

144 FERC ¶ 61,150
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 23, 2013

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER13-1819-000

Southwest Power Pool, Inc.
Attention: Tessie Kentner, Attorney
201 Worthen Drive
Little Rock, AR 72223

Dear Ms. Kentner:

1. On June 27, 2013, Southwest Power Pool, Inc. (SPP) filed an executed Network Integration Transmission Service Agreement between SPP as Transmission Provider and Kansas Municipal Energy Agency (KMEA) as Network Customer (NITSA)¹ and an executed Network Operating Agreement between SPP as Transmission Provider, KMEA as Network Customer, Mid-Kansas Electric Company (Mid-Kansas) and Sunflower Electric Power Corporation (Sunflower) as Host Transmission Owners (NOA) (collectively, the Agreement).

2. The NITSA updates network resources in Appendix 1 and the delivery points in Appendix 3, and it includes non-conforming language that was previously accepted in Docket No. ER10-2450-000.² Specifically, Section 8.9 of Attachment 1 of the NITSA provides that Wholesale Distribution Service Charges will be set forth in the Service and Operating Agreement for Local Delivery Service between KMEA and Mid-Kansas

¹ SPP states that the NITSA is the Third Revised Network Integration Transmission Service Agreement between SPP and KMEA, intended to supersede the Second Revised Network Integration Transmission Service Agreement accepted in Docket No. ER10-2450-000. SPP Transmittal Letter at 1.

² *Southwest Power Pool, Inc.*, Docket No. ER10-2450-000 (Oct. 19, 2010) (delegated letter order).

(Service and Operating Agreement).³ Appendix 4 to the NITSA contains the Service and Operating Agreement.

3. SPP seeks waiver of the 60-day prior notice requirement to permit a June 1, 2013 effective date for the Agreement. SPP states that waiver is appropriate because the Agreement is being filed within 30 days of the commencement of service.⁴

4. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 41,053 (2013), with interventions and protests due on or before July 18, 2013. On July 18, 2013, Sunflower and Mid-Kansas filed a timely motion to intervene and comments. On August 2, 2013, SPP filed an answer.

5. Sunflower and Mid-Kansas raise concerns over SPP's inclusion in the NITSA of the Service and Operating Agreement. They state that as previously determined by the Commission, filing any agreement for local delivery service is unnecessary.⁵ Sunflower and Mid-Kansas assert that the Kansas Corporation Commission (Kansas Commission) retains jurisdiction over the local delivery service facilities in question and that Mid-Kansas's local delivery agreements are not subject to the Commission's jurisdiction.

6. Sunflower and Mid-Kansas also state that the proposed Appendix 4 to the NITSA, Service and Operating Agreement, is flawed for the following reasons: (1) there are executed local agreements between KMEA and Mid-Kansas, yet SPP provides only the unexecuted versions in the filing; (2) there are new *pro forma* agreements approved by the Kansas Commission, and the parties are finalizing execution of those agreements; and (3) the appendix contains no information with respect to Sunflower's local delivery arrangements.⁶ For these reasons, Sunflower and Mid-Kansas request that the Commission "direct SPP, in a compliance filing, simply to refer to Wholesale Distribution Service being under agreements regulated by the [Kansas Commission]."⁷

7. SPP responds that because Sunflower and Mid-Kansas neither objected to the inclusion of the Service and Operating Agreement in Appendix 4 nor indicated that the included version was out of date prior to its filing on June 27, 2013, SPP included the

³ SPP Transmittal Letter at 2.

⁴ *Id.* at 3.

⁵ Sunflower and Mid-Kansas Comments at 4-5 (citing *Southwest Power Pool, Inc.*, 135 FERC ¶ 61,223 (2011)).

⁶ *Id.* at 5.

⁷ *Id.* at 5-6.

version of the Service and Operating Agreement in Appendix 4 that it believed to be the most current.⁸ SPP states that there is no basis for a blanket prohibition against “SPP’s practice of including the local agreements” in NITSA, as the Commission has refrained from requiring that local agreements either be included in, or excluded from, a NITSA. Rather, SPP explains that the Commission merely accepts local agreements for informational purposes only if they are appended to a NITSA.⁹ SPP states that it is willing to make a compliance filing that either: (i) appends the updated version of the Service and Operating Agreement; or (ii) removes the Service and Operating Agreement and replaces it with a reference to the Wholesale Distribution Service being under local agreements regulated by the Kansas Commission, as requested by Sunflower and Mid-Kansas.¹⁰

8. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motion to intervene serves to make Sunflower and Mid-Kansas parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by SPP because it has provided information that has assisted us in our decision-making process.

9. We grant SPP’s request for waiver of the 60-day prior notice requirement and conditionally accept the Agreement,¹¹ effective June 1, 2013, as requested, subject to SPP making a compliance filing within 30 days from the date of this order.¹² Given that both parties agree to the removal of the relevant appendix, we direct SPP to submit a compliance filing to remove Appendix 4 to the NITSA, Service and Operating Agreement, and to revise section 8.9 of Attachment 1 of the NITSA to state that

⁸ SPP Answer at 4.

⁹ *Id.* at 5 (citing *Southwest Power Pool, Inc.*, 135 FERC ¶ 61,223, at P 31 (2011) and *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,089, at P 21 (2011)).

¹⁰ *Id.* at n.8.

¹¹ *Southwest Power Pool, Inc.*, FERC FPA Electric Tariff, Service Agreements Tariff; 1534R3 KMEA NITSA and NOA, 1534R3 Kansas Municipal Energy Agency NITSA and NOA, 0.0.0.

¹² *See Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (“[W]aiver of notice will be granted if service agreements are filed within 30 days after service commences.”).

Wholesale Distribution Service is provided pursuant to local agreements regulated by the Kansas Commission.

The Commission orders:

(A) The Commission conditionally accepts the Agreement to become effective June 1, 2013, as requested.

(B) The Commission directs SPP to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.