

136 FERC ¶ 61,005  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Southwest Power Pool, Inc.

Docket No. ER11-3504-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued July 1, 2011)

1. On May 3, 2011, Southwest Power Pool, Inc. (SPP) submitted revisions to Attachment AD of its Open Access Transmission Tariff (Tariff) to amend the Tariff Administration Agreement (Agreement) governing its relationship with the Southwestern Power Administration (Southwestern). SPP requested an effective date of April 1, 2011 for the proposed revisions. For the reasons discussed below, we accept SPP's proposed revisions to be effective as of April 1, 2011.

**I. Background**

2. Southwestern is an agency of the U.S. Department of Energy and became a transmission owning member of SPP on June 1, 1998.<sup>1</sup> Pursuant to the Agreement, SPP administers Southwestern's Tariff and provides other related services. Since the Commission initially accepted the incorporation of the Agreement into SPP's Tariff on June 30, 2005, Southwestern and SPP have revised and extended the term of the Agreement.<sup>2</sup> SPP recently filed to extend the term of the Agreement temporarily to allow SPP and Southwestern to negotiate revisions to the Agreement. The instant filing proposes revisions that are the result of those negotiations.

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<sup>1</sup> *Southwest Power Pool, Inc.*, 82 FERC ¶ 61,285 (1998) (establishing June 1, 1998 as the effective date of SPP's Tariff. Southwestern was one of the original transmission owners in SPP).

<sup>2</sup> See, e.g., *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,072 (2010).

## II. SPP's Filing

3. SPP proposes to revise the introductory paragraphs and articles I – IV of the Agreement. According to SPP, the revisions are necessary to clarify Southwestern's participation in SPP's regional transmission planning process, to allow for additional provision of network transmission service over Southwestern's system, to extend the contract term of the Agreement, and to clarify that SPP acts in its capacity as the Regional Transmission Organization (RTO), and not as the Commission approved Regional Entity. SPP explains that the substantive changes in the Agreement are necessary because of Southwestern's status as a federal agency. Finally, the filing proposes minor revisions that SPP asserts are necessary to make the Agreement "more cohesive and correct."<sup>3</sup>

4. In article I, section 1 and section 4 of the Agreement, SPP proposes to revise several definitions and provisions, including updating the Agreement to reflect additional services rendered by SPP and to note the increased compensation Southwestern will pay SPP to perform these services.

5. SPP revises article I, section 5(a) to acknowledge that Southwestern's performance under the Agreement is also subject to 42 U.S.C. § 16431,<sup>4</sup> which pertains to federal utility participation in transmission organizations. The revisions also clarify the differences between Southwestern's obligations as a federal entity and SPP's obligations as a non-federal entity.

6. SPP explains that the revisions to article I, section 7 of the Agreement, are necessary to address certain issues relating to reliability. Among other things, these clarifications identify SPP as the Reliability Coordinator and Southwestern as Transmission Operator, and specify the duties of each. SPP also includes new language governing the exchange of compliance-related information between SPP and Southwestern.

7. According to SPP, the proposed revisions to article I, section 8 of the Agreement define the process whereby SPP will manage and respond to Southwestern's schedules for planned maintenance of transmission facilities.

8. Article I, section 10 includes revisions that govern the parties' interaction regarding the operating reserve criteria. SPP contends that these revisions are necessary for Southwestern's participation in SPP's Reserve Sharing Group.

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<sup>3</sup> SPP Transmittal at 3.

<sup>4</sup> Section 1232 of the Energy Policy Act of 2005.

9. SPP explains that the revisions to article I, section 13 update the SPP Criteria that apply to the Agreement, as well as clarify that any changes to the SPP Criteria will be evidenced by a written agreement.

10. SPP states that it and Southwestern have extensively revised article I, section 14. These revisions clarify Southwestern's costs for transmission projects pursuant to SPP's transmission expansion planning process and clarify Southwestern's participation in SPP's regional transmission planning effort. Revisions to section 14(a) replaced language that provided the manner in which Southwestern participated in SPP's transmission expansion process with provisions that outline Southwestern's rights and obligations in SPP's transmission expansion process. These provisions are set out in revised sections (b)-(c) and new sections (f)-(n).

11. According to SPP, revised section 14(b) now provides that the purpose of Southwestern's participation in SPP's transmission planning process will be to meet Southwestern's compliance obligations for the NERC Reliability Standards related to transmission planning (including transmission planning reliability standards), to facilitate information exchange in compliance with NERC Modeling, Data, and Analysis reliability standards, and to provide data and information for SPP regional and interregional planning functions including the development of transmission planning models, transmission assessments, transmission expansion plans, studies for transmission service, generation interconnections, transmission interconnections, and flowgate determination. SPP explains that Southwestern will coordinate its construction activities with SPP and will identify mutually beneficial solutions for transmission system planning projects within SPP's footprint. Southwestern reserves the right to plan and construct transmission upgrades or new facilities without SPP approval and to approve or disapprove requests to build on Southwestern's facilities by third parties.

12. SPP indicates that the revision to section 14(c) defines the term "Non-Federal Transmission Facilities" as transmission and related facilities not constructed or acquired by Southwestern pursuant to Section 5 of the Flood Control Act of 1944. SPP also states that the proposed revision to section 14(c) provides for Southwestern's coordination of its activities with SPP for construction of proposed Non-Federal Transmission Facilities, and for Southwestern to seek SPP guidance on the impact of such construction to the bulk transmission system.

13. SPP states that the new section 14(e) governs the interconnection of non-Federal generation to Southwestern's system. Under this section, the provisions of the SPP Tariff will be used to determine the feasibility and facility requirements of the SPP footprint to accommodate the interconnection.

14. SPP explains that the new section 14(f) details the relationship between SPP's transmission planning process and the Southwestern 10-year construction plan. Specifically, SPP notes that section 14(f) provides that for transmission modifications

identified through the SPP transmission planning process, Southwestern will review identified modifications and compare them against Southwestern's 10-year construction plan. If the projects are included in Southwestern's construction plan, Southwestern will endeavor to construct such projects subject to the federal statutes and regulations applicable to Southwestern. If the projects are not included in Southwestern's construction plan, SPP explains that Southwestern will take such projects into consideration in the development of subsequent construction plans. In instances where Southwestern will not be able to complete construction, SPP states that Southwestern will provide alternative scheduling to complete construction on the agreed upon transmission facilities. SPP points out that this section further clarifies that Southwestern will not be obligated to undertake projects that include voltage upgrades or conductor size increases that require Southwestern to replace its structures, without separate written agreement between Southwestern and SPP stipulating funding, cost allocation and assignment of NERC compliance responsibilities for such upgrades. SPP states that section 14(f) also clarifies that projects funded under this section are subject to Congressional funding and Southwestern's budgetary authority.

15. According to SPP, new section 14(g) provides that funding for, construction of, and costs for transmission modifications associated with service agreements under Southwestern's tariff will be determined by the then-effective provisions of Southwestern's tariff.

16. SPP states that new sections 14(h)-(l) indicate how the costs for modifications to Southwestern's transmission facilities that are required to accommodate new SPP Tariff transmission in Southwestern's zone will be determined and allocated. Section 14(h) provides that such costs will be directly assigned to the customer requesting such transmission service through a separate written agreement among SPP, Southwestern, and the customer. To the extent the new transmission service results in an increase in revenues allocable to Southwestern, and to the extent such revenues exist and continue to be distributed to Southwestern under this Agreement, SPP will credit the customer requesting transmission service each month from such increased revenues until the customer is repaid or the agreement between SPP and the customer for such transmission service under the Tariff terminates and is not renewed, whichever occurs earlier.

17. New section 14(i) provides that costs for modifications to SPP transmission owner facilities required to accommodate SPP Tariff transmission service in the Southwestern zone will be eligible for cost allocation through SPP's base plan funding mechanism. Additionally, SPP states that this section provides that any costs allocable to Southwestern will be provided subject to the Agreement.

18. New section 14(j) provides that costs for modifications to Southwestern transmission facilities required to accommodate new transmission service under the Tariff, but which are not in Southwestern's zone, will be directly assigned to the customer requesting transmission service. Additionally, SPP states that constructed

modifications funded pursuant to section 14(j) will be pursuant to a separate written agreement among SPP, Southwestern, and the customer. To the extent the new transmission service results in an increase in revenues allocable to Southwestern and to the extent such revenues exist and continue to be distributed to Southwestern, SPP explains that it will credit the customer requesting transmission service each month from such increased revenues until the customer is repaid the amount of funds provided to Southwestern to construct such modifications or the agreement between SPP and the customer for such transmission service under the Tariff terminates and is not renewed, whichever occurs earlier.

19. New section 14(k) provides that costs for modifications to non-SPP transmission owner transmission facilities required to accommodate new transmission service under the Tariff over Southwestern's transmission facilities will be addressed between the requesting party and the non-SPP transmission owner. SPP explains that it will determine whether sufficient arrangements have been made for granting transmission service.

20. New section 14(l) provides that costs for modifications to Southwestern transmission facilities required to accommodate changes to existing SPP Tariff transmission service will be directly assigned to the customer requesting transmission service. Additionally, SPP explains that construction modifications funded pursuant to this section will be pursuant to a separate written agreement among SPP, Southwestern, and the customer. To the extent the new transmission service results in an increase in revenues allocable to Southwestern and to the extent such revenues exist and continue to be distributed to Southwestern under this Agreement, SPP states that it will credit the customer requesting transmission service as noted above.

21. New sections 14(m)-(n) govern cost recovery for transmission expansion in the SPP footprint. SPP states that Southwestern will contribute a portion of the revenues it receives from SPP for the use of Southwestern's transmission system under the Tariff. Section 14(n) provides for Southwestern's contribution toward the SPP region-wide annual transmission revenue requirement ("Region-wide ATRR") identified within Attachment H of the Tariff. SPP states that Southwestern's contribution to the SPP Region-wide ATRR for the term of this Agreement to be paid during the period of May 1, 2011, through April 30, 2012, will be \$621,536. SPP explains that this amount is based on the parties' review of Southwestern's approximate ratio share of the regional transmission system peak load. Under the proposed Agreement, Southwestern will contribute this amount by dividing this amount by 12 and netting the result from the monthly amount owed to Southwestern by SPP for the use of Southwestern's transmission facilities pursuant to article 1, section 1(a) of the Agreement. Additionally, Southwestern's monthly contribution to SPP pursuant to Section (n) is limited to the net monthly revenues provided by SPP that are owed to Southwestern pursuant to other provisions of this Agreement after the monthly amount owed by Southwestern to SPP

pursuant to article I, section I is deducted. Finally, SPP explains that contribution under this section will constitute Southwestern's full obligation to SPP relative to this section, and all future contribution will be identified by SPP and Southwestern on an annual basis, concomitantly with the renewal date of the Agreement.

22. According to SPP, article I, section 17 reflects NERC's implementation of mandatory reliability standards and acknowledges that Southwestern is a NERC registered balancing authority within SPP's footprint.

23. Finally, SPP notes the following minor edits to article I: (i) corrections to typographical errors in section 4(c); (ii) removal of the phrase "of a reliability violation or threat to reliability, if" from section 7(b); and (iii) addition of the term "business" to proceed "days" in section 19 to indicate that the time period for dispute resolution will be measured in business days as opposed to calendar days.

24. Article II defines how transmission service will be treated under Southwestern's Open Access Transmission Tariff (OATT) and other contracts. SPP explains that proposed article II, section 1(b) clarifies how network integrated transmission service transactions currently under Southwestern's OATT will be allowed to roll over to SPP's Tariff once the transactions expire or terminate. SPP contends that this revision ensures that network service previously provided under Southwestern's tariff now will be provided pursuant to the Agreement.

25. SPP explains that the proposed amendments to article II, section 2 will allow SPP to utilize Southwestern's system for certain transmission transactions pursuant to section 3 of article IV of the Agreement. SPP explains further that article IV, section 3 contains the Agreement's general provision to hold users harmless. According to SPP, this revision replaces terms in Section 2 which pertained to hold harmless provisions. SPP states that the revision is necessary to correct a redundancy and in no way changes any right or obligation of the parties.

26. SPP explains that the language deleted from article II, section 5(b) and 5(c) contained terms and conditions regarding billing determinants for short-term firm and non-firm transmission contracts on Southwestern's system. In addition, SPP explains that sections 5(b) and 5(c) were deleted because they pertained to service agreements that have expired.

27. Article III contains the terms and conditions that govern transmission service that use Southwestern's system pursuant to the Agreement that are under the SPP Tariff. For example, all new transmission service contracts for network integration transmission service executed after April 1, 2011, whose point of delivery is connected to Southwestern's system, will be considered service under the Tariff. Notwithstanding this determination, SPP explains that if an existing transmission contract converts to the Tariff or there is a modification of service under either the Southwestern contracts or

SPP's Tariff, which results in a loss of revenues for Southwestern, then Southwestern reserves the right to assess a service charge to cover all or a portion of such lost revenues. SPP contends that this revision is necessary to incorporate network integration transmission service into the Agreement.

28. Article III, section 2 clarifies that participation in the SPP energy imbalance market by customers internal to Southwestern's system must be recognized in contractual arrangements between Southwestern and the customer. These contractual arrangements must address the impacts to Southwestern's operations in addition to impacts on the hydroelectric system from which Southwestern markets electricity.

29. Article IV revisions include miscellaneous legal terms applicable to the Agreement, including a clarification that the Agreement is effective April 1, 2011 through April 30, 2012, and the term of the Agreement may be extended by written amendment. According to SPP, article IV, section 2 clarifies the rights granted to each party to renegotiate the Agreement in the event a jurisdictional body holds any portion of the Agreement to be invalid or unenforceable. Section 2 clarifies that substantive changes will include actions by FERC or NERC that change the obligations of either party will be good cause to renegotiate the terms of the Agreement.

### **III. Notice of Filing and Responsive Pleadings**

30. Notice of SPP's Filing was published in the *Federal Register*, 76 Fed. Reg. 27040 (2011), with interventions and protests due on or before May 24, 2011. On May 24, 2011, Southwestern Power Resources Association, Southwestern, and the Missouri Joint Municipal Electric Utility Commission submitted timely motions to intervene. On May 24, 2011, American Electric Power Service Corporation (AEP) submitted a timely motion to intervene and a protest. On June 3, 2011, Southwestern filed an answer to AEP's protest.

### **IV. AEP's Protest and Southwestern's Answer**

31. AEP protests several provisions of the Agreement that require SPP transmission customers, whose new transmission service requests affect the Southwestern system, to fund any needed upgrades on the Southwestern transmission system separate from the regional funding mechanisms provided for other parts of the SPP system. AEP questions whether the "separate written agreement" noted in section 14(j) will be subject to the Commission's jurisdiction, and it notes that there appear to be no provisions allowing SPP customers to review the terms of this agreement. In addition, AEP contends that any crediting a customer receives for funding needed upgrades will be minimal and that these

upgrades should be recognized under SPP's Tariff as regional assets and should be afforded the same or similar regional funding treatment.<sup>5</sup>

32. AEP expresses the concern that the funding limitations of Southwestern, whose construction of facilities is subject to Congressional funding and Southwestern's budgetary authority, may lead to delays in the construction of needed facilities. AEP contends that, as currently drafted, the Agreement does not allow other SPP transmission owners, such as AEP, to construct necessary facilities within the Southwestern zone.<sup>6</sup>

33. AEP is also concerned that the Agreement is structured in such a way that some customers may pay for a portion of the SPP regional funding for the same load twice. AEP cites Public Service Company of Oklahoma (PSO) as an example. PSO is a Transmission Service customer of Southwestern for certain loads directly connected to the Southwestern system and also a SPP Network Integration Transmission Service (NITS) customer for the same loads. Consequently, AEP asserts that it is likely that PSO and similarly situated customers will pay a portion of the regional funding expenses associated with this load twice, and/or disproportionately to other SPP NITS customer loads.<sup>7</sup> AEP explains that it understands that while Southwestern proposes to pay a portion of the Region-wide ATRR, Southwestern intends to incorporate those expenses into the transmission rates for service on its system.

34. Finally, AEP argues that the dispute resolution procedures outlined in article 1, section 19 of the Agreement are not available to SPP RTO customers. AEP contends that it is unclear if or how SPP customers would challenge or appeal any decisions reached by Southwestern or SPP under the Agreement.<sup>8</sup>

35. Southwestern's answer to AEP's protest provides additional information concerning Southwestern's status as a Federal Power Marketing Administration, operating under delegated authority under Section 5 of the Flood Control Act of 1944, 16 U.S.C. § 825(s), to market power generated at hydroelectric projects constructed in the Southwest by the Corps of Engineers of the Department of the Army. Southwestern points out that the Agreement recognizes Southwestern's non-jurisdictional status and reflects Southwestern's operating, budgetary and statutory limitations as a Federal Power Marketing Administration. In addition, Southwestern enumerates several federal statutes

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<sup>5</sup> AEP Protest at 3-4.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

that impose “a wide array of statutory restrictions” on Southwestern,<sup>9</sup> including the Anti-deficiency Act,<sup>10</sup> the Flood Control Act of 1944, and section 1232 of the Energy Policy Act of 2005.<sup>11</sup>

## V. Discussion

### A. Procedural Matters

36. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers unless otherwise ordered by the decisional authority. We will accept Southwestern’s answer because it has provided information that assisted us in our decision-making process.

### B. Commission Determination

37. The Commission accepts SPP’s proposed revisions to Attachment AD of its Tariff, effective April 1, 2011, that amend the Agreement governing the relationship between SPP and Southwestern. We also find good cause to grant SPP waiver of the Commission’s 60-day prior notice requirement. Acceptance of the proposed revised agreement will avoid disruption in the administration of transmission service over Southwestern’s system by SPP and is consistent with prior acceptance of similar revisions to the Agreement governing the relationship between the parties over the last six years.<sup>12</sup> Moreover, the Commission’s acceptance of these revisions will provide a mechanism to permit SPP’s transmission customers to continue to benefit from access to Southwestern’s transmission facilities under the SPP Tariff.

38. With respect to AEP’s protest, the Commission finds AEP’s concerns to be either misplaced or premature. AEP’s primary concern is with section 14(j), which outlines how upgrades on the Southwestern transmission system necessitated by new transmission service requests not in Southwestern’s zone will be funded, separate from the regional funding mechanisms provided for other parts of the SPP system. Under section 14(j), the cost of such upgrades would be directly assigned to the customer and would be evidenced

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<sup>9</sup> Southwestern Answer at 4-5.

<sup>10</sup> 31 U.S.C. § 1341 (2006).

<sup>11</sup> 42 U.S.C. § 16431 (2006).

<sup>12</sup> *See supra* n.2.

by a “separate written agreement.” AEP expresses several concerns about this agreement, including whether the Commission will have jurisdiction over it. AEP implies that a customer’s refusal to enter into such an agreement might put them at risk for having SPP reject their service request.<sup>13</sup> The Commission finds AEP’s concerns to be misplaced. The purpose of these revisions is to ensure that Southwestern’s costs related to new transmission service requests under the Agreement will be compensated consistent with Southwestern’s statutory authorities, obligations and limitations. SPP’s proposals for the direct assignment and revenue crediting of the cost for modifications to Southwestern’s transmission facilities are consistent with the Congressional funding limitations faced by Southwestern and with the requirements of section 1232 of the Energy Policy Act of 2005.<sup>14</sup> Specifically, as it applies here, the Energy Policy Act of 2005 requires that the agreement governing Southwestern’s participation in SPP provide performance standards for the operation and use of Southwestern’s system, and that Southwestern be compensated for the costs and expenses associated with its participation in SPP. In addition, we find that this proposed treatment is related to the restrictions imposed by the Flood Control Act of 1944,<sup>15</sup> “which limits the Secretary of Energy to construct or acquire only such transmission lines and related facilities as may be necessary in order to make the power and energy generated at hydropower projects under the Department of the Army available for sale.”<sup>16</sup> Regarding AEP’s concern that the jurisdiction of any separate funding agreements, we note that these agreements would be jurisdictional and filed with the Commission because they are “...contracts which ... affect or relate to...” transmission service provided by SPP, a public utility.<sup>17</sup>

39. Likewise, we find unpersuasive AEP’s concern that Southwestern’s funding limitations may delay construction of needed facilities. Under section 14(b) of the Agreement, Southwestern will participate in SPP’s planning processes to meet its compliance obligations for applicable reliability standards and coordinate its construction plans and identify mutually beneficial solutions within SPP, subject only to its federal mandates. In other words, if the facilities are necessary for transmission service requests or reliability, the Agreement requires Southwestern to work with SPP to construct the necessary facilities. While construction of any modifications or additions to the Southwestern transmission system is at Southwestern’s discretion, we expect

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<sup>13</sup> AEP Protest at 3.

<sup>14</sup> 42 U.S.C. § 16431 (2006).

<sup>15</sup> Southwestern Answer at 5, (*citing* 16 U.S.C. § 825s (2006)).

<sup>16</sup> *Id.* at 5.

<sup>17</sup> 16 U.S.C. § 824d (2006).

Southwestern in coordination with SPP to work to construct any necessary facilities within the Southwestern transmission system consistent with the Tariff and the Agreement.

40. We find AEP's concern regarding rate issues associated with Southwestern's contribution to the Region-wide ATRR to be beyond the scope of this proceeding. The revisions to Attachment AD obligate Southwestern to contribute a specific amount to the Region-wide ATRR. AEP is concerned that Southwestern will include this expense in rates it charges for transmission service on its system and that PSO and other NITS customers may pay a disproportionate share of this expense. However, the only way Southwestern could recover such costs in its rates would be if SPP, on Southwestern's behalf, filed with the Commission under section 205 of the Federal Power Act a request to recover those costs under the SPP Tariff. Should that occur, AEP may challenge any such changes in that proceeding. At this time, however, AEP's concerns are premature and beyond the scope of the instant proceeding.

41. AEP's concerns about the dispute resolution procedures are without merit. We disagree that the language limits customers who may submit a dispute. Article 1 section 19 states in pertinent part that "Any dispute arising out of or relating to the Agreement shall be referred to the Coordinating Committee representatives designated under Section 15 of this Article I for resolution on an informal basis as promptly as possible." We find that this language does not limit who may raise an issue. In fact, "any dispute arising out of or relating to the Agreement" is subject to the dispute resolution process under the Agreement.

The Commission orders:

SPP's revised Agreement is hereby accepted to become effective April 1, 2011, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.