

145 FERC ¶ 61,033
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. ER13-2164-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued October 11, 2013)

1. On August 15, 2013, pursuant to section 205 of the Federal Power Act,¹ Southwest Power Pool, Inc. (SPP) filed proposed revisions to its Open Access Transmission Tariff (Tariff) to modify its Aggregate Transmission Service Study (ATSS) process to limit the number of iterations that will be performed for an ATSS group and to revise the open season provisions for new transmission service requests (August 15 Filing). In this order, the Commission conditionally accepts the tariff revisions for filing, to be effective October 12, 2013, as requested, and directs SPP to submit a compliance filing within 30 days of the date of this order.

I. Background

2. SPP processes long-term transmission service requests for firm point-to-point and network integration transmission service through its ATSS procedure outlined in Attachment Z1 of the SPP OATT.² Under Attachment Z1, SPP conducts an open season during which SPP combines all long-term service requests into a single ATSS group and performs an Aggregate Facilities Study (AFS) to determine what transmission system upgrades may be needed to accommodate the requests in that group.³ SPP states that this

¹ 16 U.S.C. § 824d (2006).

² SPP Transmittal at 2.

³ *Id.*

process was developed to ensure efficient expansion of the transmission system to provide the necessary available transfer capability to accommodate all transmission service requests at the minimum total costs. In addition, SPP explains that this process enables it to study multiple requests in a single study rather than requiring separate studies for each request.⁴ According to SPP, the existing ATSS process is designed to continue iteratively with the performance of an AFS until each customer's request in the AFS is resolved.⁵

3. Despite SPP's prior Tariff revisions to improve the ATSS process,⁶ SPP states that it is currently experiencing a significant backlog in processing its transmission service requests.⁷ The process now covers six ATSS groups going back to 2011 and represents 34.2 GW of transmission service.⁸ According to SPP, it has conducted 10 separate AFSs and restudies for the highest priority ATSS group. SPP maintains that because each subsequent ATSS is dependent on all prior studies, all ATSSs after the highest priority ATSS group remain open, having undergone multiple iterations without conclusion.⁹ SPP states that with the ATSS backlog it is facing, it will spend years trying to conclude the active ATSS groups under the current ATSS procedures.¹⁰

II. Description of Filing

4. SPP states that it is proposing revisions to its ATSS process in order to process transmission service requests more efficiently and thereby reduce its backlog. SPP notes

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 3 (citing *Southwest Power Pool, Inc.*, Submission of Tariff Revisions to Modify Transmission Study Process, Docket No. ER08-1379-000 (filed Oct. 7, 2009); *Southwest Power Pool, Inc.*, Submission of Tariff Revisions to Modify Transmission Study Process, Docket No. ER09-1042-000 (filed Apr. 24, 2009); *Southwest Power Pool, Inc.*, Submission of Tariff Revisions to Modify Transmission Study Process, Docket No. ER10-659-000 (filed Jan. 27, 2010)).

⁷ *Id.*

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.*

that these revisions are the first ones in a larger effort to streamline the ATSS process.¹¹ SPP estimates that it will take approximately 30 months to clear the current backlog utilizing the process proposed in the instant filing.¹²

A. Aggregate Facilities Study and Make-Whole Payments

5. SPP's proposed revisions cap the total number of AFSs. If after the fourth AFS, SPP is unable to resolve all of the transmission service requests in an ATSS group, then SPP will execute with customers an Aggregate Facilities Study Completion Agreement (Completion Agreement) that contains the parameters under which customers would be willing to take transmission service.¹³ Customers may withdraw from the process prior to executing the Completion Agreement and will only be responsible for restudy costs, or they may request that an unexecuted service agreement be filed with the Commission.¹⁴

6. Under the proposed revisions, once customers have executed the Completion Agreement, SPP will conduct the final AFS. If all parameters under which customers are willing to accept transmission service are met, SPP will issue service agreements.¹⁵ However, if a customer chooses to withdraw at this point in the process, the customer may be assessed a make-whole payment.¹⁶ According to SPP, the make-whole payment will be determined as "the increase in the Directly Assigned Upgrade costs identified in the final [AFS] for all Confirmed Requests that results from the elimination of any

¹¹ *Id.* at 13.

¹² *Id.*

¹³ Proposed Tariff at sections 19.4(d) and 32.4(d). These parameters include: the maximum amount of directly assigned upgrade costs the customer will accept, and shall not be less than the direct assigned upgrade costs determined in the prior AFS (3rd restudy); the maximum amount of third party upgrade costs the customer will accept, and not less than the upgrade costs in the prior AFS (3rd restudy); the deferred start date the customer will accept for transmission service; the willingness of the customer to pay for redispach costs; and the maximum acceptable amount for letter of credit requirements, and not less than the amount in the prior AFS (3rd restudy). Proposed Tariff at sections 19.4(d)(iii) and 32.4(d)(iii).

¹⁴ Proposed Tariff at sections 19.4(a) and 32.4(a).

¹⁵ *Id.* at sections 19.4(d)(iii)(6)(a) and 32.4(d)(iii)(6)(a).

¹⁶ *Id.* at sections 19.4(d)(iii)(6)(b) and 32.4(d)(iii)(6)(b).

Withdrawn Requests.”¹⁷ A customer will not be assessed a make-whole payment for any upgrades that were required solely by the withdrawing customer. SPP will treat make-whole payments as sponsored upgrades under Attachment J, and customers will be entitled to transmission service revenue credits under Attachment Z2.¹⁸

7. Under the proposal, if, after SPP runs the final AFS and any customers’ parameters are not met, SPP will discuss with those customers whether they are willing to change the parameters specified in the Completion Agreement. If the customers choose to modify their parameters, then SPP will issue service agreements for the requested transmission service. If the customers do not choose to modify their parameters, then they will be allowed to withdraw their transmission service request and not be assessed a make-whole payment. However, the withdrawing customers will still be responsible for a portion of subsequent study costs.¹⁹

B. Third Party Impacts

8. Under SPP’s proposed Tariff revisions, a customer’s transmission service request that has identified third party impacts²⁰ shall be resolved in accordance with section 21 of the OATT.²¹ This Tariff provision requires SPP and affected transmission owners to undertake “reasonable efforts” to assist the transmission customer in obtaining its transmission service arrangements.²²

9. If the customer’s transmission request has third party impacts and the customer has not completed its negotiations with the third party at the time SPP tenders the Completion Agreement, then the customer has two options. Under the first option, the customer may elect to move its request to the next highest priority ATSS group so that there is additional time to resolve third party impacts. The customer will be released

¹⁷ *Id.* at sections 19.4(d)(iv) and 32.4(d)(iv).

¹⁸ *Id.* at sections 19.4(d)(iv) and 32.4(d)(iv).

¹⁹ *Id.* at sections 19.4(d)(v) and 32.4(d)(v).

²⁰ During the ATSS process, SPP evaluates whether a customer’s request will have an impact on a third party’s transmission facilities. SPP Transmittal at 9.

²¹ Proposed Tariff at sections 19.4(d)(vi) and 32.4(d)(vi).

²² Southwest Power Pool, Inc., FERC FPA Electric Tariff, Open Access Transmission Tariff, Sixth Revised Volume No. 1, Section 21.1, Responsibility for Third-Party System Additions, 0.0.0.

from any obligations of the current AFS and agrees to assume all costs assigned to it in the next ATSS group.²³

10. Under the second option, the customer may elect to execute the Completion Agreement, while it continues to work toward resolving the third party impact. If the third party impact has not been resolved by the end of the Completion Agreement restudy, then the customer has until the start date of its requested transmission service or one year after the completion of the AFS, whichever is sooner, to complete such negotiations with the third party or request the service agreement be filed unexecuted at the Commission to resolve the third party issue(s). The customer must notify SPP of the successful negotiations with the third party prior to the start date of the requested transmission service or one year after the completion of the AFS, whichever is sooner. If SPP does not receive such notification, then SPP shall deem the transmission service request to be terminated and withdrawn, and the customer will be subject to a make-whole payment.²⁴

C. Open Season Revisions

11. SPP currently has three four-month open seasons for transmission service requests each year. According to SPP, continuing to have the defined open seasons will exacerbate the significant queue backlog by continuing to create new ATSS groups as SPP attempts to close the current ATSS groups.²⁵ Therefore, SPP proposes to allow open seasons to remain open no less than four months and be closed at SPP's discretion in order to reduce the total number of ATSS groups created. SPP proposes to provide ten days' prior notice on OASIS that an open season is closing.²⁶

D. Proposed Effective Date and Transition Period

12. SPP seeks waiver of the 60-day prior notice requirement to permit an October 12, 2013 effective date for the tariff revisions. SPP states that good cause exists for this waiver because SPP is facing a significant backlog of its ATSS groups and that under the current ATSS process, SPP would spend years trying to resolve the current backlog.²⁷

²³ Proposed Tariff at sections 19.4(d)(i) and 32.4(d)(i).

²⁴ *Id.* at sections 19.4(d)(vi) and 32.4(d)(vi).

²⁵ SPP Transmittal at 12.

²⁶ Proposed Tariff at Attachment Z1, section II.

²⁷ SPP Transmittal at 13-14.

Therefore, SPP requests that the proposed revisions be implemented quickly and applied to the ATSS group with the highest priority, currently on its tenth iteration. SPP notes that if the ATSS group with the highest priority closes on its own following the tenth iteration, meaning that no transmission service requests are withdrawn from the study, then SPP will apply the proposed revisions to the next highest study group which is on its fourth iteration.²⁸

13. SPP proposes that on the effective date of the new ATSS process, it will make an OASIS posting establishing a 45-day period during which any customer in any active ATSS group may withdraw its existing transmission service request without further cost.²⁹

III. Notice of Filing and Responsive Pleadings

14. Notice of the August 15 Filing was published in the *Federal Register*, 78 Fed. Reg 52,522 (2013), with interventions and protests due on or before September 5, 2013. Timely motions to intervene were filed by Calpine Corporation, Dogwood Energy LLC, Exelon Corporation, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, and Westar Energy, Inc. East Texas Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, Cooperatives) filed a timely motion to intervene and comments. Xcel Energy Services Inc. (Xcel) filed an out-of-time motion to intervene on September 9, 2013. SPP filed a motion for leave to answer and answer on September 20, 2013.

A. Protests and Comments

15. In their comments, Cooperatives state that while they generally support SPP's proposal and SPP's ongoing efforts to improve the ATSS process, they are concerned with the tariff provisions because of potential third party impacts and the risk of increased costs associated with those provisions.³⁰ Cooperatives contend that under the proposed revisions, an SPP customer whose transmission service request has third party impacts that cannot be resolved prior to the fourth restudy could end up facing the choice of withdrawing its transmission service request or agreeing to assume unspecified costs associated with third party upgrades.³¹ Cooperatives maintain that SPP's proposal could

²⁸ *Id.* at 14.

²⁹ Proposed Tariff at sections 19.4(d)(vii) and 32.4(d)(vii).

³⁰ Cooperatives Comments at 3, 7-8.

³¹ *Id.* at 3-4, 7.

put a customer with third party impacts “under the gun” to make a decision on how to proceed with its transmission service request without the customer having all the information it needs, and SPP’s proposal does little to ensure that third party impacts will be dealt with and resolved on a timely basis.³²

16. Cooperatives also state that because of their location on the seam in SPP,³³ several of their transmission service requests submitted in SPP’s current ATSS process have shown third party impacts. Cooperatives maintain that the most important thing SPP can do to ensure that third party impacts do not inordinately delay the ATSS process is for SPP to take a much more active role in assisting SPP customers to resolve third party impacts with the affected system. Cooperatives state that SPP should commit to notifying the neighboring system as soon as possible after it becomes aware of potential third party impacts, move quickly to perform the necessary affected system analysis, and continue to work diligently with the SPP customer requesting transmission service to negotiate a resolution to the third party impact issues with the affected neighboring system as quickly as possible. Cooperatives request that SPP add language to its seams coordination agreements to require counterparties to the agreements to perform studies related to third party impacts identified in the ATSS process such that SPP and its transmission customers will know the in-service date and cost of upgrades needed to resolve third party impacts prior to SPP tendering the Completion Agreement. Cooperatives also request SPP to develop specific guidelines for when it will notify an affected system of third party impacts.³⁴

17. Cooperatives also contend that increased protections should be provided for customers who elect to drop to a lower-queued ATSS group. Specifically, Cooperatives request that if a customer with third party impacts elects to move its request to the next highest priority ATSS group to have additional time to resolve the third party impacts, then that customer should be able to retain its original OASIS queue rights of first refusal to available transfer capability. Cooperatives also assert that the customer should not incur additional transmission upgrade expenses due to the entrance of new customer

³² *Id.* at 8.

³³ The Cooperatives explain that they are located on the eastern edge of the AEP Zone in SPP and on the seam between SPP and Entergy. *Id.* at 3.

³⁴ *Id.* at 5-10.

transmission service requests in subsequent AFSs, and the customer should also retain its current safe harbor status.³⁵

18. Cooperatives also request SPP to make the following changes or clarifications to the proposal: (1) clarify what iteration of the AFS would trigger the Completion Agreement process, and specifically, whether the term “restudy” includes the first AFS for any particular ATSS group; (2) change sections 19.4(d)(ii) and 32.4(d)(ii) in subparts (2), (3), and (4) to insert the phrase “by the Eligible Customer” before “in the Aggregate Facilities Study Completion Agreement”; (3) address how, if at all, the proposed backlog clearing process will be affected once the Day 2 markets in the Integrated Marketplace are implemented; and, (4) clarify how SPP’s backlog clearing proposal fits in with SPP’s overall efforts to improve its aggregate study procedures.³⁶

B. Answer

19. SPP responds that the issue of third party impacts is not new, nor is it unique to the revised ATSS process.³⁷ SPP reiterates that there are two options for a customer proceeding with a transmission service request with unresolved third party impacts. Those options include execution of a Completion Agreement and a Completion Agreement restudy, or moving down to the next highest priority ATSS group.³⁸ SPP also notes that a customer always has the option to withdraw its transmission service request prior to the Completion Agreement process without being subject to the make-whole payment.³⁹

20. SPP also disagrees with Cooperatives’ characterization of the revised ATSS process with regard to third party impacts, and particularly Cooperatives’ statement that third party impacts that “cannot be resolved prior to the fourth restudy could end up facing a choice of withdrawing its transmission service request or agreeing to assume

³⁵ *Id.* at 10-11. Under Attachment J of the SPP Tariff, transmission service customers are eligible for a safe harbor cost limit for base plan funding of the cost of network upgrades, up to \$180,000/MW times the requested capacity. Any network upgrade costs in excess of the safe harbor cost limit are directly assigned to the transmission service customer.

³⁶ *Id.* at 12-13.

³⁷ SPP Answer at 5.

³⁸ *Id.* at 6-7.

³⁹ *Id.* at 7.

unspecified costs associated with third-party upgrades.”⁴⁰ SPP argues that nowhere in the revised ATSS process is a customer required to agree to unspecified costs associated with third party upgrades. Specifically, SPP states that the customer could elect to withdraw its transmission service request, or, if the customer elects to execute a Completion Agreement, the customer will specify the parameters under which it is willing to accept the transmission service, including the maximum acceptable third party upgrade costs.⁴¹

21. SPP maintains that Cooperatives’ request for additional protections for customers with third party impacts electing to move their request into the next highest priority ATSS group is unnecessary for four reasons. First, SPP contends that by electing to move its transmission service request to the next highest priority group in order to have more time to resolve issues with a third party, the customer agrees to assume its share of costs with its new ATSS group.⁴² Second, SPP argues it is not feasible for a customer to retain its original OASIS queue rights if it elects to move into the next ATSS group. SPP states that queue priority is based on the ATSS group the transmission service request is in, and all transmission service requests in one ATSS group will have the same priority.⁴³ Third, SPP maintains that to the extent Cooperatives suggest that a customer should retain its current safe harbor status if it elects to move into the next ATSS group, nothing in the revised ATSS process will change a customer’s safe harbor status under the SPP OATT. Fourth, SPP asserts that it is unreasonable for Cooperatives to request that the transmission upgrade expenses identified in the first ATSS group should become a cap for transmission upgrade expenses identified in the new ATSS group, because this would place an extra burden on the remaining customers in the group.⁴⁴

22. SPP also states that, because the coordination between SPP and a third party is governed by the applicable seams coordination agreement between SPP and the third party, this proceeding is not the appropriate place to address the coordination between SPP and third parties.⁴⁵ As to Cooperatives’ request that SPP must notify the neighboring system as soon as possible after it becomes aware of potential third party

⁴⁰ *Id.* at 8 (citing Cooperatives Comments at 3-4).

⁴¹ *Id.* at 8.

⁴² *Id.* at 9.

⁴³ *Id.*

⁴⁴ *Id.* at 10.

⁴⁵ *Id.* at 11.

impacts, SPP notes that its practice has been to notify a third party of an impact once SPP has determined that the third party impact has a reasonable likelihood of persisting through the end of the study. SPP states that it takes this approach to avoid exposing the customer to unnecessary study costs should SPP determine in a subsequent iteration that there is no longer a third party impact.⁴⁶

23. In response to Cooperatives' specific request for clarification on what iteration of the AFS would trigger the Completion Agreement process, SPP states that the AFS process for an ATSS group will continue iteratively with up to three additional restudies of the AFS processed.⁴⁷ SPP adds that the earliest the Completion Agreement would be provided to the customers would be after the completion of the fourth iteration of an AFS.⁴⁸ In response to Cooperatives' request that "by the Eligible Customer" be included in subparts (2), (3), and (4) of sections 19.4(d)(ii) and 32.4(d)(ii), SPP agrees that each of the conditions in sections 19.4(d)(ii) and 32.4(d)(ii) is to be specified by the Eligible Customer. SPP also states that it does not anticipate any changes to the OATT as a result of the Integrated Marketplace. Finally, as to Cooperatives' requested clarification on how the backlog clearing process fits in with SPP's overall efforts to improve the ATSS process, SPP explains that it is currently evaluating additional modifications to the ATSS process to make the process more efficient and timely.⁴⁹

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵⁰ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁵¹ we will also grant Xcel's out-of-time motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁴⁶ *Id.* at 12.

⁴⁷ *Id.* at 14.

⁴⁸ *Id.*

⁴⁹ *Id.* at 15.

⁵⁰ 18 C.F.R. § 385.214 (2013).

⁵¹ *Id.* § 385.214(d).

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵² prohibits an answer to a protest or an answer, 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.

B. Commission Determination

26. We conditionally accept SPP's tariff revisions, subject to a compliance filing to be submitted within 30 days of the date of this order. We find SPP's proposal to be just and reasonable as it will allow SPP to process its customers' transmission requests in a more efficient manner and reduce the current queue backlog SPP is facing. However, as discussed below, we direct SPP to submit additional tariff language to clarify the calculation of make-whole payments and cost reallocation under its proposal.

27. Specifically, we direct SPP to explain and provide additional tariff language to outline what occurs when, at the completion of an AFS after the execution of a Completion Agreement, one or more of a customer's parameters are not met and that customer chooses to withdraw rather than modify its parameters to allow service agreements to be issued. While SPP states that in this circumstance the customer will not be assessed a make-whole payment, we find SPP's proposed tariff language to be unclear regarding the process to determine and reallocate the directly assignable upgrade costs in this circumstance. Similarly, we direct SPP to explain and provide additional tariff language on how it will determine "the increase in the Directly Assigned Upgrade costs identified in the final [AFS] for all Confirmed Requests that results from the elimination of any Withdrawn Requests" when a customer chooses to drop out of the ATSS group and a make-whole payment would be assessed. We also direct SPP to insert the phrase "by the Eligible Customer" in subparts (2), (3), and (4) of sections 19.4(d)(ii) and 32.4(d)(ii) of the OATT pursuant to Cooperatives' request and SPP's response. We find SPP has provided adequate responses to Cooperatives' other clarification requests⁵³ and will not require further explanation by SPP on those issues.

28. As to Cooperatives' request for SPP to modify its seams agreements to address concerns over third party impacts, we decline to direct SPP to do so. We recognize SPP's continuing efforts to improve seams agreements and the resolution of third party impacts.⁵⁴ However, we find that directing SPP to revise these agreements is beyond the

⁵² *Id.* § 385.213(a)(2).

⁵³ *See* Cooperatives Comments at 12-13.

⁵⁴ SPP states in its answer that the Seams Steering Committee, the stakeholder group responsible for providing direction to SPP with regard to SPP's seams coordination

(continued...)

scope of the instant proceeding. We also deny Cooperatives' request to retain queue rights to available transfer capability if a customer chooses to drop to a lower priority ATSS group. Guaranteeing the queue rights would undermine the group study process and could provide customers advantageous access to available transfer capability over other members of the same ATSS group.

29. We grant SPP's request for waiver of the Commission's 60-day prior notice requirement for good cause shown. SPP states that it is facing a significant backlog, and that an effective date of October 12, 2013 will permit the proposed revisions to be timely applied to SPP's highest prior study group currently on its tenth iteration. Therefore, consistent with *Central Hudson*,⁵⁵ we will grant waiver of the 60-day prior notice requirement and permit the tariff revisions to go into effect October 12, 2013.

The Commission orders:

- (A) SPP's tariff filing is hereby conditionally accepted, effective October 12, 2013, as discussed in the body of this order.
- (B) SPP is hereby directed to submit, within 30 days of the date of issuance of this order, a compliance filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

agreements, is currently in the process of reviewing the issue of third-party impact coordination as it relates to the ATSS process. SPP Answer at 11-12.

⁵⁵ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).