

170 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER20-108-000
ER20-108-001

ORDER ACCEPTING AND SUSPENDING NETWORK AGREEMENTS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 12, 2020)

1. On October 15, 2019, pursuant to section 205 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP), at the request of Montana-Dakota Utilities Co. (Montana-Dakota), filed an executed network operating agreement (NOA) among SPP as transmission provider, Montana-Dakota as network customer, and Basin Electric Power Cooperative (Basin) and Western Area Power Administration (WAPA) as host transmission owners, and an unexecuted network integration transmission service agreement (NITSA) between SPP as transmission provider and Montana-Dakota as network customer. As discussed below, we accept the filing, suspend it for a nominal period, effective December 15, 2019, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. On September 11, 2014, SPP filed revisions to the SPP Open Access Transmission Tariff (SPP Tariff), Bylaws, and Membership Agreement to facilitate integrating the Integrated System² into SPP.³ On November 10, 2014, the Commission issued an order on the Integrated System integration proposal and, among other things, set issues relating to joint planning, ownership, and operation of transmission facilities for hearing and

¹ 16 U.S.C. § 824d (2018).

² The Integrated System includes transmission facilities owned by WAPA, Basin, and Heartland Consumers Power District (collectively, Integrated System Parties).

³ Sw. Power Pool Inc., Filing, Docket No. ER13-2078-000 (filed July 31, 2013).

settlement judge procedures.⁴ Following formal and informal negotiations, the Integrated System Parties, Montana-Dakota and the Midcontinent Independent System Operator, Inc. (MISO) filed a joint offer of partial settlement resolving these issues, which the Commission accepted.⁵

II. Filing

3. SPP states that it is submitting these agreements for the inclusion of certain facilities in the revised NITSA in order to receive network customer transmission credits pursuant to part III, Section 30.9 (30.9 Credits) of the SPP Tariff. SPP states that the revised NITSA is subject to the Settlement Agreement. SPP states that the revised NITSA incorporates a revised appendix, Appendix 4, to identify certain Montana-Dakota facilities that the Commission previously approved to receive 30.9 Credits in the Settlement Agreement (Settlement Agreement Credit Facilities) as well as additional facilities for which Montana-Dakota is requesting 30.9 Credits through this filing (30.9 Credit Facilities).

4. SPP states that Montana-Dakota declined to execute the NITSA because SPP did not include all the facilities requested by Montana-Dakota to be included in Appendix 4 of the revised NITSA as 30.9 Credit Facilities. SPP states that it excluded these requested facilities because they were not eligible for 30.9 Credits pursuant to the SPP Tariff and the Settlement Agreement.⁶

5. SPP states that the revised NITSA revises the original agreement to add additional non-conforming language to section 11.0 of Attachment 1 and Appendix 4 of the revised NITSA. SPP states that the revised NITSA adds non-conforming language to section 11.0 of Attachment 1 for the following reasons: (1) to incorporate by reference Attachments 5 and 6 of the Settlement Agreement; (2) to reference the list of “[Montana-Dakota] Credited Facilities” that were identified in Attachment 4 of the Settlement Agreement and that are also included in Appendix 4 to the revised NITSA; and (3) to state that the Richland to Lewis & Clark 115 kV reconductor upgrade, after it is

⁴ *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,113, at P 112 (2014), *order on reh’g and clarification*, 153 FERC ¶ 61,051 (2015).

⁵ *See Sw. Power Pool, Inc.*, 155 FERC ¶ 61,168 (2016); *Sw. Power Pool, Inc., Errata to Joint Offer of Partial Settlement*, Docket Nos. ER14-2850-006 and ER14-2851-006 (filed Apr. 12, 2016) (Settlement Agreement).

⁶ Transmittal at 2.

completed, will be eligible for credits in accordance with Section 30.9 of the SPP Tariff and consistent with the Settlement Agreement.⁷

6. SPP states that the new requested creditable facilities in section I of Appendix 4 of the revised NITSA include the addition of the Bowman Junction Substation to the 30.9 Credit substations. SPP states that the new requested creditable facilities in section II of Appendix 4 of the revised NITSA include the following additions to the 30.9 Credit transmission lines: (1) the Centipede line switches on the Dickinson to Hettinger 115kV line (Centipede Line Switches); and (2) the North Dickinson to Green River 115kV line (North Dickinson to Green River Transmission Line). SPP states that the transmission owners in the area around Montana-Dakota have facilities that are highly integrated with each other as a result of decades of Montana-Dakota, WAPA, and Basin jointly planning and developing transmission facilities. SPP states the new requested creditable facilities meet the criteria to receive 30.9 Credits.⁸

7. SPP states that the Bowman Junction Substation, Centipede Line Switches, and the North Dickinson to Green River Transmission Line are facilities that were jointly developed between Basin and Montana-Dakota under the Interconnection and Common Use Agreement (Common Use Agreement). SPP states that the Common Use Agreement was the reciprocal usage and investment agreement between Montana-Dakota and Basin that ended as a result of Basin and WAPA joining SPP on October 1, 2015. SPP states that the Bowman Junction Substation, Centipede Line Switches, and North Dickinson to Green River Transmission Line were originally owned by Basin members and were recently sold to Montana-Dakota, and that they are either located wholly within or connected to the Settlement Agreement Credit Facilities and provide service to both Basin's and Montana-Dakota's SPP customer load. Lastly, SPP states that the Bowman Junction Substation, Centipede Line Switches, and the North Dickinson to Green River Transmission Line are existing equipment that have been in service since the 1980s.⁹

8. SPP states that the allocation factors used for the new requested creditable facilities and the Settlement Agreement Credit Facilities are listed in Appendix 4 of the revised NITSA, and any changes in the allocation factors of the Settlement Agreement Credit Facilities and those allocation factors listed for the new requested creditable facilities in the revised NITSA are based on the same methodology. SPP states that allocation factors for the transmission lines are calculated as the amount of line miles that qualify for 30.9 Credits, divided by the total line miles. SPP states that allocation factors for the substation facilities use a weighting that represents the 30.9 Credit Facilities' cost

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 4-5.

divided by the total installed facilities cost. SPP states that the allocation factor in several of the Settlement Agreement Credit Facilities changed from the originally approved allocation factor because some of Basin's members moved load from Montana-Dakota's system.¹⁰

9. SPP states that in its review of the new requested creditable facilities indicate that the facilities are integrated as required under Section 30.9 of the SPP Tariff. SPP states that the new requested creditable facilities will serve SPP transmission owners' power and transmission customers, and since the new requested creditable facilities are integrated as required under the SPP Tariff, the Commission should approve the new requested creditable facilities as qualifying for 30.9 Credits.¹¹

III. Notice and Responsive Pleadings

10. Notice of the filing submitted on October 15, 2019 was published in the *Federal Register*, 84 Fed. Reg. 56,186 (Oct. 21, 2019), with interventions and protests due on or before November 5, 2019. WAPA and Basin filed timely motions to intervene. Montana-Dakota filed a timely motion to intervene and protest (Montana-Dakota Protest) and filed a supplement containing an omitted attestation. American Electric Power Service Corporation (AEP) filed a motion to intervene out-of-time. SPP, WAPA, Montana-Dakota, and Basin filed answers.

11. On January 13, 2020, SPP responded (Deficiency Response) to a letter issued by Commission staff informing SPP that its filing was deficient and requesting additional information. Notice of SPP's Deficiency Response was published in the *Federal Register*, 85 Fed. Reg. 3366 (Jan. 21, 2020), with interventions and protests due on or before February 3, 2020. Montana-Dakota filed a protest (Montana-Dakota Deficiency Protest).

A. Protest

12. Montana-Dakota filed a protest arguing that SPP improperly excluded three of its facilities from the NITSA and requests that the Commission find these facilities are eligible for 30.9 Credits, and direct SPP to revise Appendix 4 of the NITSA to include the three facilities as Montana-Dakota Credited Facilities.¹² These three facilities are: (1) a 115 kV transmission line from the Dickinson west transmission substation to the north Dickinson transmission substation (Dickinson Loop); (2) a new 115/60 kV

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

¹² Montana-Dakota Protest at 8.

substation and 115 kV transmission line near Miles City, Montana (Miles City Facilities); and (3) a rebuild of the Stanley transmission substation (Stanley Rebuild). Montana-Dakota states that SPP's conclusion is incorrect and results in Montana-Dakota paying unjust and unreasonable rates for transmission service from SPP.

13. Montana-Dakota states that the Settlement Agreement memorializes the agreement reached to resolve the seams issues associated with the Integrated System's integration into SPP. Montana-Dakota asserts that the purpose of the Settlement Agreement is to facilitate the provision of 30.9 Credits for use of its transmission facilities by SPP to provide transmission service to SPP customers. Montana-Dakota states that these credits offset the charges Montana-Dakota pays to SPP and reduce rate pancaking.¹³ Montana-Dakota states that Section 30.9 of the SPP Tariff makes it clear that network customer-owned transmission facilities are eligible for 30.9 Credits if they are integrated into the plans and operations of a transmission owner *or*, if owned by an SPP transmission owner, they would be eligible for inclusion in the transmission owner's annual transmission revenue requirement.¹⁴

14. Montana-Dakota explains that the Dickinson Loop is the completion of the second phase of a long-planned transmission project. Montana-Dakota states that the first phase of the project currently receives 30.9 Credits and asserts that the second phase should not be treated differently. Montana-Dakota states that it understands that the primary basis for SPP's denial of 30.9 Credits for the Dickinson Loop is that it does not satisfy SPP's regional planning criteria and no local planning criteria exists within the Upper Missouri zone of SPP. Montana-Dakota states that this is a consequence of SPP's characterization of the Dickinson Loop as radial, which does not meet the definition of transmission under Attachment AI of the SPP Tariff.¹⁵ Montana-Dakota disagrees with SPP's assessment, and states that the Dickinson Loop is appropriately classified as transmission under Attachment AI and meets the eligibility requirements of Section 30.9 of the SPP Tariff.

15. Montana-Dakota argues that similar to the Dickinson Loop, the Miles City Facilities are appropriately classified as transmission facilities under Attachment AI of the SPP Tariff and meet the eligibility requirements of Section 30.9 of the SPP Tariff. Montana-Dakota states that based on its previous discussions with SPP, Montana-Dakota understands that SPP concluded that the Miles City Facilities were not identified as needed under its regional planning criteria and no local Upper Missouri zone criteria exists to support their inclusion. Montana-Dakota states that this conclusion stems from

¹³ *Id.* at 3.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 9-10.

the fact that SPP models the planned Miles City Facilities as radial facilities serving two loads and not a networked system, and in addition, the Upper Missouri zone does not have approved local planning criteria, so there is no criteria violation to mitigate or local standard to guide planning.¹⁶

16. Montana-Dakota explains that the Miles City Facilities were approved by MISO as a reliability project needed to address the possible loss of an existing transformer owned by Montana-Dakota and there is no argument that the facilities do not constitute networked transmission facilities. Montana-Dakota states the existing facilities at Miles City were studied, designed, and cost allocated under the Common Use Agreement, which was the basis for providing 30.9 Credits in the Settlement Agreement. Montana-Dakota asserts that there is no basis for treating the planned Miles City Facilities differently than the existing facilities. Furthermore, Montana-Dakota states that not granting the Miles City Facilities 30.9 Credits could result in further rate pancaking that the Settlement Agreement was intended to avoid and such a result would undermine the purpose of the Settlement Agreement.¹⁷

17. Montana-Dakota states that the Stanley Rebuild is a planned project whereby Montana-Dakota would rebuild the Stanley transmission substation due to age and condition. Montana-Dakota states that SPP informed Montana-Dakota that the rebuild constitutes an upgrade rather than a facility replacement, and does not meet a local planning replacement criterion, and is thus ineligible for 30.9 Credits. Montana-Dakota notes that there is no Upper Missouri zone local planning criteria to guide planning, but that the absence of local planning criteria applicable to the Stanley Rebuild does not mean that the facilities do not satisfy the integration standard under Section 30.9 of the SPP Tariff or that the facilities do not provide additional benefits to the transmission grid in terms of capability and reliability. Montana-Dakota explains that the Stanley substation was not specifically identified as a 30.9 Credit Facility at the time the Settlement Agreement was entered into because it only contained the two motor-operated switches, and instead, the revenue requirement associated with the substation was included as part of the Tioga to Kenmare 115 kV transmission line – a 30.9 Credit Facility. Montana-Dakota states that the replacement configuration is standard construction for new facilities with this type of installation. Montana-Dakota states that other facilities owned by Basin members, which use similar breaker ring configurations as used at the Stanley substation, qualify as network facilities under Attachment AI of the SPP Tariff and are included in the rates Montana-Dakota pays for SPP network

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 14-15.

integration transmission service (NITS) in the Upper Missouri zone, and argues that the SPP Tariff requires SPP to treat Montana-Dakota in a comparable manner.¹⁸

B. Answers

18. SPP argues that it correctly excluded the three Montana-Dakota facilities pursuant to the requirements of the Settlement Agreement and the Commission should accept the filing without modification. SPP states that although Section 30.9 of the SPP Tariff generally describes how network customers' transmission facilities qualify for 30.9 Credits, any upgrades, additions, or modifications owned by Montana-Dakota must first satisfy the Settlement Agreement's requirements and criteria to be eligible as 30.9 Credit Facilities. SPP asserts that Montana-Dakota has not satisfied the requirements of the Settlement Agreement to receive 30.9 Credits for the facilities Montana-Dakota identified in its protest.¹⁹ SPP states that the Settlement Agreement requires that for any of Montana-Dakota's transmission facilities to qualify as a 30.9 Credit Facility, the upgrade, addition, or modification of the Montana-Dakota transmission facility must first have been identified through the SPP planning activities, and after the transmission facility has been identified, it must then satisfy the SPP Tariff criteria for receiving 30.9 Credits.²⁰

19. SPP states that even if Montana-Dakota is able to point to some other MISO or Montana-Dakota planning criteria that triggers the need for the upgrade, addition, or modification, the Settlement Agreement requires MISO and/or Montana-Dakota to be responsible for paying for the upgrade, addition, or modification and the upgrade, addition, or modification shall not be eligible for 30.9 Credits. SPP states that although the Dickinson Loop may have been studied and approved through a previous agreement between Basin and Montana-Dakota and also approved through the MISO planning process, this project is not eligible for 30.9 Credits pursuant to the Settlement Agreement. Furthermore, SPP states that even if MISO and Montana-Dakota's planning criteria triggered the need for the Dickinson Loop, it has not been identified through any SPP planning process or planning criteria; and, therefore, Montana-Dakota is responsible for paying for the upgrade and it is not eligible for 30.9 Credits.²¹

¹⁸ *Id.* at 16-17.

¹⁹ SPP Answer at 2, 4.

²⁰ *Id.* at 6.

²¹ *Id.* at 6-7 (citing Settlement Agreement § 3.2.7.a(iii)).

20. SPP also states that the Dickinson Loop is not eligible for 30.9 Credits due solely to the fact that Montana-Dakota has not identified any SPP regional criteria identifying the need for the proposed project. SPP states that by executing the Settlement Agreement, Montana-Dakota agreed to be bound by the terms and conditions contained therein and that if Montana-Dakota wishes to receive 30.9 Credits for any upgraded, added, or modified Montana-Dakota transmission facilities that are not listed in Attachment 4 of the Settlement Agreement, Montana-Dakota must show that those requested transmission facilities have been identified as needed through the SPP planning process. SPP states that the SPP planning process did not identify the need for the Dickinson Loop; and, therefore, that planned transmission facility should not be included in the Montana-Dakota NITSA. Furthermore, SPP states that the inclusion of the Dickinson Loop in SPP's planning models is irrelevant to the determination that the project does not qualify for 30.9 Credits.²²

21. Similarly, SPP states that the Miles City Facilities fail to meet the eligibility requirements for 30.9 Credits pursuant to the SPP Tariff planning process and SPP planning criteria as required by section 3.2.7.a of the Settlement Agreement. SPP states that while some of the Miles City Facilities were identified by Montana-Dakota when it requested a delivery point addition from SPP in accordance with SPP Tariff Attachment AQ, the configuration of the transmission facilities provided by Montana-Dakota at the time of the requested Attachment AQ delivery point addition indicated that all facilities associated with the addition would be operated in a radial configuration. SPP states that later, Montana-Dakota communicated to SPP an alternate configuration of the planned Miles City Facilities in which the transmission facilities would be operated in a looped configuration. SPP States that it has not studied the looped configuration the Miles City Facilities and it was not identified in the Attachment AQ study as being necessary to meet SPP regional planning criteria. Thus, SPP states, the Miles City Facilities should not be included in the Montana-Dakota NITSA.²³

22. As for the Stanley Rebuild, SPP states that the Settlement Agreement states that if Montana-Dakota requests upgrades and replacements for age and condition of any current 30.9 Credit Facilities, which is the case with the Stanley Rebuild project, then SPP is permitted to review the request "pursuant to the SPP Tariff to determine qualification to receive Credits for the costs of the upgrades and replacements of the [30.9 Credit Facility]."²⁴ SPP states that it reviewed Montana-Dakota's request to replace the two motor-operated switches with a three breaker 115 kV ring bus, and SPP concluded that the Stanley Rebuild was not a replacement for age and condition but

²² *Id.* at 7-8.

²³ *Id.* at 9-10.

²⁴ *Id.* at 11 (quoting Settlement Agreement § 3.2.7a(viii)).

instead was a material upgrade of a transmission facility.²⁵ SPP states that this proposed Stanley Rebuild was not identified by any SPP planning process and was determined by SPP to be a material upgrade rather than a replacement for age and condition, and therefore, the Stanley Rebuild should not be included in the Montana-Dakota NITSA as a 30.9 Credit Facility.²⁶

23. SPP notes that Montana-Dakota makes the claim that it is not being treated in a comparable manner as other parties under the SPP Tariff because of SPP's determination that the Stanley Rebuild is not eligible for inclusion in the Montana-Dakota NITSA to receive 30.9 Credits, and that Montana-Dakota claims that "other new facilities owned by Basin members, which use breaker ring configuration, qualify as network facilities under Attachment AI of SPP's Tariff and are included in the rates Montana-Dakota pays for SPP NITS in the [Upper Missouri zone]."²⁷ SPP states that, unlike SPP transmission owners, Montana-Dakota is a network customer that is required to comply with the Settlement Agreement if it wishes to upgrade an existing 30.9 Credit Facility because of age and condition. SPP notes that Basin, like all other SPP transmission owners, is obligated to comply with all planning obligations under the SPP Tariff and the SPP Planning Criteria for any new facilities that are included in its Annual Transmission Revenue Requirement. SPP states that Montana-Dakota's claim that SPP inappropriately did not include the Stanley Rebuild in the revised NITSA is inaccurate and ignores Montana-Dakota's commitments under the Settlement Agreement.²⁸

24. WAPA supports SPP's determination that the three Montana-Dakota facilities do not qualify for 30.9 Credits, and requests that the Commission accept SPP's filing. WAPA argues that, because the Dickinson Loop facilities were not studied by SPP and were not planned or coordinated with all parties as required by the Settlement Agreement, those facilities do not qualify for 30.9 Credits. WAPA states that the Settlement Agreement requires for SPP to identify need through its planning process.²⁹

25. WAPA states that it has not yet agreed that the Miles City Facilities are required network upgrades to the Upper Missouri zone. WAPA states the facilities were built pursuant to the terms of a contract between Montana-Dakota and WAPA for a new Montana-Dakota interconnection at Miles City. WAPA states that pursuant to the terms

²⁵ *Id.* at 10-11.

²⁶ *Id.* at 11.

²⁷ *Id.* (citing Montana-Dakota Protest at 17).

²⁸ *Id.* at 11-12.

²⁹ WAPA Answer at 4.

of the contract, these new facility costs are not included in the Upper Missouri zone until WAPA and Montana-Dakota mutuality agreed to them.³⁰

26. WAPA further notes that it has notified Montana-Dakota that its subsequent notice of intent to loop the new facilities through its other existing radial facilities in the Miles City area, in order to create potential eligibility under Attachment AI of the SPP Tariff, has not yet been studied by WAPA to determine if there are reliability and/or operational impacts, and therefore, closure of the network in the Miles City area can be allowed. WAPA states that Montana-Dakota requested a radial interconnection from WAPA and that Montana-Dakota's later intent to loop these new facilities was not coordinated or planned as required by the Settlement Agreement.³¹

27. Finally, WAPA states that Montana-Dakota incorrectly suggests, because these new facilities were studied and approved by MISO, based upon the MISO or Montana-Dakota's planning criteria, the facilities should be included for 30.9 Credits. WAPA states that the Settlement Agreement is clear:

If MISO or [Montana-Dakota's] planning criteria is more stringent than SPP's planning criteria and application of the more stringent standard triggers the need for an upgrade, addition or modification to the [30.9 Credit Facilities], then [Montana-Dakota] or MISO customers shall be responsible for paying for the upgrade, addition or modification and such upgrade, addition or modification shall not be eligible for [30.9 Credits].³²

28. Basin requests that the Commission dismiss Montana-Dakota's protest and accept SPP's filing stating that SPP appropriately excluded Montana-Dakota's facilities because they do not satisfy the 30.9 Credit criteria set forth in the Settlement Agreement. Basin states that the Settlement Agreement accounts for the differences in planning criteria and provides a mechanism to address issues that arise from those differences. Basin states that the Settlement Agreement provides that "material changes including changes to load, transmission system facilities or system configurations or regulatory requirements may require revisions to Attachments 4, 5, or 6" to the Settlement Agreement and that such changes are considered "Triggering Events."³³ Basin notes that the Settlement

³⁰ *Id.* at 4-5.

³¹ *Id.* at 5-6.

³² *Id.* at 6 (citing Settlement Agreement § 3.2.7(iii)).

³³ Basin Answer at 4 (quoting Settlement Agreement § 4.1).

Agreement provides that “if a Triggering Event has occurred, SPP, Montana-Dakota and the [Integrated System] Parties shall discuss whether and what Attachment changes may be required” and that the Settlement Agreement also included a list of Montana-Dakota-owned transmission facilities that qualify under the SPP Tariff for 30.9 Credits.³⁴

29. Basin states that the Settlement Agreement further provides that not all upgrades, additions, or modifications to Montana-Dakota Credited Facilities are eligible for 30.9 Credits under the SPP Tariff.³⁵ Basin states that under the Settlement Agreement, the fact that Montana-Dakota identifies the need for an upgrade does not automatically mean the upgrade is eligible for 30.9 Credits, and that Montana-Dakota entered into the Settlement Agreement knowing that the Upper Missouri zone did not have local planning criteria and agreed to provisions acknowledging that differences in study and planning criteria among Montana-Dakota, MISO, and SPP may result in certain facilities being ineligible for 30.9 Credits.³⁶

30. Montana-Dakota states that the purpose of the Settlement Agreement is to facilitate the provision of 30.9 Credits to Montana-Dakota for use of its facilities by SPP and that SPP incorrectly interprets the Settlement Agreement to erect a higher bar for Montana-Dakota to receive 30.9 Credits than exists under the SPP Tariff or Commission policy.³⁷ Montana-Dakota states that the Dickinson Loop, the Miles City Facilities, and the Stanley Rebuild are appropriately categorized as transmission, will be integrated into the operations of the transmission system, and provide reliability and capability benefits to SPP as required by Section 30.9 of the SPP Tariff and Commission precedent. Montana-Dakota asserts that the Settlement Agreement does not compel a different result.³⁸ Montana-Dakota also states that the fact that the Upper Missouri zone is without a local transmission planning criteria does not mean that the transmission facilities planned to Montana-Dakota local planning criteria do not meet the requirements of Section 30.9 of the SPP Tariff.³⁹

³⁴ *Id.*

³⁵ *Id.* at 6 (quoting Settlement Agreement § 3.2.7(iii)).

³⁶ *Id.*

³⁷ Montana-Dakota Answer at 2-3.

³⁸ *Id.* at 5.

³⁹ *Id.* at 6.

IV. Deficiency Letter and Response

31. In the Deficiency Letter, Commission staff requested information from SPP on when it evaluated whether the projects cited by Montana-Dakota were eligible for 30.9 Credits, what planning criteria SPP used, and, if SPP determined the projects were not needed under SPP's planning criteria, how SPP made that determination. Commission staff requested that SPP explain what local planning criteria were used to evaluate the Dickinson Loop, Miles City Facilities, and Stanley Rebuild, and to also explain what local planning criteria is used for the Upper Missouri zone. Commission staff also requested SPP to compare the planning criteria it used to the planning criteria used by MISO and Montana-Dakota applicable to the Upper Missouri zone, and explain under what circumstances MISO or Montana-Dakota's planning criteria would be considered more stringent than SPP's planning criteria. Commission staff also asked SPP, to the extent that SPP and Montana-Dakota have identical planning criteria, if the Settlement Agreement allows for a solution selected by Montana-Dakota in response to a particular reliability concern to be eligible for 30.9 Credits under the SPP Tariff if that project differs from SPP's preferred solution for alleviating the reliability concern. Finally, Commission staff asked how SPP determined that the Stanley Rebuild was a material upgrade and not a replacement for age and condition, and whether SPP's interpretation of the Settlement Agreement requires that any facilities replaced for age and condition be replaced with the exact same configuration for eligibility for 30.9 Credits.

A. SPP's Deficiency Response

32. In its Deficiency Response, SPP states that it conducts a reliability assessment to determine transmission needs for the entire SPP region. SPP states that it generally identifies transmission needs by applying the regional SPP planning criteria, and, as required by Attachment O of the SPP Tariff, SPP also reviews and includes, as appropriate, local planning criteria to meet local reliability criteria as proposed by the Transmission Owners in the transmission planning process. SPP states that if any transmission needs are identified from the SPP planning criteria and any appropriate local planning criteria, SPP requests stakeholders to propose transmission projects that would address those needs. SPP states that any stakeholder-proposed transmission project must specifically outline the transmission need that the project will mitigate in the proposal. SPP states that after SPP receives these proposed projects, SPP tests the submittals to determine if submitted projects actually solve the transmission needs identified in the integrated transmission planning (ITP) assessment process.⁴⁰

33. SPP states that, if a transmission owner submits a proposed project to address a transmission need identified by the SPP planning criteria or any appropriate local planning criteria, the transmission owner must identify in its proposal the transmission

⁴⁰ Deficiency Response at 2.

need that the project is mitigating. SPP states that when Montana-Dakota submitted the proposed Dickinson Loop and Miles City Facilities to receive 30.9 Credits, SPP requested that Montana-Dakota identify the regional or local criteria that identified the transmission need the proposed projects would mitigate. SPP states that Montana-Dakota could not, or simply did not, specify to SPP what regional or local criteria identified the need for the proposed projects. SPP states that it is not SPP's role to receive a lengthy list of project submittals from a transmission owner and then attempt to determine if the submitted projects actually address a need based on the SPP transmission planning process, and that it is the transmission owner's responsibility to communicate to SPP the need for the project if SPP has not already identified the need.⁴¹

34. SPP states that, pursuant to section 3.2.7.a of the Settlement Agreement, SPP applied the SPP planning criteria to assess the needs for the Dickinson Loop and Miles City Facilities. SPP states that when Montana-Dakota first requested the Miles City delivery point for which the Miles City Facilities serve, the proposed projects were submitted to SPP as a radial configuration. SPP states that it determined pursuant to the SPP planning criteria that all regional criteria were met with the original radial configuration and the need for any additional facilities was not identified.⁴²

35. SPP states that there are several transmission owners in the Upper Missouri zone under Attachment H of the SPP Tariff that have their own local planning criteria, but each set of local planning criteria varies in some fashion. SPP states that each set of local planning criteria applies specifically to the facilities of the transmission owner that established the criteria, and SPP monitors the local planning criteria of each of those transmission owners and identifies any needs resulting from applying the local planning criteria in the ITP assessment process. SPP states that if an Upper Missouri zone transmission owner identifies a need using its own set of local planning criteria, it is required to identify the specific criterion that the project is intended to address.⁴³

36. SPP states that in the case of Montana-Dakota facilities, SPP applies regional SPP planning criteria in assessing needs in accordance with requirements of the Settlement Agreement. SPP states that, in addition, Montana-Dakota has not identified whether it has local planning criteria or whether any local planning criterion identified the need for

⁴¹ *Id.* at 3.

⁴² *Id.*

⁴³ *Id.* at 4.

the proposed projects. SPP states that, for these reasons, SPP did not use any local planning criteria to evaluate the Dickinson Loop, Miles City Facilities, and Stanley Rebuild.⁴⁴

37. SPP states that Montana-Dakota did not provide either its local planning criteria or MISO's planning criteria for SPP to monitor for its transmission planning assessment processes, and as a result, SPP is unaware of which parts of Montana-Dakota's local criteria or MISO's planning criteria are more stringent than SPP planning criteria. SPP states that if Montana-Dakota provided the criteria under which the need for the proposed projects were identified, then SPP would be able to compare such criteria to SPP's regional criteria to determine if they are more stringent. SPP states that, generally, if Montana-Dakota's local criteria contain any provision for which a similar provision is not included in the regional SPP planning criteria, that provision could be considered more stringent.⁴⁵

38. In regards to whether the Settlement Agreement allows for a solution selected by Montana-Dakota in response to a particular reliability concern to be eligible for 30.9 Credits under the SPP Tariff if that project differs from SPP's preferred solution for alleviating the reliability concern, SPP states that the Settlement Agreement would allow Montana-Dakota to propose a different project, but the selection of the project would be subject to the SPP planning process set forth in Attachment O of the SPP Tariff. However, SPP states that Montana-Dakota has not identified which planning criteria it used to identify the Dickinson Loop and Miles City Facilities.⁴⁶

39. Regarding the Stanley Rebuild, SPP states that a replacement for age and condition would have included the cost to replace the motor operated switches and not the construction of a ring bus substation, which is a substantial increase in the scope, functionality, and costs of facilities at that location. SPP also states that its interpretation of the Settlement Agreement does not require a replacement to have the exact same configuration for eligibility for 30.9 Credits, but to not greatly increase the scope, functionality, and cost of the original facility configuration. SPP states that in its estimate, the average cost to construct a new ring bus substation, instead of the replacement of the motor operated switches, would be roughly 10-20 times more costly for the new ring bus substation.⁴⁷

⁴⁴ *Id.*

⁴⁵ *Id.* at 5.

⁴⁶ *Id.*

⁴⁷ *Id.* at 6.

B. Montana-Dakota Deficiency Protest

40. Montana-Dakota states that it never alleged that its planned local facilities were identified by applying SPP's regional criteria. Montana-Dakota states that SPP's regional criteria looks at first contingency impacts on a more regional level and is not designed to address local reliability needs identified by a particular transmission owner. Montana-Dakota states that, due to the fact that there is no approved local planning criteria in the Upper Missouri zone, SPP only applies regional SPP Planning Criteria in assessing needs when it comes to evaluating the Dickinson Loop, Miles City Facilities, and Stanley Rebuild.⁴⁸

41. Montana-Dakota states that the fact that the Upper Missouri zone lacks a local planning criteria is not a legitimate basis upon which to deny 30.9 Credits to Montana-Dakota, particularly where SPP has not alleged, much less demonstrated, that the Dickinson Loop, Miles City Facilities, and Stanley Rebuild (1) are not integrated into the SPP transmission system; or (2) do not provide reliability and capability benefits to SPP and its members – the only two applicable requirements under the SPP Tariff and Commission precedent. Montana-Dakota states that through its November 5 Protest it clearly showed that the planned facilities meet the eligibility requirements for 30.9 Credits under both the specific terms of the SPP Tariff and Commission precedent.⁴⁹

42. Montana-Dakota states that SPP's contention that Montana-Dakota did not provide SPP with the regional or local planning criteria it was applying is unsupported and ignores months of discussions between Montana-Dakota, SPP, WAPA, and Basin that resulted in the current proceedings. Montana-Dakota states that the affidavit appended to its November 5 Protest sets forth in detail the local reliability criteria and issues the planned Dickinson Loop, Miles City Facilities, and Stanley Rebuild are designed to address. Montana-Dakota states that SPP has not refuted the need for the facilities, but instead continues to ask Montana-Dakota to identify an applicable local planning standard it knows does not exist in the Upper Missouri zone for Montana-Dakota.⁵⁰

⁴⁸ Montana-Dakota Deficiency Protest at 2-3.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 3-4.

43. Montana-Dakota notes that in its response, SPP claims that:

there are several Transmission Owners in the Upper Missouri Zone under Attachment H of the SPP Tariff that have their own local planning criteria, but each set of local planning criteria varies in some fashion. Each set of local planning criteria applies specifically to the facilities of the Transmission Owner that established the criteria.⁵¹

Montana-Dakota states that while SPP conceded that it only evaluated Montana-Dakota's planned facilities against SPP's "regional SPP Planning Criteria," SPP suggests, for the first time, that there are applicable local planning criteria in the Upper Missouri zone, but Montana-Dakota failed to identify what criteria it applied.⁵²

44. Montana-Dakota argues that, despite SPP's claim that Montana-Dakota failed to identify a local planning criterion justifying the need for its facilities, there is simply no planning criteria applicable in the Upper Missouri zone to adhere to. Montana-Dakota argues that the Commission should reject the notion that Montana-Dakota will be treated comparably only after a local planning criterion is in the Upper Missouri zone approved. Montana-Dakota argues that the fact that the Upper Missouri zone is without a current plan does not mean that the transmission facilities resulting from Montana-Dakota's local reliability planning that benefits Montana-Dakota and SPP customers do not meet the requirements of Section 30.9 of the SPP Tariff.⁵³

45. Montana-Dakota states that, with respect to the Stanley Rebuild, age and condition considerations led to Montana-Dakota's decision to replace the nearly 50-year-old two motor operated switches and tap switcher with a three-breaker ring bus configuration. Montana-Dakota states it explained that this is standard construction for new facilities in this type of installation because it provides better relay protection for a long 44-mile, 115 kV line. Montana-Dakota states that SPP's argument that Montana-Dakota somehow failed to adequately explain the basis for its planned upgrades is unsupported.⁵⁴ In regards to SPP's answers regarding the Stanley Rebuild, Montana-Dakota states that section 3.2.7.a(viii) of the Settlement Agreement does not contain any qualifiers for scope, functionality, or cost of original facilities with regard to age and condition replacement projects. Montana-Dakota states that neither the Settlement Agreement nor

⁵¹ *Id.* at 4 (citing Deficiency Response at 4).

⁵² *Id.* at 4-5.

⁵³ *Id.* at 5.

⁵⁴ *Id.* at 7.

the SPP Tariff set forth a metric whereby SPP can deny 30.9 Credits based on its assessment that “scope, functionality, and cost” have substantially increased.⁵⁵

V. Discussion

A. Procedural Matters

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

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

48. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by WAPA, Basin, Montana-Dakota, and SPP in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

49. Our preliminary analysis indicates that SPP’s filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Specifically, we are setting for hearing whether the Dickinson Loop, Miles City Facilities, and Stanley Rebuild were appropriately excluded from the list of 30.9 Credit Facilities in Appendix 4 of the NITSA. Therefore, we will accept the filing, suspend it for a nominal period, effective December 15, 2019, subject to refund, and set it for hearing and settlement judge procedures.

50. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the

⁵⁵ *Id.* at 8.

Commission's Rules of Practice and Procedure.⁵⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁵⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPP's filing is hereby accepted for filing and suspended for a nominal period, effective December 15, 2019, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of SPP's filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

⁵⁶ 18 C.F.R. § 385.603 (2019).

⁵⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(D) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.