

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southwest Power Pool, Inc.

Docket No. ER06-1362-000

ORDER ACCEPTING IN PART AND REJECTING IN PART REVISIONS TO OATT

(Issued October 13, 2006)

1. On August 14, 2006, pursuant to section 205 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP) filed proposed revisions to Attachment O, setting forth the planning process, of SPP's open access transmission tariff (OATT) to explicitly specify that SPP's Board of Directors (Board) must approve the reliability upgrades identified in SPP's transmission expansion plan prior to implementation of the upgrades, and to revise Attachment X, setting forth the credit policy, of SPP's OATT to permit guarantees involving publicly owned entities (August 14 Filing). SPP requests an effective date of August 15, 2006, for these revisions. We accept in part and reject in part the revisions to SPP's OATT subject to conditions as discussed below.

I. Background

2. The August 14 Filing proposes changes to sections 3.0 and 4.0(b) of Attachment O. SPP claims that, under those revisions, SPP's Board is to provide its approval for reliability upgrades. According to SPP, the proposed revisions to section 3.0 are intended "to provide customers and the Commission with the assurance that construction of reliability projects requires approval of the [SPP] Board."² The principal changes are highlighted in the following revised section 3.0 as follows: "The Transmission Provider shall include its conclusion in the SPP Transmission Expansion Plan submitted to the SPP Board of Directors for approval. The final

¹ 16 U.S.C. § 824d (2005).

² August 14 Filing at 4.

plan shall be posted on the SPP OASIS ten days prior to the meeting at which the Board is expected to take action. Approval of the reliability upgrades identified in the SPP Transmission Expansion Plan by the Board shall constitute approval for the appropriate Transmission Owners to begin implementation of projects for which financial commitment is required prior to the approval of the next SPP Transmission Expansion Plan.” In addition, section 4.0(b) was revised to eliminate the requirement that SPP direct the transmission owner to begin implementation of the project.

3. SPP proposes the modification to Attachment O simply to provide clarity and certainty as to the need for Board approval before a reliability-related project is constructed. SPP states that the revision to section 3.0 has been proposed to provide customers and the Commission with the assurance that construction of reliability projects requires approval of the Board. Also, SPP proposes to delete the first sentence of section 4.0(b), since the language added to section 3.0 provides for notice to the appropriate transmission owners to begin project implementation.

4. SPP proposes to change its Attachment X credit policy to expand the use of guarantees in lieu of other forms of security such as letters of credit. In particular, SPP proposes to allow not-for-profit entities to provide guarantees in a manner comparable to the guarantee that can currently be provided by a corporate parent to support the credit of its affiliate. For example, SPP suggests that a municipal joint action agency could provide guarantees from its individual municipal utility members. SPP explains that its proposed changes to Attachment X stem from proceedings before the Kansas Corporation Commission.³ Among the issues addressed in the Kansas Corporation Commission proceedings was SPP’s policy of requiring a customer to post financial security in the form of a letter of credit for the costs of upgrades that are to be paid for directly by that customer.⁴ The proposed changes to Attachment X permitting not-for-profit entities to provide a guarantee comparable to a corporate guarantee were one of the commitments made by SPP to address concerns raised regarding this policy.

II. Notice, Protest and Interventions

5. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 50407, with comments, protests or interventions due on or before September 5, 2006.

³ August 14 Filing at 4-5.

⁴ Exhibit III to the August 14 Filing at 6-9.

6. On August 16, 2006, the Kansas Corporation Commission filed a notice of intervention. On September 5, 2006, TDU Intervenors⁵ filed a Motion to Intervene and Protest. On September 19, 2006, SPP filed an Answer to TDU Intervenors' Protest.

7. TDU Intervenors protest the August 14 Filing for several reasons. First, TDU Intervenors protest that the changes to section 3.0, as well as the proposed change to section 4.0(b), would also remove all references to SPP "directing" effected transmission owners to start constructing upgrades that are approved by the SPP Board as part of the regional plan. TDU Intervenors argue that the language of these sections now refers only to "approval" of such projects, and that SPP provided no justification for this change. TDU Intervenors argue that the old language of sections 3.0 and 4.0(b) is needed to make clear that SPP's role in planning and expansion of the transmission system is paramount. Therefore, TDU Intervenors request that the Commission require SPP to retain the language in sections 3.0 and 4.0(b) providing for SPP to direct the transmission owners to commence work on reliability upgrades.

8. Second, while TDU Intervenors agree with SPP's proposal to allow the Kansas Municipals to become transmission owners, they submit that where such option has been provided to one group of customers, all other customers should have a similar option.⁶ TDU Intervenors argue that it is only by permitting this option broadly that all customers will be treated comparably and without undue discrimination. Therefore, TDU Intervenors argue that the Commission should condition its acceptance of the proposed OATT changes on SPP's modification of its OATT (and/or other relevant documents) to expressly make available to all customers the option being given to the Kansas Municipals.

9. In its September 19 Answer, SPP argues that the obligation of SPP's transmission owners to construct upgrades that are approved by SPP's Board of Directors as part of SPP's regional plan comes, not from SPP's OATT, but from SPP's Membership Agreement, specifically, section 3.3(a) of said agreement. In addition, section 3.3(b) of the Membership Agreement provides that, after a new transmission project has been approved by SPP, SPP will direct the appropriate transmission owner(s) to begin

⁵ The TDU Intervenors are comprised of the Missouri Joint Municipal Electric Utility Commission, the Oklahoma Municipal Power Authority, and the West Texas Municipal Power Authority.

⁶ See August 14 Filing at 5.

implementation of the project. SPP argues that its Membership Agreement thus clearly addresses the TDU Intervenors' concerns and emphasizes that its only intent in proposing its revisions to Attachment O was to clarify that SPP's Board would in fact approve the reliability upgrades identified in SPP's transmission expansion plan prior to implementation of the upgrades.

10. Similarly, SPP claims that the TDU Intervenors' request that SPP's OATT be modified to expressly make available to all customers the option of owning upgrades is also addressed by SPP's Membership Agreement, in that it sets out how a non-transmission owner may become a SPP transmission owner. Specifically, SPP points out that section 1.14 of the Membership Agreement provides that a SPP member that owns or controls transmission facilities may become a SPP transmission owner by giving notice to SPP and executing the Membership Agreement, which would cause a transfer of functional control of the transmission facilities to SPP. SPP also notes that it has not in any way proposed to restrict who may use this procedure to become a SPP transmission owner. According to SPP, this adequately addresses the concerns of the TDU Intervenors, and they should therefore be dismissed. SPP argues that the TDU Intervenors should not be allowed to use this proceeding to circumvent the procedures that have been established by SPP and approved by the Commission requiring SPP transmission owners to own transmission facilities and execute the Membership Agreement, thereby agreeing to transfer functional control of the transmission facilities to SPP and assume other responsibilities, such as constructing new transmission facilities.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notice of intervention and the timely, unopposed motion to intervene serve to make those who filed them parties to this proceeding.

12. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), 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.

B. Commission Determination**1. Revisions to Attachment O**

13. The Commission will accept SPP's proposed revisions to section 3.0 of Attachment O, Transmission Planning and Expansion Procedures, which provides for SPP Board approval prior to construction of reliability projects that have been submitted by transmission owners within the SPP footprint. SPP's proposed revisions to this section clarify the requirement that SPP Board approval is required prior to implementing construction of reliability projects. As SPP states the proposed change to section 3.0 has been properly vetted through the stakeholder process and approved by the SPP Board. However, as TDU Intervenors note, SPP provides no justification for the proposed change to section 4.0(b). While we agree with SPP that section 3.3(b) of the SPP Membership Agreement requires that SPP direct the appropriate transmission owner(s) to begin implementation of the project,⁷ in the interest of consistency and alignment between the SPP OATT and the Membership Agreement we will require that SPP retain the original language in section 4.0(b), which states, "[a]fter a new transmission project has been approved, the Transmission Provider will direct the appropriate Transmission Owners to begin implementation of the project." Moreover, we find that the existing language reinforces SPP's role in planning and expansion of the transmission system.⁸ For these reasons, we will accept proposed changes to section 3.0 and reject the change to section 4.0, of Attachment O.

2. Revisions to Attachment X

14. We disagree with TDU Intervenors that this section 205 filing is the proper forum to address their concern that SPP has agreed to accommodate the Kansas Municipals with the option of owning and being compensated for the costs of new transmission facilities formalized in a separate Memorandum of Understanding among Westar and the Kansas

⁷ SPP Answer at 2.

⁸ *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 188 (2004) (Consistent with Order No. 2000, the RTO must independently decide which projects should be included and how they should be prioritized. The Commission required SPP to modify Attachment O to make it consistent with the revised Membership Agreement with respect to the SPP's and transmission owners' role in the transmission planning process).

Municipals.⁹ The Commission views TDU Intervenors protest in this matter as outside the scope of the proposed changes to Attachment X of the SPP OATT. TDU Intervenors even state that they have no objection to the changes SPP proposes regarding the provision to accept guarantees involving publicly owned entities such as municipalities.¹⁰ Accordingly, we accept SPP's proposed changes to Attachment X for filing.

3. Other

15. The Commission is concerned that SPP may not have made all of the changes to its OATT necessary to accommodate not-for-profit guarantees. For example, the definition of "Guarantor" would apply only for a corporate guarantee. Accordingly, SPP is directed to strike the word "Corporate" from the definition of "Guarantor" and make similar changes in the applicable sections of its OATT. Alternatively, SPP should explain to the Commission why such a change is not necessary.

The Commission orders:

(A) The requested revisions are hereby granted in part and rejected in part, effective as of August 15, 2006, as discussed in the body of this order.

(B) SPP is hereby ordered to submit compliance filings within 30 days from the date of this order reflecting the modifications, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ See SPP August 14 Filing, Exhibit III, Stipulation and Agreement filed with the State Corporation Commission of the State of Kansas at 7 and 8.

¹⁰ TDU Intervenor protest at 4.