

127 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER09-659-000
ER09-659-001

ORDER ACCEPTING AND SUSPENDING TARIFF REVISION,
SUBJECT TO REFUND

(Issued April 10, 2009)

1. On February 6, 2009, as amended on February 9, 2009, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act,¹ an executed letter agreement (Agreement) between SPP and Entergy Services, Inc. (Entergy) to address inter-regional planning between SPP and Entergy in accordance with Order No. 890.² For the reasons discussed below, the Commission will accept the Agreement for filing, suspend it for a nominal period and make it effective April 8, 2009, subject to refund and to the outcome of SPP's Order No. 890 compliance filing proceeding in Docket No. OA08-61-001 and Entergy's Order No. 890 compliance filing proceeding in Docket No. OA08-59-004.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity

¹ 16 U.S.C. § 824d (2006).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266, at P 523-528 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261, at P 226 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order 890-C, 74 Fed. Reg. 12,540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009).

regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop transmission planning processes that satisfy nine principles and to describe those processes clearly in a new attachment (Attachment K) to their OATTs.

3. SPP is a Commission-approved regional transmission organization that also serves as Entergy's Independent Coordinator of Transmission. On December 14, 2007, in Docket No. OA08-61-000, SPP filed its transmission planning process as a proposed attachment to its OATT as required by Order No. 890.³ In an order issued on July 11, 2008, the Commission accepted SPP's filing but required SPP to submit a compliance filing to, among other things, describe how the provisions of each of the agreements it has with its neighboring regions meet the inter-regional coordination requirements of Order No. 890 and, if necessary, propose revised Attachment O language.⁴

4. On December 7, 2007, Entergy filed its Attachment K transmission planning process in Docket No. OA08-59-000. On September 18, 2008, the Commission accepted Entergy's filing but required Entergy to submit a compliance filing to, among other things, describe in detail its process for coordinating with interconnected systems to meet the inter-regional coordination requirements of Order No. 890, including identifying in its revised Attachment K all neighboring transmission owners with which it will coordinate.⁵ On December 9, 2008, Entergy submitted a request for an extension of time to February 6, 2009, for the submission of process for inter-regional coordination with SPP. On December 17, 2008, the Commission granted Entergy's request.

5. On February 6, 2009, the same day SPP submitted the instant filing, SPP submitted its compliance filing in Docket No. OA08-61-001. Entergy also submitted its compliance filing in Docket No. OA08-59-004 on February 6, 2009.

II. SPP's Filing

6. SPP states that SPP and Entergy have negotiated the Agreement to adopt an inter-regional planning methodology and that the Agreement obligates SPP and Entergy to

³ SPP incorporated its transmission planning process in Attachment O of its OATT.

⁴ See *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 49 (2008) (July 11, 2008 Order).

⁵ *Entergy Services, Inc.*, 124 FERC ¶ 61,268, at P 102 (2008).

engage in coordinated transmission system planning in accordance with the Principles Governing Regional Planning (Principles) that are part of the Agreement. SPP also states that the Principles establish that SPP and Entergy will, as required by Order Nos. 890 and 890-A and other applicable Commission orders: (a) share system plans to ensure that they are simultaneously feasible and otherwise share and use consistent assumptions and data in the development of such plans; and (b) identify system enhancements that could relieve congestion or integrate new resources.⁶ SPP states that the Agreement also provides for the sharing of data necessary to engage in coordinated transmission system planning, the allocation of the costs of transmission studies and upgrades, stakeholder involvement, and the treatment of confidential information and Critical Energy Infrastructure Information. Under the Agreement, SPP and Entergy will form a Joint Planning Committee to oversee transmission planning activities.

7. SPP notes that in the July 11, 2008 Order, the Commission required SPP to describe how the provisions of each of the agreements it has with its neighboring regions meet the inter-regional coordination requirements of Order No. 890 and that it filed its response to the July 11, 2008 Order contemporaneously with the instant filing.⁷ SPP requests an effective date of April 8, 2009, for the Agreement.

III. Notice and Responsive Pleadings

8. Notices of SPP's filing were published in the *Federal Register*, 74 Fed. Reg. 7883 (2009) and 74 Fed. Reg. 8525 (2009) with interventions and protests due on or before February 27, 2009 and March 2, 2009, respectively. Entergy timely filed a motion to intervene and the Arkansas Public Service Commission (Arkansas Commission) filed a notice of intervention and comments. East Texas Cooperatives⁸ and Interested Parties⁹ filed motions to intervene and comments. Lafayette Utilities System (Lafayette) filed a

⁶ SPP Filing at 3.

⁷ *Id.*

⁸ East Texas Cooperatives are East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas.

⁹ Interested Parties are American Electric Power Service Corporation, Oklahoma Gas & Electric Company, The Empire District Electric Company, Westar Energy, Inc., Kansas Gas and Electric Company, Southwestern Public Service Company, Oklahoma Municipal Power Authority, Kansas City Power & Light Company, Arkansas Electric Cooperative Corporation, Dogwood Energy, LLC, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, LLC, and Golden Spread Electric Cooperative, Inc.

motion to intervene and jointly filed comments with Arkansas Electric Cooperative Corporation (AECC). Union Power Partners, L.P. (Union Power) filed a motion to intervene and protest.

9. The Arkansas Commission, Interested Parties, Lafayette and AECC all state that the Agreement is not adequate to meet Order No. 890's requirement for regional participants and regional planning between SPP and Entergy, and that a comprehensive seams agreement is needed. Lafayette and AECC attach and incorporate their joint comments on Entergy's compliance filing in Docket No. OA08-59-004, and Union Power attaches its protest in that docket. Lafayette and AECC assert that as part of its compliance filing, Entergy incorporated the text of the Agreement as section 13 of Attachment K of its OATT. Union Power asserts out that the Agreement will need to be amended to match any revisions required in Docket No. OA08-59-004.

10. Union Power argues that the Agreement lacks the specificity contained in Entergy's proposed Attachment K. Union Power points out that the language from the Agreement inserted in Entergy's Attachment K is identical to the Principles, except that the Attachment K internal references are to section numbers while the Agreement internal references are to "this Article" regardless of whether the reference is limited to the specific section in which it appears. Union Power provides a table matching the section number of Attachment K to the "this Article" reference in the Principles. It requests that the Commission require SPP and Entergy to revise the Agreement to add the specificity that will be set forth in Entergy's Attachment K.

11. East Texas Cooperatives states in their comments that it is critical that all stakeholders have an active role in regional planning. East Texas Cooperatives assert that several provisions of the Agreement are vague or unclear, particularly as to whether stakeholders are included. East Texas Cooperatives list twelve ambiguities they believe need to be clarified.

12. The Arkansas Commission and Interested Parties state that the Agreement is a step forward, formalizing a pre-existing informal agreement between Entergy and SPP as the Independent Coordinator of Transmission. However, they assert that a more comprehensive seams agreement is needed to address a number of issues including: identifying regularly congested flowgates and how congestion will be addressed; describing cost allocation for economic facilities that benefit SPP and Entergy; and describing how costs of third party impacts from projects on each side of the seam will be recovered. The Arkansas Commission further states that a seams agreement should explicitly comprehend the effects of the withdrawal of any Entergy operating company from the Entergy System Agreement, including having a "hold harmless" provision.

The Arkansas Commission states that further coordination of activity between SPP and Entergy is required for SPP and Entergy to be in compliance with Order No. 890, contrary to Entergy's assertion in Docket No. OA08-59-004 that Entergy and SPP are considering further coordination activities that go beyond the requirements of Order No. 890.

13. Interested Parties state that a seams agreement should also address the following: how Entergy and SPP will enhance customer access to transmission through redispatch and how Entergy and SPP will share the cost of redispatch; how to allocate revenues from sales from upgrades on the Entergy system paid for by SPP customers to alleviate third party impacts of SPP-area projects on the Entergy system; transmission requests for transmission paths through both regions; the coordination of transmission sales through both regions; integrated studies and coordination of analysis for transmission service requests, interconnection, and feasibility studies; operational data sharing over the seam; the updating of data in SPP's and Entergy's power flow model databases; extra high voltage build-out; equitable treatment under each tariff; the coordination of the building of reliability facilities; and the interpretation of NERC Planning Standard TPL-003. Interested Parties note that SPP has a 10-year planning horizon for the SPP system, while Entergy and the Independent Coordinator of Transmission have 3-year planning horizons for Entergy's system. Also, Indicated Parties state that Entergy has refused invitations from SPP to join SPP's reliability assessment process.

14. Both the Arkansas Commission and Interested Parties state that the Commission should require the parties to submit a timeline for completion of a comprehensive seams agreement. The Arkansas Commission also states that the Commission should require SPP and Entergy to file a work plan for completion of a seams agreement and file a progress report every 30 days.

IV. Discussion

A. Procedural Matters

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

B. Commission Determination

16. The Commission will accept the Agreement for filing and suspend it for a nominal period, subject to refund and to the outcome of related proceedings as discussed below.

17. In Order No 890, the Commission directed all transmission providers to develop transmission planning processes that satisfy nine principles, including the regional participation principle. In the July 11, 2008 Order addressing SPP's proposed transmission planning process, the Commission found that SPP had not adequately addressed regional participation and directed SPP to submit a compliance filing describing how the provisions of each of the agreements it has with its neighboring regions meet the inter-regional coordination requirements of Order No. 890 and, if necessary, propose revised Attachment O language.

18. SPP filed its response to the July 11, 2008 Order in Docket No. OA08-61-001 contemporaneously with the instant filing. In its filing in Docket No. OA08-61-001, SPP noted that it was simultaneously filing this Agreement and stated that the Agreement was evidence of its compliance with the Order No. 890 regional participation requirement regarding Entergy.¹⁰ While SPP chose to make two separate filings to address its compliance with the July 11, 2008 Order, the Commission finds that the Agreement should be reviewed in context with SPP's response in Docket No. OA08-61-001 to the Commission's directive for SPP to submit a filing describing how the provisions of each of the agreements it has with its neighboring regions meet the inter-regional coordination requirements of Order No. 890.

19. Similarly, we find the language of the Principles to be so similar in substance to the language Entergy has proposed in section 13 of Attachment K of its OATT to warrant simultaneous consideration of issues raised by the SPP and Entergy proposals.¹¹ In short, many of the concerns raised in the comments and protest involve whether the Agreement satisfies both SPP's and Entergy's compliance with Order No. 890's regional participation principle. Accordingly, we will accept and nominally suspend the Agreement and make it subject to the outcome of SPP's and Entergy's Order No. 890 compliance filing proceedings in Docket Nos. OA08-61-001 and OA08-59-004, respectively.

20. In addition, we note that certain issues raised by the interveners in this docket are also being addressed in other proceedings. For example, the Commission recently indicated its intention to undertake, with input from the state commissions and other

¹⁰ SPP February 6, 2009 Filing in Docket No. OA08-61-001 at 14-15.

¹¹ For example, as noted above, Union Power, Lafayette and AECC submitted their protest and comments, respectively, filed in Docket No. OA08-59-004 as protest and comments to the Agreement.

stakeholders, a comprehensive assessment of the success of the Independent Coordinator of Transmission arrangement in addressing transmission access issues on Entergy's transmission system.¹²

21. Finally, we note that in Docket No. ER09-636-000 two Entergy operating companies (Entergy Arkansas, Inc. and Entergy Mississippi, Inc.) have filed to withdraw from the Entergy System Agreement. That filing is currently pending before the Commission, and we find that issues that the Arkansas Commission raises regarding the withdrawal of any Entergy operating companies from the Entergy System Agreement are more appropriately addressed in that proceeding.

The Commission orders:

The Agreement is hereby accepted for filing and suspended for a nominal period, to become effective April 8, 2009, subject to the outcome of Docket Nos. OA08-61-001 and OA08-59-004, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² See *Entergy Services, Inc.*, 126 FERC ¶ 61,227, at P 82 (2009):

[W]e plan to seek the input of individual state commissions regarding the content of the Independent Coordinator of Transmission's second annual report and discuss with the commissions the idea of convening a conference of all commissions, the Independent Coordinator of Transmission, Entergy, and customers to undertake a comprehensive assessment of the success of the Independent Coordinator of Transmission arrangement.