

127 FERC ¶ 61,247
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Southwest Power Pool, Inc.

Docket Nos. ER09-1004-000
ER09-1004-001

ORDER ACCEPTING SERVICE AGREEMENTS FOR FILING

(Issued June 18, 2009)

1. On April 15, 2009, as amended on April 22, 2009, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ an executed Network Operating Agreement and Network Integration Transmission Service Agreement with Kansas City Power & Light Greater Missouri Operations Company (KCP&L-GMO), and a related Agreement for the Provision of Transmission Service to Missouri Bundled Retail Load (Missouri Agreement). For the reasons discussed below, the Commission will accept the agreements for filing effective April 15, 2009, as requested.

I. Background

2. SPP is a Commission-approved regional transmission organization with 54 members, providing, among other things, transmission service and a real-time energy imbalance services market.

3. KCP&L-GMO, formerly Aquila, Inc., serves over 300,000 customers in Missouri using its 1,700 MW of generation and nearly 1,200 miles of transmission lines. Rates for KCP&L-GMO's service to its bundled retail load are regulated by the Missouri Public Service Commission (Missouri Commission).

4. On November 12, 2008, KCP&L-GMO filed with the Missouri Commission a proposal to join SPP. Subsequently, KCP&L-GMO, SPP, Missouri Commission staff and the Missouri Office of Public Counsel reached a Stipulation and Agreement

¹ 16 U.S.C. § 824d (2006).

(Stipulation) regarding KCP&L-GMO's participation in SPP.² The Stipulation provides that the Missouri Agreement is an integral part of KCP&L-GMO's participation in SPP, and that the Commission's acceptance of the Missouri Agreement without material modification is a condition precedent for the Missouri Commission's approval of KCP&L-GMO's participation in SPP.³ On February 4, 2008, the Missouri Commission approved the Stipulation.⁴

II. SPP's Filings

5. Under the Missouri Agreement, KCP&L-GMO will transfer control of certain transmission assets to SPP, and the Missouri Commission will continue to regulate the rates for KCP&L-GMO's bundled retail load served by KCP&L-GMO's facilities, including the transmission component of the bundled retail rates. The Network Integration Transmission Service Agreement and the Network Operating Agreement provide for KCP&L-GMO to take network integration transmission service from SPP to serve KCP&L-GMO's native load. SPP states that these two agreements are based on the standard provisions in SPP's Open Access Transmission Tariff (OATT), with modifications to ensure consistency with the Missouri Agreement, and are subject to the SPP OATT and the Missouri Agreement.

6. Section 3.1 of the Missouri Agreement provides that the rate KCP&L-GMO will pay for transmission to serve its bundled retail load with its own facilities will not be the rate in Schedule 9 of the SPP OATT for the KCP&L-GMO pricing zone, but instead will be the rate for the transmission component of bundled retail service established by the Missouri Commission. Also under section 3.1, KCP&L-GMO's bundled retail load served by KCP&L-GMO facilities will be included in the total load used to calculate the KCP&L-GMO zonal rate, and KCP&L-GMO will have an obligation to pay applicable charges related to facilities owned by other entities that are in KCP&L-GMO's zone but are unaffiliated with KCP&L-GMO.

7. Under section 3.2 of the Missouri Agreement, KCP&L-GMO will not pay the ancillary service charges under Schedules 3, 5, and 6 of the SPP OATT to the extent that KCP&L-GMO self-provides such services pursuant to the Network Integration Transmission Service Agreement consistent with the SPP OATT. Additionally, KCP&L-GMO is not required to pay the amounts due when KCP&L-GMO would be effectively

² SPP's April 15, 2009 Filing, Exhibit III, Stipulation and Agreement.

³ Stipulation at 7.

⁴ Order Approving Stipulation and Agreement, Case No. EO-2009-0179, State of Missouri Public Service Commission.

paying itself under Schedules 1 (Scheduling, System Control and Dispatch Service) and 2 (Reactive Supply and Voltage Control from Generation Sources Service) of the SPP OATT. If a portion of the revenues from SPP Schedules 1 and 2 would be distributed to others, then KCP&L-GMO will be obligated to pay such portion to SPP.

8. Section 3.3 of the Missouri Agreement provides that with the exception of the charges that KCP&L-GMO is not required to pay under sections 3.1 and 3.2, KCP&L-GMO will pay all applicable SPP OATT charges to SPP, including charges for upgrades pursuant to Attachment J and Schedule 11 of the SPP OATT and charges for SPP administrative costs pursuant to Schedule 1-A of the SPP OATT.

9. Section 3.4 provides that KCP&L-GMO is subject to all non-rate related terms and conditions of the SPP OATT applicable to network integration transmission service.

10. SPP states that the Commission has previously accepted similar arrangements under which a state commission retains jurisdiction over the rates for bundled retail load, including the transmission component. Specifically, SPP points to the Commission's acceptance of agreements regarding the participation in SPP of KCP&L-GMO's affiliate Kansas City Power & Light Company and the acceptance of an agreement regarding Ameren Services Company's (AmerenUE) participation in Midwest Independent Transmission System Operator, Inc. (Midwest ISO).⁵ SPP requests an April 15, 2009 effective date.

III. Notices and Responsive Pleading

11. Notices of SPP's April 15, 2009 and April 22, 2009 filings were published in the *Federal Register*, 74 Fed. Reg. 19,075 (2009) and 74 Fed. Reg. 19,953 (2009), with interventions and protests due on or before May 6, 2009 and May 13, 2009, respectively. Missouri Joint Municipal Electric Utility Commission (Missouri Municipals) filed a motion to intervene and limited protest.

12. Missouri Municipals state that they have no objection to the network service and operating agreements submitted by SPP, except to the extent that these agreements incorporate provisions of the Missouri Agreement. Missouri Municipals state that under the Missouri Agreement, the transmission rate for KCP&L-GMO's bundled retail load served by KCP&L-GMO facilities will be determined by the Missouri Commission, while the rate wholesale customers (such as Missouri Municipals) will pay for service in the KCP&L-GMO zone will continue to be determined by the Commission. Missouri

⁵ SPP's April 15, 2009 Filing at 3 (citing *Southwest Power Pool, Inc.*, Docket No. ER06-1318-000 (Sept. 27, 2006) (unpublished letter order); *Midwest Indep. Transm. System Oper., Inc.*, 106 FERC ¶ 61,293 (2004) (*Midwest ISO*)).

Municipals are concerned that these provisions could lead to undue discrimination in the transmission rates paid by wholesale customers located in the KCP&L-GMO footprint, as compared to the transmission rates paid by KCP&L-GMO's retail customers.

Specifically, Missouri Municipals are concerned that the Commission could approve incentive adders to be included in wholesale customers' rates, but the Missouri Commission could then reject the adders, so they would not be included in the KCP&L-GMO bundled retail load rates. Missouri Municipals argue that such a situation would represent undue discrimination, in violation of the FPA.

13. Missouri Municipals state that in *Midwest ISO*, the Commission was faced with a proposal similar to the Missouri Agreement and made certain findings aimed at protecting wholesale customers from undue discrimination. Missouri Municipals explain that, in that proceeding, they expressed concern that the agreement at issue could permit wholesale customers in the AmerenUE footprint to be charged zonal transmission rates under the Midwest ISO tariff that include incentive adders for service comparable to the service Midwest ISO provides AmerenUE for its bundled retail load at rates without such adders. According to Missouri Municipals, in *Midwest ISO*, the Commission responded to these concerns by requiring AmerenUE, in any proposal to apply incentive rates to other customers within its pricing zone, to demonstrate that such proposed rate change was not unduly discriminatory as compared to the rates charged for AmerenUE's bundled retail load, and that such proposal otherwise met FPA requirements.⁶ The Missouri Municipals state that the Commission should approve SPP's proposed agreements but require assurances similar to those required by the Commission in *Midwest ISO*.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

B. Commission Determination

15. The Commission will accept the Network Integration Transmission Service Agreement, Network Operating Agreement, and Missouri Agreement for filing, with the requested effective date of April 15, 2009. The Commission has previously held that the rates for transmission service provided by a regional transmission organization to its transmission-owning members, and re-sold to retail customers in conjunction with

⁶ *Midwest ISO* at P 24.

bundled retail service, may be the same rates set by the states for the transmission component of the bundled retail service.⁷

16. Missouri Municipals are concerned that the transmission rate for bundled retail load as determined by the Missouri Commission could differ from the rate for service in the KCP&L-GMO zone under the SPP OATT, if the Commission were to approve incentive adders for the KCP&L-GMO zonal rate that were then rejected by the Missouri Commission for the bundled retail load rate. We find it premature to address this concern because the instant filing does not propose recovery for incentive adders. Missouri Municipals may raise such concerns at the time SPP files such a proposal under section 205 of the FPA. Consistent with *Midwest ISO*, in any future KCP&L-GMO proposal to apply incentive rates to other customers within its pricing zone, KCP&L-GMO will be required to demonstrate that its proposed rate change is not unduly discriminatory as compared to the rates charged for KCP&L-GMO's bundled retail load, and that such a proposal otherwise meets the FPA's requirements.

The Commission orders:

The Network Integration Transmission Service Agreement, Network Operating Agreement, and Missouri Agreement are hereby accepted for filing, to become effective April 15, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 109 & n.136 (finding that the Commission will adopt the transmission component of bundled retail rates set by the state commissions if consistent with the FPA); *order on reh'g*, 109 FERC ¶ 61,010 (2004).