

133 FERC ¶ 61,084
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 25, 2010

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER10-2429-000

Wright & Talisman, P.C.
Attention: Tyler R. Brown, Esquire
1200 G Street, NW
Suite 600
Washington, DC 20005-3802

Reference: Agreement for Network Integration Transmission Service

Dear Mr. Brown:

1. On August 27, 2010, you filed on behalf of Southwest Power Pool, Inc. (SPP): (1) an executed service agreement for Network Integration Transmission Service (NITSA) between SPP as transmission provider and Kansas Municipal Energy Agency (KMEA) as network customer (KMEA NITSA); and (2) an executed Network Operating Agreement (NOA) between SPP as transmission provider, KMEA as network customer, and Kansas City Power and Light Company (KCP&L) as host transmission owner (KMEA NOA) (together, KMEA Agreements). SPP explains that the KMEA Agreements modify and supersede the currently effective NITSA and NOA that were accepted for filing by the Commission on January 26, 2010, in Docket No. ER10-334-000. SPP requests an effective date of August 1, 2010 for the KMEA Agreements. As discussed below, we reject the KMEA Agreements and direct SPP to report them in its electronic quarterly reports.

2. SPP states that it filed the KMEA Agreements with the Commission for approval because they contain terms and conditions that do not conform to the *pro forma* NITSA and NOA in SPP's Open Access Transmission Tariff (Tariff). SPP asserts that the KMEA NITSA conforms to SPP's *pro forma* NITSA except for non-conforming language in Section 8.10 of Attachment 1. SPP identifies the following specific provisions as non-conforming:

(a) Section 8.10(A) of Attachment 1 of the KMEA NITSA specifies that KMEA has confirmed certain network resources requiring network upgrades. Section 8.10(A) further indicates that the transmission service requested by KMEA from designated network resources depends and is contingent upon completion of certain upgrades, for which KMEA is not assigned cost responsibility;

(b) Section 8.10(B) of Attachment 1 of the KMEA NITSA specifies that, upon completion of the construction of the upgrades required for the designated network resources listed in the KMEA NITSA, the funding of the costs of the upgrades will be reconciled and trued-up against actual construction costs and any additional funding or refunds shall be made between SPP and KMEA; and

(c) Section 8.10(C) of Attachment 1 provides that, notwithstanding Section 4.0 of the KMEA NITSA, KMEA will be responsible for paying all charges specified in Section 8.10 of Attachment 1 as its obligation for the specified term for each assigned upgrade.

3. SPP explains that these added provisions are consistent with Section 29.3 of the SPP Tariff, which provides that network transmission service may not commence until installation of all necessary equipment has been completed. SPP further states that the Commission accepted similar non-conforming provisions in Docket No. ER10-334-000.¹ Therefore, SPP argues the Commission should accept the KMEA NITSA for filing as a non-conforming agreement. SPP also explains that the KMEA NOA contains no non-conforming language.

4. Notice of SPP's filing in Docket No. ER10-2429-000 was published in the *Federal Register*, 75 Fed. Reg. 54,610 (2010), with interventions and protests due on or before September 17, 2010. None was filed.

5. In a number of orders, the Commission stated that a transmission provider's use of *pro forma* documents ensures that customers are receiving non-discriminatory service, and that they are treated consistently and fairly.² The *pro forma* documents streamline

¹ See *Southwest Power Pool, Inc.* Docket No. ER10-334-000 (Jan. 26, 2010) (unpublished letter order).

² See, e.g., *MidAmerican Energy Company*, 116 FERC ¶ 61,018, at P 7 (2006); *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,421, at P 10 (2005); *PJM Interconnection, LLC*, 111 FERC ¶ 61,163, at P 9 (2005).

the process by eliminating the need for customers to negotiate the individual terms of each agreement. They also reduce transaction costs and eliminate the need to file agreements that conform to the *pro forma* template on file with the Commission.

6. By contrast, the Commission requires agreements that do not conform to the *pro forma* to be filed with the Commission.³ The Commission analyzes such non-conforming filings to ensure that operational or other reasons make a non-conforming agreement necessary. We do not expect non-conforming agreements to be common. For example, the Commission recognizes that non-conforming agreements may be necessary for a small number of agreements with specific reliability concerns, novel legal issues, or other unique factors. Thus, a transmission provider seeking a case-specific deviation from its *pro forma* agreement bears a high burden to justify and explain that its changes are not merely “consistent with or superior to” the *pro forma* agreement, but are *necessary* changes.⁴

7. With regard to Section 8.10 of Attachment 1 to SPP’s *pro forma* NITSA,⁵ we view it to be a fill-in-the-blank section and do not consider the KMEA Agreement to be non-conforming because SPP filled-in the blank.⁶ Further, in SPP’s transmittal letter in Docket No. ER10-334-000, SPP noted that the language it is seeking to include in section 8.10 in the instant filing does not make the agreement non-conforming. In that filing SPP moved language from section 8.3 to 8.9 and stated:

Since this language references network upgrades rather than direct assignment of facilities, Section 8.9 of Attachment 1, “Network Upgrade Charges,” is the appropriate location for the language. By moving this language to Section 8.9, the language is conforming and consistent with Section 29.3 of the SPP Tariff, which provides that network transmission

³ 18 C.F.R. §§ 35.1(a) and (g) (2010).

⁴ See *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 (2005).

⁵ SPP recently filed revisions to its *pro forma* NITSA and NOA to reduce the number of non-conforming filings. See SPP transmittal letter in Docket No. ER10-1300-000 at 2.

⁶ See *Columbia Gas Transmission Corporation*, 97 FERC ¶ 61,221, at 62,002 (2001).

service may not commence until installation of all necessary equipment has been completed.⁷

8. The *pro forma* NITSA contemplates parties entering specific details about compensation for network upgrade charges in section 8.10 of Attachment 1. Therefore, SPP does not need to file this type of provision with the Commission. In addition, SPP's reliance on the letter order issued in Docket No. ER10-334-000⁸ to support its filing is unpersuasive because unpublished delegated letter orders do not constitute legal precedent binding on the Commission.⁹

9. In conclusion, we reject the KMEA Agreements because the provisions SPP identifies as being non-conforming are contemplated by SPP's *pro forma* NITSA and NOA and, thus, these agreements do not need to be filed with the Commission for approval. We will also direct SPP to include the revised KMEA Agreements in its electronic quarterly reports.

The Commission orders:

(A) The Commission rejects the KMEA Agreements as discussed in the body of this order.

(B) The Commission directs SPP to include the revised KMEA Agreements in its electronic quarterly reports, as discussed in the body of this order.

By the direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ SPP refers to Section 8.9 "Network Upgrade Charges" in Docket No. ER10-334-000. Section 8.9 subsequently became section 8.10. *See Southwest Power Pool, Inc.*, 131 FERC ¶ 61,088 (2010).

⁸ *See supra* note 1.

⁹ *Idaho Power Co.*, 95 FERC ¶ 61,482 (2001); *Cambridge Electric Light Co.*, 95 FERC ¶ 61,162 (2001); *Westar Energy, Inc.*, 124 FERC ¶ 61,090 (2008).