

125 FERC ¶ 61,347  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 22, 2008

In Reply Refer To:  
Southwest Power Pool, Inc.  
Docket No. ER09-162-000

Wright & Talisman, P.C.  
1200 G Street, NW, Suite 600  
Washington, DC 20005

Attention: Matthew K. Segers, Esq.

Reference: Revised Tariff Sheets

Dear Mr. Segers:

1. On October 29, 2008, Southwest Power Pool, Inc. (SPP), submitted revised sheets to its Open Access Transmission Tariff (Tariff) pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> to amend the rate charges for Southwestern Public Service Company (Southwestern Public Service), a transmission owner and pricing zone under the SPP Tariff, that were accepted by the Commission in Docket No. ER08-472-000 on March 21, 2008.<sup>2</sup> SPP requests waiver of the Commission's prior notice requirement to allow an effective date for the proposed revisions of July 6, 2008, to permit the corrected rates to become effective on the same date as the original effective date of the rates granted in the March 21 Order.

2. SPP, a regional transmission organization administers the provision of open access transmission service on a regional basis across the facilities that transmission owners have dedicated to SPP's Tariff. SPP uses zonal rates based on the zones where the points of delivery or load are located, while rates for through-and-out transactions are based on the zone from which the power exits SPP's transmission system. The transmission

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<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup> See *Southwest Power Pool, Inc.*, 122 FERC ¶ 61,266 (2008) (March 21 Order).

owner, which in this case is Southwestern Public Service, controls the filing of rates for its zone. SPP modifies its tariff to reflect the transmission owner's rate changes.

3. SPP states that its original filing to implement a rate change for the Southwestern Public Service pricing zone did not include Southwestern Public Service's rates for its transmission facilities that qualify as Base Plan upgrades under SPP's Tariff.<sup>3</sup> Consequently, in this filing, SPP has incorporated Southwestern Public Service's Base Plan Zonal and Region-Wide Annual Transmission Revenue Requirements and Point-to-Point Rates in Attachment H and Addendum 1 and 2 to Schedule 11 of SPP's Tariff, respectively. SPP also filed revised tariff sheets incorporating Southwestern Public Service's formula rate for transmission service in its entirety.

4. Notice of SPP's filing was published in the *Federal Register*, 73 Fed. Reg. 69,627 (2008), with interventions and protests due on or before November 19, 2008. West Texas Municipal Power Agency (West Texas), Golden Spread Electric Cooperative, Inc. (Golden Spread), and the New Mexico Cooperatives<sup>4</sup> filed timely motions to intervene and protests. Golden Spread filed a motion to reject the tariff sheets or in the alternative, a motion to consolidate. Xcel Energy Services, Inc. (Xcel) filed a motion to intervene out-of-time and comments. SPP filed an answer to the protests.

5. Golden Spread protests that SPP's modifications cannot be characterized as a correction of an inadvertent omission, asserting that SPP's filing incorporates new charges associated with Base Plan upgrade costs that are separate and apart from those set forth in Southwestern Public Service's transmission formula rate template in Docket No. ER08-313-000. Golden Spread further states that the filing appears to involve regional issues extending beyond the Southwestern Public Service zone and the transmission formula rate conditionally accepted in Docket No. ER08-313-000.<sup>5</sup> Golden Spread protests that SPP seeks to incorporate Base Plan upgrade charges in the Southwestern Public Service zone that were not quantified in the filing in Docket No. ER08-313-000, as well as determinations regarding the allocation of Base Plan upgrades across SPP. Golden Spread also protests waiver of the Commission's 60-day notice requirement and the filing by SPP of a populated formula rate because the formula itself is the rate. Golden Spread requests that the Commission reject SPP's filing, or in the alternative, consolidate it with Docket No. ER08-313-000, *et al.*

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<sup>3</sup> See SPP's January 23, 2008 Filing in Docket No. ER08-313-000, *et al.*

<sup>4</sup> The New Mexico Cooperatives include Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc. and Roosevelt County Electric Cooperative, Inc.

<sup>5</sup> See *Xcel Energy Services, Inc.*, 122 FERC ¶ 61,098 (2008).

6. The New Mexico Cooperatives and West Texas request that the Commission accept SPP's filing, subject to refund and to the outcome of the proceeding in Docket No. ER08-313-000, *et al.*

7. Xcel objects to SPP's filing of a populated formula rate template, stating that it is contrary to Commission policy, which considers the formula rate itself to be the filed rate. Xcel requests that the Commission direct SPP to revise its filing to incorporate the formula rate template rather than the populated formula rate.<sup>6</sup>

8. SPP responds that Golden Spread's protest should be rejected because the Base Plan upgrade rates are based on Southwestern Public Service's accepted transmission service formula rate. SPP states that because its Membership Agreement grants Southwestern Public Service unilateral rights to propose modifications to its rate or rate structure, it is Southwestern Public Service's responsibility to justify and obtain approval of its rates in Docket No. ER08-313-000, *et al.* SPP further states that the waiver of the prior notice requirement and the requested effective date of July 6, 2008, are necessary to allow the Base Plan upgrade rates to become effective on the same effective date as the rates accepted in the March 21 Order.<sup>7</sup>

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Pursuant to Rule 214 (d) of the Commission Rules of Practice and Procedure,<sup>8</sup> the Commission will grant Xcel's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure<sup>9</sup> prohibits the filing of an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process.

12. The Commission finds that SPP's filing tracks the formula rate proposed by Xcel and Southwestern Public Service in Docket No. ER08-313-000, *et al.* and does not

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<sup>6</sup> Xcel Comments at p 4-5.

<sup>7</sup> SPP's November 25, 2008, Answer to Protests at 2-4.

<sup>8</sup> 18 C.F.R. § 385.214(d) (2008).

<sup>9</sup> 18 C.F.R. § 385.213(a)(2) (2008).

propose additional changes to SPP's Tariff. Therefore, the Commission conditionally accepts and nominally suspends SPP's filing to be effective July 6, 2008, subject to refund and to the outcome of Docket No. ER08-313-000, *et al.* Waiver of the Commission's notice requirement pursuant to section 35.11 of the Commission's regulations (18 C.F.R. § 35.11) is granted.<sup>10</sup> Because we are accepting SPP's filing subject to the outcome of Docket No. ER08-313-000, *et al.*, the Commission's disposition of the issues raised by the intervenors regarding Southwestern Public Service's proposed formula rate will be addressed in that proceeding.

13. As previously noted, SPP incorporated into Southwestern Public Service's formula rate template the inputs for the annual update at issue. However, when the Commission approves a formula rate, it approves the formula itself, which becomes the filed rate, not the specific data inputs used to update rates pursuant to the formula. Accordingly, we direct SPP to submit a compliance filing within 30 days of the date of this order that includes Southwestern Public Service's formula rate template and removes the data populating that formula.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>10</sup> The Commission finds that the Southwestern Public Service and SPP tariff revisions should become effective simultaneously, so that all customers are affected by the tariff changes at the same time, including those customers who take service in the Southwestern Public Service zone under the SPP Regional Tariff.