

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. ER05-1285-001
ER05-1285-002

ORDER GRANTING CLARIFICATION, DENYING REHEARING, AND
ACCEPTING COMPLIANCE FILING

(Issued March 3, 2006)

1. This order addresses several requests for clarification and rehearing of an order issued by the Commission on September 30, 2005 (September 30 Order),¹ as well as a compliance filing made by Southwest Power Pool, Inc. (SPP) in response to the September 30 Order. The September 30 Order accepted several revisions proposed by SPP to its open access transmission tariff (Tariff), including a new definition of Transmission Facilities and a provision for the distribution of revenue between multiple entities owning transmission facilities in a single zone. We grant clarification, deny rehearing, and accept SPP's compliance filing, as set forth below.

I. Background

2. SPP filed three sets of revisions to its Tariff (Original Filing), including: (1) a modification to the definition of Transmission Facilities, by adding a new Attachment AI and revising the Definitions section; (2) a revision of Attachment L to provide for the distribution of revenue between multiple entities owning transmission facilities in a single zone; and (3) a revision of Schedule 1 (Scheduling System Control and Dispatch Service) to eliminate the assessment of multiple scheduling charges for a single reservation or transaction and a revision of Attachment L (Treatment of Revenues) to provide for the allocation of scheduling revenue under the new rate design.

¹ *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,355 (2005).

3. In the September 30 Order, the Commission accepted SPP's proposed amendment to the definition of Transmission Facilities, as modified, as well as the revisions to Attachment L and Schedule 1.² The Commission directed SPP to file revised Tariff sheets with the following modifications to Attachment AI: (1) a clarification that "open loops" will be considered radial lines and that if a future loop contains an existing radial, that existing radial can be included in rates,³ and (2) a revision to section II to state that rate treatment for transmission upgrades completed after October 1, 2005, will be determined pursuant to section 1.3 (h) of SPP's Tariff.⁴ The Commission also directed SPP to clarify whether a facility, under Attachment AI, would lose its designation as "transmission" if two or more end-use customers decide to merge.⁵

4. Golden Spread Electric Cooperative, Inc. (Golden Spread) and Lafayette Utilities System (Lafayette) requested rehearing of the September 30 Order and filed motions for clarification. East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives); and the City of Independence, Missouri, the Oklahoma Municipal Power Authority, and the West Texas Municipal Power Agency (collectively, TDU Intervenors) filed motions for clarification of the September 30 Order.

II. Requests for Rehearing and Clarification

A. Definition of Transmission Facilities: Classification of Facilities that are Transmission under the Commission's Seven Factor Test

5. Golden Spread argues that the definition of Transmission Facilities must include all lines that have been determined to be transmission under the Commission's seven

² The Commission found that the revisions to Attachment L and Schedule 1 satisfied the Commission's requirements that SPP: (1) provide for the distribution of revenue between multiple entities owning transmission facilities in a single zone, and (2) eliminate multiple scheduling charges (pancaked rates) for a single reservation or transaction, as required by *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 115, 156 (February 10 Order), *order on reh'g*, 109 FERC ¶ 61,010 at P 53, 103 (2004); *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,003 (2004), *order on reh'g*, 100 FERC ¶ 61,138 (2005).

³ September 30 Order at P 30-31.

⁴ *Id.* at P 41.

⁵ *Id.* at P 25.

factor test,⁶ regardless of whether those lines are operated at, below, or above 60 kilovolts (kV).

6. In the Original Filing, SPP proposed that Transmission Facilities would include all facilities operated below 60 kV that have been determined to be transmission under the Commission's seven factor test. Some parties, including Golden Spread, argued that this proposed definition inconsistently applied the seven factor test by requiring it to be applied to facilities below 60 kV but not to facilities at and above 60 kV. In response, the Commission stated that "the definition [did] not limit application of the Commission's seven factor test to facilities below 60 kV" and that parties could seek determinations from this Commission or state commissions regarding the status of any facility.⁷

7. Golden Spread now argues that it is not clear from the September 30 Order whether SPP is required to honor a determination that a facility is transmission under the Commission's seven factor test; Golden Spread seeks clarification that such a determination is binding on SPP.

8. We clarify that we intended that the seven factor test may be applied to determine whether any facility is transmission, regardless of whether it is operated at, above, or below 60 kV and that SPP would be required to honor such a determination. Since we grant clarification in this matter, Golden Spread's alternate request for rehearing is dismissed.

⁶ To determine what facilities would be under the Commission's jurisdiction and what facilities would remain under the state's jurisdiction for purposes of retail stranded cost adders or other retail regulatory purposes, in Order No. 888 the Commission developed a seven factor test to determine what facilities are transmission facilities and what facilities are local distribution facilities. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ September 30 Order at P 42.

B. Definition of Transmission Facilities: Facilities Constructed after October 1, 2005

9. In the Original Filing, SPP proposed the following sentence to be included in the new definition of Transmission Facilities: “All facilities operated at 60 kV and above constructed after October 1, 2005 would be included [as Transmission Facilities].” Some parties protested this sentence, arguing that it would allow different treatment of new and existing transmission facilities performing similar functions (*i.e.* all facilities operated at 60 kV or above that were constructed after October 1, 2005 would be considered transmission, while similar facilities already in existence may not be considered transmission under Attachment AI). SPP answered that the proposed definition would only determine which *existing* facilities would be rolled in for cost sharing and that *future* facilities that operate at 60 kV or above must also be Base Plan Upgrades, under section 1.3 (h) of the Tariff, in order for their related revenue requirements to be “subsidized” by the SPP transmission system.

10. In the September 30 Order, the Commission found that the proposed sentence was not consistent with SPP’s expressed intent for Attachment AI to determine only which *existing* facilities would go into transmission rates on a going forward basis, while deferring to section 1.3 (h) of the Tariff for the rate treatment for *future* transmission upgrades. We directed SPP to revise the sentence to state that rate treatment for transmission upgrades completed after October 1, 2005 will be determined under section 1.3 (h).⁸

11. East Texas Cooperatives and TDU Intervenors now file motions for clarification. East Texas Cooperatives say that the modification could lead someone to conclude that only Base Plan Upgrades can be considered Transmission Facilities under Attachment AI, and they request that the Commission clarify that Base Plan Upgrades are only one category of Transmission Facilities under Attachment AI. TDU Intervenors contend that the modification would essentially delete the sentence and replace it with a reference to the cost allocation provisions. This would require the owner of a new radial facility to have to fight two battles; it would first have to prevail in an argument over whether the facility is transmission and, second, would have to show that rolled-in treatment is justified. TDU Intervenors seeks clarification that the Commission accepts SPP’s intention that new radial facilities of 60 kV and above will be considered transmission, while leaving open how the costs of such facilities will be collected.

12. We agree that the definition, as modified by the September 30 Order, may create confusion with respect to two separate issues: (1) which facilities are Transmission Facilities subject to the SPP Tariff, and (2) what will be the cost allocation/rate treatment

⁸ *Id.* at P 41.

of Transmission Facilities. Thus, we clarify that Transmission Facilities under Attachment AI are not limited to Base Plan Upgrades. Reference to section 1.3 (h) of the Tariff relates only to the rate treatment of these new facilities, not to the issue of which facilities are Transmission Facilities.

C. Definition of Transmission Facilities: Golden Spread's Request for Rehearing

13. Golden Spread argues that the Commission did not consider the cost shifts that would result from the Commission's acceptance of exclusion of two types of lines: radial lines operated below 60 kV and those operated at 60 kV and above that do not serve two or more unaffiliated customers from the definition of Transmission Facilities in Attachment AI.

14. In the Original Filing, SPP proposed to modify the definition of Transmission Facilities to include: "[a]ll existing non-radial power lines, substations, and associated facilities, operated at 60 kV or above, plus all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not Affiliates of each other." Golden Spread protested this proposal, arguing that more than half of its delivery points are served by radial lines and that if these radial lines were suddenly no longer a part of the transmission system, a cost shift would result. Golden Spread's load would be responsible for those facilities while still having to pay a share of the cost of similar facilities in SPP that serve other load. SPP responded that policies represented by the proposed revision will be applied uniformly to all customers and that Golden Spread was not being intentionally disadvantaged. SPP also stated that the Commission allows the direct assignment of radial lines and that the cost effects on Golden Spread results from the nature and distribution of the loads it serves.

15. The September 30 Order accepted SPP's proposed definition. The Commission considered the possibility of resulting cost shifts and the effects on the entire SPP system and found that, on balance, the definition is reasonable.⁹

16. The Commission notes that the proposed definition was vetted through the SPP stakeholder process, with all interested entities able to participate, and that the resulting proposed definition was a compromise between varying interests. While the new definition may not be favorable to Golden Spread, customers on other systems may now receive more favorable treatment since radial lines that were previously directly assigned

⁹ The Commission also considered the system-wide effects on the transmission system of SPP's proposal to treat as radial lines those facilities constructed as looped facilities but operated as radial lines. The Commission accepted this proposal in the September 30 Order, after finding that the system-wide effects were, on balance, reasonable.

can now be included in SPP's transmission rates. We agree with SPP that Golden Spread is being treated the same as any other customer. Further, SPP's role as a regional transmission planner will, in the long run, result in additional transmission facilities being built, which should open markets for Golden Spread and other transmission customers.

17. We have long permitted the direct assignment to the customer of costs associated with non-grid facilities that do not serve a system-wide function, including radial lines.¹⁰ Even if Golden Spread's radial lines were considered part of the transmission system before the Commission accepted the proposed definition of Transmission Facilities, SPP's revision to the definition was in accordance with Commission policy. Further, SPP recognized that a customer can apply for a determination from the Commission that its facility is a transmission facility under the Commission's seven factor test. Any cost that Golden Spread will incur, under the new definition, is attributable to the nature and distribution of the load it serves. Moreover, if Golden Spread's facilities are excluded from the definition of transmission because they do not qualify under the Commission's seven factor test, then any upgrades on those facilities will rightfully also be the responsibility of Golden Spread. Accordingly, we deny rehearing.

D. Creation of a Lafayette Separate Pricing Zone

18. In the Original Filing, SPP proposed amendments to Attachment L to allow the distribution of revenue between multiple entities owning transmission facilities in a single pricing zone. In its comments, Lafayette argued that the scope of the revisions was too narrow because the proposal did not address the issue of establishing a new Transmission Owner as a separate pricing zone; the proposal only dealt with compensation for new Transmission Owners in an existing pricing zone.

19. In the September 30 Order, the Commission found that Lafayette's concerns over the scope of the revisions and its ability to participate fully in the SPP regional transmission organization (RTO) were beyond the scope of the proceeding.¹¹ The

¹⁰ *Northeast Texas Electric Cooperative, Inc.*, 108 FERC ¶ 61,084 at P 47 (2004), *reh'g denied*, 111 FERC ¶ 61,189 (2005); *Western Massachusetts Electric Company*, 63 FERC ¶ 61,222 at 62,615 (1993), *reh'g denied*, 66 FERC ¶ 61,167 (1994); *Public Service Company of Colorado*, 59 FERC ¶ 61,311 at 62,150 n. 32 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993).

¹¹ September 30 Order at P 50.

Commission stated that if Lafayette transfers operational control over its transmission facilities to SPP, then the issue of whether a separate pricing zone is appropriate could be addressed.¹²

20. Lafayette requests rehearing of the determination that Lafayette's ability to participate in the SPP RTO is beyond the scope of this proceeding. It says that the Commission should have addressed the creation of a separate pricing zone for Lafayette. It states that the February 10 Order brought the issue directly within the scope of the proceeding by: (1) saying that creating separate pricing zones is an alternative way to compensate customers for transmission facilities that they own and turn over to SPP's functional control; (2) instructing SPP to address the matter under the guidance of its independent board; and (3) directing SPP to resolve the matter, as an issue raised by Lafayette, as a condition of achieving RTO status. Lafayette states that the Commission cannot now declare that the subject of pricing zone creation is off-limits. The Commission should direct SPP to submit provisions addressing pricing zone creation under the guidance of its independent board. Lafayette also requests clarification, and in the alternative, rehearing. It says that it is unfair to require it to submit functional control of its transmission facilities to SPP before it can find out whether it will be able to become a separate pricing zone.

21. Regardless of whether Lafayette's concerns are beyond the scope of this proceeding, those issues were not ripe for consideration in the September 30 Order, nor are they ripe for consideration now. Lafayette and SPP have not agreed upon an arrangement for Lafayette to become a Transmission Owner in the SPP RTO. Lafayette states that it is still discussing with SPP which further arrangement would be sufficient for Lafayette to participate as a Transmission Owner in the SPP RTO, given its lack of direct interconnection to SPP.¹³ Once Lafayette and SPP agree on a mechanism by which Lafayette can participate in SPP, the issue will be ripe for consideration, and Lafayette can seek a determination from the Commission regarding its entitlement to a separate pricing zone. Thus, we deny rehearing. However, we continue to encourage Lafayette and SPP to pursue efforts to reach agreement on a mechanism by which Lafayette would be able to fully and completely participate in the SPP RTO.

22. Accordingly, we clarify that Lafayette does not first need to submit functional control of its transmission facilities to SPP to seek a determination from the Commission that it is entitled to a separate pricing zone. Instead, if Lafayette and SPP agree on the mechanism by which Lafayette can participate in the SPP RTO but cannot agree on the

¹² *Id.*

¹³ Lafayette Request for Rehearing at n. 4.

terms of compensation, then Lafayette can seek a determination from the Commission regarding its entitlement for a separate pricing zone. Since we provide clarification in this matter, Lafayette's alternate request for rehearing is dismissed.

III. Compliance Filing

A. SPP's Compliance Filing

23. On November 29, 2005, SPP submitted revised tariff sheets to comply with the September 30 Order. As directed, SPP revised section II of Attachment AI to state that: (1) rate treatment for transmission upgrades completed after October 1, 2005, will be determined under section 1.3 (h) of SPP's tariff; and (2) "open loops" are radial lines and if an existing radial is incorporated into a looped transmission circuit, it will be eligible for inclusion in rates on the same basis as the remainder of the facilities in the loop. SPP submitted the modified definition of Transmission Facilities as follows:

~~All facilities operated at 60 kV and above~~ Rate treatment for transmission upgrades ~~constructed~~ completed after October 1, 2005 ~~would be included~~ will be determined pursuant to section 1.3 (h) of this Tariff. For the purpose of the application of this criterion, "open loops" are radial lines. Additionally, at such time an existing radial would be eligible for inclusion in rates on the same basis as the remainder of the facilities in the loop.

24. SPP also responds to concerns about whether a facility would lose its designation as a Transmission Facility if two or more end-use customers decide to merge.¹⁴ SPP clarifies that once an existing facility is designated as a Transmission Facility, based on customers attached to it, that designation will not be modified solely due to such a merger.

B. Notice of the Filing and TDU Intervenors' Comments

25. Notice of SPP's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 73,998 (2005), with interventions, comments, and protests due on or before December 20, 2005. TDU Intervenors filed a motion to intervene and comments.

26. TDU Intervenors state that SPP should be required to modify the language of Attachment AI so that it is clear that new radial facilities of 60 kV and above will be

¹⁴ Golden Spread raised this concern in its protest to the Original Filing. The September 30 Order required SPP to clarify whether under Attachment AI a facility will lose its designation as "transmission" if end-use customers merge.

considered Transmission Facilities and that the costs of such facilities will be governed by other provisions of the Tariff. Specifically, TDU Intervenors state that section II of Attachment AI should be modified to read as follows:

~~Rate treatment for transmission upgrades completed after October 1, 2005 will be determined pursuant to section 1.3 (h) of this Tariff. All facilities at 60 kV and above completed after October 1, 2005 shall qualify as transmission; however, rate treatment of such transmission facilities shall be determined pursuant to section 1.3 (h) of this Tariff. For the purpose of the application of this criterion, "open loops" are radial lines. Additionally, at such time an existing radial would be eligible for inclusion in rates on the same basis as the remainder of the facilities in the loop.~~

C. Commission Determination

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene serves to make TDU Intervenors a party to this proceeding.

28. We find that SPP's revisions comply with the September 30 Order and accept SPP's compliance filing, as clarified in the discussion above. With this clarification, we do not find that an additional modification to the definition, as requested by TDU Intervenors, is necessary.

The Commission orders:

- (A) Golden Spread's and Lafayette's requests for rehearing are hereby denied.
- (B) Golden Spread's, Lafayette's, East Texas Cooperatives', and TDU Intervenors' requests for clarification of the September 30 Order are hereby granted, as discussed in the body of this order.
- (C) SPP's compliance filing is hereby accepted, as clarified in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.