

144 FERC ¶ 61,168  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Southwest Power Pool, Inc.

Docket No. ER13-1872-000

ORDER ACCEPTING AND SUSPENDING SERVICE AGREEMENT AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 30, 2013)

1. On July 1, 2013, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission's regulations,<sup>2</sup> Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted Network Integration Transmission Service Agreement (NITSA) between SPP as the transmission provider and Kansas Municipal Energy Agency (KMEA) as the network customer, and an unexecuted Network Operating Agreement (NOA) among SPP as the transmission provider, KMEA as the network customer and Westar Energy, Inc. (Westar) as the host transmission owner (together, KMEA Agreement).<sup>3</sup> In this order, we accept the KMEA Agreement for filing, suspend it for a nominal period, make it effective June 1, 2013, as requested, subject to refund, and establish hearing and settlement judge procedures.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> 18 C.F.R. § 35.13 (2013).

<sup>3</sup> Southwest Power Pool, Inc., FERC FPA Electric Tariff, [Service Agreements Tariff, 2562 KMEA NITSA NOA, 2562 Kansas Municipal Energy Agency NITSA and NOA, 0.0.0.](#)

## **I. Background**

2. KMEA is a municipal energy agency headquartered in Overland Park, Kansas, and is acting as an agent for the City of Eudora, Kansas (Eudora) for the purpose of procuring transmission service from SPP. Eudora is a KMEA member and a small municipality in Douglas County, Kansas and a former wholesale requirements customer of Westar. Westar is a transmission-owning member of SPP.

## **II. SPP's Filing**

3. SPP states that it is submitting the KMEA Agreement because: (1) it is unexecuted; and (2) the NITSA includes terms and conditions that do not conform to the standard form of service agreement in SPP's Tariff. SPP asserts that KMEA does not object to submission of the unexecuted KMEA Agreement because, due to time constraints, KMEA and Westar were not able to finalize Appendix 4 of the NITSA. SPP states the KMEA Agreement conforms to the *pro forma* agreements in SPP's Tariff, except for the nonconforming language in the KMEA NITSA as follows.

### **A. Real Power Losses - Distribution**

4. SPP explains that the parties have added language to the fill-in-the-blank section 8.6 of Attachment 1 of the NITSA specifying that "[t]he Network Customer shall replace all distribution losses in accordance with Westar's Open Access Transmission Tariff, Section 28.5, based upon the location of each delivery point meter located on distribution facilities" and that "[t]he composite loss percentages in Section 28.5 shall exclude transmission losses."<sup>4</sup> SPP asserts that the additional language is just and reasonable because it provides the parties with detail on how distribution losses will be calculated in accordance with a Commission-approved tariff.

### **B. Modifications to Points of Delivery**

5. SPP explains that Appendix 3 of the NITSA, which identifies the pertinent delivery points located on Westar's distribution facilities, also contains nonconforming language beyond that contained in the *pro forma* service agreement. Specifically, SPP states that Appendix 3 of the NITSA now identifies the SPP bus number/name and delivery point name, and it includes a footnote indicating that the voltage of the delivery point is the voltage where the meter is physically located.<sup>5</sup> SPP contends that the

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<sup>4</sup> SPP Transmittal Letter at 2 (citing NITSA at Attachment 1, § 8.6).

<sup>5</sup> *Id.* (citing NITSA at Appendix 3).

additional language is necessary and benefits the parties because it provides more detail regarding delivery points.

**C. Wholesale Distribution Service Charges**

6. SPP states that section 8.9 of Attachment 1 of the NITSA contains language specifying that cost support and monthly charges for Wholesale Distribution Service Charges are detailed in an additional, nonconforming Appendix 4 to the NITSA.<sup>6</sup> SPP explains that the inclusion of the cost support and monthly charges for Wholesale Distribution Service in Appendix 4 is consistent with Schedule 10 of the SPP Tariff, which requires cost support when Service Agreements containing wholesale distribution service charges are filed with the Commission. SPP notes that, at the time of the filing, KMEA was still involved in discussions with Westar pertaining to the wholesale service distribution service charges detailed in Appendix 4.

**D. Effective Date and Waiver Request**

7. SPP requests waiver of the Commission's 60-day notice requirement to permit the KMEA Agreement to be effective June 1, 2013. SPP asserts that waiver is appropriate because the KMEA Agreement is being filed within thirty (30) days of the commencement of service.

**III. Notice of Filing and Responsive Pleadings**

8. Notice of SPP's filing was published in the *Federal Register*, 78 Fed. Reg. 41,051 (2013), with protests and interventions due on or before July 22, 2013. Eudora filed a motion to intervene out of time and protest on July 24, 2013.

9. Eudora argues that SPP's filing is patently deficient because it contains no cost support for the monthly wholesale distribution service charge of \$8,514.20. Eudora adds that the only information SPP provides that pertains to the wholesale distribution service charge is a single sheet in Appendix 4, with two line items. Eudora alleges that, without supporting documentation and additional detail, neither the Commission nor Eudora can determine whether the rates and charges that Eudora will pay are just and reasonable. Eudora notes that in a similar proceeding, the Commission found that the nearly identical

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<sup>6</sup> *Id.* at 3 (citing NITSA at Attachment 1, § 8.9 and Appendix 4).

lack of cost support raised issues of material fact that could not be resolved on the record and set the matter for hearing and settlement judge procedures.<sup>7</sup>

10. Eudora argues that the scant two lines of information on the summary sheet in Appendix 4 of the KMEA NITSA cannot satisfy the cost support requirement within Schedule 10 of the SPP Tariff.<sup>8</sup> Eudora states that, prior to submitting its protest, it communicated its concerns regarding the lack of information to Westar and SPP. Eudora continues that, while Westar provided some information to Eudora, it was not sufficient to independently verify or evaluate the proposed charge. Chief among Eudora's concerns is a discrepancy in vintage/age of the assets at the Eudora substation.<sup>9</sup> Eudora also states that, in an attempt to avoid the cost of preparing and submitting the protest, Eudora offered to accept a reduction in the filed rate to account for the lack of documentation, but that this offer was rejected by Westar. Because Eudora could not resolve the issues on its own, it requests that the Commission provide additional review and oversight. Eudora requests that the Commission reject the filing without prejudice due to the lack of support, and that the Commission require Westar and SPP to submit complete cost information to support the proposed wholesale distribution service charge.<sup>10</sup>

#### **IV. Discussion**

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

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), we will grant Eudora's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

##### **B. Substantive Matters**

12. SPP's filing raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement

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<sup>7</sup> *Id.* (citing *Southwest Power Pool, Inc.*, 139 FERC ¶ 61,016, at PP 16, 22, 26 (2012)).

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 7.

judge procedures ordered below. Our preliminary analysis indicates that the KMEA Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept the KMEA Agreement for filing, suspend it for a nominal period, subject to refund, and set it for hearing and settlement judge procedures as ordered below. We also grant waiver of the Commission's prior notice requirement to permit the requested effective date of June 1, 2013, because the KMEA Agreement was filed within thirty (30) days of service commencing.<sup>11</sup>

13. While we are setting this case for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>12</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>13</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

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<sup>11</sup> *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).

<sup>12</sup> 18 C.F.R. § 385.603 (2013).

<sup>13</sup> If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The Commission orders:

(A) The KMEA Agreement is hereby accepted for filing and suspended for a nominal period, to be effective June 1, 2013, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the KMEA Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.