

139 FERC ¶ 61,264
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 28, 2012

In Reply Refer To:
Southwest Power Pool, Inc.
Municipal Energy Agency of Nebraska
Docket No. ER12-1896-000

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Dear Sirs:

1. On May 31, 2012, Southwest Power Pool, Inc. (SPP) and its transmission customer, Municipal Energy Agency of Nebraska (MEAN), filed a joint request for a temporary, limited waiver of sections 7.1 and 7.4 of SPP's Open Access Transmission Tariff (Tariff), and any other Tariff provisions as may be necessary, to permit SPP and MEAN (the parties) to suspend their obligations temporarily with respect to certain contested billing amounts. The parties also requested expedited Commission action because the parties assert that MEAN is unable to pay the contested amounts and therefore risks default under the Tariff absent waiver.¹
2. Under section 7.1 of SPP's Tariff, a transmission customer must pay its monthly invoice for transmission service within 15 days of receipt. Under section 7.4, in the event of a billing dispute, the transmission provider will continue to provide service as long as

¹ SPP and MEAN also requested a shortened comment period not to exceed seven days. The Commission granted this request on June 1, 2012, requiring comments, protests, and interventions be submitted by June 8, 2012.

the transmission customer (1) continues to make all payments not in dispute and (2) pays the disputed portion of the invoice into an escrow account, pending resolution of the dispute. If the transmission customer fails to meet these two requirements, then the transmission provider may provide notice to the transmission customer of its intent to suspend service in 60 days.

3. The parties state that in January 2012, SPP informed MEAN that it believed MEAN was improperly using its network integration transmission service to serve load other than its designated network load and had failed to properly reserve, schedule, and pay for point-to-point transmission service for these deliveries during the period spanning February 2010 through January 2012. The parties further state that during a May 2, 2012 meeting, SPP informed MEAN that it intended to bill MEAN approximately \$15 million in transmission service charges and penalties under the Tariff and would invoice MEAN the additional charges during the June billing cycle, pursuant to section 7.1 of the Tariff.

4. The parties state that MEAN disputes the additional \$15 million in charges and formally requested commencement of SPP's dispute resolution process under the Tariff. According to the parties, MEAN also provided SPP with a document setting forth the legal basis for MEAN's belief that the charges and penalties, if any, stemming from the alleged violation cannot exceed approximately \$1.5 million under the Tariff. Due to the magnitude of the charges, the parties state that MEAN communicated to SPP that it would not be able to pay the full amount of the contested charges into escrow, as required by section 7.4, within the 15-day period established under section 7.1. The parties state that MEAN requested that SPP defer billing the contested charges until completion of the dispute resolution process. According to the parties, MEAN stated that, without the requested deferral, it would risk default, which could lead to termination of service and other adverse consequences. The parties state that SPP communicated that it did not believe it had discretion under its Tariff to defer billing the contested charges until resolution of the dispute.²

5. Accordingly, SPP and MEAN request that the Commission grant SPP the authority to temporarily waive the billing procedures in section 7.1 and the default provisions in section 7.4 of its Tariff. The parties explain that this limited, temporary waiver would allow MEAN to forego paying the contested charges into an escrow account without risk of default and would permit SPP to defer including the contested charges on an invoice pending resolution of the dispute. Additionally, the parties emphasize that MEAN will continue to honor its obligations to pay for uncontested transmission service during this temporary waiver period.

² SPP indicates that it will refrain from including the contested charges on MEAN's transmission service invoice while this request for limited waiver is pending.

6. Notice of the filing was issued on June 1, 2012, with interventions, comments, and protests due on or before June 8, 2012. MEAN and Omaha Public Power District submitted timely motions to intervene. No protests or comments were received.

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. The Commission has granted waiver requests in certain circumstances where an emergency situation or an unintentional error was involved.³ Waiver, however, is not limited to those circumstances. "Where good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, the Commission has found that a one-time waiver is appropriate."⁴ We find that the parties have demonstrated good cause to grant their request for temporary, limited waiver, which will allow them to engage in the dispute resolution process set forth in the Tariff. The waiver is limited because the request for waiver only spans the time needed to follow the dispute resolution provisions of the Tariff. There are no apparent undesirable consequences of the waiver because MEAN has committed to continue to pay the undisputed portion of its bill while the parties are engaged in dispute resolution. The benefits to MEAN's customers are evident, because the possibility of default under the Tariff is mitigated. Therefore, we grant SPP the authority to waive the billing procedures in section 7.1 and the default provisions in section 7.4 of its Tariff, as they relate to the contested charges, until completion of the dispute resolution process.

By direction of the Commission. Commissioner Clark is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ See, e.g., *ISO New England, Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (allowing limited and temporary change to a tariff to correct an error); *Great Lakes Transmission Limited Partnership*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

⁴ *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,088, at P 7 (2009). See also, *Cal. Indep. System Operator Corp.*, 124 FERC ¶ 61,031, at P 19, *reh'g denied*, 124 FERC ¶ 61,293 (2008).