

126 FERC ¶ 61,088
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 2, 2009

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER09-443-000

Wright & Talisman, P.C.
1200 G Street, NW
Suite 600
Washington, DC 20005-3802

Attention: Ms. Wendy N. Reed, Esquire
Counsel for Southwest Power Pool, Inc.

Reference: Limited Waiver of Tariff Provision

Dear Ms. Reed:

1. On December 22, 2008, Southwest Power Pool, Inc. (SPP) filed a request for waiver of the notice provisions of section 17.7 of SPP's Open Access Transmission Tariff (Tariff) to permit SPP to grant AES Shady Point a one-year extension of the commencement of its transmission service. SPP requests expedited treatment by the Commission because without a waiver, the requested transmission service will begin on January 8, 2009 and AES Shady Point will be required to pay for transmission service that it has informed SPP it does not need.
2. Under section 17.7 of SPP's Tariff, a transmission customer may obtain up to five one-year extensions for the commencement of service by paying a non-refundable annual reservation fee equal to one-month's charge for firm transmission service for each year within fifteen days of notifying the transmission provider it intends to extend the commencement of service. For extensions of one year or more, the transmission customer must request the extension no later than ninety days before the commencement of service.
3. In 2006, AES Shady Point requested 320 MW of transmission service from AES Shady Point to AEP West for one year commencing January 8, 2008. SPP granted AES Shady Point 271 MW of service based on its Aggregate Transmission Service Study Procedures in Attachment Z1. Soon after, AES Shady Point discovered that it no longer

needed the transmission service granted by SPP because it had recently renewed a power sales agreement with Oklahoma Gas and Electric Company. No other parties have requested the same transmission capacity, and AES Shady Point has tried to locate another party in need of the transmission service.

4. Last year, AES Shady Point timely requested a one-year extension of the transmission service commencement date pursuant to section 17.7 of SPP's Tariff to January 8, 2009. Since then, AES Shady Point has been unable to locate another party in need of transmission service. According to the petition, AES Shady Point intended to request another extension under section 17.7. However, due to administrative oversight, AES Shady Point did not make its formal request for such extension until December 4, 2008, not within the required ninety days notice for extensions pursuant to the SPP Tariff. Thus, without waiver of the required ninety day notice period to extend, AES Shady Point will be required to pay for unneeded transmission service.

5. SPP requests that the Commission grant SPP the authority to waive the notice requirement in section 17.7 of its Tariff for AES Shady Point, because the provisions of the SPP Tariff do not permit it to grant such waivers. As noted above, this transmission service is not needed by AES Shady Point, and failure to timely request an extension was due to administrative oversight.

6. Notice of the filing was published in the *Federal Register*, 74 Fed. Reg. 1207 (2009), with interventions, comments and protests due on or before January 12, 2009. No protests or comments were received.

7. The Commission has granted certain waiver requests where an emergency situation or an unintentional error was involved.¹ Waiver, however, is not limited to those circumstances. Where good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, the Commission has found that a one-time waiver is appropriate.² Here, we find it reasonable to grant the waiver to permit AES Shady Point to avoid paying for

¹ See, e.g., *ISO New England, Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (using reasoning typically applied to waivers to allow limited and temporary change to a tariff to correct an error); *Great Lakes Transmission Limited Partnership*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event granted for good cause shown); and *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

² *Cal. Indep. System Operator Corp.*, 124 FERC ¶ 61,031, at P 19 (2008), *reh'g denied*, 124 FERC ¶ 61,293 (2008).

transmission service it does not need. Therefore, we grant SPP the authority to waive its section 17.7 notice requirements and allow AES Shady Point to extend the commencement of its transmission service for an additional year.

By direction of the Commission. Commissioner Kelliher is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.