

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Southwest Power Pool, Inc.

Docket No. ER99-4392-002

ORDER ACCEPTING COMPLIANCE FILING AS MODIFIED

(Issued February 11, 2005)

1. In this order we accept Southwest Power Pool, Inc.'s (SPP) January 31, 2000 filing to comply with the Commission's December 17, 1999 order in this proceeding.¹

I. Background

2. In the December 17 Order the Commission accepted, as modified, the addition of network integration transmission service to SPP's regional transmission tariff as part of SPP's incremental implementation of open access transmission.²

¹ *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 (1999) (December 17 Order), *order on reh'g*, 98 FERC ¶ 61,038 (2002) (January 17 Order).

² The Commission also accepted for filing SPP's new Membership Agreement, addressed the allocation of transmission revenues that SPP receives for service provided under its regional transmission tariff, and accepted for filing SPP's proposal for allocating revenues among its members. December 17 Order at 61,890-91. The Commission affirmed the latter decision on rehearing. January 17 Order at 61,108-10. East Texas Electric Cooperative, Inc. and its members Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, Cooperatives) appealed, arguing that it is unjust, unreasonable and unduly discriminatory to require small utilities like themselves to show that they are integrated with SPP's transmission system in order to receive a revenue allocation. The court affirmed the Commission's "integration" policy, but remanded for further consideration the issue of whether the Cooperatives' facilities within SPP are integrated with SPP's transmission

(continued)

3. In the December 17 Order the Commission: (1) rejected SPP's proposal to provide for the direct assignment to customers of the cost of network upgrades during a transition period; (2) directed SPP to reflect Central South West Corporation's (CSW) agreement to adjust its point-to-point annual revenue requirement; (3) directed SPP to include the Commission-approved point-to-point rates for CSW; (4) directed SPP to revise certain language in its network operating agreement; (5) rejected SPP's proposed tariff Attachment V (Additional User Obligations); (6) accepted SPP's redispatch procedures subject to SPP removing an additional charge above the redispatch cost cap; (7) rejected SPP's proposed modifications to Schedules 2-6 for ancillary services; (8) directed SPP to revise Attachment D (Methodology to Assess Short-Term Available Transmission Capacity) to indicate that available transmission capacity is "available" rather than "adequate"; and (9) rejected SPP's proposal to place customers in default for failure to submit payment after 10 days instead of 30 days.

II. SPP's Compliance Filing

4. SPP's compliance filing proposes, among other things: (1) revisions to Attachment J to clarify that during the transition period, the cost of network upgrades will be directly assigned to the extent Commission policy allows; and (2) revisions to Attachment K that indicate that redispatch will occur only if transmission owners or generators agree to provide the service.

5. Notice of SPP's filing was published in the *Federal Register*, 65 Fed. Reg. 7,378 (2000), with comments, protests and interventions due on or before February 22, 2000. Coral Power, L.L.C. filed a protest, and SPP filed an answer.

III. Discussion

A. Procedural Matters

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process.

system. *East Texas Electric Cooperative, Inc., et al. v. FERC*, 331 F.3d 131 (D.C. Cir. 2003). On remand, the Commission reaffirmed its "integration" policy, but found that the Cooperatives' facilities were not integrated with SPP, so they should not receive revenue allocations under the SPP Regional Tariff. *Southwest Power Pool, Inc.*, 108 FERC 61,078 (2004), *reh'g pending*.

B. Recovery of Costs Associated With New Facilities

7. In its original filing, SPP proposed that for a five-year transition period, the costs of network upgrades would be determined and recovered on a case-by-case basis, subject to Commission approval. Following the transition period, the cost of all network upgrades necessary after other alternatives (such as redispatch) are exhausted would be rolled into SPP's transmission rates. The December 17 Order rejected these revisions because transmission owners must subject all their uses of the grid to the same pricing rules that they propose for third parties.³ The Commission noted that its general prohibition against "and" pricing (charging both incremental and average cost rates), does not apply when all customers (including native load customers) pay the same rates under an ISO or RTO regional mechanism. However, because jurisdictional SPP members were not charging themselves an "and" rate for their uses of the grid to serve their retail load under an ISO or RTO regional mechanism, the Commission rejected SPP's proposal for direct assignment of network upgrades during the transition period.⁴

8. In its compliance filing, SPP proposes to modify Attachment J to make clear that during the transition period, the cost of network upgrades will be directly assigned only to the extent consistent with Commission policy. SPP states that this revised provision: (1) ensures that whatever pricing methodology is used will adhere to the Commission's requirements; and (2) is consistent with similar language in section 27 of the Order No. 888 *pro forma* tariff, which states that the transmission customer is responsible for the cost of new facilities to the extent consistent with Commission policy.⁵ SPP also proposes to modify Attachment J to state that the recovery of network upgrade costs will be provided for in a service agreement filed with the Commission, so that there will be no direct assignment of network upgrade costs without the Commission's express approval.

1. Coral's Protest and SPP's Answer

9. Coral protested this provision, claiming that instead of eliminating the provisions for direct assignment of network upgrades during the transition period, SPP has revised this section in such a way that it will not provide adequate notice to transmission customers of their potential cost responsibility and may be confusing or misleading.

³ December 17 Order at 61,889.

⁴ *Id.*

⁵ See Transmittal Letter at 3-4.

Coral requests that SPP be directed to revise Attachment J to indicate that during the transition period, transmission customers will not be required to pay the costs of network upgrades.

10. SPP notes in its answer that section 27 of the *pro forma* tariff states that for the cost of new facilities, the customer shall compensate the transmission provider to the extent consistent with Commission policy. SPP states that it is merely incorporating this language into Attachment J. It adds that in its original filing, it deleted this language from section 27 of its tariff because of the changes that it proposed to Attachment J. Now that the Commission has rejected the revisions to Attachment J, SPP is restoring to the tariff the language that it deleted from section 27.

2. Commission Determination

11. We will accept this provision of SPP's compliance filing. SPP is revising its tariff to provide that during the transition period, the transmission customer will pay for network upgrade costs only to the extent Commission policy requires. The language it proposes is in section 27 of the *pro forma* tariff and was in SPP's tariff in section 27 prior to the original filing. SPP's proposed revision properly ensures that this *pro forma* language remains in its transmission tariff. That SPP proposes to restore the missing language to Attachment J rather than section 27 is consistent with the *pro forma* tariff.

C. Redispatch Procedures and Redispatch Costs

1. Background

12. The SPP regional tariff permits redispatch at the reservation stage to accommodate additional firm reservations with the service price (the SPP tariff embedded cost transmission access charge plus the actual redispatch costs incurred by any SPP transmission provider to accommodate the reservation) capped at a level that ensures that total charges do not exceed the total charges the customer would have paid under individual company tariffs.⁶ In its original filing, SPP proposed to modify this redispatch charge to provide for recovery of opportunity costs that arise after redispatch is arranged and to provide that any redispatch costs in excess of the cap and costs for redispatch to avoid curtailment of existing firm services would be recovered through a formula rate that spreads the costs to all load, except grandfathered agreements that do not permit recovery of these costs.

⁶ See *Southwest Power Pool, Inc.*, 82 FERC ¶ 61,267, *order on reh'g*, 85 FERC ¶ 61,031 (1998).

13. In the December 17 Order, the Commission held that SPP's proposal to recover from all customers, except grandfathered contracts, the average cost of redispatch to avoid curtailment was reasonable, with one exception. It found that this proposal and the proposal to recover opportunity costs that arise after redispatch is arranged could result in additional charges above the cost cap and, thus, effectively removed the cost cap for redispatch costs that the Commission had put in place to limit the effects of "and" pricing. The Commission found that SPP had not justified these additional charges above the cost cap. Accordingly, the Commission required SPP to remove the proposed additional charges above the redispatch cost cap.

14. SPP has made this change, as directed in the December 17 Order. It also proposes additional revisions to Attachment K. SPP states that because its current tariff does not require transmission owners to redispatch to accommodate new transmission requests, their agreement to redispatch is based on acceptance of the tariff provision allowing recovery of redispatch costs. SPP states that because this provision for cost recovery was rejected, it modified Attachment K to make clear that redispatch will only occur if the relevant transmission owner or generator agrees to provide the service.

2. Coral's Protest and SPP's Answer

15. Coral protests that the existing tariff requires that redispatch be provided to accommodate a new transmission request, and that SPP did not simply revert to the existing tariff provision.⁷ Coral contends that in *Mid-Continent Area Power Pool*,⁸ the Commission required transmission providers to consider redispatch as an option to accommodate a new transmission request. It states that the Commission required MAPP to reinstate *pro forma* tariff sections 13.5 and 15.4, which require redispatch in order to accommodate a firm service request. Coral states that sections 13.5 and 15.4 of SPP's tariff provide that redispatch must occur in accordance with Attachment K. Therefore, Coral argues that consistent with *MAPP*, SPP should revise Attachment K so that redispatch is required to accommodate a new transmission service request, not left to the

⁷ Coral Protest at 4-5 (citing December 17 Order at 61,892).

⁸ 87 FERC ¶ 61,075 (1999) (*MAPP*).

prerogative of transmission providers and owners. Coral also contends that SPP is not free to unilaterally amend its tariff in a compliance filing, and since SPP did not revert to the pre-existing tariff provisions, the change it proposes must be supported in a separate filing under section 205 of the Federal Power Act.⁹

16. SPP answers that the prior version of its tariff did not obligate transmission owners to provide redispatch to accommodate new service and that the transmission owners' agreement to redispatch was based on the removal of the price cap. SPP says that it added provisions stating that redispatch would be offered upon agreement of the affected transmission owner. It adds that it had to try to arrange for redispatch service from the transmission owners (as well as other generation owners) under the tariff, but that the transmission owners were not obligated to redispatch their generating units, particularly if they were not being compensated for the redispatch. SPP contends that the transmission owners agreed to provide redispatch as part of the new revised tariff with the understanding that they would have the opportunity to be fully compensated. SPP states that because the Commission eliminated this ability for transmission owners to recover their costs, SPP revised the other provisions that were tied to that language.

3. Commission Determination

17. SPP claims that the transmission provider or owner will not be fully compensated for redispatch service with a price cap in place. The *pro forma* tariff does not, however, give a transmission provider or owner an option to not provide redispatch service as long as the customer agrees to pay for the costs of redispatch. By capping the total charge under the SPP tariff (the SPP tariff embedded cost transmission access charge plus redispatch costs) at a level equal to the cumulative embedded cost transmission access charges the customer would have paid under individual company tariffs, the cost cap avoids the possibility of "and" pricing. To the extent that SPP believes that it would not fully recover its costs under the cap, it is free to propose an alternative means of recovering redispatch costs that does not give rise to the opportunity for "and" pricing. For instance, to the extent that the cost of redispatch to accommodate an additional reservation exceeds the cumulative embedded cost transmission access charges the customer would have paid under individual company tariffs, SPP could propose to charge the higher of redispatch costs or the SPP tariff embedded cost transmission access charge, so called "or" pricing, which is consistent with Commission policy.

⁹ 16 U.S.C. § 824d (2000).

18. Thus, we agree with Coral that SPP must remove the provision stating that the transmission provider or owner has the option to agree to provide redispatch service, because redispatch is required to accommodate a new transmission service request. We therefore reject SPP's proposal to add to Attachment K, in section I.A., the following language: "and the Transmission Provider and/or applicable Transmission Owner agree to provide the service."

D. Other Tariff Revisions

19. Our review indicates that the remaining tariff revisions comply with our December 17 Order. We will approve them and, accordingly, accept SPP's compliance filing as revised.

The Commission orders:

(A) SPP's compliance filing is hereby accepted, as modified in this order.

(B) Within 30 days of the date of issuance of this order, SPP shall submit a revised compliance filing incorporating the modifications required by this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.