

121 FERC ¶ 61,196
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 Nos. ER07-371-002
ER07-371-003

ORDER GRANTING IN PART AND DENYING IN PART REHEARING, AND
CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued November 20, 2007)

1. On May 25, 2007, the Commission issued an order (May Order)¹ conditionally accepting Southwest Power Pool, Inc.'s (SPP) proposed revisions to Schedule 2 of its Open Access Transmission Tariff (OATT), and ordering SPP to submit a compliance filing. Several parties filed requests for rehearing of the May Order. In addition, SPP submitted its compliance filing. In this order, the Commission grants in part and denies in part rehearing, and conditionally accepts SPP's compliance filing, subject to revisions.

I. Background

2. In *Calpine Oneta*,² the Commission held that Calpine Oneta Power, L.P., which is an independent power producer (IPP) within the control area of American Electric Power Company (AEP), a transmission owner in SPP, must be compensated for providing Reactive Support and Voltage Control from Generation Sources Service (reactive power or reactive power service) in a manner comparable to the compensation provided to AEP. Because Schedule 2 of SPP's OATT allowed only transmission owners' generators to receive compensation for providing reactive power, the Commission held in *Calpine*

¹ *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199 (2007) (May Order).

² *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 (2006) (*Calpine Oneta*), order on reh'g, 119 FERC ¶ 61,177 (2007).

Oneta that SPP's Schedule 2 was unjust, unreasonable and unduly discriminatory under section 206 of the Federal Power Act (FPA).³

3. Subsequently, on December 26, 2006, SPP proposed revisions to its Schedule 2 to provide that all generators, including both non-affiliated merchant generators and vertically integrated utilities generators, would no longer be compensated for reactive power within the deadband. However, all generators would be compensated for providing reactive power outside the deadband under the direction of the Transmission Provider or local Balancing Authority.

4. SPP explained that this filing responded to the Commission's invitation in *Calpine Oneta* to "propose a rate for all generators that compensates them comparably for the level of reactive power actually needed and used, so as to avoid remuneration in excess of those levels."⁴ It further explained that reactive power within the power factor deadband of .95 leading to .95 lagging is considered a requirement for all generators for which there is no specific compensation under Schedule 2, while compensation is provided for reactive power specifically provided and needed outside of the deadband.

5. The Commission accepted SPP's revised Schedule 2, subject to SPP filing additional modifications.⁵ Specifically, the Commission required SPP to modify section II.A of Schedule 2 to state what data should be contained in the application a generator must submit to SPP in order to apply for Qualifying Generator (QG) status, and to allow adequate time for a generator to submit such data. The Commission also directed SPP to revise sections II and III of Schedule 2 to eliminate any lag in compensation for reactive power supplied by new QGs in order that they may receive compensation on a pro-rated basis for reactive power outside the deadband. Finally, the Commission required SPP to incorporate the criteria and procedures to be used by SPP and the Balancing Authorities in determining which generator to call upon for reactive power outside the deadband.

II. Requests for Rehearing

6. On June 25, 2007, Reliant Energy, Inc. (Reliant), Redbud Energy, L.P. (Redbud), and the Western Farmers Electric Cooperative (Western Farmers) filed requests for rehearing of the May Order.

³ 16 U.S.C. § 824e (2000).

⁴ *Calpine Oneta*, 116 FERC ¶ 61,282 at P 50.

⁵ May Order, 119 FERC ¶ 61,199.

7. Reliant argues that Schedule 2 unduly discriminates against IPPs, and therefore violates the Commission's comparability standard. In Reliant's view, the Commission's comparability standard requires that, if the transmission owners' own or affiliated generators receive compensation for producing reactive power inside the deadband, then IPPs must receive similar compensation—even if the transmission owners' generators recover their costs through retail rates. Reliant claims that the comparability standard makes no distinction as to whether such compensation is being collected through wholesale or retail rates, and that by ceasing all wholesale compensation for reactive power inside the deadband, Schedule 2 unduly discriminates against IPPs, who unlike the transmission owners' generators, cannot recover these costs through retail rates. In addition to being unduly discriminatory, Reliant argues that this discrepancy undermines competitive markets.

8. Further, Reliant and Redbud argue that the Commission has an obligation under *FPC v. Conway*⁶ to take this alleged discrimination into account when establishing the wholesale rate. Reliant and Redbud argue that the Commission erred in the May Order by dismissing their argument as a request for the Commission to adjust retail rates. Rather, Reliant and Redbud state that their request is that the Commission take into account the alleged undue discrimination resulting from the transmission owners' different treatment of reactive power costs in their retail and wholesale rates when evaluating Schedule 2. Reliant and Redbud contend that wholesale compensation for reactive power generated within the deadband is within the zone of reasonableness, and is required by the comparability standard.

9. Western Farmers seek rehearing of the Commission's May Order on the basis that the Commission erred in concluding that generating facilities of non-jurisdictional utilities in the SPP region, that have historically provided reactive support and voltage control outside normal operating parameters at SPP's request and direction, are not eligible to be "grandfathered" QGs. Western Farmers also argue that the Commission erred in failing to provide adequate explanation for its decision to deny non-jurisdictional utilities eligibility to have their generating facilities treated as grandfathered QGs.

III. Compliance Filing

10. SPP submitted its compliance filing on July 16, 2007. In the accompanying transmittal letter, SPP states that it was submitting an Addendum 1 to Schedule 2 in response to the Commission's directive to submit proposed revised tariff sheets specifying the operating data generators must provide to SPP when generators apply for

⁶ *FPC v. Conway*, 426 U.S. 271 (1976) (*Conway*).

QG status. SPP also states that it added a new section V containing the criteria for QG dispatch, as required by the Commission in the May Order. Further, to eliminate the lag in compensation for reactive power supplied by new QGs, SPP proposes revisions to Schedule 2 to synchronize all data and billing units so that Reactive Power Outside Deadband and Reactive Compensation for a particular month will be charged to customers using data and billing units of the same month.

11. SPP's proposed revised tariff sheets also contain language at section II.A that was not specifically directed by the May Order. This proposed language would exempt all generators that have previously submitted operating data to SPP from having to provide the operating data required pursuant to this section.⁷

12. SPP requests that the revised tariff sheets become effective March 1, 2007 to be consistent with the effective date accepted by the Commission in the May Order.

13. Notice of SPP's compliance filing was issued in the *Federal Register*, 72 Fed. Reg. 41,724 (2007), with interventions and protests due on or before August 6, 2007. None were filed.

IV. Discussion

A. Requests for Rehearing

14. As discussed in detail below, we will grant rehearing in part and deny rehearing in part.

15. We deny Redbud's and Reliant's requests for rehearing. As we have previously explained, reactive power is required for an interconnecting generator to deliver its power and reactive power produced within the deadband and is, therefore, generally not

⁷ SPP's July compliance filing proposes to revise section II.A, FERC Electric Tariff, Fifth Revised Vol. No. 1, Substitute Original Sheet No. 130, to include:

To the extent the operating data requested in Addendum 1 has been previously provided to SPP pursuant to a generation interconnection agreement or through input for SPP transmission operational or planning models, that operating data shall not be required with the application.

compensable.⁸ The Commission has, however, recognized two exceptions to this general rule. First, an IPP may have an independent contractual right to such compensation.⁹ Second, and more relevant here, an IPP may be entitled to such compensation based on comparability, as is the case if a transmission owner compensates its own or affiliated generators for this service.¹⁰

16. Reliant's and Redbud's arguments are based on comparability. Reliant and Redbud claim that SPP's Schedule 2 is unduly discriminatory because the transmission owners' generators will be able to recover the costs of producing reactive power within the deadband through their bundled retail rates, while IPPs will not. Reliant and Redbud recognize that the Commission has no jurisdiction over retail rates; consequently, they argue that comparability requires the Commission to direct SPP to revise Schedule 2 so that all generators receive compensation through their wholesale rates. Moreover, Reliant and Redbud contend that the Commission failed to meet its obligation under *Conway* because it did not consider this discrepancy when evaluating Schedule 2. Reliant and Redbud also argue that directing SPP to revise Schedule 2 is within the zone of reasonableness.

⁸ May Order, 119 FERC ¶ 61,199 at P 28. *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *Arizona Pub. Serv. Co.*, 95 FERC ¶ 61,128, at 61,409 (2001); *Michigan Electric Transmission Co.*, 96 FERC ¶ 61,214 (*METC I*), *order on reh'g*, 97 FERC ¶ 61,187, at 61,852 (2001) (*METC II*); *accord E.ON U.S. LLC*, 119 FERC ¶ 61,340, at P 12 (2007).

⁹ *See KGen Hinds LLC*, 115 FERC ¶ 61,028 (2006); *KGen Hot Spring LLC*, 115 FERC ¶ 61,029 (2006); *Hot Spring Power Co., LP*, 115 FERC ¶ 61,027 (2006); *Entergy Services, Inc. v. Cottonwood Energy Co. LP*, 115 FERC ¶ 61,031 (2006); *Entergy Services, Inc. v. Union Power Partners, L.P.*, 115 FERC ¶ 61,030 (2006) (holding that the generators involved could raise their claims that they have independent contractual rights to compensation for reactive power within the deadband). The issue of an independent contractual right to reactive power has not been raised in the case.

¹⁰ Order No. 2003-A at P 416. *See also KGen Hinds LLC*, 120 FERC ¶ 61,284 (2007).

17. We disagree that SPP's Schedule 2 creates a comparability issue. Comparability requires that IPPs receive compensation for producing reactive power inside the deadband only if the transmission owners' generators receive such compensation. Here, SPP's Schedule 2 denies such compensation to *all* generators in SPP -- both transmission owners' and IPPs. All generators in SPP are thus treated comparably. Therefore, IPPs in SPP have no claim to compensation via Schedule 2 based on comparability.¹¹

18. Moreover, comparability does not require that the Commission guarantee IPPs' recovery for reactive power costs within the deadband. As we explained in the May Order, all that the transmission owners have is an *opportunity* to recover their costs in retail rates. The transmission owners' generators are not entitled to charge retail customers retail rates that guarantee full recovery of their costs; rather, they must first justify their rates to state authorities. Just as transmission owners have the opportunity to recover their costs other than through Schedule 2, so IPPs have the opportunity to recover their costs other than through Schedule 2. Comparability requires only that IPPs have a similar opportunity "to make up the revenue that they previously might have earned through a separate charge for reactive power within the deadband."¹² As we explained in the May Order, the transmission owners may seek to recover their costs in their power sales rates, and IPPs have the same opportunity; they may negotiate agreements recovering these costs through their market based power sales rates.¹³

19. Reliant and Redbud further allege that the May Order misconstrued their arguments as requesting a retail rate adjustment, and therefore that the Commission did not make an adequate *Conway* analysis. We disagree. The May Order merely acknowledged that, while no adjustment could be effectuated by this Commission at the retail rate level, Reliant and Redbud were free to negotiate the rates they receive for real power, so as to recover their costs for reactive power within the deadband.¹⁴

20. Similarly, we disagree that the Commission failed to meet its obligation under *Conway* when accepting SPP's Schedule 2. In the May Order, the Commission fully considered all circumstances relevant to whether SPP's Schedule 2 was just and

¹¹ *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005).

¹² May Order, 119 FERC ¶ 61,199 at P 39.

¹³ *Id.*

¹⁴ See also *Bonneville Power Admin. v. Puget Sound Energy, Inc.*, 120 FERC ¶ 61,211, at P 14-16 (2007) (addressing a similar *Conway* argument).

reasonable, including the possibility that the transmission owners' generators might recover their reactive power costs through their retail rates. We concluded, as we affirm here, that SPP's Schedule 2 does not result in non-comparable treatment because both the transmission owners' generators and IPPs have the opportunity to recover their costs through their power sales rates. In requesting that the Commission direct SPP to revise Schedule 2, the IPPs are essentially requesting that the Commission go further and guarantee full recovery of their reactive power costs. In other words, they are seeking something more akin to a cost-of-service rate for their reactive power costs, while still retaining a market-based rate through which they would earn their profit. In requesting that the Commission guarantee recovery of such costs, Reliant and Redbud are making a request that is beyond the demands of comparability, and beyond the requirement of *Conway* that the Commission evaluate all relevant circumstances in setting the wholesale rate.¹⁵

¹⁵ See *Southern Co. Serv., Inc.*, 119 FERC ¶ 61,023 at P 20 n.64 (2007) (*Southern*) (finding that the Supreme Court's decision in *Conway* did not countenance the Commission going beyond the just and reasonable wholesale rate to address the alleged undue discrimination at issue). In *Southern*, the Commission refused to roll the costs of Alabama Municipal Electric Authority's (AMEA's) non-integrated radial line into Southern's system-wide OATT under the guise of comparability, notwithstanding AMEA's allegation that Southern had violated the Commission's policy against rolling in such lines by improperly rolling in the cost of its own radial line. Here, Reliant and Redbud make an argument similar to the argument made by AMEA; Reliant and Redbud claim that, to the extent the transmission owners' generators are recovering costs on the retail level that no generator in SPP is able to recover on the wholesale level, there is non-comparable treatment that should be remedied by the Commission directing SPP to permit wholesale recovery. However, the Commission has repeatedly stated that it will not allow Schedule 2-like recovery of costs associated with producing reactive power inside the deadband, absent either a specific contractual right or an appropriate claim based on comparability. Thus, Reliant's and Redbud's comparability argument fails because Schedule 2 does not allow any generator to collect such compensation in its wholesale rates, and because both IPPs' and the transmission owners' generators have a comparable opportunity to recover these costs in other rates. Consistent with what the Commission explained in *Southern*, *Conway* does not require us to go beyond the just and reasonable rate established in Schedule 2 because the transmission owners' generators might be more successful in utilizing their opportunity to recover these costs than are IPPs.

21. We also disagree with Reliant's and Redbud's claim that compensation for producing reactive power within the deadband is within the zone of reasonableness and is required by the comparability standard. Such argument implies that, even absent a claim that such compensation is required by comparability, the Commission is obligated to provide cost recovery through Schedule 2. As we have said herein, that is not the case.

22. Similarly, we reject the argument that these circumstances create a barrier to competition, as Reliant argues on rehearing. As participants in the market, IPPs have every incentive to weigh and account for any costs, including these costs, when negotiating their rates. Just as the transmission owners' generators have no guarantee that state authorities will approve their proposed bundled retail rates, there is no guarantee that IPPs will be able to recover their full costs. However, this lack of a guarantee does not constitute a barrier to competition. Indeed, if we were to agree with Reliant and Redbud and guarantee recovery for IPPs, while transmission owners had no comparable guarantee, it would be the resulting preference in favor of IPPs that would inappropriately affect competition.

23. We will grant Western Farmers' request for rehearing. We agree that non-jurisdictional generating facilities, which have supplied reactive support and voltage control outside normal operations, at SPP's request and direction, should be accorded the same grandfathered eligibility status that is provided under SPP's section II.A application provisions for jurisdictional facilities. SPP's tariff, as accepted by the May Order, provides grandfathered eligibility for QG status to jurisdictional facilities, that is, those facilities with a cost-based rate schedule on file with the Commission. We are persuaded by Western Farmers that eligibility for QG status should be based upon generating facilities satisfying SPP's technical requirements. These non-jurisdictional generating facilities that have historically provided reactive supply and voltage control services to SPP should therefore be eligible for the same grandfathered status as jurisdictional generating facilities.¹⁶

B. Compliance Filing

24. We will conditionally accept SPP's compliance filing, subject to SPP submitting additional revisions. We conclude that the information provided in Addendum 1 adequately details the specific operating data generators must provide when applying for

¹⁶ As noted above, in the July compliance filing, SPP proposes revisions to section II.A to extend grandfathered eligibility to all generating facilities that have previously provided the generating data requested in Addendum 1, which the Commission addresses below.

QG status. However, in the May Order the Commission also required SPP to insert the word “final” before “approval” in the second sentence of section II.A to allow adequate time for generators to submit such data once the Commission acts on SPP’s compliance filing to the May Order.¹⁷ In the clean version of the proposed tariff sheets, SPP deleted the entire second half of the second sentence of section II.A. We direct SPP to amend section II.A to include this second sentence in its entirety, as well as the word “final” before “approval.” The corrected clean version should read: “In order to receive compensation under this Schedule 2, all other owners of generation must apply to the Transmission Provider for QG status and provide the necessary operating data set forth in Addendum 1 to this Schedule 2 to the Transmission Provider no later than 30 days following the final approval of this Schedule 2 by the Commission.”

25. Also, consistent with our finding on rehearing, we will accept SPP’s proposed section II.A to exempt all generating facilities from having to submit technical operating data before qualifying as QGs. We find the proposed language satisfies Western Farmers’ concerns regarding grandfathered status for its generating facilities.

26. In addition, the May Order required SPP to revise its tariff sheets to provide detailed information about both its criteria and procedures by which SPP and Balancing Authorities will determine which generators to call upon for providing reactive power outside the deadband. In response, SPP created a new section V detailing the criteria for QG dispatch. We find that SPP’s proposed section V tariff language does not adequately comply with the May Order because SPP did not include all the language required by the May Order. Therefore, we direct SPP to submit a new compliance filing that adds the underlined language below to its previously submitted section V language:

In the event of a system contingency or emergency situation that requires specific attention to reactive production, SPP or the applicable Balancing Authority will determine, based on real-time data and engineering studies of current and prospective conditions, the most effective solution to maintain transmission system reliability. For a circumstance that requires specific attention to reactive production, SPP or the applicable Balancing Authority will perform an engineering study to determine the most effective operational plan. SPP or the applicable Balancing Authority will issue reactive dispatch instructions or revised voltage schedules on a non-discriminatory basis based upon generator availability, location, and reactive capability, for such purpose.

¹⁷ *Id.* P 52.

27. Moreover, in response to the May Order, SPP proposes to modify Schedule 2 to eliminate the time delay for compensating new QGs for reactive power. Pursuant to SPP's proposed revised tariff language, new QGs will receive pro-rated payment in a timely manner for the reactive power they supply outside the deadband at the direction of the Transmission Provider or Balancing Authority. This revision complies with our directive in the May Order and we accept it.

28. Finally, the Commission grants SPP's request that its revised Schedule 2 tariff sheets become effective March 1, 2007, to be consistent with the effective date of the SPP tariff sheets accepted by the Commission's May Order.

The Commission orders:

(A) Requests for rehearing of the May Order are hereby granted in part and denied in part, as discussed in the body of the order.

(B) SPP's proposed revised Schedule 2 tariff sheets are hereby conditionally accepted, subject to SPP submitting a compliance filing within 30 days of the date of this order, as discussed in the body of the order, to become effective March 1, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.