

136 FERC ¶ 61,106
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 15, 2011

In Reply Refer To:
Southwest Power Pool, Inc.
Docket Nos. ER11-3243-000
ER11-3243-001
ER11-3243-002

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 March 31, 2011, as amended on June 16, 2011 and June 21, 2011, 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 Midwest Energy, Inc. (Midwest) as host transmission owner (KMEA NOA) (together, KMEA Agreements). SPP requests an effective date of March 1, 2011 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 the KMEA NOA contains terms and conditions that do not conform to the *pro forma* NOA in SPP's Open Access Transmission Tariff (Tariff). SPP asserts that the KMEA NOA conforms to the *pro forma* NOA except for the following non-conforming language (underlined) in section 9.2:

9.2 For all resources including but not limited to Network Resources of the Network Customer, the following generation telemetry readings to the Host Transmission Owner are required:

- 1) Analog MW;
- 2) Integrated MWHRS/HR;
- 3) Analog MVARs; and
- 4) Integrated MVARHRS/HR.

3. SPP explains that the additional language is necessary because several of KMEA's resources are behind the meter and are not network resources. SPP states that the additional language allows Midwest to obtain generation telemetry readings for all of KMEA's resources, including the behind the meter resources. SPP asserts that the Commission should accept the filing because the non-conforming language clarifies certain terms and conditions regarding the provision of network service to KMEA, and is necessitated by the unique circumstances of KMEA's service request. SPP also explains that the KMEA NITSA contains no non-conforming language.

4. On May 27, 2011, as amended on May 31, 2011, the Commission notified SPP that the March 31, 2011 filing was deficient and directed SPP to provide additional information to the Commission by June 16, 2011 (Deficiency Letter). On June 16, 2011, as amended on June 21, 2011, SPP supplemented the March 31, 2011 filing by submitting a response to the Deficiency Letter (Response to the Deficiency Letter).

5. Notice of SPP's Filing in Docket No. ER10-3243-000 was published in the *Federal Register*, 76 Fed. Reg. 19,341 (2011), with interventions and protests due on or before April 21, 2011. None was filed. Notice of SPP's Filing in Docket No. ER10-3243-001 was published in the *Federal Register*, 76 Fed. Reg. 37,802 (2011), with interventions and protests due on or before July 12, 2011. None was filed. Notice of SPP's Filing in Docket No. ER10-3243-002 was published in the *Federal Register*, 76 Fed. Reg. 37,107 (2011), with interventions and protests due on or before July 7, 2011. None was filed.

6. 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.¹ The *pro forma* documents streamline the process by eliminating the need for customers to negotiate the individual terms of

¹ 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).

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.

7. By contrast, the Commission requires agreements that do not conform to the *pro forma* agreement to be filed with the Commission.² 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.³

8. With regard to SPP’s addition to section 9.2 of the KMEA NOA,⁴ we are not persuaded that this addition is necessary for billing purposes. In its Response to the Deficiency Letter, SPP explains that the additional language in section 9.2 will provide Midwest with access to the generation meter readings, which will allow for the determination of the gross load and avoid incorrect billing based on the netting of load and generation.⁵ However, we note that section 2.0 of attachment 1 to the KMEA NITSA, which is the same as section 2.0 of attachment 1 of SPP’s *pro forma* NITSA, provides in relevant part:

The Network Customer’s Network Load shall be measured on an hourly integrated basis, by suitable metering equipment located at each connection and delivery point, and *each generating facility*. The meter owner shall cause to be provided to the Transmission Provider, Network Customer and applicable Transmission Owner, on a monthly basis *such data as required by Transmission Provider for billing*. . . . Measurements taken and all metering equipment shall be in accordance with the Transmission Provider’s standards and practices for similarly

² 18 C.F.R. §§ 35.1(a) and (g) (2011).

³ See *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 (2005).

⁴ SPP recently filed revisions to its *pro forma* NITSA and NOA to reduce the number of non-conforming filings. The Commission accepted SPP’s revisions in *Southwest Power Pool, Inc.*, Docket No. ER10-1300-000 (July 22, 2010) (unpublished letter order).

⁵ Response to Deficiency Letter, June 21, 2011 at 2.

determining the Transmission Provider's load. *The actual hourly Network Loads, by delivery point, internal generation site and point where power may flow to and from the Network Customer, with separate readings for each direction of flow, shall be provided* (emphasis added).

9. Section 2.0 of attachment 1 provides that KMEA's network load will be measured at each generating facility and that KMEA must provide such data as required by the transmission provider for billing. Section 2.0 of attachment 1 further states that KMEA must provide its actual hourly network loads, by delivery point, internal generation site and point where power may flow to and from KMEA, with separate readings for each direction of flow. Therefore, section 2.0 of attachment 1 already requires KMEA to provide generation meter readings for behind the meter resources for billing purposes. Accordingly, we are not persuaded to accept the non-conforming language SPP inserts into section 9.2 of the KMEA NOA as necessary for billing purposes.

10. SPP further explains in its Response to Deficiency Letter that the addition to section 9.2 is necessary to allow Midwest to achieve operational efficiencies and to maintain reliable operation of the transmission system.⁶ However, SPP has not adequately described the unique factors surrounding the KMEA NOA to justify the section 9.2 addition. In fact, in its Response to Deficiency Letter SPP explains that:

SPP transmission owners, other than Midwest have not required similar generation telemetry readings from their network customers for resources other than designated Network Resources, including behind-the-meter resources, in Service Agreements to which SPP is a party.

11. Because SPP has not described unique factors surrounding the KMEA NOA that render the section 9.2 addition necessary, and SPP has indeed not imposed a similar requirement on similarly situated customers, we are not persuaded that unique factors make the addition to section 9.2 necessary.

12. In conclusion, we direct SPP to remove the proposed non-conforming language from section 9.2 of the KMEA NOA because SPP has not adequately explained why it is necessary for either billing or operational purposes. Because there are no other non-conforming provisions, the revised KMEA Agreements do not need to be filed with the Commission for approval. We direct SPP to include information about the revised KMEA Agreements in its electronic quarterly reports.

⁶ Response to Deficiency Letter, June 21, 2011 at 3.

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.

Kimberly D. Bose,
Secretary.