



Otter Tail Power Company (“Otter Tail”)<sup>5</sup> and noting their concerns regarding SPP’s proposed revisions to its Tariff. Specifically, the MPUC, NDPSC, and SDPUC expressed concern that Otter Tail’s customers—ratepayers in Minnesota, North Dakota and South Dakota—would suffer negative rate impacts as a result of Otter Tail being forced to take transmission service from SPP at pancaked rates.<sup>6</sup> The MPUC, NDPSC, and SDPUC also supported Otter Tail’s request for hold harmless treatment.<sup>6</sup>

## II. REQUEST FOR CLARIFICATION

In the December 30 Order, FERC determined that the Tariff revisions SPP proposes in this proceeding “have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.”<sup>7</sup> Nonetheless, FERC “decline[d] to impose a hold harmless condition and similarly reject[ed] the request to address rate pancaking that results from Central Power’s membership in SPP.”<sup>8</sup> It also found, however, that “Otter Tail may address in the hearing and settlement judge procedures whether any provision is needed in its service agreement with SPP” to address duplicative or pancaked rates on the Integrated Transmission System resulting from Central Power’s integration into SPP.<sup>9</sup>

Because the MPUC, NDPSC, and SDPUC also raised concerns regarding duplicative and pancaked rates for service on Otter Tail’s system, the JSC is concerned that, due to the wording of the December 30 Order, some parties may argue that FERC

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<sup>5</sup> Motion to Intervene and Protest of Otter Tail Power Company, Docket No. ER16-209-000 (filed Nov. 20, 2015).

<sup>7</sup> *Id.*

<sup>7</sup> December 30 Order at P 45.

<sup>8</sup> *Id.* at P 47.

<sup>9</sup> *Id.*

intended to preclude the JSC from raising these issues in hearing and settlement judge procedures. Specifically, the JSC is worried parties will assert that, by stating that Otter Tail may raise these issues in hearing and settlement judge procedures, FERC intended to preclude the JSC from raising these issues. Therefore, for the avoidance of doubt, the JSC respectfully requests that FERC clarify that by stating that Otter Tail may raise these issues in hearing and settlement judge procedures, it did not intend to exclude other parties that raised these concerns in their comments from also addressing these issues in the hearing and settlement judge procedures.

### **III. REQUEST FOR REHEARING**

#### **A. Specification of Errors and Statement of Issues**

As required by Rule 713(c),<sup>10</sup> the JSC identify below each issue on which they seek rehearing and provide representative precedent in support of their position on each issue:

1. The December 30 Order errs by failing to address the arguments raised by the JSC in its comments. *See, e.g., PPL Wallingford v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir 2005) (An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious); *Natural Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 111 (D.C. Cir. 1987) (agency ruling “arbitrary and capricious” if the agency “ignores important arguments or evidence”); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“Normally, an agency rule would be arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem . . .”); *see also Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001); *Public Serv. Comm’n v. FERC*, 397 F.3d 1004, 1008 (D.C. Cir. 2005). Accordingly, FERC’s decision is arbitrary and capricious, in contravention of its obligations under the Administrative Procedure Act (“APA”).<sup>11</sup>

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<sup>10</sup> 18 C.F.R. § 385.713(c).

<sup>11</sup> *See, e.g.,* 5 U.S.C. § 706(2)(A), (E); *State Farm*, 463 U.S. at 43.

## B. Argument

Although the December 30 Order accepted the comments filed by the MPUC, NDPSC, and SDPUC, it did not substantively address any of the arguments they raised regarding the potential rate impact on Minnesota, North Dakota and South Dakota ratepayers or their request that Otter Tail be held harmless from the rate impacts of Central Power joining SPP. Instead, FERC simply dismissed their request with a single sentence citing a single order.<sup>12</sup> Moreover, the cited paragraph does not discuss the requested hold harmless remedy, explain why such a remedy would be inappropriate here when FERC previously has held that it is appropriate in similar situations (*e.g.*, where one utility's decision to join a Regional Transmission Organization results in harm to another utility due to the intertwined nature of their systems), or explain the decision to depart from past precedent.

FERC is required, by law, to engage in reasoned decision-making.<sup>13</sup> Court precedent is clear that an agency fails to engage in reasoned decision-making when it ignores comments or arguments before it.<sup>14</sup> The MPUC, NDPSC and SDPUC raised valid concerns regarding rate impacts and requested a specific relief that FERC has granted previously in such situations. The December 30 Order's failure to address these arguments is arbitrary and capricious, and is grounds for granting rehearing. On rehearing, FERC should follow its existing precedent and find that a hold harmless remedy is appropriate

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<sup>12</sup> December 30 Order at P 47 (“Separate inter-RTO transmission charges are consistent with Commission precedent, which permits RTOs to collect transmission charges from a load-serving entity for every transmission system that the load-serving entity uses.”) (citing *Sw. Power Pool, Inc.* 153 FERC ¶ 61,051, at P 52 (2015)).

<sup>13</sup> *See, e.g.*, 5 U.S.C. § 706(2)(A).

<sup>14</sup> *See, e.g., PPL Wallingford*, 419 F.3d at 1198 (An agency's ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious).

and necessary to mitigate the impacts to Minnesota, North Dakota and South Dakota ratepayers of Central Power's decision to join SPP.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the JSC respectfully requests that FERC: (1) grant the clarification requested herein; and (2) grant rehearing and on rehearing reverse its determination that hold harmless issues should be excluded from hearing and settlement judge procedures.

Respectfully submitted,

/s/ Daniel P. Wolf

Daniel P. Wolf,  
Executive Secretary of Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147  
[dan.wolf@state.mn.us](mailto:dan.wolf@state.mn.us)

/s/John M. Schuh

John M. Schuh  
Special Assistant Attorney General  
600 E. Boulevard Ave, Dept. 408  
Bismarck, ND 58505-0480  
[jschuh@nd.gov](mailto:jschuh@nd.gov)  
*Attorney for the North Dakota Public Service Commission*

/s/Karen E. Cremer

Karen E. Cremer  
500 E. Capitol  
Pierre, SD 57501  
[karen.cremer@state.sd.us](mailto:karen.cremer@state.sd.us)  
*Attorney for the South Dakota Public Utilities Commission*

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 28th day of January 2016 in Saint Paul, Minnesota.

/s/Rose Christensen

Rose Christensen

121 7th Place East, Suite 350

St. Paul, Minnesota 55101-2147

Telephone: 651-201-2211