

148 FERC ¶ 61,105
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 6, 2014

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER14-2107-001

Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223

Attention: Tessie Kentner, Attorney

1. On June 2, 2014, as amended June 11, 2014,¹ Southwest Power Pool, Inc. (SPP) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),² two agreements. The first agreement is an unexecuted Network Integration Transmission Service Agreement (NITSA) between SPP (as transmission provider) and American Electric Power Service Corporation (AEP), as agent for Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (as network customer) (Eighteenth Revised AEP NITSA). The second agreement is an unexecuted Network Operating Agreement (NOA) among SPP (as transmission provider), AEP, as agent for PSO and SWEPCO (as network customer), and Western Farmers Electric Cooperative (Western Farmers) (as host transmission owner) (Eighteenth Revised AEP NOA). Together, the Eighteenth Revised AEP NITSA and NOA are referred to as the Agreement.³ In this order, we conditionally accept the Agreement, effective May 1, 2014, as requested, subject to the outcome of the ongoing hearing and settlement judge procedures in Docket No. ER14-67-000, and subject to a compliance filing, as discussed below.

¹ SPP states that the June 11, 2014 Filing is intended to amend and replace the June 2, 2014 Filing.

² 16 U.S.C. § 824d (2012).

³ SPP designated the Agreement as Eighteenth Revised Service Agreement No. 1148 under its Open Access Transmission Tariff. Southwest Power Pool, Inc., FERC FPA Electric Tariff, Service Agreements Tariff, [1148 AEP NITSA & NOAs, 1148 Substitute American Electric Power NITSA and NOA, 4.0.0.](#)

2. On October 9, 2013, in Docket No. ER14-67-000, SPP filed the Sixteenth Revised AEP NITSA, the Sixteenth Revised AEP NOA, and the Sixteenth Revised Western Farmers NOA (together, the Sixteenth Revised AEP Agreement) partially unexecuted due to a dispute between AEP and Western Farmers regarding the design, configuration, and cost allocation of facilities for certain delivery points – the Ellis and Wapanucka points of delivery – that AEP requested in Western Farmers’ service area. On December 6, 2013, the Commission issued an order that accepted the Sixteenth Revised AEP Agreement for filing, suspended it for a nominal period, effective October 1, 2013, subject to refund, and established hearing and settlement judge procedures.⁴

3. On March 4, 2014, in Docket No. ER14-1423-000, SPP filed the Seventeenth Revised AEP NITSA and the Seventeenth Revised AEP NOA (together, the Seventeenth Revised AEP Agreement), retaining the same non-conforming language from the Sixteenth Revised AEP Agreement, and adding additional network resources. On April 30, 2014, the Commission issued a letter order that accepted the Seventeenth Revised AEP Agreement for filing, effective February 1, 2014, subject to the outcome of the hearing and settlement judge procedures in Docket No. ER14-67-000.⁵

4. SPP states that, since the April 30 Order, the parties updated the network resources in Appendix 1, receipt points in Appendix 2, and delivery points in Appendix 3 of the Seventeenth Revised AEP NITSA. In addition, SPP explains that the parties updated the Seventeenth Revised AEP Agreement to include changes to the *pro forma* agreements approved by the Commission for SPP’s Integrated Marketplace.⁶

5. SPP maintains that, while the changes necessitating the revisions to the Agreement conform to SPP’s *pro forma* agreements, there are certain non-conforming changes that remain from prior iterations of the Agreement. Specifically, SPP explains that the Eighteenth Revised AEP NITSA retains non-conforming language in sections 3.0 and 5.0 of Attachment 1 providing that the load for Minden, Ringgold, and Castor will be

⁴ *Southwest Power Pool, Inc.*, 145 FERC ¶ 61,204 (2013) (December 6 Order). The Commission found issues of material fact remained 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 met Western Farmers’ facility standards and system requirements and were comparable to the design and configuration for facilities Western Farmers had 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. *Id.* P 27.

⁵ *Southwest Power Pool, Inc.*, 147 FERC ¶ 61,078 (2014) (April 30 Order).

⁶ *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012), *order on reh’g*, 142 FERC ¶ 61,205 (2013).

dynamically telemetered to the AEP control area. SPP notes that the Commission has previously accepted earlier iterations of the Eighteenth Revised AEP NITSA that contain similar language.⁷

6. SPP also indicates that the Eighteenth Revised AEP NITSA retains non-conforming language identical to the Sixteenth Revised AEP NITSA to incorporate AEP's desired design, configuration, and cost allocation for facilities associated with the Ellis and Wapanucka points of delivery.⁸ SPP explains that those changes are included in sections 2.0, 3.0, 5.0, 8.1, 8.3, and 8.11 of Attachment 1 of the Eighteenth Revised AEP NITSA as well as the Ellis Delivery Point Agreement (attached to the Eighteenth Revised AEP NITSA as Appendix 4) and the Wapanucka Delivery Point Agreement (attached to the Eighteenth Revised AEP NITSA as Appendix 5). SPP states that both the Ellis and Wapanucka Delivery Point Agreements are only partially executed due to the dispute between AEP and Western Farmers.⁹

7. SPP asserts that Western Farmers declined to execute the Eighteenth Revised AEP NOA without providing a reason. In addition, SPP asserts that AEP declined to execute the Eighteenth Revised AEP NITSA based on SPP's listing of network upgrades for two new delivery points, Benteler and City Lake, in section 8.10 of Attachment 1, rather than section 8.11 of Attachment 1, of the Eighteenth Revised AEP NITSA.¹⁰ SPP maintains that, in accordance with its standard practice for network upgrades resulting from an Attachment AQ (Delivery Point Addition Process) study, SPP determined that section 8.10 was the appropriate location to list the Benteler and City Lake points of delivery because SPP will be issuing notifications to construct for the network upgrades. SPP explains that section 8.11 is a non-conforming section that was added to the Sixteenth Revised AEP NITSA to specifically address the facilities for the Ellis and Wapanucka points of delivery which are the subject of ongoing settlement discussions in Docket No. ER14-67-000.¹¹ According to SPP, it is appropriate to distinguish the

⁷ SPP Transmittal at 4 (citing April 30 Order, 147 FERC ¶ 61,078; December 6 Order, 145 FERC ¶ 61,204; *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,295 (2013); *Southwest Power Pool, Inc.*, Docket No. ER12-444-000 (Jan. 11, 2012) (delegated letter order); *Southwest Power Pool, Inc.*, Docket No. ER11-3487-000 (June 28, 2011) (delegated letter order); *Southwest Power Pool, Inc.*, Docket No. ER10-2489-000 (Oct. 13, 2010) (delegated letter order)).

⁸ *Id.* at 4-6.

⁹ SPP states that it is not a party to either delivery point agreement. *Id.* at 5-6.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 7.

facilities for the Ellis and Wapanucka points of delivery from the facilities in section 8.10 for which SPP has issued notifications to construct.

8. SPP requests an effective date of May 1, 2014 for the Agreement. To accommodate this effective date, SPP requests waiver of the Commission's 60-day prior notice requirement, set forth in 18 C.F.R. § 35.3 (2014). SPP argues that waiver is appropriate because May 1, 2014 is the effective date requested in the June 2, 2014 filing, and such filing was made within 30 days of the commencement of service.¹²

9. Notice of SPP's June 2, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 33,545 (2014), with interventions and protests due on or before June 23, 2014. Notice of SPP's June 11, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 35,157 (2014), with interventions and protests due on or before July 2, 2014.

10. Western Farmers submitted a timely motion to intervene and comments, requesting that the Commission condition any acceptance of the Agreement on the outcome of the hearing and settlement judge procedures in Docket No. ER14-67-000.¹³ AEP submitted a timely motion to intervene and limited protest, requesting that the Commission direct SPP to modify the Eighteenth Revised AEP NITSA so that the facilities associated with the establishment of two new delivery points – Benteler and City Lake – are listed in section 8.11 of Attachment 1, which is the same section of the attachment in which the facilities associated with other delivery points, Ellis and Wapanucka, are listed.¹⁴ AEP explains that subsection A of section 8.10 applies to network upgrades for network resources, not upgrades associated with new delivery points.

11. AEP also states that the Commission should clarify that, for the purposes of providing notice to the customer and the public, blacklined versions of a revised service agreement should depict the revisions to the service agreement as compared to the previously accepted version. AEP contends that, because the Commission has previously accepted the revisions to the Seventeenth Revised AEP NITSA, subject to the outcome of hearing and settlement proceedings, section 8.11 is a currently effective provision, and it is not being changed through the instant filing. Consequently, AEP maintains that it is inappropriate for SPP to depict the provisions in the NITSA involving the Ellis and Wapanucka delivery points in blackline, particularly given that SPP has not blacklined

¹² *Id.* (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)).

¹³ Western Farmers Comments at 5-6.

¹⁴ AEP Limited Protest at 1.

the new language SPP has proposed in this proceeding regarding the Benteler and City Lake delivery points.¹⁵

12. On July 16, 2014, SPP submitted an answer to AEP, reiterating that SPP's listing of the Benteler and City Lake delivery points in section 8.10 is consistent with SPP's standard practices and the *pro forma* NITSA.¹⁶ SPP states that, if AEP makes an ongoing issue of memorializing network upgrades associated with a new delivery point in a non-conforming section 8.11, SPP recommends that AEP bring the issue to the stakeholder process to determine if a revision to the *pro forma* NITSA is necessary. SPP is concerned that, absent an order by the Commission, AEP's request to depart from SPP's standard filing procedures for network upgrades may decrease transparency and result in unduly discriminatory treatment of other network customers.

13. SPP asserts that it filed the non-conforming language in blackline in accordance with Order No. 2001 and the Commission's regulations. SPP explains that, in Order No. 2001, the Commission found that, if an agreement does not precisely match the applicable standard form of service agreement, or if the agreement is unexecuted, it is necessarily non-conforming and must be filed individually for Commission approval.¹⁷ Further, SPP points to 18 C.F.R. § 35.10 (2014), which requires that such filings must contain a marked version of the service agreement sheets or sections showing additions and deletions with new language marked by underlined text and deleted language struck through. SPP asserts that filing a marked service agreement that notes all non-conforming changes from a standard agreement, whether the service agreement is new or established, is reasonable based on the plain language of the law.¹⁸ However, SPP states that, if the Commission agrees with AEP, the Commission should clarify that blacklining

¹⁵ *Id.* at 3.

¹⁶ SPP Answer at 4-5.

¹⁷ *Id.* at 8 (citing *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, at P 196, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008)).

¹⁸ *Id.* at 8-9.

only immediate non-conforming changes to previously accepted non-conforming service agreements is compliant with the Commission's filing requirements.¹⁹

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to 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.

15. We conditionally accept the Agreement, effective May 1, 2014, as requested, subject to the outcome of the hearing and settlement judge procedures in Docket No. ER14-67-000, and subject to a compliance filing, as described below. As noted by SPP, the Agreement contains the same non-conforming language relating to the Ellis and Wapanucka points of delivery currently subject to ongoing hearing and settlement judge procedures in Docket No. ER14-67-000. Thus, the rulings in Docket No. ER14-67-000 have a direct bearing on those same changes proposed in the instant proceeding and will apply to the Agreement.

16. As to the appropriate provision to list the new delivery points at Benteler and City Lake, we agree with AEP that, given the structure of this particular non-conforming agreement, such delivery points should be identified in section 8.11 of Attachment 1 of the Eighteenth Revised AEP NITSA. While we understand that SPP generally describes network upgrades in section 8.10 of Attachment 1 of a NITSA, the prior iterations of the Agreement have separated network upgrades from delivery point facilities, and thus, the new delivery points are most appropriately listed in section 8.11, entitled "Delivery Point Facilities." We do not view AEP's request as decreasing transparency or being unduly discriminatory to SPP's other network customers, as this change only applies to this particular non-conforming agreement in which network upgrades and delivery points have been separated. We therefore direct SPP to submit in a compliance filing, within 30 days of the date of this order, a revised NITSA to reflect the change to section 8.11.

17. We also clarify that SPP should provide, in future filings to the Commission, a marked version showing any additions and deletions to a rate schedule, tariff, or service agreement currently on file, in accordance with 18 C.F.R. § 35.10(b) (2014). In the instant case, SPP failed to mark by either highlighting, background shading, bold text, or underlined text the new Benteler and City Lake delivery points in accordance with the regulations. We clarify, however, that non-conforming deviations from the *pro forma*

¹⁹ *Id.* at 9-10.

service agreement should also be marked.²⁰ We expect SPP to adopt this blacklining approach in its compliance filing due within 30 days of the issuance of this order.

By Direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ We note that the transmittal letter should clearly delineate whether the marked language pertains to previously accepted non-conforming language or the new language proposed in that particular agreement.