

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER05-562-001

ORDER ON REHEARING AND CLARIFICATION

(Issued June 3, 2005)

1. On May 9, 2005, Southwest Power Pool, Inc. (SPP) and the Indicated Transmission Owners (Indicated TOs)<sup>1</sup> filed requests for rehearing or clarification of the Commission's order<sup>2</sup> accepting and suspending for a nominal period SPP's revisions to its Open Access Transmission Tariff (OATT) to add Schedule 12, which would allow it to recover the electric annual charges (annual charges) that it pays to the Commission, and establishing a hearing and settlement judge procedures. The Commission grants rehearing, as discussed below. This order benefits customers because it helps SPP comply with Commission requirements concerning annual charges set forth in Order No. 641.<sup>3</sup>

**Background**

2. SPP's proposed Schedule 12 contains SPP's proposal for recovering the annual charges it pays to the Commission from Transmission Customers and Transmission Owners.

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<sup>1</sup> The Indicated Transmission Owners are Kansas City Power & Light Company, Midwest Energy, Inc., Oklahoma Gas and Electric Company, Southwestern Electric Power Company and Public Service Company of Oklahoma, Southwestern Public Service Company, The Empire District Electric Company, and Westar Energy, Inc.

<sup>2</sup> *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,012 (2005) (April 8 Order).

<sup>3</sup> *Revision of Annual Charges Assessed to Public Utilities*, 65 Fed. Reg. 65,757 (Nov. 2, 2000), FERC Stats. & Regs., Regulations Preambles July 1996 - 2000 ¶ 31,109 (2000), *reh'g denied*, Order No. 641-A, 66 Fed. Reg. 15,793 (Mar. 21, 2001), 94 FERC ¶ 61,290 (2001) (Order No. 641).

3. Oklahoma Municipal Power Authority (OMPA) and the Missouri Joint Municipal Electric Utility Commission (MJMEUC) (together, the Protestors) filed a joint protest expressing concerns about the potential for double recovery of these annual charges. The Protestors stated that it must be assumed that the zonal rates under SPP's OATT, which recover the revenue requirements of transmission owners, already recover the Commission's annual charges. The Protestors asserted that Schedule 12 does not propose to modify the zonal rates or otherwise ensure that customers do not pay for the Commission's annual charges twice.

4. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We will accept the Protestors' answer because it has provided information that assisted us in our decision-making process.

### Discussion

5. SPP seeks clarification or, in the alternative, rehearing of the April 8 Order. SPP asks the Commission to clarify that: (1) in setting this matter for hearing, the Commission was ordering an inquiry into how SPP's Schedule 12 charges should be allocated and not questioning SPP's right to recover Commission annual charges; and (2) the scope of the "double recovery" issue. SPP states that its understanding of the "double recovery" inquiry is to determine the extent to which Commission annual charge amounts may already be embedded in zonal rates, and to ensure that with respect to any such embedded amounts, SPP's transmission customers do not pay twice. Specifically, SPP seeks guidance as to how to determine the extent of any embedded costs when the past rates were the result of a true "black box" settlement. In the alternative, SPP requests rehearing: (1) to the extent that the order could result in SPP's inability to recover fully Commission annual charges; and (2) to the extent that the order would relieve SPP Transmission Customers from any responsibility for Schedule 12 charges based upon a showing that existing zonal rates include any embedded amount for Commission annual charges.

6. The Indicated TOs request rehearing or clarification of the April 8 Order. They assert that, by setting the matter of double recovery of annual charges for a hearing and settlement procedures, the order is contrary to Commission precedent in *New PJM Companies*.<sup>4</sup> The Indicated TOs further state that the Commission does not require a Transmission Owner joining an RTO to file an updated cost-of-service analysis.<sup>5</sup> In the alternative, the Indicated TOs ask that the Commission specify the relief that would be

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<sup>4</sup> *New PJM Companies*, 108 FERC ¶ 61,140 (2004), clarified in 110 FERC ¶ 61,392 (2005). See also *PJM Interconnection, LLC*, 108 FERC ¶ 61,318 (2004).

<sup>5</sup> See *Midwest Independent System Operator, Inc.*, 103 FERC ¶ 61,090 (2003).

appropriate against any duplicate recovery that might exist. They offer to pay the amount embedded in the Transmission Owners' zonal rates for Commission annual assessments. They would continue to make this payment until the zonal rates are changed to eliminate any duplication.

7. The Protestors' answer admits that they made a mistake in citing *New PJM Companies* in their earlier protest. They assert that if the Commission grants the motions for clarification and/or rehearing then the Protestors will have no remedy but to file a section 206 complaint challenging the SPP and TO rates. The Protestors note the Indicated TOs' offer to pay the amount embedded in the Transmission Owners' zonal rates for Commission annual assessments until those rates are changed to eliminate any double charging. The Protestors would agree to the Indicated TOs' compromise.

8. In the interest of correcting our prior order and fully explaining the Commission's position on the double recovery issue, the Commission will grant the rehearing requests of the Indicated TOs and SPP and modify our April 8 Order to accept SPP's Schedule 12 without suspension.

9. This case turns on whether by filing Schedule 12 in order to recover Commission annual charges, SPP has caused the existing zonal rates to become subject to this proceeding. Under the Regional Transmission Organization (RTO) system, SPP charges zonal rates based upon the Transmission Owners' costs of service. SPP provides the service and collects the money, but these charges are fundamentally Transmission Owner rates. These rates are based on the Transmission Owners' costs and the money collected goes to Transmission Owners to reimburse them for their costs. The Commission has treated zonal rates as Transmission Owner rates and therefore required customers to bring separate Federal Power Act (FPA) section 206 complaints regarding the potential for double recovery of annual charges rather than allowing customers to question Transmission Owner rates in a FPA section 205 proceeding involving rates filed by the RTO.<sup>6</sup>

10. The Indicated TOs cite *Midwest ISO* to support their assertion that the Commission does not require transmission owners joining an RTO to file an updated

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<sup>6</sup> See *Midwest Independent System Operator*, 105 FERC ¶ 61,144 (2003), *order on reh'g*, 106 FERC ¶ 61, 255 (2004) (where Midwest ISO filed to recover its annual charges from Transmission Customers, Midwest ISO customers raised concerns about the potential for double recovery because they were also paying zonal rates based on the Transmission Owners' revenue requirements. The Commission directed those customers to file a separate section 206 complaint if they continued to feel that they were being double charged).

cost-of-service analysis.<sup>7</sup> When a Transmission Owner joins an RTO, the Commission accepts the Transmission Owner's existing rates as they are and allows the RTO to start charging these rates immediately. The Commission does not treat these zonal rates as rates newly filed by the RTO that must be justified.

11. Thus, Commission precedent<sup>8</sup> requires the Protestors to file a separate 206 complaint if they wish to challenge the zonal rates on the grounds that these rates already include charges for recovery of the Commission's annual charges, so we should not have set this case for hearing.

12. While SPP and the Indicated TOs both assert that there is only a small amount of money at stake here, customers should not be charged twice for the same annual charges. The Indicated TOs note their willingness to pay the amount embedded in the zonal rates for Commission annual assessments. The Protestors state their willingness to accept this compromise. While we are granting rehearing and removing this case from hearing and settlement procedures, we strongly urge the parties to work the issue out among themselves.

The Commission orders:

Rehearing of the April 8 Order in the above-captioned proceeding is granted.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>7</sup> *Midwest ISO*, 103 FERC ¶ 61,090 at P 20 (2003).

<sup>8</sup> *Midwest ISO*, 105 FERC ¶61,144 at P 34.