112 FERC ¶ 61,319
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southwest Power Pool, Inc. Docket Nos. ER05-652-001
ER05-652-002
RT04-1-012
RT04-1-013
ER04-48-012
ER04-48-013
ER05-109-001
ER05-109-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued September 20, 2005)

1. This order addresses requests for rehearing of the Commission's order issued in this proceeding on April 22, 2005,[1] in which the Commission conditionally accepted tariff revisions proposed by Southwest Power Pool (SPP), in order to implement a regional transmission cost allocation plan with regard to new transmission upgrades (cost allocation plan). This order also addresses SPP's compliance filing to that order. As discussed below, we will grant in part and deny in part the rehearing requests, conditionally accept SPP's compliance filing, and direct a further compliance filing.

Background

2. SPP has been authorized as a regional transmission organization (RTO) since October 1, 2004.[2] In the Commission's initial order addressing SPP's RTO application,

[1] *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 (2005) (April 22 Order).

[2] *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004) (October 1 Order), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

we directed SPP to develop and file a transmission cost allocation plan by the end of 2004.[3]

3. On October 29, 2004, in Docket No. ER05-109-000, SPP submitted proposed tariff revisions in order to provide an aggregate transmission service study process to evaluate long-term transmission service requests and included as part of that filing limited cost allocation and cost recovery provisions. The proposed changes were set forth in Attachment Z (Aggregate Transmission Study Procedures) to SPP's Open Access Transmission Tariff (OATT). Noting concerns about the interrelationship between Attachment Z and the fully developed transmission cost allocation plan that SPP would soon file, the Commission accepted the proposed aggregate transmission study procedures to become effective February 1, 2005, but accepted and suspended SPP's proposed cost allocation and cost recovery provisions to become effective the earlier of five months from the requested effective date (July 1, 2005) or further Commission order, subject to refund.[4]

4. On February 28, 2005, SPP submitted its complete cost allocation plan, reflected in a new section V (Recovery of Costs for Base Plan Upgrades) to SPP's OATT and proposed revisions to Attachment J (Recovery of Costs Associated with New Facilities), Schedule 11 (Base Plan Charges) and Attachment Z. As noted above, the Commission conditionally accepted the cost allocation plan in the April 22 Order.

Requests For Rehearing

5. SPP, Southwest Industrial Customer Coalition (Southwest Industrial); East Texas Cooperatives[5]; Golden Spread Electric Cooperative, Inc. and Lyntegar Electric Cooperative, Inc. (collectively Golden Spread); Indicated Transmission Owners[6]; and the

---

[3] *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004) (February 10 Order), *order on reh'g*, 109 FERC ¶ 61,010 (2005).

[4] *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,028 (2005) (January 21 Order).

[5] East Texas Cooperatives include: East Teas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

[6] Indicated Transmission Owners include: Kansas City Power & Light Company; Midwest Energy, Inc.; Oklahoma Gas and Electric Company; Southwestern Electric Power Company and Public Service Company of Oklahoma; Xcel Energy Services Inc., on behalf of Southwestern Public Service Company; the Empire District Electric Company; and Westar Energy, Inc.

TDU Intervenors[7] timely sought rehearing of the April 22 Order. East Texas Cooperatives and the Arkansas Public Service Commission (Arkansas Commission) each filed an answer in support of SPP's rehearing request. The requests for rehearing are discussed by issue below.

Procedural Matters

6. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2005), prohibits answers to requests for rehearing. Accordingly, we will reject East Texas Cooperatives' and Arkansas Commission's answers to SPP's request for rehearing. Nevertheless, we note that their concerns are addressed, to the extent that the answers reiterate SPP's arguments discussed below.

Base Plan Criteria

April 22 Order

7. As further detailed in the April 22 Order, SPP's cost allocation plan (set forth in Attachment J to SPP's tariff) breaks new transmission expansion projects into four categories: (1) Base Plan facilities[8]; (2) Economic Upgrades; (3) Generation Interconnection facilities; and (4) facilities required to respond to transmission requests.[9] Base Plan facilities are eligible for regional cost allocation. Other types of upgrades may be considered a Base Plan Upgrade for cost allocation purposes if they meet the following criteria (Base Plan criteria): (1) the transmission customer's commitment to the Designated Network Resource has a duration of at least five years; (2) the new and existing Designated Network Resources of the transmission customer cannot exceed 125 percent of the customer's projected system peak responsibility; and (3) the cost of the upgrades associated with the Designated Network Resource is less than or equal to $180,000/MW times the lesser of the planned maximum net dependable capacity

[7] TDU Intervenors include: the Missouri Joint Municipal Electric Utility Commission; Oklahoma Municipal Power Authority; and West Texas Municipal Power Agency.

[8] Base Plan facilities are defined as: "Those upgrades included in and constructed pursuant to the SPP Transmission Expansion Plan in order to ensure the reliability of the Transmission System. Base Plan Upgrades shall also include those upgrades required for new or changed Designated Resources to the extent allowed for in Attachment J to this Tariff." SPP OATT, section 1.3h.

[9] April 22 Order at P 9.

applicable to the transmission customer or the requested capacity (Safe Harbor provision).[10]

8. The Commission accepted the Base Plan criteria without modification. The Commission stated that the five-year commitment is reasonable because it strikes a balance between the competing concerns noted by protesters, including the shorter-term commitments to designated resources that could result in inefficient construction and longer-term commitments that might serve to inhibit expansion.[11]

9. In addition, the Commission accepted the 125 percent limitation as a reasonable compromise between competing interests. While recognizing concerns that the limitation might be too limiting for smaller transmission customers, the Commission found that the waiver process (whereby a transmission customer may seek waiver of the required criteria so that the costs of a network upgrade may be classified in whole or in part as Base Plan Upgrade costs) offers the opportunity to ensure that reasonable exceptions to the stated Base Plan criteria will be accepted, on a non-discriminatory basis.[12]

10. With regard to the Safe Harbor provision, the Commission noted protestors' concerns that the $180,000/MW threshold might be too low, because embedded costs (upon which the Safe Harbor limit is based) could include depreciated assets and are much less than current construction costs. Accordingly, the Commission accepted the $180,000 MW threshold as an initial amount and directed SPP to assess, as part of its biennial planning process, the average costs of all network upgrades and work with the stakeholders and regional state committee (RSC) to evaluate the effectiveness and accuracy of the $180,000/MW threshold. The Commission suggested that this review could be conducted in conjunction with review of the Attachment J "unintended consequences" provision discussed below.[13]

Rehearing Requests

11. Golden Spread argues that each of the three criteria is problematic for small, transmission-dependent systems. Golden Spread states that there is no evidence that five-year generation contracts, particularly in small increments, are readily available as a standard product in the marketplace. It further asserts that nothing in the April 22 Order demonstrates why the 125 percent limitation, as opposed to any other threshold, is

[10] *Id.* at P 40.

[11] *Id.* at P 49.

[12] *Id.* at P 50.

[13] *Id.* at P 51.

reasonable. Moreover, Golden Spread asserts that the fact that a transmission customer may seek a waiver from the 125 percent requirement does not make that requirement reasonable. Similarly, Golden Spread argues that the Commission's directive that SPP continue to evaluate the $180,000 Safe Harbor limitation does not render that provision reasonable from the outset.

Commission Determination

12. The Commission will deny Golden Spread's rehearing request on this issue. While some market participants may continue to have concerns about the cost allocation plan, we believe the plan will help to avoid many of the conflicts that have hampered transmission construction in the past. We further believe that transmission expansion resulting from the cost allocation plan will result in significant efficiency and reliability benefits throughout the region. Golden Spread is concerned that the five-year minimum requirement could unduly penalize smaller systems. While the Commission acknowledges that five-year DNR contracts may not be standard offerings, this does not mean that a five-year contract is unavailable, as Golden Spread fears. The SPP region has a generation reserve margin above 40 percent.[14] With this amount of excess generation, essentially presenting a "buyer's market," we do not share Golden Spread's concerns.

13. In addition, contrary to Golden Spread's argument, the Commission did not find the 125 percent limitation to be just and reasonable solely due to the existence of the waiver process. Rather, the Commission found that the limitation was a reasonable compromise of competing interests, as detailed in the April 22 Order. In addition, the 125 percent limitation is more than double the minimum required capacity margin of 12 percent as defined in the SPP Criteria.[15] We believe that a higher percent limitation on capacity margins would be inefficient under these circumstances.

14. With respect to the Safe Harbor provision, the Commission noted that the $180,000 was an initial amount that is subject to change later based on SPP's continued assessment and experience. If SPP, as the independent transmission provider, determines, in conjunction with stakeholders and the RSC, that increases in the Safe Harbor provision are necessary to avoid discrimination against smaller entities, the Commission expects SPP to make the necessary filings with the Commission to increase the $180,000 Safe Harbor provision amount. Further, Golden Spread may continue to

[14] See 2004 State of the Market Report for the Southwest Power Pool at 14 available at http://www.spp.org/Publications/SPP_State-of-the-Market-Report_05312005.pdf.

[15] See SPP Criteria 2.1.9 available at http://www.spp.org/Publications/SPP_Criteria.pdf.

pursue this issue during stakeholder meetings with SPP and the RSC to support the filing of a higher amount for the Safe Harbor provision.[16] If, in practice, the Safer Harbor amount of $180,000 results in undue discrimination against customers such as Golden Spread, those customers may file a complaint under section 206 of the Federal Power Act.[17]

Waiver of Base Plan Criteria

April 22 Order

15. The Commission accepted SPP's proposed waiver process, whereby a transmission customer may seek a waiver from SPP of all or part of the Base Plan criteria in order to qualify for Base Plan treatment. Waivers may be given for, among other reasons, resources that provide needed fuel diversity as determined by the SPP Board of Directors (Board). In accepting the waiver process, the Commission stated:

> We believe that SPP must have some degree of flexibility in making cost allocation determinations and that therefore, the existence of a waiver process is appropriate. Further, we are not persuaded that the waiver process vests the SPP Board with too much discretion. While Southwest Industrial cites the *RTO West* order[18] for the proposition that the fuel diversity provision should be removed, we note that, in that case, we merely declined to require, at the request of an intervenor, that RTO West have the express ability to order system expansions to accommodate "public interest concerns," such as promoting fuel diversity.[19] Here, SPP seeks to include fuel diversity among the non-exhaustive list of waiver criteria, and we find that it properly may be included. We further note, as SPP states, that any aggrieved parties not granted waivers retain the filing rights of any other party.[20]

---

[16] We note that the cost allocation plan, including the Base Plan criteria, was developed with extensive input of the RSC and represents a compromise among RSC members.

[17] 16 U.S.C. § 824e (2000).

[18] *Avista Corp., et al.*, 100 FERC ¶ 61,274 (2002) (September 18 Order), *order on reh'g*, 101 FERC ¶ 61,346 (2002) (*RTO West*).

[19] *RTO West*, 101 FERC at P 47.

[20] April 22 Order at P 57.

Rehearing Requests

16. On rehearing, Southwest Industrial argues that promoting fuel diversity is a non-cost factor and that neither SPP nor the April 22 Order provided an explanation as to how that factor would lead to just and reasonable rates. Indeed, Southwest Industrial states that a waiver based on fuel diversity would allocate to all load the cost of transmission upgrades that fail criteria designed to protect customers from excessive levels of transmission investments.

17. Southwest Industrial further argues that *RTO West* and *Order No. 2000*[21] stand for the proposition that an RTO lacks authority to pursue certain allocation of transmission upgrade costs solely on the basis of advancing non-price and non-reliability factors such as fuel diversity. It contends that the April 22 Order is inconsistent with that precedent. Southwest Industrial further states that the April 22 Order failed to meaningfully address the argument, set forth in Southwest Industrial's protest to the cost allocation plan, that no other RTO considers fuel diversity in evaluating transmission enhancement or expansion.

Commission Determination

18. As an initial matter, contrary to Southwest Industrial's argument, the April 22 Order is not inconsistent with *RTO West* or *Order No. 2000*. As we explained in the April 22 Order, *RTO West* does not stand for the proposition that RTOs may not have the express ability to order system expansions to accommodate public interest concerns. In that case, the Commission merely declined to require such authority (at the request of an intervenor), because Order No. 2000 does not require it, and RTO West satisfied the minimum RTO characteristics without it. In this case, SPP itself sought to include fuel diversity as one consideration on a non-exhaustive list of waiver criteria.

19. Nevertheless, we will grant Southwest Industrial's request for rehearing on this issue and require SPP to remove the fuel diversity provision from the non-exhaustive list of waiver criteria. Upon further consideration, we find that SPP did not sufficiently explain how parties paying the costs associated with the proposal benefit from increased fuel diversity. SPP may seek to refile the fuel diversity waiver provision with this supportive information.

---

[21] *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Reg. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F. 3d 607 (D.C. Cir. 2001) (*Order No. 2000*).

Unintended Consequences

April 22 Order

20. In the April 22 Order, the Commission accepted without modification a provision in section III.D.2 of Attachment J (unintended consequences provision), which provides:

> For each SPP Transmission Expansion Plan, SPP shall calculate the cost allocation impacts of the Base Plan Upgrades to each Transmission Customer within the SPP Region. The results will be reviewed for unintended consequences by the Regional Tariff Working Group and reported to the Markets Operations Policy Committee and Regional State Committee.

21. The Commission rejected East Texas Cooperatives' argument that the meaning of "unintended consequences" is ambiguous and found that the proposal provides a reasonable check on the outcome of the transmission expansion process, as well as an additional level of review regarding SPP's transmission expansion plan and cost allocation decisions. The Commission also noted that the provision does not authorize rate changes without a filing under section 205 or 206 of the Federal Power Act (FPA). [22] To the extent the provision provides stakeholders with an opportunity to express their opinions, the Commission found the provision to be positive. In addition, the Commission required SPP to include the results of these reviews in informational reports for continued monitoring.[23]

Rehearing Requests

22. East Texas Cooperatives do not object to an unintended consequences provision per se, but they reiterate their concern that the unintended consequences provision is ambiguous. East Texas Cooperatives state that the provision injects uncertainty into the SPP transmission planning and expansion process that could make negotiating new power supply arrangements and financing for such arrangements very difficult. For example, East Texas Cooperatives state that nothing in the provision precludes SPP from removing an upgrade from the Base Plan for a designated resource if it causes an unintentional consequence. They request that the Commission direct SPP to define "unintentional consequences" and propose a procedural process to address unintended consequences if they are discovered.

---

[22] 16 U.S.C. §§ 824d and 824e (2000).

[23] April 22 Order at P 61.

Commission Determination

23. We will deny East Texas Cooperatives' request for rehearing on this issue. As we explained in the April 22 Order, our understanding of the provision is that it is merely a mechanism to voice opposition to the cost allocation. This provision does not provide the basis for SPP to alter in any way the upgrades included in the Base Plan. The Base Plan criteria and waiver criteria set forth in the OATT provide the bases for determining whether an upgrade is included in the Base Plan and whether a waiver will or will not be granted. If SPP discovers an "unintended consequence" and wants to resolve it by denying inclusion in the Base Plan of an upgrade that satisfies the criteria or withdrawing a waiver for an upgrade that satisfies the waiver criteria, SPP must make a filing under section 205 of the FPA in order to revise the terms and conditions of its OATT to change its Base Plan criteria or waiver criteria. The Commission notes that, as discussed above, SPP is required to include the results of reviews for "unintended consequences" in informational reports to facilitate further monitoring by the Commission and market participants.

Attachment Z's Crediting Mechanism and "And" Pricing

April 22 Order

24. The Commission conditionally accepted SPP's Attachment Z cost allocation and crediting proposal, rejecting arguments that the potential for direct assignment of network upgrades constitutes prohibited "and" pricing.[24] The Commission noted that it has permitted similar pricing where the transmission provider was independent or as part of

[24] For economic and requested upgrades not included in the Base Plan, Attachment Z provides different cost-recovery methods for point-to-point and network transmission customers. Point-to-point customers would pay the higher of the total monthly base transmission rate charge or the monthly revenue requirement associated with the facility upgrades. Network customers would pay the applicable network transmission service rate and a direct assignment charge based upon the monthly revenue requirement associated with the facility upgrades to the extent they did not qualify as Base Plan Upgrades. SPP proposed that any charges in excess of the base transmission rate would be credited back to the transmission customer from future point-to-point transmission service revenues for service in direction of the initial load until the customer has been fully compensated, but the Commission required that the credits also be funded by network service customers that use the expanded capacity offered by the economic or requested upgrades.

an experimental program that did not include credits for network upgrade costs.[25] Noting, in addition, that the direct assignment of network upgrades to network customers would only occur if the facility is not a Base Plan Upgrade, and the network customer receives a credit to offset the cost of the direct assignment, the Commission found the provision reasonable and sufficient to justify the distinction between the cost allocation treatment for point-to-point customers and network customers.[26]

25. The Commission further found, however, that the crediting provisions in Attachment Z were too restrictive in that they were limited to point-to-point service in the direction of the initial overload. The Commission found that it is appropriate to grant credits for subsequent network transmission service as well as point- to-point requests that use the capacity created by a requested or economic upgrade. The Commission disagreed with arguments that the credits should be extended to service in the opposite direction of the original overload (except for controllable equipment, as noted below), since any transmission service requests could have been granted in the opposite direction to relieve the original overload. Additionally, the Commission directed SPP to include crediting provisions for controllable transmission equipment, such as DC (direct current) ties and regulating phase shifting transformers, in its footprint, since the proposal lacked any discussion of these facilities. The Commission stated that the crediting provisions should include credits for service in both directions over such facilities, since service over these transmission elements is different, i.e., specifically scheduled and controllable.[27]

Rehearing Requests

26. TDU Intervenors charge that the Commission failed to address whether "and" pricing is applied to only network customers, and instead focused on whether it is permissible or even exists in this case. TDU Intervenors fault the Commission for concluding that it is acceptable to apply "and" pricing to network customers, without SPP filing a cost-benefit analysis for innovative rate treatment pursuant to Commission

[25] April 22 Order P 71 (citing Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. P 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A at P 587, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. P 31,160 (2004) (Order No. 2003-A), order on reh'g, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. P 31,171 (2005) (Order No. 2003-B), reh'g pending; Entergy Services, Inc., 110 FERC ¶ 61,295 (2005)).

[26] *Id.* The Commission further found that point-to-point customers, by contrast, were in a better position than they were previous to Attachment Z because they would qualify for credits for subsequent transmission usage.

[27] April 22 Order at P 72.

regulations.[28] TDU Intervenors state that credits applied under the "and" pricing mechanism probably will not be sufficient to offset all, or even a substantial portion of, the costs directly assigned to network customers. TDU Intervenors state that the proposal is discriminatory because point-to-point customers will pay only the higher of the embedded costs or the directly assigned costs while network customers will pay both. [29] They request that the Commission require SPP to apply "higher of" pricing to both network and point-to-point customers whose upgrades are not accorded Base Plan treatment.

27. East Texas Cooperatives take issue with the Commission's reference to *Order No. 2003* in accepting Attachment Z's pricing scheme. East Texas Cooperatives claim that *Order No. 2003-A* makes clear that "and" pricing is unacceptable even for independent transmission providers. East Texas Cooperatives state that for the direct assignment of network upgrades to be reasonable under Commission policy, the transmission customer must receive "well defined" rights in return for bearing the direct assignment costs.[30] East Texas Cooperatives argue that SPP is not proposing well-defined rights, such as congestion rights. They assert that the crediting mechanism is not a well-defined right because the customer has no certainty as to when, or if, the customer can recover its directly-assigned costs. East Texas Cooperatives state that, in order to create a well-defined right, the Commission should direct SPP to: (1) apply crediting to all new transmission service (including transmission service taken by the party paying for the upgrade), not just new service by third parties[31]; (2) clarify that revenues by transmission owners that have opted not to take network service under the SPP tariff must be applied

[28] They cite 18 C.F.R. § 35.34(e) (2005). Golden Spread asserts that the Commission has instructed SPP that SPP's proposals combining average and incremental pricing must comport with the Commission's filing requirements. Golden Spread cites *Southwest Power Pool, Inc.*, 98 FERC ¶ 61,038 at 61,105 (2002).

[29] Golden Spread states that the Commission has instructed SPP that the Commission would not consider proposals that combine incremental and average cost rates unless all customers pay the same rate. Golden Spread cites *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at p. 61,889 (1999) (*SPP I*).

[30] East Texas Cooperatives cite *Order No. 2003-A* at P 587.

[31] TDU Intervenors also ask clarification as to what constitutes "subsequent network transmission service" for the purpose of funding the credit for upgrades paid by network customers. TDU Intervenors state that few parties take network service under the SPP OATT. Many more take service under the non-rate terms and conditions of the OATT but it is not clear whether these parties constitute network transmission service customer who must also fund the credit for upgrades paid by network customers.

as credits when network upgrades directly assigned to a customer under Attachment Z are later used by transmission owners to serve their retail loads[32]; and (3) establish a firm deadline (e.g., five years after service over the new facility commences) for repayment of credits.

28. Golden Spread states that transmission owners have failed to maintain and expand the system to avoid projected overloads and that, if that failure continues, SPP could use "and" pricing to alleviate previously overloaded facilities by charging customers who seek service over facilities that have been overloaded for years.

Commission Determination

29. As explained in the April 22 Order, the Commission is not persuaded that the cost allocation proposal constitutes a prohibited form of "and" pricing.[33] The Commission explained its policy regarding direct assignment of network upgrades in *Order No. 2003-A*, stating that where the transmission provider is independent of market participants, exceptions to the prohibition on direct assignment of network upgrades can be made, because the independent transmission provider has no incentive to use the pricing to the advantage of its own generation.[34] The Commission stated that this independence allows for a more creative and flexible approach to competitive energy markets. Further, under the transmission pricing policies that the Commission has permitted an RTO or independent system operator (ISO), in which the interconnection customer bears the cost of all facilities and upgrades that would not be needed "but for" the interconnection of the new generating facility, the interconnection customer receives transmission and

[32] TDU Intervenors are concerned that SPP will apply its cost allocation rules in such a way that a direct assignment of network upgrade costs would not apply to upgrades within a host zone. TDU Intervenors state that cost-allocation provisions are supposed to apply to all uses of the transmission system, including use by transmission owners to supply bundled retail and grandfathered loads under the non-rate terms and conditions. TDU Intervenors seek Commission clarification that acceptance is conditioned on applicability to all transmission users.

[33] Prohibited "and" pricing results from the assessment of an embedded cost transmission rate and a direct assignment of network upgrades that is not offset by the granting of well-defined transmission rights.

[34] We note that the phrase "direct assignment" as used in this case is somewhat different from the way the term has been used in other contexts. In generator interconnection cases involving non-independent transmission providers, for instance, when the generator pays costs that are "directly assigned," the generator will not recover those costs from the transmission provider. Here, SPP asserts that the customer has an opportunity to recover some or all of that money through credits.

congestion rights in return, as well as access to the network. For these reasons, the Commission views SPP's proposal for participant funding for network upgrades as a creative and flexible approach to competitive energy markets that does not constitute prohibited "and" pricing.

30. With respect to East Texas Cooperatives' argument that the Commission should direct SPP to apply crediting to all new transmission service, not just new service by third parties, we provide the following limited clarification. New transmission service excludes the transmission service request that causes the upgrade to be built, but it must include any increases to the initial request for transmission service by the transmission customer requesting the upgrade. We disagree with East Texas Cooperatives that a customer's initial transmission service request should also serve as a source of funds for credits.

31. The Commission further clarifies that the reference in the April 22 Order to "subsequent network transmission service" included increases in an existing network resource designation (or a new network resource designation) and any new network transmission service to accommodate new network load designations, including service taken by transmission owners under the non-rate terms and conditions of the SPP OATT. By treating new network transmission service over the directly assigned network upgrades including new network transmission service for retail loads as the source of funds for the credits, SPP should treat the users of the network upgrades similarly and will enhance the rights received by transmission customers in lieu of receiving FTRs.

32. The Commission will not require SPP to guarantee full and complete repayment of construction costs by a certain deadline (e.g., five years) as recommended by East Texas Cooperatives because it is not necessary to create well-defined rights. The Commission notes that FTRs do not provide a guarantee of full and complete repayment of construction costs and even if a party were to recover its construction costs through the receipt of congestion rents, there is no deadline for full and complete recovery. Moreover, if an upgrade alleviates congestion, then FTRs associated with the upgrade may provide less compensation compared to SPP's proposal which offers the opportunity for full and complete recovery albeit without a deadline. Accordingly, we find that requiring a deadline for full and complete recovery is not necessary to create well-defined rights.

33. The Commission also will not require that point-to-point and network customers be treated the same in terms of assigning network upgrade costs because the differences in treatment do not constitute undue discrimination. The Commission has long recognized the differences between network service and point-to-point service. For

example, in the *Order No. 888 NOPR*,[35] the Commission envisioned that network service would be used to integrate many resources with many loads while the point-to-point transmission service would be used for power flows into, out of, within or through the control area. These differences in the services are also reflected in the pricing of the services. Network service customers pay an adjusted load ratio share while point-to-point customers pay a reservation charge. As transmission owners increasingly seek to depart from their historical practice of rolling-in network upgrades, the Commission is increasingly aware that "higher of" pricing may introduce additional complexity for the pricing of incremental network upgrades for network customers than it would for point-to-point customers. For example, under "higher of" pricing for network upgrades, the transmission provider compares the monthly revenue requirement from the upgrade to the monthly revenue requirement from the embedded transmission rate.

34. While determining the monthly revenue requirement for the network upgrade would be similar for point-to-point transmission customers and network customers, determining the appropriate monthly revenue requirement for the embedded transmission rate may be more difficult for network customers. A network customer's load ratio share automatically changes from month to month and determining the appropriate amount to include, if any, for a "higher of" test may, in some cases, be difficult. This added complexity for applying the "higher of" test for network customers requesting a network upgrade demonstrates that different cost allocation methodologies for point-to-point and network customers would not be undue discrimination.

35. Further, the Commission expects SPP to apply the cost allocations rules pertaining to network customers equally to all network transmission customers, including Transmission Owners taking service under the non-rate terms and conditions of the SPP OATT to avoid discrimination against one group of network service customers. This is consistent with the Commission's determination in *SPP I*, which states that comparability dictates that a transmission provider treat itself in the same manner as a customer that is taking the same service.[36] This would also apply to customers whether their transmission

[35] Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, 60 Fed. Reg. 17,662 (April 7, 1995), FERC Stats. and Regs. ¶ 32,514 (1995) (Order No. 888 NOPR).

[36] Contrary to Golden Spread's contention, *SPP I* does not require all customers to be charged the same rates. Rather, it provides that comparability requires the transmission owner and all customers to be charged the same rates for the same service. Therefore, transmission owners taking network service would be charged the same rates as network service customers and transmission owners taking point-to-point service would be charged the same rates as other point-to-point customers.

service requests result in inter- or intra-zonal network upgrade costs. TDU Intervenors' concern was answered in the April 22 Order based on the fact that the tariff language makes no intra/inter zonal distinction and SPP so clarified in its answer in Docket No. ER05-652-000.[37]

36. Since, as explained above, SPP's proposal does not constitute a prohibited form of "and" pricing, TDU Intervenors are incorrect that SPP was required to file a cost-benefit analysis under the Commission's regulations.

Attachment Z Aggregate Facilities Study Process

April 22 Order

37. As noted in the April 22 Order, section IV of Attachment Z provides for an Aggregate Facilities Study Process, as follows:

> [SPP] in conjunction with the applicable Transmission Owners shall determine the necessary cost and lead-time for construction of each upgrade and the estimated cost of service for each request. The Transmission Provider, in conjunction with the applicable Transmission Owners, shall determine the optimal set of solutions to reduce the overall costs for the study group and reliably provide the requested service in a timely manner.

38. The Commission accepted the provision without modification, rejecting Golden Spread's and East Texas Cooperatives' arguments that the provision gives SPP and transmission owners full control over the Aggregate Facilities Study Process to the exclusion of all other interested parties. The Commission explained that other provisions in SPP's tariff addressed protestors' concerns. For example, the Commission noted that section III, paragraph (a) states in part that "[t]he Transmission Provider [SPP] shall determine the upgrades required to reliably provide all requested service." In addition, the Commission noted that Attachment O of SPP's tariff, Transmission Planning and Expansion Procedures, provides that "[t]he Transmission Provider shall independently perform regional transmission studies." Section 4 (a) states that "[e]ach Transmission Owner shall use due diligence to construct transmission facilities as directed by the SPP Board of Directors. . . ." We stated that, because these portions of the tariff work together and we required SPP to amend Attachment O to allay similar concerns,[38] we would not require further amendments in this case. We noted that a transmission

[37] See April 22 Order at P 86 and SPP April 14 answer at 14.

[38] February 10 Order at P 188.

customer who believes this arrangement has been abused to the customer's detriment may file a complaint under section 206 of the FPA.[39]

Rehearing Requests

39. On rehearing, Golden Spread and East Texas Cooperatives reiterate concerns that this provision allows SPP and transmission owners to make key decisions in the Aggregate Facilities Study Process, to the exclusion of other interested parties. They argue that the provision undermines the independence of SPP and could put transmission dependent utilities and generators at a competitive disadvantage compared to transmission owners. They state that the provision conflicts with the stakeholder process SPP uses in accordance with its Bylaws to evaluate additions to the SPP transmission system. For example, they contend that the Transmission Working Group (TWG), a diverse SPP stakeholder working group, must be involved in developing the planning criteria to evaluate transmission additions, available transmission capability calculations, and seasonal flowgate ratings.

40. Golden Spread and East Texas Cooperatives further take issue with the Commission's statement that other portions of the study procedures and SPP's OATT address protestors' concerns. They argue, for example, that Attachment O and Attachment Z address entirely different circumstances and, therefore, one cannot assume that the safeguards provided in the former apply to circumstances addressed in the latter. Moreover, they contend that even if other OATT provisions provide for less transmission owner control or more involvement from stakeholders, those provisions do not render section IV of Attachment Z just and reasonable.

41. Golden Spread and East Texas Cooperatives request that the Commission reject the provision, allow the inclusion of transmission customers and applicants for service along with transmission owners in the process, or provide further explanation as to why transmission owners and SPP are the only parties that should determine the necessary cost and lead-time for each upgrade and the optimal set of solutions to reduce the overall costs for each study group.

Commission Determination

42. The Commission will deny requests for rehearing on this issue. We are not persuaded that section IV is inconsistent with the stakeholder process. SPP, as the transmission provider, is ultimately responsible for the Aggregate Facilities Study Process and when it performs an aggregate study, we expect that it will work within the criteria set forth by the TWG and adopted by SPP.[40]

---

[39] April 22 Order at P 75.

43. In addition, since the network upgrades in the Aggregate Facilities Study will affect the transmission owner's transmission system, it is logical for SPP to work with transmission owners to determine the lead-time for construction. Moreover, since the transmission owners also have more experience with the intricacies of their system, including having performed numerous studies in the past, it is reasonable that the transmission provider consult the transmission owners to develop the optimal set of solutions to reduce the overall costs for the study group. This does not mean that the transmission owners have decision-making authority or the type of authority the Commission has prohibited related to regional planning.[41] We remain satisfied that SPP's tariff language, as noted above, and business practices prohibit transmission owners from assuming a decisional role.

44. Moreover, the Commission is not persuaded that active involvement of transmission customers would be beneficial to the Aggregate Facilities Study Process, because a single transmission customer could delay the construction of network upgrades for the entire aggregate study group. A transmission customer who believes it has been harmed by the process may file a complaint under section 206, without delaying the entire process and its expected benefits.

Attachment Z Right of First Refusal Provision

April 22 Order

45. In the April 22 Order, the Commission directed SPP to remove the right of first refusal provision from Attachment Z. That provision provided:

> Each SPP Transmission Owner shall possess the right of first refusal to obtain all rights and responsibilities afforded to customers under this Attachment Z by assuming the cost responsibility for any or all of the upgrades to their facilities which it constructs to provide transmission service pursuant to this Attachment Z.

46. The Commission noted that it previously rejected similar provisions,[42] and found that the provision gave decision-making authority to the transmission owners, which is

---

[40] TWG is charged with specific responsibilities toward accomplishing SPP's mission. SPP Bylaws, section 1.12. These include: resolving disputes among transmission owners concerning ATC calculations (section 4.0), approving transmission owner requests for changes to transmission reliability margin (section 4.3.1), approving transmission owner requests for changes to capacity benefit margin (4.3.5), and resolving disputes concerning flowgates (4.4.3).

[41] ISO New England, Inc., 95 FERC ¶ 61,384 at 62,430 (2001).

[42] *See, e.g., Carolina Power and Light*, 94 FERC ¶ 61,273 at 62,010 (2001) and

not afforded to customers, potentially to the customers' detriment. The Commission further found that the provision injected an element of uncertainty into the expansion process and, therefore, did nothing to encourage third-parties from proposing transmission expansion projects. In addition, the Commission found that the provision could obstruct third-party ownership and limit SPP's ability to resolve concerns regarding compensation for customer-owned transmission facilities.[43] Accordingly, the Commission further directed SPP to provide for third-party ownership once it has established an appropriate compensation method.[44]

Rehearing Requests

47. On rehearing, SPP and the Indicated Transmission Owners assert that the Commission's finding on this issue was based on a misreading of section VII of Attachment Z. They argue that the provision provided only that transmission owners would have the right of first refusal to assume the cost responsibility for necessary upgrades to their facilities or for new facilities; it did not provide transmission owners with a unilateral right of first refusal to construct necessary upgrades or facilities. They contend that, contrary to the Commission's finding, section VII did not inject an "element of uncertainty" into the expansion process. Rather, it simply provided an alternative means of allocating the cost of facilities. They argue that other provisions of SPP's tariff make clear that SPP retains decision-making authority over upgrading jurisdictional transmission facilities. They further assert that section VII was not intended to address third-party ownership and that the issue of third-party ownership, and who builds transmission, requires direct involvement of the state commissions within SPP, as well as input from SPP's members.[45] SPP proposes to refile a tariff provision that clarifies that the right of first refusal provision is a cost allocation mechanism, not an ownership mechanism, but states that the Commission should not prejudge the issue of which entities may construct necessary upgrades and facilities.

Cleco Power LLC, 101 FERC ¶ 61,008 (2002).

[43] In previous orders, the Commission directed SPP to develop a method of compensation for customer-owned transmission facilities. (*See* February 10 Order at P 115 and July 2 Order at P 80.) In addition, the Commission understood SPP's transmission planning and expansion process to accommodate third-party investment and participation in transmission upgrade projects. (*See* February 10 Order at P 185-86).

[44] April 22 Order at P 79.

[45] For example, SPP states that the April 22 Order did not address whether state law would allow third-party construction, whether a third-party would have any eminent domain rights to allow construction, or how a third-party could construct and maintain new transmission that uses other parties' facilities.

Commission Determination

48. We will grant rehearing on this issue to the extent that SPP seeks to include a cost responsibility option that does not limit third-party ownership or permit a right of first refusal to construct necessary upgrades. Consistent with the proposal in its rehearing request, SPP should refile a tariff provision clarifying that the right of first refusal provision is a cost allocation mechanism, not an ownership mechanism. As noted, we understand that SPP's transmission planning and expansion process is intended to accommodate third-party investment and participation in transmission upgrade projects, as well as develop a compensation method for customer-owned facilities. We further clarify that the April 22 order was not intended to establish transmission construction and ownership rights in advance of SPP, its stakeholders, state commissions, and the RSC from seeking to resolve these issues.

Informational Filings

April 22 Order

49. The Commission found that follow-up reports would be beneficial, and required SPP to file informational reports, as part of its planning process, concerning the various reviews directed in the order (e.g., reviews concerning the effectiveness of the Safe Harbor and unintended consequences provisions).[46]

Rehearing Requests

50. With regard to the reports directed in the April 22 Order, TDU Intervenors request that the Commission clarify: (1) the timing of such reports; (2) that such reports will be subject to notice and comment procedures; and (3) that among the information to be provided in such reports is SPP's disposition of all requests for waiver of the Base Plan criteria, so that the Commission can determine the effectiveness of this option at protecting smaller entities.

Commission Determination

51. With regard to the timing of the informational reports directed in the April 22 Order, the Commission clarifies that the reports should be filed on an annual basis. In addition, we agree with TDU Intervenors that SPP should include in the reports information concerning SPP's disposition of all requests for waiver of the Base Plan criteria, to inform the Commission and others regarding the reasonableness of SPP's application of the waivers and the treatment of any facilities granted waivers that

[46] April 22 Order at P 51.

subsequently caused unintended consequences. As we directed in the April 22 Order, these reports are informational only, and, therefore, will not be subject to notice and comment procedures.

Compliance Filing

52. On May 23, 2005, SPP submitted its compliance filing to the April 22 Order. Specifically, SPP submitted proposed tariff revisions to Attachment Z, which are intended to: (1) provide credits for subsequent network transmission service, as well as point-to-point requests that use the capacity created by a requested or economic upgrade; (2) include crediting provisions for controllable transmission equipment in its footprint[47]; and (3) remove the right of first refusal provision. SPP states that it has not yet determined how a third-party would be compensated, so it is not filing OATT amendments that address third-party ownership. SPP understands that this is a requirement of the April 22 Order, and claims that it will establish procedures to allow compliance.

Notice of the Filing and Responsive Pleadings

53. Notice of the filing was published in the Federal Register,[48] with interventions and protests due on or before June 13, 2005. TDU Intervenors, and the Lafayette Utilities System and the East Texas Cooperatives (jointly, East Texas Cooperatives) filed timely protests. Redbud Energy, LP (Redbud) filed an untimely protest summarily supporting TDU Intervenors' protest.

54. On July 7, 2005, SPP filed an answer to East Texas Cooperatives' protest.

Procedural Matters

55. We will accept Redbud's untimely protest, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue burden or prejudice to the parties.

56. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process.

[47] The crediting provisions include credits for service in both directions.

[48] 70 Fed. Reg. 32,767 (2005).

April 22 Order

57. As noted above, the Commission found that the crediting provisions in Attachment Z were too restrictive in that they were limited to point-to-point service in the direction of the initial overload. The Commission found that it is appropriate to grant credits for subsequent network transmission service as well as point- to-point requests that use the capacity created by a requested or economic upgrade. The Commission disagreed with arguments that the credits should be extended to service in the opposite direction of the original overload (except for controllable equipment, as noted below), since any transmission service requests could have been granted in the opposite direction to relieve the original overload. Additionally, the Commission directed SPP to include crediting provisions for controllable transmission equipment, such as DC (direct current) ties and regulating phase shifting transformers, in its footprint, since the proposal lacked any discussion of these facilities. The Commission stated that the crediting provisions should include credits for service in both directions, since service over these transmission elements is different, i.e., specifically scheduled and controllable.[49]

SPP's Filing

58. SPP's proposed modifications to the crediting mechanism are reflected in section VII (Transmission Service Crediting) of Attachment Z. That section provides that transmission customers paying for a directly assigned network upgrade shall receive credits for a portion of new transmission service using the facility as a credit based on section VI (Cost Recovery). The credit amount shall be recovered with interest from new transmission service until the credit balance has zeroed. A crediting mechanism is provided for point-to-point transmission service (subpart 1), network transmission service (subpart 2), and power controlling devices (subpart 3). These subparts are summarized below in the context of relevant protests.

Protests

59. Noting that the first sentence of section VII states that transmission customers paying for a directly assigned network upgrade shall receive credits for "a portion of new transmission using the facility as a credit based on [s]ection VI," TDU Intervenors assert that "a portion of" could be read to limit to some arbitrary amount the credit for which transmission customers are eligible. They seek removal of the "a portion of" language.

60. They also take issue with subpart 1 of section VII. That section provides:

> Revenues from new point-to-point service that increases loading on the new Network Upgrade in the direction of the initial overload will be included

[49] April 22 Order at 72.

> for crediting purposes. For each new point-to-point reservation having such loading impact on such Network Upgrade made after the facility upgrade is completed . . . , the customer shall receive a portion of the transmission service charge equal to the positive response factor of such new reservation on the Network Upgrade facility times the new reservation capacity times the rate applicable to such reservation.

61. TDU Intervenors argue that, as written, the provision suggests that credits would be limited to only those point-to-point reservations made after the facility is completed, even though reservations made before the completed date but starting after or extending beyond the completed date would also provide revenues for crediting. They contend that the provision should be modified to reflect SPP's intent.[50]

62. TDU Intervenors and East Texas Cooperatives further take issue with subpart 2 of section VII. That section provides:

> Credits will be provided for New Long-Term Network Transmission Service using the Network Upgrade in the direction of the initial overload to accommodate new Designated Resources or new loads. Revenues credited shall be determined based on the MW usage of the facility divided by the increased capacity provided by the Network Upgrade. This will provide a percent usage for which the new Network Service Customer will be charged based on the original cost of the facility. This charge shall [be] paid for by the new Network Customer or applied to rates based on the Base Plan funding formula in Attachment J and credited to the Transmission Customer who provided the Network Upgrade.

63. East Texas Cooperatives argue that this provision introduces a new limitation on the availability of credits related to the provision of network services: SPP will provide credits to an upgrade-funding party only if the network service making use of the upgrade relates to a new Network Resource or a new network load. East Texas Cooperatives state that the provision reduces the availability of credits in a way that is inconsistent with the nature of network service.[51] They argue that, because of the integrative nature of network service, an existing customer could make use of a new transmission facility

---

[50] They assert that, in addressing similar language in an earlier version of Attachment Z, SPP stated that the intent of this provision would be for customers to receive revenue for reservations made prior to the completion of the facility upgrade and starting after the completion date. *See* Docket No. ER05-109-000, SPP's Answer to Protests and Requests for Rejection or Modification at 18.

[51] East Texas Cooperatives further note that, in the April 22 Order at P 72, the Commission found that SPP had placed unreasonable limitations on the availability of credits to parties that are assigned cost responsibility for network transmission upgrades.

without designating a new network resource or specifying the addition of a new network load. They argue that credits should flow whenever a network customer uses an upgrade in the direction of the original constraint, regardless of the underlying cause for the network customer's use. TDU Intervenors seek Commission clarification that the reference to new loads includes load growth and is not limited to discrete new loads.

64. TDU Intervenors also seek deletion of the term "New Long-Term Network Transmission Service" from subpart 2 of section VII. They state that the term is unnecessary and that the April 22 Order used the phrase "subsequent network transmission service," not "new."

65. TDU Intervenors further take issue with language in subparts 2 (as summarized above) and 3 regarding a "percent usage" charged to network service customers that will be credited to the transmission customer's funding of the upgrade. In relevant part, subpart 3 provides:

> For cost recovery on power controlling transmission devices the Upgrading Transmission Customer shall receive credit for Point-to-Point and Network Transmission Service using the facility in both directions. Revenues credited shall be determined based on the MW usage of the facility divided by the sum of the increased capacity provided in both directions by the Network Upgrade. This will provide a percent usage for which the new Long-Term Network Service Customer will be charged based on the original cost of the facility. This charge shall [be] paid for by the new Network Customer based on the Base Plan funding formula in Attachment J and credited to the Transmission Customer who provided the Network Upgrade. Crediting for Point-to-Point Transmission Service using the power controlling device shall be the percent usage of the total revenue received by the Transmission Provider that is not required for other transmission funding obligations.

66. TDU Intervenors assert that subparts 2 and 3 each use a calculus for determining the new usage of the facility that differs from the calculus used in determining the usage of the customers whose original requests gave rise to the upgrade, and which determines the customers' shares of the upgrade costs. TDU Intervenors argue that this purported mismatch is unsupported and state that SPP should modify the sections to provide that revenues credited shall be determined based on the ratio of the average positive incremental impact of the new network use of the network upgrade divided by the total average positive incremental impact of all uses of the network upgrade.

67. TDU Intervenors and East Texas Cooperatives further contend that SPP should provide examples of how subparts 2 and 3 will function generally and, if necessary, supply clarifying language. For example, East Texas Cooperatives assert that it is not

clear whether the term "facility" in subpart 2 refers to the network upgrade, the overloaded transmission facility prior to the network upgrade, or some other combination thereof. They further claim that it is unclear what SPP means when it states that the "charge shall be paid for by the new Network Customer or applied to rates based on the Base Plan funding formula in Attachment J and credited to the Transmission Customer who provided the Network Upgrade." They contend that the language fails to address how multiple transmission customers will be allocated credits if more than one transmission customer originally funded the network upgrade. TDU Intervenors assert that "or applied to rates" appears in subpart 2 but not subpart 3 and that the phrase should appear in both sections. They further state that the last sentence of subpart 3 makes references to "total revenue received by the Transmission Provider" without any apparent tie to use of the facility in question, and to "other transmission funding obligations" without any explanation of that phrase.

SPP's Answer

68. SPP responds to concerns about its proposal to provide credits to an upgrade-funding party only if the network service making use of the upgrade relates to a new network resource or a new network load. SPP states that its proposed crediting mechanism for network transmission service is similar to the mechanism it proposed for point-to-point transmission service accepted by the April 22 Order. Specifically, SPP states that its credit for point-to-point service was tied to increased loadings from incremental transactions enabled by the upgrade. SPP states that, here, by limiting the credit to new designated network resources and new network loads, SPP has developed a comparable provision. SPP contends that its approach is reasonable and that it need not show that its approach is more reasonable than the approach suggested by East Texas Cooperatives, i.e., allowing credits to flow whenever a network customer uses an upgrade in the direction of the original constraint, regardless of the underlying cause for the network customer's use. SPP states that East Texas Cooperatives' approach would require SPP to monitor flows continuously and conduct numerous studies to test the impact of various dispatch scenarios and, therefore, would be extremely time consuming and costly to implement.

Commission Determination

69. As an initial matter, we find that SPP generally has complied with the directives in the April 22 Order. Indeed, no party has suggested otherwise. Rather, the protestors take issue with very specific tariff language changes that SPP made in attempting to comply with the Commission's directive pertaining to the crediting mechanism. Given our findings regarding these changes (discussed below), we will conditionally accept SPP's

compliance filing, effective May 5, 2005, and direct SPP to make a further compliance filing. Further, to the extent SPP complied with directives in the April 22 Order which have been modified by the rehearing discussion above, SPP's compliance filing must include tariff revisions consistent with the Commission's findings on rehearing in this order.

70. In the first sentence of section VII, Transmission Service Crediting, we agree with TDU Intervenors that "a portion of" could be read to limit to some arbitrary amount the credit for which the transmission customers are eligible. Accordingly, we will direct SPP to remove the "a portion of" language from this sentence. We also agree that SPP must clarify the provision in section VII, subpart 1 (point-to-point transmission service), to provide credits for transmission service reservations made prior to the completion of the network upgrades with service commencing after the upgrades are placed in service. As proposed, the language could be interpreted to mean that credits would be limited to only those point-to-point reservations made after the facility is completed, even though reservations made before the completed date but starting after or extending beyond the completed date would also provide revenues for crediting. This change is consistent with SPP's stated intent of how the provision will work.

71. We find that the intent of crediting is for increases in existing and new network resource designations with regard to subpart 2 (network transmission service). We also affirm that "subsequent network transmission service" includes network service to meet load growth, because as network customers increase their designations of network resources to meet load growth, the additional increments of resource designations will serve as a basis for the credits, as discussed in the rehearing section above ("And" Pricing). TDU Intervenors and East Texas Cooperatives argue that the word "new" in the crediting provision is unnecessary and limits credits to "new Designated Resources or new loads." They request that SPP use load flow analyses to show incremental use on upgrades and pay credits for this incremental use. SPP points out that determining incremental use in this fashion would be extremely time consuming and costly. We agree and will not require that credits be calculated in this manner. As long as a network customer remains within the limits of its existing network resource designations, any changes in the results of load flow studies on the network upgrade would be permitted under a customer's existing network transmission service agreement and would not be the basis for credits. If however, a transmission customer increases an existing network resource designation, we would expect the crediting provision to capture that increase. Accordingly, SPP must clarify the provision to accommodate this circumstance since it would not be a "new" Designated Resource but an increase to an existing one.

72. We also agree that the "percent usage" provision in subparts 2 (network transmission service) and 3 (power controlling devices)[52] reflects a different calculation

[52] Specifically, subparts 2 and 3 state that the calculation for revenues credited will

than the method to determine the usage of customers whose transmission service requests gave rise to the required upgrades and their share of the upgrade costs. Additionally, we agree that SPP must clarify how subparts 2 and 3 will function, since the word "facility" as used on those sections could have multiple meanings and there is no method to allocate credits if more than one customer funded an upgrade. We also agree that the phrase "or applied to rates" should be included in subpart 3, as well as subpart 2, since the purpose of both provisions is to detail how charges for use of the network will be paid.[53] Accordingly, we direct SPP to revise the calculation in its compliance filing to be consistent with the calculation used to determine the cost responsibility for the upgrade or support fully its proposal, clarify subparts 2 and 3, and amend subpart 3 to include the phrase "or applied to rates."

The Commission orders:

(A) The rehearing requests are hereby granted in part and denied in part, as discussed in the body of this order.

(B) SPP compliance filing is hereby conditionally accepted for filing, effective May 5, 2005, as discussed in the body of this order.

(C) SPP is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

---

provide a "percent usage" for which the new network service customer will be charged based on the original cost of the facility.

[53] In other words, like subpart 2, subpart 3 should provide: "This charge shall [be] paid for by the Network Customer or applied to rates based on the Base Plan funding formula in Attachment J . . . ."