

124 FERC ¶ 61,110
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.

Cargill Power Markets, LLC

Docket No. EL08-9-001

v.

Southwest Power Pool, Inc.

ORDER ON REHEARING

(Issued July 29, 2008)

1. In this order the Commission denies Cargill Power Markets, LLC's (Cargill) request for clarification or rehearing of the Commission's January 30 Order.¹ The January 30 Order denied a complaint Cargill filed against Southwest Power Pool, Inc. (SPP) on November 9, 2007, alleging that SPP violated its Open Access Transmission Tariff (OATT) and Commission precedent in processing a queue of requests for long-term, firm, point-to-point transmission service on the East DC Tie.²

Background

2. At the time of the complaint, SPP was providing 450 MW of long-term firm point-to-point transmission service to Calpine Energy Services L.P. (Calpine) on the East DC Tie under nine transmission service agreements that were set to expire on December 31, 2007. Under section 2.2 of SPP's Order No. 888 OATT, Calpine had, and ultimately exercised, the option to renew its service under the agreements.³

¹ See *Cargill Power Markets, LLC v. Southwest Power Pool, Inc.*, 122 FERC ¶ 61,068 (2008) (January 30 Order).

² The East DC Tie serves as an interface between SPP's transmission system and the Electric Reliability Council of Texas (ERCOT) region.

³ *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, FERC Stats. & Regs. ¶ 31,036 (1996), order
(continued)

3. In its complaint, Cargill alleged that SPP processed the queue of requests for long-term, firm, point-to-point transmission service on the East DC Tie in a manner that violates the Commission's "first come, first served" policy in Order No. 888 and sections 2.2 and 13.2 of SPP's OATT. Cargill argued that, despite the fact that Cargill held a superior queue position by virtue of its earlier-submitted, 10-year transmission service requests, SPP required Calpine to match Constellation Energy Commodities Group, Inc.'s (Constellation) later-submitted, 11-year transmission service requests allegedly because Constellation requested service for a longer term.⁴ According to Cargill, SPP should not have conditionally accepted Constellation's transmission service requests because Cargill's requests, once conditionally accepted and confirmed by SPP, reserved all of the 450 MW of service available on the tie, subject to Calpine's right to match, leaving no transmission capacity available to satisfy Constellation's later-queued transmission service requests.⁵

4. In the January 30 Order, the Commission found that SPP correctly applied the provisions in section 2.2 of its Order No. 888 OATT, and denied Cargill's request to direct SPP to require the incumbent customer to match only the duration of the earliest submitted competing request. The Commission noted that SPP modified section 2.2 of the *pro forma* Order No. 888 OATT to provide that, if, at the time of an incumbent customer's rollover notification, SPP's transmission system cannot accommodate all of the requests for transmission service, the incumbent customer must agree to accept a contract term at least as long as the "longest term confirmed competing request" by any

on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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 relevant 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).

⁴ On September 5, 2006, Cargill submitted five 10-year requests for long-term, firm, point-to-point transmission service on the East DC Tie, totaling 500 MW and commencing January 1, 2008. On July 20, 2007, Constellation submitted two requests for 50 MW of long-term firm, point-to-point transmission service on the East DC Tie commencing January 1, 2008, each with a term of 10 years, and eight requests for 50 MW of service commencing January 1, 2008, each with a term of 11 years.

⁵ On October 18, 2007, SPP conditionally accepted both Cargill's and Constellation's transmission service requests making Cargill first and Constellation second in the queue for transmission service on the East DC Tie should Calpine decide not to continue taking transmission service from SPP after December 31, 2007.

new eligible customer.⁶ Therefore, the Commission stated that SPP was correct to require Calpine to match the term in Constellation's transmission service request because Constellation was the new eligible customer in the transmission service queue with the longest term competing service request.

5. Furthermore, the Commission declined to address in the complaint proceeding how SPP should process competing requests for rollover in the future, stating that to do so would be speculative and would prejudice how SPP should process competing requests for rollover under its pending Order No. 890 OATT. The Commission stated that Cargill should raise any issues regarding SPP's rollover process in SPP's Order No. 890 proceeding in Docket No. OA08-5-000, not in the context of the complaint regarding SPP's Order No. 888 OATT.

Request for Clarification or Rehearing

6. Cargill states that the January 30 Order makes clear that section 13.2 of SPP's OATT addresses requests for new transmission service or situations where the incumbent customer does not exercise its rollover rights, and that the provisions in section 2.2 of SPP's OATT apply when the incumbent customer does exercise its rollover rights.⁷ However, Cargill requests that the Commission clarify that when an incumbent customer initiates rollover process of its transmission service, but fails to exercise its rollover rights fully by declining to match the longest-term competing request in a transmission service queue, SPP must process the queue on a first come, first served basis consistent with section 13.2 of SPP OATT.⁸ Cargill contends that, if the Commission declines to grant this clarification, there is risk that SPP will conclude that it may process transmission service request queues without regard to section 13.2, even in circumstances where the incumbent customer declines to match the longest-term competing request in the queue.

7. In the event the Commission denies its request for clarification, Cargill requests rehearing of the January 30 Order to affirm the continued application of section 13.2 of SPP's OATT when an incumbent customer declines to match the longest-term competing request for service.

⁶ See SPP's Order No. 888 *pro forma* OATT, section 2.2 as accepted by the Commission in *Southwest Power Pool, Inc.*, 96 FERC ¶ 61,034 (2001).

⁷ Cargill Request for Clarification or Rehearing at 4, citing January 30 Order at P 18.

⁸ Cargill Request for Clarification or Rehearing at 3.

Commission Determination

8. We deny Cargill's requests for either clarification or rehearing of the January 30 Order. As stated in the January 30 Order, section 13.2 addresses requests for new transmission service or situations where the incumbent customer does not exercise its rollover rights. Section 13.2 does not apply in this instance, because the incumbent customer, Calpine, elected to roll over the entire 450 MW of transmission capacity. Therefore, the rollover provisions in section 2.2 of SPP's Order No. 888 OATT apply, not the provisions in section 13.2.

9. We decline to address in this proceeding how SPP should process competing requests for rollover in the future. To do so would be speculative and would prejudice how SPP should process competing requests for rollover under its pending Order No. 890 OATT. Cargill should raise any issues regarding SPP's rollover process in SPP's Order No. 890⁹ proceeding in Docket No. OA08-5-000,¹⁰ not in the context of this complaint proceeding, which involves the application of SPP's Order No. 888 OATT. Cargill has not presented any evidence in its request for clarification or rehearing that warrants a different result. Accordingly, we deny both Cargill's request for clarification and its request for rehearing.

⁹ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

¹⁰ We note that in an order issued on May 16, 2008 in Docket No. OA08-5-000, the Commission directed SPP to file a revised tariff sheet reflecting the previously accepted language in section 2.2 of SPP's Order No. 888 OATT because SPP's Order No. 890 Attachment K filing, setting forth its transmission planning process, which was filed December 14, 2007 in Docket No. OA08-61-000, had not yet been accepted by the Commission. The Commission also directed SPP to re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment K filing, requesting an effective date commensurate with the date of that filing. See *Southwest Power Pool, Inc.*, 123 FERC ¶ 61,176, at P 41 (2008). The Commission conditionally accepted SPP's Attachment K filing on July 11, 2008. See *Southwest Power Pool Inc.*, 124 FERC ¶ 61,028 (2008).

The Commission orders:

Cargill's request for clarification or rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.