

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER06-593-000

ORDER ACCEPTING FACILITIES UPGRADE AGREEMENT AND REQUIRING
COMPLIANCE FILING

(Issued March 31, 2006)

1. In this order we conditionally accept an “Agreement to Sponsor Facilities Upgrades” (Agreement) between Southwest Power Pool, Inc., (SPP), Redbud Energy, L.P. (Redbud) and Oklahoma Gas and Electric Company (OG&E) (collectively, the Parties), and require a compliance filing to: (a) remove certain language; and (b) conform the filing to the requirements of Order No. 614,¹ as discussed below.
2. On February 1, 2006, SPP filed the proposed Agreement to provide for funding of an upgrade at the Arcadia Substation on OG&E’s transmission system.
3. Redbud is an Independent Power Producer and owner of a 1200 MW generation facility (Redbud Plant) located near Luther, Oklahoma, and interconnected to OG&E’s transmission facilities through the Redbud Substation. Because transmission capacity limitations at the Arcadia Substation prevent the Redbud Plant from operating at the levels at which Redbud wishes to operate, Redbud, on December 16, 2005, requested that SPP and OG&E construct the Arcadia Upgrade. The Parties executed the Agreement on January 30, 2006.
4. Redbud desires to have upgrades made to certain 345 kV line terminals and related substation buss work at the Arcadia Substation that pose limitations to the capacity of two 345 kV lines connecting the Redbud and Arcadia Substations. Under the Agreement, OG&E agrees to construct and own the Arcadia Upgrade and Redbud agrees to provide the capital necessary to meet the cost of the Arcadia Upgrade. OG&E estimates the

¹ *Designation of Electric Rate Schedule Sheets*, 90 FERC ¶ 61,352 (2000) (Order No. 614).

construction cost of the Arcadia Upgrade to be approximately \$1.43 million. Redbud agrees to fund all costs of constructing, testing and energizing as well as all costs for the approval of the Arcadia Upgrade, including an adjustment to compensate for the income tax liability resulting from the upgrade and any accruing interest, not to exceed \$3 million.

5. The parties negotiated the Agreement under SPP's regional transmission cost allocation plan (Cost Allocation Plan).² The Cost Allocation Plan provides, among other things, a mechanism to credit revenues back to the entity or entities funding the project.³ SPP states that it is filing this Agreement as a separate Agreement, because its tariff does not contain a form of Agreement for Requested Upgrades.⁴

6. The Agreement provides that SPP will treat the Arcadia Upgrade as a Requested Upgrade as that term is defined in the SPP Tariff, and that SPP will provide Transmission Revenue Credits to Redbud in accordance with Attachment Z to the SPP Tariff. The Agreement provides that each party may make a unilateral filing with the Commission under sections 205 or 206 of the Federal Power Act (FPA) to modify the Agreement, and the Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the FPA.

7. Notice of the SPP's filing was published in the *Federal Register*, 71 Fed. Reg. 8,297 (2006), with interventions and protests due on or before February 22, 2006. On February 10, 2006, Redbud filed a motion to intervene and supporting comments. On February 21, 2006, OG&E filed a motion to intervene and supporting comments.⁵

8. Our review of the Agreement indicates that, with one exception, it appears to be just and reasonable and has not been shown to be unjust or unreasonable, unduly discriminatory or otherwise unlawful. The exception to this finding is the provision on page 3, Article 1.4 of the Agreement that provides in pertinent part as follows:

² Transmittal Letter at 2. The Commission conditionally approved the Cost Allocation Plan on April 22, 2005. *Southwest Power Pool*, 111 FERC ¶ 61,118, *order on reh'g*, 112 FERC ¶ 61,319 (2005).

³ Transmittal Letter at 2.

⁴ Transmittal Letter at 3-4.

⁵ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Redbud understands and agrees that its payments are to be made irrespective of the FERC's approval of this Agreement.

This provision conflicts with the Commission's authority under section 205 of the FPA to ensure that rates and charges shall be just and reasonable and not unduly discriminatory or otherwise unlawful.⁶ We will direct SPP to make a compliance filing deleting this provision from the Agreement. With the exception of the language quoted above, we will accept the Agreement for filing, without suspension or hearing.

9. SPP states that the Agreement is the first of its kind involving Requested Upgrades executed pursuant to SPP's Cost Allocation Plan under its Tariff and that the mechanism for crediting revenues back to Redbud under the Agreement will be done consistent with Attachment J and Attachment Z under the SPP Tariff. Because the Agreement consistently refers to various provisions of the SPP Tariff, we will accept SPP's proposed Agreement as a service agreement under the SPP Tariff.

10. SPP seeks waiver of the prior notice requirement so that the Agreement may become effective on January 30, 2006.⁷ We will waive the prior notice requirement and allow the Agreement to become effective on January 30, 2006, as requested.⁸

11. The Agreement contains no tariff designations and, therefore, does not comply with Order No. 614. We will direct SPP, in its compliance filing, to ensure that its tariff filing complies with Order No. 614.

The Commission orders:

(A) SPP's proposed Agreement is hereby accepted, effective January 30, 2006, as discussed in the body of this order.

⁶ 16 U.S.C. §824d (2000). *Cf. Calpine Oneta Power, L.P. v. American Electric Power Service Corp.*, 112 FERC ¶ 61,186 at P 5, n.3 (2005); *Kiowa Power Partners, LLC v. Public Service Company of Oklahoma*, 110 FERC ¶ 61,118 at P 5, n.6 (2005); *Public Utilities Commission of the State of California v. Sellers of Long Term Contracts*, 103 FERC ¶ 61,354 at P 91 (2003).

⁷ Transmittal Letter at 4.

⁸ *See Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (waiver of prior notice will be granted if a service agreement under a tariff is filed within 30 days after service commences).

(B) SPP is hereby directed to make a compliance filing, as described in the body of this order, within 30 days of the date of issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.