

111 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER05-799-000 and
ER05-526-000

ORDER ACCEPTING AND SUSPENDING AGREEMENTS, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES AND CONSOLIDATING
PROCEEDINGS

(Issued May 18, 2005)

1. On April 8, 2005, Southwest Power Pool, Inc. (SPP) filed an unexecuted service agreement for network integration transmission service (NITSA) between SPP and Oklahoma Municipal Power Authority (OMPA) and an unexecuted network operating agreement (NOA) between SPP, OMPA, and Oklahoma Gas & Electric Co. (OG&E).¹ As discussed below, the Commission accepts the unexecuted agreements, suspends them for a nominal period, to become effective April 1, 2005, subject to refund, establishes hearing and settlement judge procedures, and consolidates this proceeding with the proceeding in Docket No. ER05-526-000.² This order benefits customers by ensuring a timely inquiry into whether the agreements are just and reasonable.

Background

2. OMPA is a member of SPP and serves as a wholesale power supplier to 35 municipalities in the State of Oklahoma. OMPA has taken transmission service over OG&E facilities pursuant to an agreement entered into in 1985. As a result of implementation of the SPP Regional Transmission Organization (RTO), the parties believed that maintaining the grandfathered agreements might limit the benefits of RTO implementation and decided to convert OMPA's service to service under the SPP Open Access Transmission Tariff (OATT).

¹ SPP, OG&E, and OMPA are signatories to the NOA.

² *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,304 (2005).

Filing

3. On April 8, 2005, SPP filed an unexecuted NITSA with OMPA and an unexecuted NOA between SPP, OMPA and OG&E.³ SPP explains there is a dispute between the parties about the amount of transmission service OMPA is eligible to roll over under section 2.2 of SPP's OATT.⁴ SPP states that it is willing to provide OMPA with network transmission service. It asserts that there is an issue as to the designation of network resources (Dolet Hills, Pirkey, and Oklaunion) to serve OMPA load in OG&E. SPP states that these resources have not been demonstrated to have renewal rights to serve OMPA load in OG&E's control area; therefore, section 2.2 is not applicable and these resources instead can be designated and studied pursuant to sections 30.2 and 32 of the SPP OATT.

4. SPP interprets section 2.2 as requiring SPP to provide rollover rights for the amount of capacity a customer has been using and paying for, and not as creating an automatic entitlement to take additional capacity. Thus, SPP believes that OMPA has not been using and paying for transmission capacity associated with its Dolet Hills, Pirkey, and Oklaunion resources used to serve load in the OG&E control area. SPP states that SPP, OG&E, and OMPA have been trying to resolve this matter for several months, without resolution and have therefore submitted the dispute to the Commission with the instant filing.

5. SPP also states that it submits this filing not only because of the above dispute, but also because both the NITSA and NOA contain provisions that differ from the pro forma versions that appear in SPP's OATT. Such modifications include: (1) clarification of

³ Related filings containing additional agreements and a new form of service agreement for ancillary services, which facilitate the conversion of OMPA's grandfathered transmission service to service under SPP's OATT, will be acted on by separate order. These filings were made in Docket Nos. ER05-753-000, ER05-755-000, and ER05-761-000.

⁴ Section 2.2 of SPP's OATT provides, in part, that: "Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more, and retail) of the Transmission Owner(s) or Transmission Provider have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed." It further provides that: "This reservation priority only applies to the facilities of the Transmission Owner(s) where such facility costs have been included as part of the firm service rates that the firm service customer has been paying."

metering provisions in the NOA; (2) an initial term of 10 years for the NITSA; (3) a revision to the NITSA to adjust actual hourly network load to system input for transmission and distribution losses; (4) the addition of a new section governing the wholesale distribution service charge; (5) the requirement of cost support for the derivation of credits for customer-owned facilities; and (6) the addition of a so-called Agreement Regarding Credit for Facilities and Charges for Direct Assignment Facilities.

6. SPP avers that the above listed changes to the pro forma have been made with OMPA's and OG&E's consent, and are necessary to facilitate the conversion from grandfathered services under OG&E's bundled pre-OATT power supply agreement to the SPP OATT.

7. SPP requests waiver of the Commission's 60-day prior notice requirement to permit an effective date of April 1, 2005. It asserts that waiver is appropriate because the NITSA and NOA are being filed no later than 30 days after commencement of service.

Notice of Filing, Interventions, and Protests

8. Notice of SPP's filing was published in the *Federal Register*, 70 Fed. Reg. 22,021 (2005), with interventions and protests due on or before April 29, 2005. OG&E filed a timely motion to intervene and comments. OMPA filed a timely motion to intervene, motion to consolidate, and protest.

9. In its protest, OMPA requests that the Commission order SPP to accept OMPA's designation of its historical network resources or, in the alternative, suspend the NITSA, set it for hearing, and also institute settlement judge procedures. OMPA also requests consolidation of this proceeding with Docket No. ER05-526-000. OMPA explains that it is merely continuing its long-standing use of the Dolet Hills, Pirkey, and Oklaunion resources as baseload plants on which OMPA has relied for close to 20 years to supply a significant portion of its energy needs.

10. In its comments, OG&E states that, if the existing agreements between OG&E and OMPA were to continue, they would require OG&E to allow import of approximately 121 MW of capacity from these resources if they were delivered to the points of receipt specified in the agreements. OG&E further states that, in a Memorandum of Understanding dated September 16, 2003, between OMPA and OG&E, the parties agreed to support, for submission to SPP, the Appendix 1 – Network Resources which specifically lists the three resources under dispute.

Discussion**A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Hearing and Settlement Procedures

12. The NITSA and NOA submitted by SPP raise issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

13. The Commission's preliminary analysis of SPP's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept SPP's NITSA and NOA for filing, suspend them for a nominal period, to become effective on April 1, 2005,⁵ subject to refund, and set them for hearing and settlement judge procedures as ordered below.

14. Given common issues of law and fact, we will consolidate this proceeding with the proceeding in Docket No. ER05-526-000 for purposes of settlement, hearing, and decision.

The Commission orders:

(A) SPP's NITSA and NOA are hereby accepted for filing and suspended for a nominal period, to become effective on April 1, 2005, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing

⁵ See *Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (permitting the Commission to grant waiver if service agreements under an umbrella agreement are filed within 30 days after service commences).

Docket Nos. ER05-799-000 and ER05-526-000

5

shall be held concerning the justness and reasonableness of SPP's NITSA and NOA. However, the hearing will be held in abeyance to provide time for settlement judge procedures.

(C) Docket Nos. ER05-799-000 and ER05-526-000 are hereby consolidated for purposes of settlement, hearing and decision.

(D) The settlement judge or presiding judge designated to preside in Docket No. ER05-526-000, as appropriate, shall determine the procedures best suited to accommodate the consolidation of Docket No. ER05-799-000 with Docket No. ER05-526-000.

By the Commission

(S E A L)

Linda Mitry,
Deputy Secretary.