

124 FERC ¶ 61,316
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. OA08-60-000

ORDER GRANTING LIMITED ORDER NO. 890 WAIVER REQUEST

(Issued September 30, 2008)

1. On December 14, 2007, Southwest Power Pool, Inc. (SPP) filed a request for waiver of the applicability of the Commission's revised policies concerning rollover rights adopted in Order No. 890.¹ As discussed below, we grant SPP's request.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.² Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. Order No. 890 revised a number of provisions related to the rights of existing firm transmission service customers to continue to take transmission service from the transmission provider when the customer's contract expires, known as rollover rights. One of these revised provisions now requires a transmission customer to have at least a five-year contract to be eligible for rollover rights.³ Because of the close relationship

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

² *See id.* P 26-61.

³ *Id.* P 1265. Prior to Order No. 890, customers only needed to enter into a one-year contract in order to obtain a rollover right.

between rollover rights and transmission planning, this provision and other rollover rights reforms were to become effective for each transmission provider and its customers on the effective date determined by the Commission in the order accepting the transmission provider's coordinated and regional planning process, or Attachment K.⁴ Moreover, the new rollover policies were to apply only to contracts entered into or renewed after such effective date.

4. On December 28, 2007, the Commission issued Order No. 890-A.⁵ Order No. 890-A revised the Order No. 890 rollover provisions to provide that the pre-Order No. 890 one-year contract commitment requirement would apply to all transmission service requests that were in a transmission provider's transmission queue as of the effective date of the reforms adopted in Order No. 890 (i.e., July 13, 2007).⁶

II. SPP's Waiver Request

5. On December 14, 2007, SPP submitted a request that the Commission waive the applicability of the revised rollover policies for potential customers who submitted long-term transmission service requests before the initiation of its October 1, 2007 open season. Pursuant to Attachment Z of SPP's OATT, SPP uses an aggregate transmission service study process to evaluate long-term transmission service requests. In this process, SPP combines all long-term point-to-point transmission service requests and long-term designated network resource requests received during a four month open season into a single aggregate transmission service study. SPP initiates three open seasons each year. If a potential transmission service customer drops out of the queue following completion of the transmission service studies, all subsequent requests must be re-evaluated and restudied.

6. SPP explains that at the time of its waiver request filing, some large generators in the transmission queue had dropped out of the queue after failing to receive state approvals for siting. This caused all subsequent transmission requests to be restudied. As a result, many transmission service requests that should have been accepted and converted to signed transmission contracts before the effective date of SPP's Attachment K were still pending.

⁴ On July 11, 2008, the Commission accepted SPP's Attachment K filing effective December 14, 2007. *See Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at Ordering Paragraph (A) (2008).

⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

⁶ *Id.* P 691.

7. SPP states that potential transmission customers that submitted requests for long-term service for one year or more before the close of the June 1–September 30, 2007 open season had a reasonable expectation of executing a service agreement with SPP before the Commission’s acceptance of SPP’s planning process. Accordingly, the Commission’s pre-Order No. 890 policy, which allowed a rollover right for contracts with a term of at least one year, should apply to these early requests.

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP’s filing was published in the *Federal Register*, 72 Fed. Reg. 58,839 (2007), with interventions and protests due on or before January 4, 2008. On December 31, 2007, Xcel Energy Services, Inc., on behalf of Southwest Public Service Company, filed a motion to intervene. On January 3, 2008, Westar Energy, Inc. filed a motion to intervene and comments in support of SPP’s request. On January 4, 2008, Western Farmers Electric Cooperative and American Electric Power Service Corporation filed motions to intervene. No adverse comments or protests were filed. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

IV. Discussion

9. We grant SPP’s request and waive the applicability of our revised rollover rights policy adopted in Order Nos. 890 and 890-A for the specific existing firm transmission service requests set forth in SPP’s filing. As discussed above, Order No. 890-A permitted transmission service requests in the queue as of July 13, 2007 to maintain the pre-Order No. 890 rollover policies. Because SPP’s aggregate transmission service study period overlapped the July 13, 2007 transmission queue date, we will consider all transmission service requests submitted during the June 1–September 30, 2007 aggregate study period to have been submitted before July 13, 2007 (i.e., transmission service requests submitted after July 13, 2007, but before September 30, 2007, will be subject to the pre-Order No. 890 rollover provisions). Therefore, all of the transmission service customers specified by SPP will be subject to the pre-Order No. 890 rollover policies.

10. We agree that potential transmission customers that submitted requests for long-term service for one year or more before the open season closed on September 30, 2007, had a reasonable expectation that they would be able to enter into an executed service agreement with SPP before the effectiveness of SPP’s planning process and, as a result, should have the Commission’s pre-Order No. 890 rollover policies apply to them.

The Commission orders:

SPP's request that the Commission waive the applicability of the revised rollover policies, as discussed in the body of this order, is hereby granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.