

152 FERC ¶ 61,123
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Southwest Power Pool, Inc.

Docket No. ER15-1918-000

ORDER ACCEPTING IN PART AND REJECTING IN PART TARIFF REVISIONS,
SUBJECT TO FURTHER COMPLIANCE FILING

(Issued August 14, 2015)

1. On June 15, 2015, pursuant to section 205 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP) submitted proposed revisions to its Open Access Transmission Tariff (SPP Tariff) related to its Transmission Owner Selection Process. In this order, we accept in part and reject in part SPP's proposed tariff revisions, subject to a further compliance filing, as discussed below.

I. Background

2. SPP states that, in response to Order No. 1000,² it established a competitive bidding process,³ through which it will select, from competing responses to SPP-issued requests for proposals, qualified entities to construct, own, and operate new SPP-approved transmission facilities that qualify as "Competitive Upgrades."⁴ Under SPP's

¹ 16 U.S.C. § 824d (2012).

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, No. 12-1232, 2014 WL 3973116 (D.C. Cir. Aug. 15, 2014).

³ SPP calls its competitive transmission bidding process the Transmission Owner Selection Process.

⁴ The criteria for Competitive Upgrades are set forth in section I of Attachment Y (Transmission Owner Designation Process) of the SPP Tariff. *See* SPP Tariff, Attachment Y, § I.1-2.

competitive bidding process, SPP will issue a request for proposals for Competitive Upgrades that have been selected in its regional transmission plan for purposes of cost allocation.⁵ Entities that have qualified pursuant to the SPP Tariff qualification criteria may submit a bid in response to a request for proposals.⁶ SPP's Industry Expert Panel⁷ then evaluates the bids using a scoring system, which awards points based on the following criteria: (1) engineering design; (2) project management; (3) operations; (4) rate analysis; and (5) finance. A transmission developer is also eligible for incentive points if it proposed the selected transmission project.⁸ The Industry Expert Panel recommends a transmission developer to the SPP Board, which ultimately selects the winning bid.⁹ The developer that submitted the winning bid becomes the Designated Transmission Owner, and SPP issues the Designated Transmission Owner a Notification to Construct the transmission project.¹⁰

3. Under SPP's Transmission Owner Selection Process, each transmission developer that submits a bid must simultaneously submit a Transmission Owner Selection Process deposit which is based on the cost of the Competitive Upgrades as identified in the SPP Transmission Expansion Plan approved by the SPP Board of Directors. The deposit amount for a small project, less than \$10 million, is \$10,000; for a medium project, between \$10 million and \$100 million, is \$25,000; and for a large project, greater than \$100 million, is \$50,000.¹¹ SPP determines the actual Transmission Owner Selection Process costs, which include the costs associated with administering the Transmission Owner Selection Process and the Industry Expert Panel process for the Competitive Upgrade, at the completion of the process and all bidders make additional payments or

⁵ *Id.* § III.2.a.

⁶ *Id.* § III.2.d.i.

⁷ The SPP Board establishes the Industry Expert Panel to review bids in SPP's competitive bidding process, and select the winning bid to recommend to the SPP Board. *See id.* § II.

⁸ *Id.* § III.2.f.

⁹ *Id.* § III.2.d.vii.

¹⁰ *Id.* § V.1-2.

¹¹ *Id.* § III.2.e.i.

obtain refunds based on the reconciliation of the Transmission Owner Selection Process deposits collected and the actual Transmission Owner Selection Process costs.¹²

II. SPP Filing

4. SPP states that the proposed revisions to section III of Attachment Y: (1) resolve ambiguity regarding the calculation and recovery of the costs of the Transmission Owner Selection Process; (2) modify the demonstration of financial strength that participants in the Transmission Owner Selection Process must show; and (3) clarify which information the Industry Expert Panel may rely upon to score and rank request for proposals.¹³ SPP requests an effective date of August 5, 2015 for these proposed tariff revisions.

III. Notice of Filing and Responsive Pleadings

5. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 35,646 (2015), with interventions and protests due on or before July 6, 2015. On July 6, 2015, Ameren Services Company on behalf of its affiliates, ATX Southwest, LLC and Ameren Transmission Company of Illinois, (collectively, Ameren) filed a timely motion to intervene and protest. On July 10, 2015, South Central MCN, LLC filed a motion to intervene out of time. On July 24, 2015, SPP filed an answer.

IV. Discussion

A. Procedural Issues

6. 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. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant South Central MCN, LLC'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.

7. 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 a protest unless otherwise ordered by the decisional authority. We accept SPP's answer because it has provided information that assisted us in our decision-making process.

¹² *Id.* § III.2.e.ii.

¹³ Transmittal at 1, 3.

B. Substantive Issues**1. Cost Recovery for Transmission Owner Selection Process****a. SPP Proposal**

8. SPP proposes changes to clarify how the costs associated with its Transmission Owner Selection Process are calculated and charged. SPP states that it is not proposing to change the structure of the deposit, true-up process, or deposit amounts for bids on each Competitive Upgrade. Instead, SPP points out that its current tariff language could be interpreted to limit SPP's recovery only to those costs traceable to the administration of a specific Transmission Owner Selection Process for a specific Competitive Upgrade. SPP asserts that it has incurred, and may continue to incur, costs associated with implementing and administering the Transmission Owner Selection Process that are general costs not directly traceable to a specific Competitive Upgrade. SPP argues that these costs should be part of SPP's costs to evaluate bids. SPP states that these costs include SPP's costs to develop the procedures to implement various aspects of the Transmission Owner Selection Process, staff time, and SPP's costs to set up the Industry Expert Panel recruitment, selection, and training processes. SPP asserts that these implementation costs are not directly traceable to specific Competitive Upgrades and that the current tariff language is ambiguous regarding whether and how SPP calculates and recovers them.¹⁴

9. SPP proposes to assess an Implementation Cost Charge of \$2,000, which will be recovered with each bid. SPP asserts that the Implementation Cost Charge is designed to be small enough to spread cost recovery out over time and ensure that costs are not disproportionately allocated to a selection process for a specific Competitive Upgrade. SPP claims that, instead, the costs will be allocated to all beneficiaries of the process that SPP has put in place to implement its Transmission Owner Selection Process. SPP asserts that the Implementation Cost Charge will ensure that SPP can recover the costs associated with implementing the Transmission Owner Selection Process and Industry Expert Panel process from those who benefit (i.e., Transmission Owner Selection Process participants), which is consistent with cost causation. SPP avers that the Implementation Cost Charge is just and reasonable and consistent with cost causation principles because it will allow SPP to spread these costs over time to more Transmission Owner Selection

¹⁴ *Id.* at 5.

Process participants, rather than recovering them from those entities that participate in the Transmission Owner Selection Process that occurs right after the costs are incurred.¹⁵ SPP contends that it is not possible to predict how long it would take SPP to recover its general implementation costs. However, SPP states that it determined that \$2,000 was appropriate because it is relatively small in comparison to the overall cost of evaluating a bid and nominal in comparison to building a Competitive Upgrade. Further, SPP avers that imposing the Implementation Cost Charge will avoid having these costs allocated disproportionately to one group of bidders or possibly fall on other customers under the SPP Tariff administration charge. SPP adds that it will ensure that the fee amount will not present a barrier to participation. SPP asserts that its proposed language ensures that SPP only recovers the Implementation Cost Charge until all of SPP's costs to develop and implement the Transmission Owner Selection Process and Industry Expert Panel process have been recovered.¹⁶ SPP asserts that, if it recovers all of its general implementation costs and has incurred no additional general implementation costs in the future, SPP will revisit this language and possibly adjust or remove the Implementation Cost Charge in the future.

10. Second, SPP proposes revisions to describe how SPP calculates costs associated with administering the Transmission Owner Selection Process for a specific Competitive Upgrade and costs associated with administering the Industry Expert Panel process for that specific Competitive Upgrade.¹⁷ SPP also proposes new tariff language that sets forth how SPP will calculate each bid's total Transmission Owner Selection Process costs, invoice a bidder for costs exceeding the amount of its deposit, and provide refunds to a bidder for unused deposit amounts.¹⁸ SPP asserts that these revisions ensure that SPP will be able to recover each bid's *pro rata* share of the general implementation costs SPP has incurred while also maintaining the existing true-up to ensure that SPP does not over- or under-collect the specific Transmission Owner Selection Process costs for a specific Competitive Upgrade.

11. SPP notes that currently if a bid is disqualified from further consideration or if the SPP Board of Directors withdraws a request for proposal, then SPP is required to refund

¹⁵ *Id.* at 9 (citing *ISO New England, Inc.*, 115 FERC ¶ 61,145, at P 13 (2006) (“Under cost causation principles, costs are allocated to the parties who cause the incurrence of such costs.”)).

¹⁶ *Id.* at 5-7 (citing SPP Tariff, Attachment Y, § III.2(e)(ii)(2)).

¹⁷ *Id.* at 7 (citing SPP Tariff, Attachment Y, § III.2(e)(ii)).

¹⁸ *Id.* at 8 (citing SPP Tariff, Attachment Y, § III.2(e)(ii)(3)).

to the applicable bidder 90 percent of its Transmission Owner Selection Process deposit funds. SPP proposes revisions to specify that this refund will be made from the funds remaining after SPP recovers the Implementation Cost Charge. SPP avers that, because general implementation costs are incurred for the benefit of all Transmission Owner Selection Process participants, it is appropriate to recover the Implementation Cost Charge from all bids, even if the bid is later disqualified as deficient or the SPP Board of Directors subsequently withdraws a request for proposal because all cost estimates contained in the bids significantly exceed SPP's cost estimate and the SPP Board of Directors is required to reevaluate the Competitive Upgrade.¹⁹

b. Protest

12. Ameren argues that the Commission should reject SPP's proposed Implementation Cost Charge, which would charge bidders \$2,000 for each bid submitted under the Transmission Owner Selection Process to recover undefined general costs not directly traceable to a specific Competitive Upgrade solicitation.²⁰ According to Ameren, the Commission required SPP to craft tariff language so that bidders would pay for precise costs associated with administering the Transmission Owner Selection Process for a specific Competitive Upgrade solicitation. Ameren notes that the existing tariff language includes a true-up mechanism so that no bidder is assessed more or less than SPP's actual cost to administer the Transmission Owner Selection Process. Ameren asserts that the proposed tariff language attempts to undo the precision required by the Commission by permitting SPP to assess an additional arbitrary \$2,000 fee.²¹ Ameren avers that SPP's justification for its proposal would mean that any future costs associated with implementing tariff changes should be carved out and charged to specific segments of SPP participants.

13. Further, Ameren contends that bidders are not the sole beneficiaries of the Transmission Owner Selection Process. According to Ameren, a central goal of the Transmission Owner Selection Process is to ensure that the bidder that is selected to develop, construct, and operate a Competitive Upgrade project will provide the best overall value to all of the stakeholders within SPP. Ameren argues that the true benefactors of the Transmission Owner Selection Process are the SPP participants who ultimately pay for the transmission project. Ameren contends that assessing additional arbitrary charges to the bidders will only serve to further limit competition and reduce the

¹⁹ *Id.* at 8-9.

²⁰ Ameren Protest at 3.

²¹ *Id.* at 4.

value of Order No. 1000 to the SPP stakeholders.²² Therefore, Ameren urges the Commission to reject the proposed Implementation Cost Charge.²³

c. Answer

14. SPP asks that the Commission reject Ameren's protest. SPP asserts that its current tariff language is ambiguous and could be read to suggest either that the SPP Tariff permits SPP to recover only those costs that are directly traceable to the administration of a specific Transmission Owner Selection Process for a Competitive Upgrade or that the SPP Tariff omits a mechanism to enable SPP to spread out these general Transmission Owner Selection Process costs over time. SPP argues that the current tariff language could result in the imposition of all general Transmission Owner Selection Process costs onto the first bids that are received after the costs are incurred.²⁴

15. SPP argues that the proposed Implementation Cost Charge is relatively small in comparison to the cost of the Competitive Upgrade. SPP also asserts that the charge is not arbitrary because it will be recovered from the Transmission Owner Selection Process deposit amounts submitted by bidders with their bids.²⁵ SPP argues that the charge is just and reasonable and recovers costs that SPP incurs as part of its effort to evaluate bids. SPP argues that its proposal is consistent with cost causation principles because the general costs of implementing the Transmission Owner Selection Process and the Industry Expert Panel process are recovered from the participants as opposed to other stakeholders via the SPP Tariff Administration Charge.²⁶ SPP asserts that the Commission's reasoning in response to a similar fee proposed by PJM Interconnection, L.L.C. (PJM) applies to the Implementation Cost Charge. SPP notes that, in that proceeding, the Commission "agree[d] with PJM that it is reasonable to charge a fee to

²² It appears that Ameren inadvertently attributes this statement to ATX Southwest. *See id.* at 5.

²³ *Id.*

²⁴ SPP Answer at 4-5.

²⁵ *Id.* at 5.

²⁶ *Id.* at 5-7.

cover the costs of evaluating transmission projects proposed for selection in the regional transmission plan for purposes of cost allocation.”²⁷

16. Additionally, SPP argues that its Implementation Cost Charge does not hinder competition. SPP contends that Ameren fails to demonstrate how recovering the charge from deposit amounts that bidders are already required to pay under SPP’s existing tariff provisions will discourage parties from submitting bids.²⁸

17. SPP disputes Ameren’s argument that the Implementation Cost Charge is “unworkable.” SPP explains that it is able to track and recover the costs associated with the Transmission Owner Selection Process separately from its recovery of costs associated with other services provided under the SPP Tariff. Further, SPP asserts that it has tracked its incurred costs since the implementation of Order No. 1000 and will continue to do so.²⁹

d. Commission Determination

18. We find that SPP has not demonstrated that the proposed Implementation Cost Charge is just and reasonable and not unduly discriminatory. We find it is not appropriate to recover the costs associated with creating and maintaining the Transmission Owner Selection Process, which SPP proposed in order to comply with Order No. 1000, from only bidders and not others that also benefit. We disagree with SPP’s claim that there is ambiguity in the OATT about whether and how SPP recovers costs associated with implementing and administering the Transmission Owner Selection Process that are general costs not directly traceable to a specific Competitive Upgrade. The Transmission Owner Selection Process is a part of the overall transmission planning process, and, as such, the administrative costs of establishing the Transmission Owner Selection Process, including establishing the Industry Expert Panels, should not be recovered through the proposed Implementation Cost Charge because SPP’s OATT already provides a mechanism to recover these costs through its Tariff administration charge. While the Commission accepted SPP’s Transmission Owner Selection Process deposit to cover the costs associated with administering the competitive bidding process for a specific request for proposals, it did not find that SPP could use the Transmission Owner Selection Process deposit to recover general costs associated with the

²⁷ *Id.* at 7 (citing *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,087, at P 27 (2015)).

²⁸ *Id.* at 7-8.

²⁹ *Id.* at 8-9.

transmission planning reforms of Order No. 1000. Instead, consistent with SPP's proposal to comply with Order No. 890, those costs should be recovered under Schedule 1-A of SPP's OATT.³⁰ We find that SPP has not supported its proposal to impose the Implementation Cost Charge on bidders to recover general administrative costs beyond the costs of evaluating their bids and has not shown that it is just and reasonable and not unduly discriminatory to assess the Implementation Cost Charge only to entities that submit bids in the Transmission Owner Selection Process.

19. We find that SPP's reliance, in its answer, on the Commission's finding in *PJM Interconnection, L.L.C.* is unfounded. SPP points to the Commission's statement that it is reasonable to charge a fee to cover the costs of evaluating transmission projects proposed for selection in the regional transmission plan for purposes of cost allocation.³¹ The type of fee discussed by the Commission in that proceeding is similar to SPP's Commission-accepted Transmission Owner Selection Process deposit, and ensures that transmission developers paid for the costs of evaluating their bids. However, as we have found, SPP has not demonstrated that imposition of the Implementation Cost Charge on bidders is necessary in order to ensure that they pay for the costs of evaluating their bids. Therefore, *PJM Interconnection, L.L.C.* is not relevant to the issue before us.³² For these reasons, we reject the proposed Implementation Cost Charge that recovers general administrative costs of the Transmission Owner Selection Process and the Industry Expert Panel process. Accordingly, we direct SPP to submit a compliance filing, within 30 days of the date of issuance of this order, to remove the proposed revisions to the SPP Tariff related to the Implementation Cost Charge.

20. We also reject SPP's proposed revisions to describe how SPP calculates costs associated with administering the Transmission Owner Selection Process for a specific Competitive Upgrade and costs associated with administering the Industry Expert Panel process for that specific Competitive Upgrade as unnecessary. With the rejection of the proposed Implementation Cost Charge, we find that the SPP Tariff already limits SPP's

³⁰ In its Order No. 890 compliance proceeding, SPP stated that costs associated with its transmission planning process and associated studies will be recovered under Schedule 1-A of SPP's OATT, which provides for the application of an administrative charge to all transmission service taken under SPP's OATT. *Sw. Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 64 (2008).

³¹ SPP Answer at 7 (citing *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,087 at P 27).

³² We note that, even if the case was not distinguishable, the cited statement is dictum, which is not binding precedent.

recovery only to those costs associated with the administering the Transmission Owner Selection Process and the Industry Expert Panel process for a specific Competitive Upgrade. Accordingly, we direct SPP to submit a compliance filing, within 30 days of the date of issuance of this order, to remove such proposed revisions to the SPP Tariff.

21. We find that SPP's proposal to specify that the refund made to a bidder when a bid is disqualified from further consideration or if the SPP Board of Directors withdraws a request for proposal will be made from the funds remaining after SPP recovers the Implementation Cost Charge is rendered moot by our rejection of the proposed Implementation Cost Charge. Accordingly, we direct SPP to submit a compliance filing, within 30 days of the date of issuance of this order, to remove such proposed revisions to the SPP Tariff.

2. Financial Strength Requirements

a. SPP Proposal

22. SPP proposes to modify the financial contingencies that bidders are required to demonstrate when they submit a bid. SPP states that currently bidders must demonstrate that they possess the necessary financial strength to construct the Competitive Upgrade by either: (1) demonstrating that either the bidder (or its parent guarantor) continues to possess an investment grade rating and the Competitive Upgrade does not exceed the bidder's (or parent guarantor's) total capitalization by 30 percent; (2) providing conclusive evidence of the ability to obtain a performance bond equal to the total cost of the Competitive Upgrade plus a 30 percent contingency; or (3) providing conclusive evidence of the ability to obtain a letter of credit equal to the total cost of the Competitive Upgrade plus a 30 percent contingency. SPP proposes to reduce the required contingency for bidders using performance bonds or letters of credit from 30 percent to 20 percent.³³ SPP contends that this change will reduce the potential financial burden on bidders, and should encourage broader participation in the Transmission Owner Selection Process while allowing SPP to continue to ensure that bidders possess sufficient financial strength to complete the Competitive Upgrade if their bid is selected by the SPP Board of Directors.³⁴

³³ Transmittal at 4 (citing SPP Tariff, Attachment Y, § III.2(c)(vi)(2)).

³⁴ *Id.* at 3-4.

b. Commission Determination

23. We find that SPP's proposed revisions to the financial strength requirements are just and reasonable because they will potentially reduce the financial burden on bidders and potentially encourage broader participation in the Transmission Owner Selection Process. Moreover, the proposed revisions should not disrupt SPP's ability to ensure that bidders possess adequate financial resources to complete the Competitive Upgrade should they submit the winning bid. Accordingly, we accept these proposed tariff revisions.

3. Industry Expert Panel Evaluation

a. SPP Proposal

24. SPP proposes revisions to clarify the process and timeline for the Industry Expert Panel's evaluation of bids. SPP states that the current tariff language requires the Industry Expert Panel to "score and rank each [bid] in a non-discriminatory manner based upon the information supplied in the [bid] *or* obtained during the review period."³⁵ SPP contends that, contrary to its intent, this language could be interpreted to mean that the Industry Expert Panel can disregard the information supplied in the bid and rely only on information obtained in subsequent discussions with the bidder during the review period. SPP asserts that its proposed revision will clarify that the Industry Expert Panel may not disregard information supplied in a bid when scoring and ranking bids and instead rely exclusively on information obtained during the review period.³⁶ Therefore, SPP proposes to change "or" to "and" in the tariff language describing the information that the Industry Expert Panel may use during the review period.

b. Commission Determination

25. We find that SPP's proposed revision to the Industry Expert Panel evaluation process are just and reasonable because they clarify which information the Industry Expert Panel can review in its evaluation. Accordingly, we accept these proposed tariff revisions.

³⁵ SPP Tariff, Attachment Y, § III.2(d)(vi)(1) (emphasis added by SPP).

³⁶ Transmittal at 9-10.

The Commission orders:

(A) The proposed tariff revisions to section III of Attachment Y are hereby accepted in part, effective August 15, 2015, as requested, and rejected in part, subject to further compliance filing, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing, within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.