

120 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER07-1093-000

ORDER CONDITIONALLY ACCEPTING NETWORK INTEGRATION
TRANSMISSION SERVICE AGREEMENT AND NETWORK OPERATING
AGREEMENT

(Issued August 27, 2007)

1. On June 28, 2007, Southwest Power Pool, Inc. (SPP) filed an executed service agreement for network integration transmission service (NITSA) between SPP and Westar Energy, Inc. (Westar) and an executed network operating agreement (NOA)¹ among SPP, Western Resources Inc. and Kansas Gas and Electric Company (Kansas Gas and Electric).² SPP requests the inclusion of certain provisions into the NITSA that do not conform to the applicable form of service agreement set forth in SPP's open access transmission tariff (OATT). The NITSA also includes the designation of the Spring Creek Generating Station (Spring Creek) as a year-round network resource.
2. In this order, we conditionally accept the NITSA and NOA, subject to Westar's continued compliance with our orders in *Westar Energy, Inc.*³ (collectively, the Spring Creek Orders) in which: (1) Westar committed not to use Spring Creek as a network

¹ Westar states that the NOA is a copy of the agreement that the Commission approved in Docket No. ER02-882-000 and that it will continue in effect in connection with the NITSA.

² Westar and Kansas Gas and Electric state that Kansas Gas and Electric is Westar's wholly-owned subsidiary. For the purpose of this order, they will be referred to collectively as Westar.

³ *Westar Energy Inc. and ONEOK Energy Services Co., L.P.*, 115 FERC ¶ 61,228 (2006), *order on reh'g, Westar Energy, Inc.*, 117 FERC ¶ 61,011 (2006), *order on reh'g, Westar Energy Inc.*, 118 FERC ¶ 61,237 (2007).

resource from December through February (the Winter Period); and (2) Westar was ordered to file quarterly updates with the Commission addressing (a) the control area in which Spring Creek is located, from an operational standpoint; and (b) how the facility is being modeled by SPP. Westar was also ordered to file a report showing that it had not used Spring Creek as a network resource during the Winter Period within 45 days after the Winter Period ends each February. In addition, we direct SPP to modify the NITSA as noted below and accept the June 1, 2007 effective date, as requested.

I. Background

3. In the Spring Creek Orders, the Commission conditionally authorized the acquisition and use of generating facilities in connection with Westar's purchase of Spring Creek. The conditions were grounded in the Commission's finding that additional transmission upgrades would be needed to mitigate adverse effects on competition if Spring Creek became a network resource, enabling it to sell into the Westar market and increase Westar's market share.⁴ The Commission found that Westar's proposal not to use Spring Creek as a network resource during the Winter Period satisfied Westar's market share mitigation responsibilities.⁵

II. Notice of Filing and Responsive Pleadings

4. Notice of SPP's filing was published in the *Federal Register*, 72 Fed. Reg. 38,075 (July 12, 2006) with comments, protests or interventions due on or before July 19, 2007. Oklahoma Municipal Power Authority (OMPA) filed a motion to intervene and protest. Westar filed a motion to intervene out of time, for leave to answer protest and answer on July 23, 2007.

5. OMPA states that the NITSA and NOA are not consistent with the Spring Creek Orders.⁶ OMPA notes that the NITSA lists Spring Creek as a year-round network resource, including during the Winter Period, despite the Spring Creek Orders' condition that Westar not use Spring Creek as a network resource during the Winter Period.

6. Westar states that designating Spring Creek as a year-round network resource is not inconsistent with its commitment to mitigate market power concerns in the Winter Period.⁷ Westar states that it intends to honor its mitigation commitment by using point-to-point transmission service to move Spring Creek power to the Westar control area in

⁴ 118 FERC ¶ 61,237 at P 2.

⁵ 117 FERC ¶ 61,011 at Ordering Paragraph (A).

⁶ OMPA's Motion to Intervene and Protest at 1.

⁷ Westar's Answer at 4-5.

the Winter Period. As a result, in the event Westar uses some portion of its 225 MW of Spring Creek power to serve its customers during the Winter Period, it will pay additional transmission charges for such service and compete for transmission with other service requests rather than enjoy the service preference inherent in network integration transmission service.

7. OMPA also argues that Westar is not in compliance with the Spring Creek Orders because it has failed to prepare and file a quarterly update regarding the location and modeling of Spring Creek as directed.⁸ OMPA notes, moreover, that SPP has yet to move Spring Creek back into the Oklahoma Gas & Electric control area for modeling purposes, as required by the Commission.⁹

8. Westar admits that it failed to file the quarterly update within 30 days. On July 19, 2007, Westar made the required filing. Westar states that it has again requested SPP to have Spring Creek modeled in the Oklahoma Gas & Electric control area and has received assurances that the remaining changes to SPP's modeling will be made by early August.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant Westar's late-filed motion to intervene given its interest in the proceeding, the early state of the proceeding and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Westar's answer to OMPA's protest because it has provided information that assisted us in our decision-making process.

B. Commission Determination

10. OMPA states that Westar's designation of Spring Creek as a network resource in the NITSA is not consistent with the Spring Creek Orders. Those orders make it clear that Westar cannot use Spring Creek as a network resource during the Winter Period. The Commission concluded that this restriction would address the harm to competition

⁸ *Id.* at 5.

⁹ *See Westar*, 118 FERC ¶ 61,237 at P 15.

resulting from the designation of Spring Creek as a network resource. Westar asserts that by using point-to-point transmission service in order to move Spring Creek power to the Westar control area in the Winter Period, Westar's 225 MW share of Spring Creek's output will have to compete with other suppliers for scarce available transmission capacity, and the resulting *pro rata* allocation of available transmission capacity will avoid harm to competition. As a result, Westar asserts, adding Spring Creek as a year-round network resource is not inconsistent with Westar's obligations under the Spring Creek Orders.¹⁰

11. While we acknowledge the steps Westar has taken to honor its mitigation obligations, we find that the resource designations¹¹ in the NITSA are inconsistent with the Spring Creek Orders since, as listed, the designations indicate that Spring Creek would be available for winter use. Westar claims that because SPP does not recognize seasonal network resource designations, Westar could not fulfill its mitigation obligations by not designating Spring Creek as a network resource in the Winter Period.¹² However, it is unclear to us why the NITSA cannot list operating restrictions placed on the Spring Creek units, especially since SPP's Application to Designate a New Network Resource under the SPP NITS¹³ requires an applicant to list any period of restricted operations during the term of designation. In addition, the SPP tariff defines the Maximum Net Dependable Capacity¹⁴ rating as the capacity available regularly to satisfy the daily load patterns of each SPP member.¹⁵ However, Westar is not free to call on Spring Creek's 225 MWs to "regularly satisfy [its] daily load patterns." Accordingly, we direct SPP to revise the designations for the Spring Creek units to reflect zero winter capacity or note the existing designations to reflect the operating restrictions placed on the Spring Creek

¹⁰ Westar's Answer at 4-5.

¹¹ See Appendix 1 of the NITSA at P 14 which lists the Spring Creek Units as having a maximum net dependable capacity of 225 MWs. The designations show that Spring Creek consists of four combustion turbine units with summer/winter capacity of 56, 56, 56 and 57 MWs, respectively.

¹² See Westar's Answer at 4.

¹³ See Application to Designate a New Network Resource under the SPP NITS, available at <http://www.spp.org/section.asp?group=194&pageID=27>.

¹⁴ See SPP, FERC Electric Tariff, Fifth Revised Volume No. 1, Original Sheet No. 941 which states: "net capability is referenced in many NERC documents as net dependable capacity, that is the maximum capacity a unit can sustain over a specified period modified for seasonal limitations."

¹⁵ *Id.* at Original Sheet No. 944.

units in a compliance filing within 30 days of the date of this order. Specifically, SPP must note that the Spring Creek units cannot be called upon as a network resource during the Winter Period until such time that Westar's mitigation obligation ends.

12. The Commission reminds Westar that the requirement to timely file quarterly reports should not be taken lightly, and we expect Westar to file future reports on time. In addition, we accept Westar's explanation of why Spring Creek has yet to be modeled in the Oklahoma Gas & Electric control area and expect that Westar's next quarterly report will state that the modeling change was made in early August, as Westar affirms.¹⁶

The Commission orders:

(A) The NITSA and NOA are conditionally accepted for filing to be effective June 1, 2007.

(B) SPP is directed to make a compliance filing within 30 days of the date of the order as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ Westar's Motion to Intervene at P 5.