

145 FERC ¶ 61,076
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 28, 2013

In Reply Refer To:
EDP Renewables North America LLC
Docket No. ER13-2293-000

Jessica C. Friedman
Van Ness Feldman, LLP
1050 Thomas Jefferson St., NW
Washington, DC 20007

Reference: Limited Waiver of Tariff Provision

Dear Ms. Friedman:

1. On August 30, 2013, EDP Renewables North America LLC (EDPRNA) filed a petition for limited waiver of the 15-day payment requirement to obtain an extension for the commencement of firm point-to-point transmission service set forth in section 17.7 of Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (OATT) and request for expedited action. As discussed below, we grant the requested waiver.
2. EDPRNA explains that it has entered into a long-term power purchase agreement (PPA) with a utility in the Southeast, which requires EDPRNA to secure transmission service from SPP for the delivery of power under the PPA beginning in 2016. EDPRNA also reports that it has entered into a Firm Point-to-Point Transmission Service Agreement (TSA) with SPP for 100 MW of transmission capacity from SPP's Blue Canyon Node 6 to the Entergy balancing authority area, commencing September 1, 2013 and extending through September 1, 2018.¹
3. Section 17.7 of SPP's OATT permits a transmission customer to obtain, subject to availability, up to five one-year extensions for the commencement of service by requesting an extension no later than 90 days prior to the commencement of service (for extensions of one year or more), and then paying a non-refundable annual reservation fee within 15 days of such request. EDPRNA states that, on May 31, 2013, it submitted a

¹ EDPRNA Petition at 3.

formal request through SPP's Open Access Same Information System (OASIS), seeking an extension of the commencement of service to September 1, 2014. However, EDPRNA explains that it inadvertently neglected to remit the annual reservation fee within 15 days of submitting its extension request to SPP, as required under section 17.7 of SPP's OATT. EDPRNA states that, after discovering the error through informal communications with SPP on August 22, 2013, it remitted the annual reservation fee to SPP by wire transfer on August 26, 2013.² On August 27, 2013, SPP informed EDPRNA that it was not able to accept EDPRNA's payment and would not be able to waive the annual reservation fee requirements under section 17.7 of SPP's OATT, without the Commission's approval.

4. Consequently, EDPRNA seeks a one-time waiver of the 15-day payment requirement under section 17.7 of SPP's OATT to allow SPP to accept payment and postpone commencement of service under the TSA. EDPRNA notes that the Commission has granted tariff waiver requests in cases of unintentional administrative oversight, and has found that a one-time waiver is appropriate "[w]here good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident."³

5. EDPRNA states that its request for waiver is of limited scope, because it applies only to the payment of the annual reservation fee in this one-time, limited circumstance.⁴ EDPRNA submits that the requested extension of commencement service will not have undesirable circumstances because no other customers are currently requesting the same service capacity reserved by EDPRNA and because, should another customer request such capacity, EDPRNA would be required either to release the reserved capacity or to commence service pursuant to the capacity release provision of section 17.7 of SPP's OATT.⁵ EDPRNA further states that its failure to timely remit the reservation fee was an inadvertent error, and that it has sought to correct this error in good faith. In addition, EDPRNA asserts that the requested tariff waiver will benefit the Southeast region customers seeking renewable energy via the delivery of power facilitated by the TSA,

² *Id.*

³ *Id.* at 4-5 (citing *Southwest Power Pool, Inc.*, 138 FERC ¶ 61,054 (2012); *ISO New England, Inc.*, 117 FERC ¶ 61,171 (2006); *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,055 (2010); *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,088 (2009); *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132, at P 14 (2010); *California Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031, at P 19 (2008)).

⁴ *Id.* at 5-6.

⁵ *Id.* at 6.

and will promote more efficient utilization of currently available transmission capacity.⁶ Absent the requested limited waiver of the 15-day payment requirement in section 17.7, EDPRNA points out that it must either pay for unused transmission service until 2016, or relinquish its reserved capacity and risk not being able to secure delivery for power under the PPA.

6. Accordingly, EDPRNA requests that the Commission grant its request for a limited waiver. In addition, EDPRNA requests that the Commission grant expedited treatment for this request, and issue an order within 30 days from the date of the filing, to the extent possible, because otherwise it will need to begin taking service under the TSA on September 1, 2013.

7. Notice of the limited waiver request was published in the *Federal Register*, 78 Fed. Reg. 55,248 (2013), with interventions and protests due on or before September 13, 2013. On September 12, 2013, SPP filed a timely motion to intervene and comments. 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 of SPP serves to make it a party to this proceeding.

8. SPP does not expressly support or oppose EDPRNA's request for waiver in its comments. Rather, SPP explains that it added the 90-day notification requirement for extending the commencement of service in section 17.7 as a modification to the *pro forma* OATT, with the aim of "limit[ing] a customer's ability to hoard transmission capacity from competitors."⁷ SPP states that the 15-day payment requirement in section 17.7 of SPP's OATT is identical to the 15-day requirement in the Commission *pro forma* OATT.⁸ SPP also notes that, in Order No. 890-A, the Commission clarified that transmission customers seeking extension of service who failed to pay the required deposit in a timely manner would lose the option to extend their transmission service commencement date, and would instead "remain obligated to take service under the

⁶ *Id.* at 6-7.

⁷ SPP Comments at 3. See *Southwest Power Pool, Inc.*, 96 FERC ¶ 61,034 (2001) (accepting filing of tariff revisions in Docket No. ER01-1989-000 adding 90-day notification requirement to section 17.7).

⁸ SPP Comments at 3.

original terms and conditions of the underlying transmission service agreement.”⁹ SPP points out that EDPRNA did not provide the non-refundable annual reservation fee equal to one-month’s charge within the 15-day period of the requested extension, but did so on August 26, 2013, well beyond the 15-day period.¹⁰ SPP states that it notified EDPRNA that it could not accept the extension request and that EDPRNA’s firm point-to-point transmission service would begin September 1, 2013, pursuant to the terms and conditions of the transmission service, and that it then returned the annual reservation fee and rejected the OASIS request to extend EDPRNA’s commencement of service.¹¹

9. The Commission has previously granted one-time waivers of tariff provisions in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹² Based on the circumstances presented, we find that EDPRNA has shown good cause to grant the requested waiver to permit SPP to waive its section 17.7 15-day payment requirement to allow EDPRNA to extend the commencement of its transmission service to September 1, 2014. EDPRNA submitted its request to extend the commencement of service on May 31, 2013, meeting the 90-day prior notice requirement. EDPRNA’s failure to comply with the 15-day payment requirement appears to have been an inadvertent error, which EDPRNA took steps to rectify immediately upon learning of the oversight. We also find that EDPRNA’s request for one-time waiver of the 15-day payment deadline is of limited scope. Moreover, granting the requested waiver will remedy a concrete problem by ensuring that EDPRNA is able to meet its commitments under the PPA without paying for transmission service that it cannot currently use. Finally, it appears that the waiver will not have any undesirable consequences, as: (1) no party has contested EDPRNA’s waiver request; (2) there are currently no other customers in the queue for the same capacity reserved by EDPRNA; and (3) EDPRNA will remain subject to the capacity release provisions in section 17.7.

⁹ *Id.* at 3-4 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 773 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

¹⁰ *Id.* at 4.

¹¹ *Id.* at 4-5.

¹² *See, e.g., New York Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011).

10. Accordingly, EDPRNA's request for limited waiver of section 17.7 of SPP's OATT is granted, as discussed in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.