

122 FERC ¶ 61,106  
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. EL06-71-000

ORDER TERMINATING SECTION 206 PROCEEDING

(Issued February 6, 2008)

1. The Commission, in a May 19, 2006 order,<sup>1</sup> instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>2</sup> to determine whether certain language in section 2.2 of Southwest Power Pool, Inc.'s (SPP) existing Open Access Transmission Tariff (OATT) may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In this order, we find that section 2.2 of SPP's existing OATT continues to be just and reasonable and not unduly discriminatory or otherwise preferential. Accordingly, we terminate the section 206 proceeding in Docket No. EL06-71-000.

**I. Background**

2. On March 21, 2006, Associated Electric Cooperative, Inc. (Associated Electric) filed a complaint against SPP, arguing that SPP violated its OATT in granting a rollover request by American Electric Power Service Corporation (AEP) for 250 MW of long-term firm point-to-point transmission service from the Union Electric Company d/b/a Ameren UE transmission system to the Central and South West Services, Inc.

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<sup>1</sup> *Associated Elec. Coop., Inc. v. Southwest Power Pool, Inc.*, 115 FERC ¶ 61,213 (May 19 Order), *order on reh'g*, 117 FERC ¶ 61,114 (2006).

<sup>2</sup> 16 U.S.C. § 824e (2000 & Supp. V 2005).

transmission system. The May 19 Order denied Associated Electric's complaint, finding that SPP properly applied section 2.2 of its OATT in granting AEP's rollover request.<sup>3</sup>

3. The May 19 Order also instituted a section 206 proceeding regarding certain language used in section 2.2 of SPP's OATT.<sup>4</sup> In particular, the last three sentences of section 2.2, which differ from the *pro forma* Order No. 888 OATT,<sup>5</sup> state:

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. If competing existing firm service requirements customers apply for service that cannot be fully provided, the priority rights will be ranked in accordance with first-come, first-served principles. If firm service customers tie, then the capacity for which they receive priority rights under this tariff shall be apportioned on a pro rata basis.

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<sup>3</sup> May 19 Order, 115 FERC ¶ 61,213 at P 14-18.

<sup>4</sup> The language of interest was incorporated into the SPP OATT early in SPP's history as a regional transmission provider. See *Southwest Power Pool, Inc.*, 96 FERC ¶ 61,034, at 61,094-95, *order on reh'g*, 96 FERC ¶ 61,307 (2001); *Southwest Power Pool, Inc.*, Docket No. ER01-1989-003 (Oct. 23, 2001) (unpublished letter order).

<sup>5</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002). Order No. 888 has been superseded, in part, by Order No. 890. Order No. 890 revised the terms and conditions for rollover rights in the *pro forma* OATT. *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007). Order No. 890 did not become effective until May 14, 2007 and therefore is not at issue here.

4. In the May 19 Order, the Commission stated that the limitations included in this language appear to go beyond those allowed by the Commission:

Once a transmission provider evaluates the impact on its system of serving a customer, Commission policy requires the transmission provider to plan and operate its transmission system with the expectation that it will continue to provide service to the customer should the customer request rollover. The Commission has explained that a transmission provider can deny a customer the ability to roll over its long-term firm service contract only if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term. The Commission also has explained that a transmission provider may limit the terms under which a new long-term agreement may be rolled over if it has a pre-existing contract obligation that commences in the future. If the transmission system becomes constrained (for reasons other than reasonably forecasted native load growth or pre-existing contract obligations that commence in the future) such that the transmission provider cannot satisfy all existing long-term customers, then the obligation is on the transmission provider either to curtail service to all affected customers (not just the later-accepted firm customers) pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.<sup>6</sup>

5. The May 19 Order required SPP to file comments on the matter.

## II. SPP's Comments

6. On June 19, 2006, SPP filed its comments in response to the May 19 Order, arguing that: (1) the specific language in section 2.2 of its OATT has been approved by the Commission as just and reasonable, and (2) the specific language in section 2.2 of its OATT has not been shown to be unjust, unreasonable or unduly discriminatory or preferential.

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<sup>6</sup> May 19 Order, 115 FERC ¶ 61,213 at P 19 (internal citations omitted).

7. First, SPP argues that the relevant language has been found to be just and reasonable. SPP argues that the first sentence is intended “to prevent transmission customers from having priority rights to facilities for which they have not been historically paying” and was “necessary to convert the Commission’s pro forma [OATT], which is intended to be used by individual companies, to a regional, multi-company [OATT].”<sup>7</sup> SPP argues that the Commission has approved this language for other entities as well.<sup>8</sup> SPP notes that, in approving the language, the Commission has stated:

this revision implements the requirements of the pro forma tariff in the context of a regional [Independent System Operator (ISO)] arrangement. Every customer under the [ISO] [OATT] will have the same rollover rights it enjoys today under the individual tariff of any member – no more, no less. It would make no sense to extend the rollover right to capacity that is being used today to serve other customers and which will now be part of the ISO because other customers have rollover rights to that capacity. Indeed, creation of rollover rights associated with capacity that is not used presently to serve the transmission customer would result in rollover rights that far exceed the existing capacity that is being used today to provide transmission service to existing customers.[<sup>9</sup>]

8. SPP argues that the last two sentences of section 2.2 “simply fill in an omission in the pro forma [OATT] by describing what happens if the capacity is insufficient to satisfy all customers with a priority.”<sup>10</sup> SPP argues that this allocation of capacity is consistent with the approach used elsewhere in its OATT for allocating capacity on a first-come,

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<sup>7</sup> SPP Comments at 3-4.

<sup>8</sup> *Id.* at 4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, at 62,173 (1998) (*Midwest ISO*); *Alliance Cos.*, 94 FERC ¶ 61,070, at 61,324 (2001)).

<sup>9</sup> *Id.* (citing same).

<sup>10</sup> *Id.*

first-served basis.<sup>11</sup> SPP also notes that the language has been previously accepted by the Commission without discussion.<sup>12</sup>

9. Second, SPP argues that, under section 206, the Commission “must not only demonstrate that the last three sentences of section 2.2 of SPP’s [OATT] are unjust, unreasonable or unduly discriminatory, but it must also demonstrate that its proposed changes are just and reasonable.”<sup>13</sup> SPP states that, since the Commission’s acceptance of the relevant language, “nothing has changed that would make these provisions any less necessary or just and reasonable.”<sup>14</sup> SPP also notes that “its transmission customers have not been unduly hindered in their ability to exercise their rollover rights. In fact, many of the Grandfathered Agreements to which these three provisions would be most applicable have already converted to taking transmission service under SPP’s [OATT], making any limitation or denial of a rollover request pursuant to these provisions much less likely.”<sup>15</sup>

10. No other entities filed comments in response to the May 19 Order.

### **III. Discussion**

11. SPP explains that the relevant language is applicable only in the limited context of “convert[ing]” the *pro forma* OATT from applicability to individual companies to an RTO/ISO context. As SPP further explains, this language was necessary to describe what happens if the capacity is insufficient to satisfy all customers with priority. Moreover, as SPP explains, many of the Grandfathered Agreements to which these provisions would be most applicable have already converted to taking service under SPP’s OATT. Thus, given SPP’s explanation of the limited nature of the language at issue, we conclude that this language remains just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or otherwise preferential. Accordingly, we terminate the section 206 proceeding established in Docket No. EL06-71-000.

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<sup>11</sup> *Id.* (citing SPP OATT at Att. Z, § III(b)).

<sup>12</sup> *Id.* (citing *Midwest ISO*, 84 FERC ¶ 61,231; *Southwest Power Pool, Inc.*, 86 FERC ¶ 61,090 (1999), *order on reh’g*, 94 FERC ¶ 61,299 (2001)).

<sup>13</sup> *Id.* at 5 (internal citation omitted).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 6.

The Commission orders:

The section 206 proceeding established in Docket No. EL06-71-000 is hereby terminated.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.