

131 FERC ¶ 61,088  
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 Nos. ER10-550-000  
ER10-550-001

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued April 30, 2010)

1. On December 31, 2009, Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (Tariff) to incorporate provisions specifying the process by which transmission customers add, modify, or abandon the local physical delivery point facilities necessary to deliver power and energy pursuant to their transmission service agreement under the SPP Tariff. The filing also included proposals for various clarifying provisions.<sup>1</sup> In this order, the Commission conditionally accepts the tariff provisions effective May 1, 2010.

**I. Background**

2. SPP states that it currently processes requests to add, modify or abandon delivery point facilities using its Aggregate Transmission Service Study procedure. SPP explains that the Aggregate Transmission Service Study combines all designated network resource and long-term firm point-to-point requests received during a specified time period into a single aggregate study and determines the appropriate upgrades that will be needed to accommodate the aggregate group. SPP asserts that using its Aggregate Transmission Service Study procedure to process requests to add, modify or abandon delivery point facilities that are made to accommodate the growth or reconfiguration of existing load along with requests to serve entirely new load in this Aggregate Transmission Service Study procedure results in unnecessary delays for customers with existing load.

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<sup>1</sup> On January 21, 2010, SPP filed an errata relating to tariff sheet designations. On February 23, 2010, SPP amended the filing to request that the Commission defer the effective date of the tariff provisions until May 1, 2010.

## II. SPP's Filing

### Attachment AQ

3. SPP proposes a separate process whereby transmission customers can request to add, modify, or abandon delivery points under a new Attachment AQ to SPP's OATT. SPP states that these proposed tariff revisions will coordinate and standardize its procedures by which delivery points are added, modified, or abandoned. Under the new Attachment AQ, SPP and the relevant transmission owner will study such requests and report their findings to the transmission customer. The engineering, design, construction, and cost of any local facilities needed to fulfill the request will be established in a written agreement between the relevant transmission owner and the transmission customer. SPP asserts that the proposal is just and reasonable because it will eliminate unnecessary delays in fulfilling requests to add, modify, or abandon delivery point facilities to accommodate the growth or reconfiguration of existing load.

4. The proposed Attachment AQ will govern changes in delivery point facilities and identify the responsibilities and the response times of the parties required in order to achieve a timely conclusion to the requested change. Attachment AQ and the accompanying revisions require transmission customers to make their requests in writing to SPP and the relevant transmission owner and each request must contain as much information known or projected at the time of the request.

5. Under the proposed procedures, once SPP and the relevant transmission owner receive a request for addition, modification or abandonment of delivery point facilities, each will concurrently conduct all necessary studies associated with the requested change.<sup>2</sup> Attachment AQ provides that once the requisite studies are completed, the transmission owner and the customer will agree to and specify in writing each party's responsibility for engineering, design, construction, and cost of the facilities described in the report. SPP contends that this provision is necessary because the facility modifications may require local facility upgrades, which are not subject to the cost allocation provisions of SPP's Tariff. Currently, SPP states that its practice has been to

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<sup>2</sup> These studies include a Load Connection Study and, in certain circumstances, a Delivery Point Network Study. The Load Connection Study will be initiated by the customer's execution of a Load Connection Study agreement and performed by the transmission owner at the customer's expense. Once transmission owner completes the Load Connection Study, it will issue a report. Simultaneously with the Load Connection Study, SPP performs a preliminary assessment of the impact on its transmission system. If SPP determines that a change to a delivery point facility will have a significant impact on its transmission system, SPP will conduct a Delivery Point Network Study at the customer's expense.

allow the customer and the transmission owner to establish how such upgrades are constructed and funded in a separate agreement. In the filing, SPP proposes to standardize this practice by clarifying how these upgrades will be handled.

6. The filing states that during the course of a Load Connection Study or Delivery Point Network Study, any party may suggest changes in the planned facilities and, to the extent such a change is acceptable to the other parties, the transmission owner and/or SPP will continue with any restudy as necessary.

### **Additional Tariff Changes**

#### **a. Section 31.2**

7. SPP similarly proposes to revise section 31.2 to provide that the addition, modification, or abandonment of delivery point facilities will be governed by the provisions of section 31.2 and the new Attachment AQ.<sup>3</sup> Revised section 31.2 states that network customers are required to provide SPP and the relevant transmission owner with as much advance written notice as reasonably practicable of any physical addition or abandonment of a delivery point facility, or any modifications requiring action by the transmission owner to existing delivery point facilities. Subsections 31.2a, 31.2b, and 31.2c govern the specific instances in which a network customer requests a new delivery point, when a network customer desires to abandon a delivery point, and when a network customer requests modification of a delivery point, respectively.

8. Section 31.2d states that any costs related to the construction, operation, maintenance, and retirement of a network customer's delivery point facilities, other than any required network upgrades, would be charged to the network customer in accordance with SPP's Tariff and Commission policies. If network upgrades are required pursuant to Attachment AQ study results, such upgrades will be deemed to be reliability upgrades in accordance with section III of Attachment O of SPP's Tariff, and funded pursuant to section III of Attachment J of SPP's Tariff. SPP states that this is consistent with its obligation to plan for and accommodate the growth of existing load under its Tariff.

#### **b. Section 31.3**

9. SPP adds a new section 31.3, which applies where a transmission customer funds construction of the added or modified delivery point facilities and where such payments may be considered a tax event. This section requires the network customer to reimburse the transmission owner for the tax effect of such a contribution-in-aid-of-construction. Any tax effect would be computed consistent with the methodology set forth in *Ozark*

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<sup>3</sup> See Exhibit II at revised section 31.2

*Gas Transmission.*<sup>4</sup> SPP contends that the new section 31.3 is necessary because, as described above, some requested changes to delivery point facilities may require local facility upgrades, which are not subject to the cost allocation provisions of SPP's Tariff.

**c. Section 31.4**

10. Proposed section 31.4, in conjunction with Attachment AQ, govern the addition, modification, or abandonment of any delivery point facilities for network load not physically interconnected with SPP's transmission system, notwithstanding the provisions of any agreement a network customer may have with another transmission provider. Under this proposed section, where a network customer gives notice of its intent to add a new delivery point facility for load that will be served from the customer's existing designated resources, then the request can be processed through the new Attachment AQ.<sup>5</sup> If the customer wishes to designate a new network resource, the request must be made through SPP's Aggregate Transmission Service Study.

**Miscellaneous Revisions**

11. SPP proposes two sets of miscellaneous provisions intended to clarify SPP's Tariff. First, SPP proposes to revise the definition of "wholesale distribution service" and schedule 10 (Wholesale Distribution Service) of its Tariff to specify that wholesale distribution service will be provided in conjunction with both point-to-point and network transmission service.

12. SPP also proposes new language to section 2.0 of Attachment 1 to its *pro forma* network service agreement requiring the owner of metering equipment at each connection and delivery point for a network customer's load to provide SPP and the network customer or the applicable transmission owner with data required for billing on a monthly basis. Additionally, SPP proposes new language in section 8.1 of its *pro forma* network operating agreement, which requires meter owners to permit network customers and/or host transmission owners to remotely interrogate, through read-only access, any delivery point meter for the purpose of obtaining load data and other data.

**III. Notices of Filings and Responsive Pleadings**

13. Notice of SPP's December 31, 2009 filing was published in the *Federal Register*, 75 Fed. Reg. 2531 (2010), with interventions or protests due on or before January 21,

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<sup>4</sup> 56 FERC ¶ 61,349 at 62,365 (1991).

<sup>5</sup> SPP notes that this is because such a request reflects the normal growth of existing load, which SPP is required to plan for and accommodate, and does not constitute a new transmission service request.

2010. Xcel Energy Services, Inc., ITC Great Plains, LLC, New Mexico Cooperatives,<sup>6</sup> and Western Farmers Electric Cooperative (WFEC) filed timely motions to intervene. Westar Energy, Inc. (Westar), Oklahoma Gas and Electric Company (OG&E), and American Electric Power Service Corporation (AEP) filed motions to intervene out-of-time. East Texas Cooperatives<sup>7</sup> filed a timely motion to intervene and comments. Golden Spread Electric Cooperative, Inc. (Golden Spread) filed a timely motion to intervene and a conditional protest. SPP filed an answer to the East Texas Cooperatives' comments. WFEC filed an answer in response to SPP's answer. Notice of SPP's January 21, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 5307 (2010), with interventions or protests due on or before February 11, 2010. AEP filed a timely motion to intervene. Notice of SPP's February 24, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 9892 (2010), with interventions or protests due on or before March 16, 2010. No interventions or protests were filed with respect to the February 24, 2010 filing.

### **East Texas Cooperatives' Comments**

14. East Texas Cooperatives generally support SPP's efforts to formalize and streamline the process for addressing requests to add, modify, or abandon delivery point facilities. However, East Texas Cooperatives are concerned that the procedures seem to envision that SPP will never be a party to any agreement between a transmission owner and transmission customer concerning delivery point facilities. East Texas Cooperatives point to the following proposed language:

[t]he engineering, design, construction, and cost of any local facilities needed to accommodate the delivery point facility addition or modification request will be established in a written agreement between the customer and the relevant [t]ransmission [o]wner.<sup>8</sup>

East Texas Cooperatives state that SPP justifies its absence from these agreements by stating that these requests may require local facility upgrades, which are not subject to the

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<sup>6</sup> New Mexico Cooperatives are Central Valley Electric Cooperative, Inc., Farmers Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc.

<sup>7</sup> East Texas Cooperatives are East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives).

<sup>8</sup> East Texas Cooperatives' Comments, at 3.

cost allocation provisions in SPP's Tariff.<sup>9</sup> East Texas Cooperatives contend that SPP fails to explain fully why such upgrades could not be considered Zonal Reliability Upgrades,<sup>10</sup> which, if classified as such, would be subject to SPP's cost allocation procedures.

15. East Texas Cooperatives also contend that SPP could also be a party to the delivery point agreements for reasons other than cost allocation. SPP could participate as a billing agent for the transmission owner, as a party responsible for performing studies in conjunction with a delivery point agreement, and also as a provider of dispute resolution services, if necessary.

16. Thus, East Texas Cooperatives contend that the proposed tariff revisions are incomplete to the extent they fail to provide any means for SPP to become a party to a delivery point agreement between a transmission owner and a transmission customer.

### **Golden Spread's Conditional Protest**

17. Golden Spread appreciates the usefulness of a formal process for transmission customers to add, modify, or abandon delivery point facilities. However, Golden Spread states that the Commission should explicitly require that the process set forth by SPP also applies to changes made to the transmission system to accommodate a transmission owner's retail load, whether or not the transmission owner characterizes the affected facilities as "[d]elivery [p]oints." Golden Spread notes that "[d]elivery [p]oint" is not a defined term and therefore, Golden Spread seeks to clarify that the proposed process applies to changes in the physical load connections to the transmission system, regardless of whether the facilities in question provide service to one or more wholesale customers, to a transmission owner's retail load, or some combination thereof.

18. Golden Spread states that if, under the proposed revisions, different standards for the addition, modification and abandonment of delivery point facilities and for record retention will apply to service provided for transmission owners' native retail load as opposed to wholesale transmission customers, it protests the filing as unduly discriminatory.

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<sup>9</sup> Citing the transmittal letter at 8.

<sup>10</sup> See SPP Tariff at Section 1.50a:

Zonal Reliability Upgrades: These upgrades included in and constructed pursuant to the SPP Transmission Expansion Plan in order to ensure the reliability of the Transmission System identified because of application of a Transmission Owner's company specific planning criteria.

**SPP's Answer**

19. Responding to the comments of East Texas Cooperatives, SPP argues that requiring SPP to be a party to local distribution facilities agreements would violate Federal Power Act (FPA) section 201<sup>11</sup> and would also be inconsistent with Commission precedent.<sup>12</sup> SPP states that local distribution facility agreements would govern physical modifications to delivery point facilities solely on the transmission owner's distribution system. SPP contends that according to FPA section 201,<sup>13</sup> the Commission lacks jurisdiction over facilities that are not used to provide jurisdictional service. SPP states that the local distribution facility agreements between the customer and the relevant transmission owner that are contemplated by SPP's proposed Attachment AQ will only address the engineering, design, construction, and cost allocation of local distribution facilities needed to accommodate a delivery point modification request. As such, SPP states that the agreements are non-jurisdictional and the Commission cannot require SPP to be a party to these agreements.

20. SPP further argues that any mandate by the Commission that SPP be a party to such agreements would be inconsistent with Commission precedent. SPP contends that the Commission only requires a Regional Transmission Organization (RTO) to be a signatory to agreements that affect the operation of transmission facilities under the RTO's functional control.<sup>14</sup> The purpose of this requirement is to ensure that the RTO is fully apprised of the matters addressed in such agreements and has had the opportunity to raise any reliability concerns it might have. SPP contends that the Commission does not require an RTO to execute agreements that are not likely to have an impact on the RTO's transmission system, especially when the agreements involve local delivery services or facilities.

21. SPP also argues that East Texas Cooperatives' arguments in favor of requiring SPP to be a signatory to the local distribution facility agreements are unfounded. SPP contends that East Texas Cooperatives mistakenly believe that the local facility agreements will address the coordination of Attachment AQ studies by SPP and the

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<sup>11</sup> 16 U.S.C. § 824(b)(1) (2006).

<sup>12</sup> In its answer, SPP cites *Detroit Edison v. FERC*, 334 F.3d 48, 51 (2003) and *PJM Interconnection, LLC*, 116 FERC ¶ 61,102, at P 17-26 (2006).

<sup>13</sup> *Id.*

<sup>14</sup> Citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,172, at P 75 (2009) and *Am. Elec. Power Serv. Corp.*, 112 FERC ¶ 61,128, at P 10-11 (2005).

transmission owner. SPP claims that requiring it to sign local distribution facility agreements will not affect the coordination of Attachment AQ studies.

22. SPP challenges as mistaken East Texas Cooperatives' assertion that SPP's dispute resolution procedures would apply to a local distribution facility agreement. SPP states that the dispute resolution procedures in its Tariff only apply to disputes between a transmission customer and a transmission provider involving transmission service under the Tariff. SPP states that because it is not providing services under the local distribution facility agreements, any dispute under such agreements would not be between the customer and SPP. Thus, SPP concludes that its dispute resolution procedures would not apply.

23. Finally, SPP states that requiring it to sign local distribution facility agreements will impose unnecessary burdens on SPP and the Commission. SPP argues that having to file each local distribution facility agreement with the Commission would be an unnecessary burden, especially given the fact that the proposed tariff provisions do not include a *pro forma* agreement.

#### **Western Farmers Electric Cooperative's Answer**

24. WFEC states that it generally supports the SPP answer and its request that the Commission reject East Texas Cooperatives' proposal that SPP be a party to agreements related to local delivery point facilities. WFEC endorses SPP's contention that requiring SPP to become a signatory to these local distribution facility agreements would be an administrative burden, stating that WFEC alone has approximately 300 local delivery points.

25. WFEC also opposes Golden Spread's contention that the Commission should require transmission owners to maintain records identifying changes to the transmission system pursuant to Attachment AQ, along with costs incurred to study and implement such changes. WFEC states that the Commission does not have jurisdiction over the agreements at issue and that Golden Spread has not provided any evidence justifying its proposed requirement.

#### **IV. Discussion**

##### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant Westar's, OG&E's, and

AEP's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by SPP and WFEC, because they have provided information that assisted us in our decision-making process.

### **B. Commission Determination**

29. We find that SPP's proposed revisions to its Tariff, including the addition of new Attachment AQ, are just and reasonable, subject to the condition noted below. SPP's proposed revisions provide a separate and more efficient and standardized process for its transmission customers to add, modify, or abandon delivery point facilities associated with growth or reconfiguration of existing load.

30. We find that whether a local distribution facilities agreement must be filed with the Commission depends on the nature of the facilities involved and service being provided. If the wholesale sale or transmission of electric energy in interstate commerce does not occur over such delivery point facilities, then they are outside of the Commission's jurisdiction under the FPA.<sup>15</sup>

31. As to the question of whether SPP must be a party to any agreement with a network customer concerning the addition, modification or abandonment of a delivery point, we note that we have not required an RTO to be a party to distribution-transmission interconnection agreements.<sup>16</sup> That is, the facilities that will be subject to the local distribution facility agreements are not under SPP's functional control and, as SPP explains, will have little or no impact on SPP's transmission system.<sup>17</sup>

32. In addition, we find that the East Texas Cooperatives incorrectly assert that SPP's dispute resolution procedures would apply to a local distribution facility agreement. As

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<sup>15</sup> See 16 U.S.C. § 824(b)(1).

<sup>16</sup> American Transmission Company LLC, *et al.*, 111 FERC ¶ 61,350 (2005).

<sup>17</sup> Because these are local distribution facilities, only the transmission owner and the network customer would be parties to a study to identify any modifications to local distribution facilities that would be required to effect service. Simultaneously, SPP also determines whether the modifications would affect SPP's transmission system. If SPP determines that there will be an impact on facilities subject to SPP's control, then an agreement involving SPP may also be necessary.

SPP explains in its answer, the dispute resolution procedures in SPP's Tariff only apply to disputes "between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff."<sup>18</sup> Here, SPP is not a party to the local distribution facility agreements and does not provide transmission service under such agreements. Therefore, SPP would not be a party to any dispute that arises under such agreements and its dispute resolution procedures would not apply. Because the local distribution facility agreement would be between a transmission owner and network customer, the dispute resolution procedures under that transmission owner's tariff would apply.

33. Golden Spread asserts that if different standards will apply to service provided for native retail load as opposed to wholesale transmission customers, the filing is unduly discriminatory. The filing does not distinguish between transmission owners that are transmission customers taking service from SPP to serve their bundled retail load and other transmission customers. Moreover, transmission owners that are not otherwise taking transmission service under the SPP Tariff to serve their bundled retail load are still subject to the non-rate terms and conditions of the tariff,<sup>19</sup> and are also subject to certain rate terms and conditions where the transmission owner is not rendering service to itself.<sup>20</sup> Therefore, we believe that Attachment AQ applies to all transmission customers and that its non-rate terms and conditions, as well as certain rate terms and conditions, apply to transmission owners that are not otherwise taking transmission service under the SPP Tariff to serve their bundled retail load. We find no language in SPP's Attachment AQ that would suggest otherwise. Accordingly, we find no merit to Golden Spread's concern that different standards for the addition, modification or abandonment of delivery point facilities and for record retention will apply to service provided for transmission owners' native retail load as opposed to wholesale transmission customers.

34. Finally, we note that SPP's proposed tariff sheets have a proposed effective date of March 1, 2010. As noted above, SPP asked the Commission to defer the effective date of the tariff sheets until May 1, 2010. We accept the proposed tariff sheets effective May 1, 2010 subject to SPP making a compliance filing within 30 days of the date of this order to correctly designate the tariff sheets effective May 1, 2010.

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<sup>18</sup> SPP February 12, 2010 Answer at 6 (*citing* §§ 12.1 and 12.2 to FERC Electric Tariff, Fifth Revised Volume No. 1).

<sup>19</sup> *See* § 39.2 to FERC Electric Tariff, Fifth Revised Volume No. 1.

<sup>20</sup> *See, e.g.*, § 41(b) to FERC Electric Tariff, Fifth Revised Volume No. 1 (charges recovering costs for base plan upgrades and approved balanced portfolios shall be assessed to transmission owners providing transmission service to bundled retail load for which such transmission owners are not taking transmission service under the Tariff).

The Commission orders:

(A) SPP's proposed tariff revisions are hereby conditionally accepted, effective May 1, 2010, as discussed in the body of this order.

(B) SPP is required to designate its tariff sheets, as described in the body of this order, within 30 days of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.