted *conditionally* subject to transmission upgrades being placed into service.”<sup>58</sup> Xcel suggests that network service subject to redispatch is conditioned only on an up-front determination that the service can be provided with redispatch, made prior to offering the service and, once granted, is not substantively different from network service not subject to redispatch, presumably because the customer with service subject to redispatch “pays SPP the same amount for transmission service as the ‘regular’ [network service] customer pays.”<sup>59</sup> As the Commission found in the Paper Hearing Order, however, network service subject to redispatch cannot be simultaneously feasible without leaning on the capacity of other firm transmission customers not subject to redispatch.<sup>60</sup> Moreover, Xcel fails to explain how, if accurate, its characterization of network service subject to redispatch diverges from point-to-point transmission service subject to redispatch in a manner that warrants disparate treatment. Xcel has not disputed the limitations on the eligibility of customers with point-to-point transmission service subject to redispatch for ARRs and LTCRs. As Xcel notes,<sup>61</sup> we have clarified that the fact that network service is subject to redispatch does not mean the customer has lower priority or less firm service.<sup>62</sup> Again, this is also the case for point-to-point service subject to redispatch.<sup>63</sup> Accordingly, we affirm that network service subject to redispatch is similarly situated to network service not subject to redispatch for the times of year and in the amounts of service provided without redispatch.<sup>64</sup>

---

<sup>58</sup> September 2016 Order, 156 FERC ¶ 61,217 at P 31.

<sup>59</sup> Xcel Rehearing Request at 17.

<sup>60</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at P 34.

<sup>61</sup> Xcel Rehearing Request at 18.

<sup>62</sup> See Complaint Order, 161 FERC ¶ 61,074 at P 36; *Alabama Power*, 161 FERC ¶ 61,073 at P 25.

<sup>63</sup> *Alabama Power*, 161 FERC ¶ 61,073 at P 25 (“We reiterate that both network service subject to redispatch and firm point-to-point transmission service subject to redispatch are forms of *firm* transmission service, albeit firm service conditioned upon redispatch. Further, the fact that the service is subject to redispatch does not mean that the transmission customer has a lower priority transmission service.”).

<sup>64</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at P 33.

### 3. Effective Date

21. We also deny Joint Parties' request for rehearing. While Joint Parties set forth their reasons for preferring an earlier effective date, they fail to show that the October 19, 2017 effective date for the Tariff revisions is not appropriate.

22. The establishment of a refund effective date in Docket No. EL16-110-000 preserved the Commission's ability to order refunds, if appropriate, back to this date. It did not obligate the Commission to establish an earlier date for the Tariff revisions.<sup>65</sup> Neither did the Commission's anticipation that it would be able to issue an order in the paper hearing proceeding by May 2017 require the establishment of a May 31, 2017 effective date for the Tariff revisions directed in the Paper Hearing Order.<sup>66</sup> As the Commission noted in the Complaint Order, the Commission lacked a quorum at the time Joint Parties filed their complaint through the beginning of the 2017-2018 allocation year, and the Commission thus could not have directed SPP to refrain from allocating additional ARRs and LTCRs during that time.<sup>67</sup>

23. Joint Parties are mistaken in asserting that the Commission established a "new and even later refund effective date" in the Paper Hearing Order.<sup>68</sup> Section 206(b) of the FPA provides that the Commission "may order refunds," not that it must.<sup>69</sup> After considering the record in the paper hearing proceeding, the Commission determined that refunds were not required and instead directed SPP to file prospective Tariff changes, effective as of the date of the Paper Hearing Order. This determination was consistent with the Commission's authority under FPA section 206(a) to set a just and reasonable rate "to be thereafter observed and in force" after finding a rate to be unjust, unreasonable, or unduly

---

<sup>65</sup> See Joint Parties Rehearing Request at 5.

<sup>66</sup> *Id.* at 5-6.

<sup>67</sup> Complaint Order, 161 FERC ¶ 61,074 at P 40 n.66.

<sup>68</sup> Joint Parties Rehearing Request at 6-7.

<sup>69</sup> 16 U.S.C. § 824e(b) (2012); see also *La. Pub. Serv. Comm'n v. FERC*, 772 F.3d 1297, 1302-03 (D.C. Cir. 2014) ("To hold that refunds are mandatory every time there is an unjust or unreasonable rate would be contrary to Congress's use of the permissive 'may' in section 206(b) . . .").

discriminatory or preferential. Contrary to Joint Parties' assertions, no "FPA limitation" prevents the Commission from setting this rate prospectively.<sup>70</sup>

24. As the Commission explained in the Complaint Order and the Paper Hearing Order, SPP had not violated its Tariff, but it would be unjust and unreasonable for SPP to continue to allocate ARRs and LTCRs under its prior interpretation of the Tariff going forward.<sup>71</sup> However, with respect to ARRs and LTCRs already granted under SPP's prior interpretation of the Tariff, the Commission weighed all considerations and found that permitting customers to retain rights granted before the October 19, 2017 effective date "appropriately balance[d] the interests of network customers with service subject to redispatch who were granted ARRs or LTCRs based on SPP's interpretation of its Tariff with the need to prevent ARRs and LTCRs from continuing to be awarded in an unjust and unreasonable and unduly discriminatory or preferential manner."<sup>72</sup> In directing SPP to implement changes prospectively from the date of the Paper Hearing Order, the Commission considered the harm alleged by Joint Parties in their respective briefs,<sup>73</sup> and weighed this harm against the determinations that SPP's interpretation of its Tariff was reasonable, SPP had not violated its Tariff, and customers had already been allocated

---

<sup>70</sup> See, e.g., *Monongahela Power Co.*, 162 FERC ¶ 61,129, at PP 120-121 (2018) (following an FPA section 206 proceeding in which a refund effective date was established, the Commission exercised its discretion to make changes directed on compliance effective prospectively); *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 155 FERC ¶ 61,124, at P 37 (2016) (rejecting the argument that the Commission must apply a new rate under FPA section 206(a) retroactively as of the refund effective date on the basis that this application of section 206(b) effectively "would make refunds mandatory in all cases and thus would eliminate the discretion that the statute explicitly gives to the Commission and that has been recognized by the courts").

<sup>71</sup> See Complaint Order, 161 FERC ¶ 61,074 at PP 35-36; Paper Hearing Order, 161 FERC ¶ 61,071 at P 33. We note that the United States Court of Appeals for the District of Columbia Circuit has repeatedly observed that the Commission's "discretion 'is often at its 'zenith' when the challenged action relates to the fashioning of remedies.'" *Pub. Utils. Comm'n of Cal. v. FERC*, 988 F.2d 154, 163 (D.C. Cir. 1993) (quoting *Towns of Concord, Norwood, and Wellesley v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992)).

<sup>72</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at P 51.

<sup>73</sup> See *id.* P 34 ("As Enel indicates, network service subject to redispatch, as a form of conditional service, cannot be simultaneously feasible without leaning on the capacity of other firm transmission customers not subject to redispatch.").

ARRs and LTCRs under SPP's interpretation. We continue to believe that this timing struck the appropriate balance. We therefore decline to direct SPP to change the effective date of the Tariff revisions on rehearing.

25. With respect to Joint Parties' concerns regarding the statement in the Complaint Order that the Tariff revisions directed in the Paper Hearing Order "will apply prospectively, and do not apply to the 2017-2018 annual allocation process,"<sup>74</sup> we clarify that this statement was neither "internally inconsistent" nor erroneous.<sup>75</sup> Joint Parties allege that the October 19, 2017 effective date results in mid-year application of the Tariff revisions.<sup>76</sup> However, while annual ARR and LTCR allocations are effective June 1-May 31 of the relevant allocation year, these allocations occur in March and April. In other words, the annual ARR and LTCR allocations for the 2017-2018 allocation year were made in March and April 2017, prior to the effective date of the Tariff Revisions.<sup>77</sup> Although the Tariff revisions became effective as of October 19, 2017, no new annual allocations are made until March and April of 2018 (for the 2018-2019 allocation year).<sup>78</sup> Accordingly, we confirm that the Tariff revisions applied prospectively and did not apply to the 2017-2018 annual allocation process. Joint Parties' requested May 31, 2017 effective date therefore is not needed to address any mid-year gap, and we deny rehearing.

---

<sup>74</sup> Complaint Order, 161 FERC ¶ 61,074 at P 39.

<sup>75</sup> Joint Parties Rehearing Request at 11.

<sup>76</sup> *Id.* at 11-12.

<sup>77</sup> The Commission permitted network service customers granted ARRs associated with network service subject to redispatch to continue to hold those ARRs until the end of the 2017-2018 allocation year. *See* Paper Hearing Order, 161 FERC ¶ 61,071 at P 50.

<sup>78</sup> *See* SPP, Market Participant Guide: SPP 2018 Congestion Hedging, at 7 (Dec. 15, 2017), [https://www.spp.org/documents/56198/mp%20guide\\_spp%202018%20congestion%20hedging.pdf](https://www.spp.org/documents/56198/mp%20guide_spp%202018%20congestion%20hedging.pdf).

The Commission orders:

Xcel's and Joint Parties' requests for rehearing are denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.