

145 FERC ¶ 61,204
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER14-67-000

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

(Issued December 6, 2013)

1. On October 9, 2013, Southwest Power Pool, Inc. (SPP) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ an executed Network Integration Transmission Service Agreement (NITSA) and two associated Network Operating Agreements (NOA), one executed and the other unexecuted (collectively, the Agreement).² As discussed below, we will accept the Agreement for filing, suspend the Agreement for a nominal period, make it effective October 1, 2013, as requested, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. American Electric Power Service Corporation (AEP), as agent for Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO), is a network integration transmission service customer under the SPP Tariff. Pursuant to Attachment AQ (Delivery Point Addition Process) of the SPP Tariff, AEP requested two new delivery points in the Western Farmers Electric Cooperative (Western Farmers) service area, the Ellis and Wapanucka points of delivery. Western Farmers is a

¹ 16 U.S.C. § 824d (2012).

² SPP designated the Agreement as Sixteenth Revised Service Agreement No. 1148 under its Open Access Transmission Tariff (Tariff). Southwest Power Pool, Inc., FERC FPA Electric Tariff, Service Agreements Tariff, [1148 AEP NITSA & NOAs](#), [1148 American Electric Power NITSA and NOAs, 1.0.0](#).

non-jurisdictional generation and transmission cooperative that owns, operates, and maintains transmission facilities located principally in Oklahoma. Western Farmers is a member of SPP, and its transmission facilities are administered under the SPP Tariff.

II. SPP Filing

3. The Agreement comprises: (1) an executed NITSA between SPP (as transmission provider) and AEP, as agent for PSO and SWEPCO (as network customer) (Sixteenth Revised AEP NITSA); (2) an executed NOA among SPP (as transmission provider), AEP, as agent for PSO and SWEPCO (as network customer), and AEP, as agent for PSO, SWEPCO, and AEP Texas North Company (as host transmission owner) (Sixteenth Revised AEP NOA); and (3) an unexecuted NOA among SPP (as transmission provider), AEP, as agent for PSO and SWEPCO (as network customer), and Western Farmers (as host transmission owner) (Sixteenth Revised Western Farmers NOA). SPP states that the Agreement includes terms and conditions that do not conform to SPP's *pro forma* agreements.³ Further, SPP states that the Agreement modifies and supersedes the existing NITSA and NOAs among the parties, collectively designated as Fifteenth Revised Service Agreement No. 1148 (Fifteenth Revised Agreement), which was accepted by the Commission on June 28, 2013.⁴

4. The June 28 Order addressed a dispute between AEP and Western Farmers regarding the design, configuration, and cost allocation of facilities associated with the Ellis point of delivery. The Commission determined that that proceeding was not the appropriate forum to rule on the merits of the dispute between AEP/PSO and Western Farmers because the Fifteenth Revised Agreement did not include the configuration and cost allocation for the disputed facilities associated with the Ellis point of delivery. Accordingly, the Commission determined that the dispute was beyond the scope of the proceeding and accepted the Fifteenth Revised Agreement for filing, to be effective April 1, 2013.⁵ SPP states that AEP and Western Farmers have been unable to resolve this dispute and that it has since expanded to include the Wapanucka point of delivery.

³ SPP states that the parties retained some non-conforming language approved by the Commission in previous iterations of the Agreement, while additional non-conforming language was necessary to accommodate the Ellis and Wapanucka points of delivery. SPP Transmittal at 4-7.

⁴ *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,295 (2013) (June 28 Order).

⁵ *Id.* P 19.

5. SPP explains that, in accordance with Attachment AQ of the SPP Tariff, AEP/PSO requested to interconnect the Ellis and Wapanucka points of delivery to the Western Farmers transmission system. According to SPP, it performed a preliminary assessment pursuant to section 3.2 of Attachment AQ and found no significant impact on the transmission system related to the addition of either delivery point.⁶ SPP explains that if the transmission provider finds no significant impact on the transmission system relating to a requested change in delivery point, pursuant to section 3.2, the host transmission owner “will coordinate completion of such change in local delivery facilities, including all required studies.”⁷

6. SPP states that after it determined that there was no significant impact on the transmission system, section 4 of Attachment AQ required Western Farmers and AEP/PSO to identify the facilities necessary to install the Ellis and Wapanucka points of delivery. SPP explains that the method of recovery for costs associated with facilities necessary to install a new delivery point typically would be outlined in an agreement between AEP and Western Farmers in a manner that is mutually agreeable to the parties and consistent with the cost allocation procedures under the SPP Tariff.⁸

7. SPP further explains that it received a letter dated August 28, 2013 from Western Farmers requesting that SPP revise the Fifteenth Revised AEP NITSA, in order to document cost allocation and transmission charges applicable to AEP’s network integration transmission service for the network load served by AEP’s Ellis and Wapanucka points of delivery. According to SPP, Western Farmers stated that the parties had reached an impasse in their negotiations over the configuration, ownership, and cost allocation of facilities for both delivery points.⁹ Thus, in its August 28 letter, Western Farmers also asked SPP to file the agreements unexecuted with the Commission.

8. SPP also states that, due to AEP’s concern over the required service date for customers and lack of construction activity by Western Farmers, AEP initiated construction with the expectation that it would either be paid by Western Farmers for such construction or would recover the costs of these investments through general transmission rates. According to SPP, AEP has either completed construction already or is currently constructing the facilities that AEP determined to be required to enable its

⁶ SPP Transmittal at 4.

⁷ *Id.* (citing SPP Tariff, Attachment AQ § 3.2).

⁸ *Id.*

⁹ *Id.* at 3.

request for service for both delivery points. SPP explains that the transmission service for the Ellis point of delivery was scheduled to begin on October 1, 2013, and the transmission service for the Wapanucka point of delivery was scheduled to begin on November 1, 2013. SPP states that it received notification from AEP that Western Farmers had not yet completed the facilities required for AEP's requested transmission service to begin for both points of delivery.¹⁰ SPP states that because of the inability of the parties to reach an agreement and SPP's desire to facilitate the timely provision of service to customers, SPP included the facilities being constructed by AEP for the Ellis and Wapanucka points of delivery within the Agreement.¹¹

9. SPP also explains that, at the request of AEP, the Agreement includes non-conforming language to incorporate AEP's desired design, configuration, and cost allocation for facilities associated with the Ellis and Wapanucka points of delivery, which includes the Ellis Delivery Point Agreement (attached to the Sixteenth Revised AEP NITSA as Appendix 4) and the Wapanucka Delivery Point Agreement (attached to the Sixteenth Revised AEP NITSA as Appendix 5).¹² SPP states that both the Ellis and Wapanucka Delivery Point Agreements are only partially executed due to the dispute between AEP and Western Farmers. SPP states that it is not a party to either delivery point agreement.¹³

10. SPP requests an effective date of October 1, 2013 for the Agreement. To permit this effective date, SPP requests waiver of the Commission's 60-day notice requirement, set forth in 18 C.F.R. § 35.3 (2013). SPP argues that waiver is appropriate because the Agreement is being filed within 30 days of the commencement of service.¹⁴

III. Notice of Filing and Responsive Pleadings

11. Notice of SPP's October 9, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 62,359 (2013), with interventions and protests due on or before October 30, 2013. AEP, on behalf of its affiliates PSO and AEP Oklahoma Transmission

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.* at 7.

¹³ *Id.* at 6.

¹⁴ *Id.* at 7 (citing *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)).

Company, Inc, submitted a timely motion to intervene and comments.¹⁵ Western Farmers also submitted a timely motion to intervene and comments. AEP filed an answer to Western Farmers' comments, and Western Farmers filed a reply to AEP's comments. East Texas Cooperatives¹⁶ submitted a timely motion to intervene and an answer. SPP submitted an answer in response to the comments submitted by AEP and Western Farmers. On December 2, 2013, Western Farmers submitted an answer in response to the answers submitted by AEP, East Texas Cooperatives, and SPP.

A. Summary of the Dispute

12. In short, the dispute involves the appropriate design, configuration, and cost allocation of the facilities necessary to accommodate AEP's two new delivery points. Western Farmers argues that its standard designs, configurations, and cost allocation methodologies are consistent with good utility practice and Western Farmers' own transmission system standards. Western Farmers also contends that its proposal (involving radial configurations for the Ellis and Wapanucka delivery points) would provide adequate and reliable service to each of AEP's retail customers, further arguing that the cost of the delivery point facilities should be directly assigned to AEP.¹⁷ AEP argues that its proposed looped service configuration for the Ellis and Wapanucka points of delivery, as described in the Agreement, is necessary to provide reliable service to AEP's load for both delivery points. AEP also contends that the facilities in these looped configurations qualify as transmission facilities that will be integrated with the SPP transmission system. Therefore, AEP concludes that the costs of these facilities should be rolled into transmission rates and not directly assigned to the customer.¹⁸

1. Western Farmers Comments

13. Western Farmers argues that a network customer should not be allowed to take over the Attachment AQ process by building its owned preferred design without the consent of the host transmission owner. Western Farmers asserts that, where a network

¹⁵ On October 30, 2013, AEP, on behalf of its affiliates AEP Oklahoma Transmission Company, Inc., and AEP Southwestern Transmission Company, Inc., submitted a timely motion to intervene.

¹⁶ East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. are collectively referred to as East Texas Cooperatives.

¹⁷ Western Farmers Comments at 8.

¹⁸ AEP Comments at 23-29.

customer and host transmission owner are unable to agree on the design, configuration, and cost allocation of delivery point facilities as envisioned under section 4 of Attachment AQ, these determinations should be made by the host transmission owner, subject to certain limitations to ensure that the host transmission owner's determinations are reasonable. Among the limitations Western Farmers suggests to determine reasonableness are whether the proposed configuration meets the host transmission owner's facility standards and system requirements and whether the configuration provides reliable service to retail customers.¹⁹ Western Farmers argues that its standard designs, configurations, and cost allocation methodologies are consistent with good utility practice and Western Farmers' own transmission system standards. In addition, Western Farmers points to previous proceedings to suggest that AEP has supported giving deference to the host transmission owner. Western Farmers asserts that in these proceedings, AEP served as host transmission owner and maintained the unilateral right to control facility design.²⁰

14. Western Farmers contends that it is critically important that the Commission resolve the issue of which party controls when an impasse occurs under section 4 of Attachment AQ, for both this proceeding and future disputes.²¹ Western Farmers states that AEP began constructing the enhanced facilities without Western Farmers' agreement on the design, configuration, and cost allocation for those facilities. As a result, Western Farmers asserts that its own design and configuration proposals have limited use at the present stage of project development, noting that construction of AEP's enhanced facilities may have to continue to avoid additional costs associated with altering the current stage of construction.²²

15. Although Western Farmers prefers its own design and configuration for each delivery point, Western Farmers states that it is willing to accommodate AEP's enhanced design and configuration, provided that AEP is directly assigned the costs. Western Farmers argues that section 31.2d of SPP's Tariff supports its claim that the costs for

¹⁹ Western Farmers Comments at 8-9, 10.

²⁰ *Id.* at 9 (citing *American Electric Power Service Corp.*, Docket No. ER12-2060-000 (Aug. 9, 2012) (delegated letter order); *American Electric Power Service Corp.*, Docket No. ER13-2154-000 (Aug. 14, 2012) (delegated letter order)).

²¹ Section 4, Engineering, Design, and Construction of New Facilities states: "The Transmission Customer and Host Transmission Owner shall agree to and specify in writing each party's responsibility for engineering, design, construction, and cost of facilities described in the final Load Connection Report."

²² Western Farmers Comments at 10.

AEP's enhanced facilities should be directly assigned.²³ Western Farmers contends that, for each delivery point request, no network upgrades are necessary because each delivery point serves a single Tariff customer serving a single retail consumer and because SPP's studies did not identify any needed network upgrades. Thus, Western Farmers argues that SPP's Tariff is clear that the construction of delivery point facilities should be charged to the network customer rather than the host transmission owner.²⁴ Western Farmers further claims that the enhanced facilities are not transmission facilities because they fail the seven-factor test set out in section II.6 of Attachment AI (Transmission Definition) of the SPP Tariff, even though the voltage of the enhanced facilities is at "transmission level."²⁵

16. Additionally, Western Farmers raises cost causation concerns, arguing that AEP should not be permitted to shift cost responsibility to Western Farmers for facilities that are unnecessary to adequately serve AEP and maintain reliability on Western Farmers' transmission system.²⁶ Western Farmers contends that, while AEP would incur some costs via its load ratio share if costs are rolled into Western Farmers' generally applicable rates, AEP's contribution would represent only a fraction of the costs associated with the enhanced facilities for both delivery points.²⁷ Western Farmers asserts that its existing customers will receive minimal, if any, benefit from the enhanced facilities and should not be allocated the bulk of the costs. Western Farmers requests that the Commission not allow AEP to violate the Commission's cost causation principle and set a problematic precedent that incentivizes network customers to request excessively-designed facilities subject to rolled-in rate treatment.²⁸

²³ Section 31.2d of SPP's Tariff states, in part:

The costs related to the construction, operation, maintenance and/or retirement of a network customer's delivery point(s), other than required Network Upgrades, shall be charged to the Network Customer in accordance with this Tariff and Commission policies.

²⁴ Western Farmers Comments at 11.

²⁵ *Id.* at 13-14, 19.

²⁶ *Id.* at 12, 14-15.

²⁷ *Id.* at 15, n.18.

²⁸ *Id.* at 15.

17. If the Commission determines that AEP's enhanced facilities constitute transmission facilities, Western Farmers requests that the Commission find these facilities to be Sponsored Upgrades²⁹ subject to cost allocation pursuant to Attachment J (Recovery of Costs Associated with New Facilities) of SPP's Tariff. Western Farmers asserts that AEP has attempted to use the Attachment AQ process to build facilities that far surpass what is required in response to a delivery point request. Western Farmers acknowledges that the facts and circumstances surrounding this proceeding do not fit the process set forth in section V.A of Attachment J,³⁰ and asserts that AEP's enhanced facilities more closely resemble Sponsored Upgrades than transmission facilities for which costs will be socialized among all customers.³¹

18. Finally, Western Farmers contends that SPP's filing contains certain language that is inaccurate or incomplete. Western Farmers asserts that at no time have AEP's two retail customers that are located behind the Ellis and Wapanucka delivery points been at risk of not receiving adequate and reliable service. Western Farmers also contends that it has fulfilled and continues to fulfill its host transmission owner responsibilities. Lastly, Western Farmers states that it has not agreed to certain language included in the Agreement pertaining to the design of the delivery point facilities.³²

²⁹ Under the SPP Tariff, Sponsored Upgrades are "Network Upgrades, requested by a Transmission Customer or other entity, which do not meet the definition of any other category of Network Upgrades." SPP Tariff § I.1 – Definitions S.

³⁰ Western Farmers notes, for example, that AEP has not executed an agreement accepting the responsibilities of a Project Sponsor. Western Farmers Comments at 18, n.25.

³¹ *Id.* at 17-19.

³² *Id.* at 20-25. Specifically, Western Farmers states that sections 8.3 and 8.11 of Attachment 1 of the NITSA contain facility descriptions that represent AEP's enhanced designs. Western Farmers also states that the Ellis and Wapanucka Delivery Point Agreements, which it did not execute and represent AEP's desired outcome, are included as appendices in the NITSA. Finally, Western Farmers states that section 8.3 of Attachment 1 of the NITSA excludes the SPP transmission system from the description of direct assignment facilities. Western Farmers contends that this exclusion results in 138 kV lines in AEP's enhanced design being included as part of the SPP transmission system.

2. AEP Comments

19. AEP urges the Commission to accept the Agreement because it specifies the appropriate permanent facilities to be constructed for both the Ellis and Wapanucka delivery points. AEP further argues that the costs of these facilities should be rolled into Western Farmers' transmission rates, consistent with Commission policy and SPP's Tariff.³³

20. AEP contends that Western Farmers only expressed disagreement with AEP's proposed configurations for the two points of delivery after AEP broached the topic of cost allocation.³⁴ AEP states that Western Farmers gave AEP permission to begin constructing AEP's preferred facilities because Western Farmers was unable to install the facilities necessary to serve load at the delivery points.³⁵ AEP suggests that Western Farmers' approval of a radial tap was driven by its interest in avoiding the inclusion of network upgrade costs in its rates.³⁶ AEP argues that this is not a sound basis for grid engineering, and it asserts that cost assignment concerns should not trump good utility practice.³⁷

21. AEP maintains that a looped configuration is necessary to serve load reliably at the Ellis delivery point for a 16 MW industrial retail customer that requires a high degree of reliability. According to AEP, a radial tap is inadequate to serve this load reliably, and only a looped configuration is acceptable.³⁸ AEP also asserts that its configuration for

³³ AEP Comments at 4.

³⁴ *Id.* at 9, 14.

³⁵ *Id.* at 8, 13. *See also* AEP Comments, Exhibit RLP-4.

³⁶ AEP states that the Ellis delivery point is in service using a radial tap and single disconnect switch. AEP Comments, Attachment 1, Ward Test. at 16. AEP also indicates that construction of the new Wapanucka-Stonewall 138 kV line is complete; however, Western Farmers has indicated that it will not be able to complete installation of its temporary switch structure until sometime in December 2013 or January 2014. AEP Comments, Attachment 2, Pennybaker Test. at 47.

³⁷ *Id.* at 21.

³⁸ *Id.* at 19-21. Specifically, AEP states that adding redundancy into the system allows Western Farmers considerable flexibility to isolate sections of the circuit for maintenance or fault events, resulting in less outages and more reliable service to the customer. *Id.* at 20.

the Wapanucka delivery point is necessary to serve an industrial retail customer, a pumping station that will initially require 12 MW of load. AEP explains that the Wapanucka delivery point is approximately seven miles south of the Laselle-Tupelo line and seven miles west of the Tupelo-Atoka line, and that both of these 138 kV lines are owned by Western Farmers. AEP asserts that because this customer requires a high degree of reliability, a circuit constructed from each of these lines to the delivery point is necessary.³⁹

22. AEP argues that its proposed network upgrades for both the Ellis and Wapanucka delivery points are properly classified as transmission facilities under the seven-factor test established in Order No. 888,⁴⁰ as well as under Attachment AI of the SPP Tariff. In addition, AEP argues that Commission policy, as articulated in Opinion Nos. 474 and 474-A, establishes that where facilities necessary to provide service to a delivery point would be integrated with the transmission system, such as in this proceeding, the costs of such facilities should be rolled into the host transmission owner's transmission rates and not directly assigned to the customer.⁴¹ In this regard, AEP argues that the Commission has repeatedly affirmed that a showing of any degree of integration suffices for a facility to be a network facility, and that it allows direct assignment of costs only for non-network facilities, such as radial lines.⁴² AEP further asserts that the network upgrades necessary to serve the Ellis and Wapanucka delivery points will provide reliability benefits to customers besides PSO—the network customer being served directly by both the Ellis and Wapanucka delivery points—and its load.⁴³

³⁹ *Id.* at 22-23.

⁴⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴¹ AEP Comments at 10 (citing *Northeast Texas Electric Cooperative, Inc. et al.*, 108 FERC ¶ 61,084 (2004) (Order No. 474), *reh'g denied*, 111 FERC ¶ 61,189 (2005) (Order No. 474-A)).

⁴² *Id.* at 30 (citing *Southern Company Services, Inc.*, 116 FERC ¶ 61,247, at P 18 (2006), *reh'g denied*, 119 FERC ¶ 61,023 (2007)).

⁴³ *Id.* at 22-23, 25-27, 32.

23. AEP also contends that SPP's preliminary finding of no significant impact to the transmission system resulting from the addition of both the Ellis and Wapanucka delivery points does not preclude all facilities associated with these delivery point requests from being determined to be network upgrades for which costs are rolled into transmission rates. AEP points to the Northeast Texas Electric Cooperative, Inc.'s Griffin delivery point as an example of where SPP did not find significant impact on its system, but where the delivery point agreement between the parties provided that network upgrades would be constructed and costs not directly assigned.⁴⁴

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by AEP, SPP, and the East Texas Cooperatives, or the answers filed by Western Farmers, and will, therefore, reject them.

B. Substantive Matters

1. Hearing and Settlement Judge Procedures

26. Our preliminary analysis indicates that the Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Agreement for filing, suspend it for a nominal period, make it effective October 1, 2013, subject to refund, and set it for hearing and settlement judge procedures.

27. We find that 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 judge procedures ordered below. Issues of material fact remain with regard to, among other things: (1) whether Western Farmers' proposed design and configuration for facilities associated with the Ellis and Wapanucka points of delivery

⁴⁴ *Id.* at 33-34. See *Southwestern Electric Power Co.*, Docket No. ER12-1469-000 (May 24, 2012) (delegated letter order). AEP states that the Commission accepted this delivery point agreement without modification.

meet Western Farmers' facility standards and system requirements, and are comparable to the design and configuration for facilities Western Farmers has constructed for customers with similar service requirements; and (2) whether facilities associated with each delivery point should be designated as delivery point facilities or transmission facilities.

28. While we are setting this matter 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.⁴⁵ 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.⁴⁶ The settlement judge shall report to the Chief Judge and the Commission within 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 commencement of a hearing by assigning the case to a presiding judge.

2. Effective Date and Waiver Request

29. SPP requests waiver of the Commission's 60-day notice requirement in order to permit an effective date of October 1, 2013 for the Agreement. Waiver is appropriate when a service agreement under an existing tariff is filed within 30 days of commencement of service.⁴⁷ Because SPP filed the Agreement within 30 days of the commencement of service, we will grant waiver of the Commission's 60-day notice requirement.

⁴⁵ 18 C.F.R. § 385.603 (2013).

⁴⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days 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>).

⁴⁷ 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.”).

The Commission orders:

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

(B) Waiver of the Commission's prior notice requirement is hereby granted, as discussed in the body of this order.

(C) 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 Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) 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.

(E) 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.

(F) 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.