

131 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Southwest Power Pool, Inc.

Docket No. ER10-798-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued April 26, 2010)

1. On February 25, 2010, Southwest Power Pool, Inc. (SPP) submitted a proposed revision to Attachment AD, Tariff Administration Agreement (Agreement), of the SPP Open Access Transmission Tariff (Tariff or OATT). The Agreement governs the relationship between SPP and the Southwestern Power Administration (Southwestern) related to the provision of certain transmission related services. SPP's filing proposes to extend the term of the Agreement by one year. As discussed below, the Commission accepts SPP's proposal, effective February 1, 2010.

I. Background

2. SPP is a Commission-approved regional transmission organization (RTO). As an RTO, SPP administers transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

3. Southwestern is federal power marketing administration within the United States Department of Energy¹ and had been a transmission owning member of SPP beginning June 1, 1998. However, Southwestern terminated its Membership Agreement with SPP effective October 31, 2004.

¹ Southwestern was established in 1943 by the Secretary of Interior and was transferred by the Department of the Interior to the Department of Energy in 1977 pursuant to the Department of Energy Organization Act. 42 U.S.C. § 7101 (2000). Southwestern markets power generated at multi-purpose reservoir projects constructed by the Corps of Engineers of the Department of the Army. As a federal power marketing administration, Southwestern is not a public utility under section 201 of the Federal Power Act (FPA) subject to sections 205 and 206 of the FPA. *See* 16 U.S.C. §§ 824, 824d, 824e (2006).

4. On May 16, 2005, SPP filed with the Commission a revision to Attachment AD of the SPP Tariff to incorporate the Agreement governing its relationship with Southwestern. The Agreement provides for SPP to administer the Southwestern Tariff and provide scheduling services, regional reliability council services, operating reserve sharing, Open Access Same-Time Information System administration, and reliability coordination. The Agreement also permits SPP to use Southwestern's transmission facilities under the SPP Tariff, while ensuring that Southwestern complies with federal law. The Commission accepted the Agreement on June 30, 2005.²

5. Over the last five years, SPP has filed proposals on an annual basis to extend the term or otherwise modify the Agreement. The Commission accepted each of these proposals.³ The most recent amendment extended the term of the Agreement to January 31, 2010.

II. SPP's Filing

6. On January 28, 2010, SPP and Southwestern executed an amendatory agreement to extend the term of the Agreement through January 31, 2011. On February 25, 2010, SPP filed the amendatory agreement with the Commission as a proposed revision to Attachment AD of its Tariff, to be effective February 1, 2010.

7. SPP states that acceptance of the proposed modification is warranted to avoid a disruption in the administration of transmission service over Southwestern's transmission facilities by SPP after expiration of the Agreement on January 31, 2010. SPP states that extension of the Agreement will allow SPP to continue to administer transmission service on terms that are mutually agreeable to Southwestern. SPP notes the Commission has accepted SPP's prior proposals to extend the term of the Agreement. SPP further notes that the Commission has repeatedly acknowledged the benefit of public power participation in regional transmission organizations.⁴

² *Southwest Power Pool, Inc.*, Docket No. ER05-972-000 (June 30, 2005) (unpublished letter order).

³ *Southwest Power Pool, Inc.*, Docket No. ER06-344-000 (February 14, 2006) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER07-408-000 (February 28, 2007) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER08-1161-000 (August 20, 2008) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER09-801-000 (April 30, 2009) (unpublished letter order).

⁴ *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,239, at P 15 (2008).

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 75 FR 11161 (2010), with interventions and protests due on or before March 18, 2010. Southwestern filed a timely motion to intervene. American Electric Power Service Corporation (AEP) filed a timely motion to intervene and protest. On April 1, 2010, Southwestern filed a motion to dismiss and answer to the AEP protest.

9. AEP states it is concerned that the operation of the proposed revised Agreement will result in the assignment of cost responsibility to SPP members without SPP members' input. AEP explains that pursuant to section 14 of the Agreement, Southwestern's participation in any funding of expansion or upgrade projects on the Southwestern system is at Southwestern's sole discretion.⁵ AEP states that even when a project may be needed to meet future reliability needs or improve the existing service, Southwestern can elect not to participate in the funding of the project. AEP contends that this places SPP customers in the position of being required to support the full cost of the project.

10. AEP states that in this situation, there is no mechanism for revenue credits for future sales of transmission service, nor is there any recognition of future use of the facilities by Southwestern itself. Moreover, AEP asserts that there is no requirement in the Agreement that SPP consult with SPP members in determining the need for an upgrade on the Southwestern system. AEP suggests that there should be some mechanism that provides for SPP customer input and an equitable division of the expense and future revenue credits for SPP members who support the cost of Southwestern facilities.

⁵ Section 14 of the Agreement specifies the parties' rights and obligations relating to transmission expansions, interconnections, modifications and additions to Southwestern's facilities. Section 14 states cost responsibility for these upgrades or expansions will be determined as follows:

...SPP shall submit its findings to Southwestern along with a recommendation of what SPP proposes as Southwestern's share of such upgrade/expansion costs and a proposed method of participation. Southwestern will evaluate SPP's proposal and provide a response to SPP as to the dollar amount and the method by which Southwestern agrees to participate.

See SPP Tariff, Fifth Revised Vol. No. 1, Attachment AD, Article I, Section 14 (a).

11. AEP also asserts that it is unclear what mechanism SPP transmission customers can utilize to appeal any cost assignment that occurs under the Agreement. AEP suggests that a possible remedy would be to clarify that at least one of the members of the Coordination Committee⁶ on behalf of SPP will be a representative from an SPP Member that is either a Transmission Owner or Network Transmission Service customer under the Tariff. In addition, AEP argues that SPP should clarify that the construction requirements resulting from SPP's application of the SPP OATT will be governed by the terms and conditions of the SPP OATT.

12. In its motion to dismiss and answer to the AEP protest, Southwestern explains that the filing does not propose modifications to section 14 of Attachment AD, but simply extends the term of the Agreement for one year. Southwestern argues that AEP fails to establish any issue in its protest that relates to the revision of SPP's Tariff to extend the term of Attachment AD, which is the sole issue in this docket. Southwestern asserts that the Commission has accepted the Agreement and extensions to the term of the Agreement numerous times. Southwestern contends that AEP had opportunity to object when these provisions were first filed at the Commission. Southwestern argues that raising the issue now is an impermissible collateral attack on prior Commission orders,⁷ and that the issues presented in AEP's protest are outside the scope of the proceeding in this docket.

13. Southwestern states that in the alternative, the Commission should deny AEP's protest on substantive grounds. Southwestern explains that the Agreement correctly recognizes Southwestern's non-jurisdictional status and reflects Southwestern's operating, budgeting, and statutory limitations as a federal power marketing administration. Southwestern states that the Agreement was written to permit the use of federal transmission facilities by SPP and to permit Southwestern's participation in SPP, while still allowing Southwestern to comply with the federal obligations and statutory

⁶ Section 15 of the Agreement establishes a Coordination Committee to develop procedures for implementing the operating and technical requirements of the Agreement. Section 15 states that Southwestern and SPP shall each appoint two members of the Coordination Committee and that the decisions of the Coordination Committee must be unanimous.

⁷ *Southwest Power Pool, Inc.*, Docket No. ER05-972-000 (June 30, 2005) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER06-344-000 (February 14, 2006) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER07-408-000 (February 28, 2007) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER08-1161-000 (August 20, 2008) (unpublished letter order); *Southwest Power Pool, Inc.*, Docket No. ER09-801-000 (April 30, 2009) (unpublished letter order).

restrictions applicable to federal power marketing administrations. Southwestern explains that as a power marketing administration, it is bound by the requirements in the Anti-Deficiency Act,⁸ the Flood Control Act of 1944,⁹ and the National Environmental Policy Act (NEPA),¹⁰ and the Federal Utility Participation in Transmission Organizations Act.¹¹

14. Southwestern contends that section 14 of the Agreement creates a mechanism by which Southwestern might voluntarily seek Congressional funding for the costs of any upgrades or expansions recommended by SPP. Southwestern states that this provision ensures that it does not violate the Anti-Deficiency Act by allocating funds without Congressional authorization. Furthermore, Southwestern explains that section 14 ensures compliance with the Flood Control Act of 1944, which states that Southwestern may only construct or acquire transmission lines and related facilities as may be necessary in order to market federal power. In addition, Southwestern states that it must be able to approve or disprove modifications to Southwestern's facilities to comply with NEPA. Southwestern asserts that by suggesting that the Commission require Southwestern to comply with the SPP Tariff transmission expansion cost methodology, AEP is attempting to bind Southwestern to obligate Congressionally-allocated funds for unknown future costs, which Southwestern is prohibited from doing under the Anti-Deficiency Act and the Federal Utility Participation in Transmission Organizations Act.

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 (2009), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits answers unless otherwise ordered by the decisional authority. We will accept Southwestern's answer because it has provided information that assisted us in our decision-making process.

⁸ 31 U.S.C. § 1341 (2006).

⁹ 16 U.S.C. § 8250 (2006).

¹⁰ 42 U.S.C. § 4331 (2006).

¹¹ 42 U.S.C. § 16431(c)(2) (2006).

B. Commission Determination

16. The Commission accepts SPP's proposed revision to Attachment AD of its Tariff to extend by one year the term of the Agreement governing the relationship between SPP and Southwestern. Acceptance of the proposed modification will avoid disruption in the administration of transmission service over Southwestern's system by SPP and is consistent with prior acceptance of similar proposed extensions.¹² Moreover, the Commission's acceptance of this proposal will ensure that SPP's transmission customers will continue to benefit from access to Southwestern's transmission facilities under the SPP Tariff.

17. AEP argues the Commission should require SPP to clarify how the cost of network upgrades on the Southwestern system for which Southwestern declines to pay will be allocated. However, the Commission is unable to provide the relief AEP requests. To the extent that AEP is concerned with how SPP may allocate to its members costs related to upgrades and expansions on the Southwestern transmission system, that issue is beyond the scope of this proceeding, which is merely a further extension of the pre-existing Agreement.¹³

18. In the future, when faced with a proposal by SPP to allocate costs to expand the Southwestern transmission system, AEP may file a complaint against SPP pursuant to FPA section 206 should it believe that that is appropriate. We also encourage AEP to participate in the SPP transmission planning process and express in that forum any concerns it may have. In addition, AEP may take advantage of the stakeholder participation provisions in Attachment O, Transmission Planning Process, of Southwestern's reciprocity OATT.¹⁴ Both of these latter options may effectively resolve any such concerns without the need for formal litigation before the Commission.

¹² See *supra* note 3.

¹³ See *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,142, at P 32 (2009) (rejecting a party's comment opposing elimination of CAISO's unsecured credit limit as beyond the scope of the proceeding, as CAISO was not proposing to eliminate the unsecured credit limit); and *Nevada Power Company*, 130 FERC ¶ 61,147, at P 28 (2010) (rejecting a Nevada Power's concern about effects of an exemption for El Dorado solar generating facility from Nevada Power's reactive power requirements on the safety and reliability of the grid as beyond the scope of the proceeding).

¹⁴ Southwest Power Administration, *Open Access Transmission Tariff, Attachment O* (August 2009), available at <http://www.swpa.gov/PDFs/SWPAOpenAccessTariff.pdf>.

The Commission orders:

SPP's proposed revisions are hereby accepted to become effective February 1, 2010, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.