

153 FERC ¶ 61,354
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER16-244-000

ORDER ACCEPTING SERVICE AGREEMENT, SUBJECT TO CONDITION

(Issued December 29, 2015)

1. On November 2, 2015, Southwest Power Pool, Inc. (SPP) submitted, pursuant to section 205 of the Federal Power Act¹ and section 35.13 of the Commission's regulations:² (1) an unexecuted service agreement for Network Integration Transmission Service (Service Agreement) between SPP as transmission provider and Missouri River Energy Services (Missouri River) as network customer; and (2) an unexecuted Network Operating Agreement among SPP as transmission provider, Missouri River as network customer, and Missouri River, Basin Electric Power Cooperative (Basin Electric), East River Electric Power Cooperative, Inc., Northwest Iowa Power Cooperative, and Western Area Power Administration (Western) as host transmission owners (together, Missouri River Agreement).³ In this order, we accept the Missouri River Agreement, subject to condition, effective October 1, 2015, as discussed below.

I. Background and SPP's Filing

2. On September 11, 2014, SPP submitted proposed revisions to its Open Access Transmission Tariff (Tariff), Bylaws, and Membership Agreement to facilitate the decision of the U.S. Department of Energy, Western Area Power Administration – Upper Great Plains Region (Western-UGP), Basin Electric, and Heartland Consumers Power

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ The Missouri River Agreement is designated as Original Service Agreement No. 3095.

District (Heartland) (collectively, Integrated System Parties),⁴ to integrate into SPP. On November 10, 2014, the Commission conditionally accepted in part, rejected in part, and established hearing and settlement judge procedures with regard to SPP's proposed Tariff revisions.⁵ On October 15, 2015, the Commission issued a rehearing order affirming the issues set for hearing and settlement judge procedures, which remain ongoing in Docket Nos. ER14-2850-000 and ER14-2851-000.⁶

3. On November 2, 2015, in connection with the Integrated System Parties' integration into SPP, SPP filed the Missouri River Agreement. SPP states that the Missouri River Agreement conforms to the standard forms of service agreements set forth in SPP's Tariff, but that Missouri River declined to execute the agreements, and requested that SPP file them unexecuted due to SPP's intent to represent the point of receipt for the Laramie River Resource as the Laramie River Substation. According to SPP, Missouri River believes the point of receipt should be designated as the Grand Island Substation because of grandfathered service that Missouri River has across the Nebraska Public Power District (NPPD) system from the Sydney Substation to the Grand Island Substation.⁷

4. SPP states that Missouri River maintains that the inclusion of the Grand Island point of receipt is needed to properly represent the Missouri River deliveries from the Laramie River Substation to the Missouri River network loads pursuant to a 1977 transmission service contract between NPPD and Basin Electric (1977 Agreement). SPP states that the 1977 Agreement is a contract with NPPD and only provides service across NPPD facilities from the Sidney Substation to the Grand Island Substation, not all the way from Laramie River to Grand Island.⁸

5. SPP states that it declined to include the Grand Island point of receipt in Appendix 2 of the Service Agreement because: (1) SPP does not include grandfathered

⁴ Western-UGP, Basin Electric, and Heartland together jointly own and operate a significant portion of the bulk electric transmission system in the Upper Great Plains region of the United States (collectively, the Integrated System).

⁵ *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,113 (2014), *order on reh'g*, 153 FERC ¶ 61,051 (2015) (Rehearing Order).

⁶ *See* Rehearing Order, 153 FERC ¶ 61,051.

⁷ Transmittal at 1-2.

⁸ *Id.* at 2.

transactions in its service agreements, as the purpose of the Service Agreement is to reflect the network integration transmission service that Missouri River is taking from SPP, not to reflect grandfathered transactions on the SPP system; and (2) the approach advocated by Missouri River ignores the necessity of SPP service from the Laramie River Substation to the Sidney Substation in addition to the service Missouri River would receive from the Grand Island Substation to the Missouri River points of delivery.⁹

6. Further, SPP explains that prior to the inclusion of the Integrated System into SPP, Missouri River depended upon capacity rights under the 1977 Agreement. However, SPP states that, operationally, Missouri River was able to schedule its power from its Laramie River Resource to its load around SPP using an alternate path on the Integrated System, which did not use the SPP transmission system for scheduling purposes. SPP states that the 1977 Agreement provided all of the service that Missouri River needed within SPP. According to SPP, with the inclusion of the Integrated System facilities into the SPP transmission system, including the facilities of Missouri River and others, Missouri River must now use the SPP transmission system. SPP states that the alternate path on the Integrated System and the facilities from the Grand Island Substation to Missouri River points of delivery are all now under the Tariff. SPP argues that, as a result, the Laramie River Substation is the proper point of receipt to include in Appendix 2 of the Missouri River Service Agreement, rather than the Grand Island Substation, to address the SPP network integration service from the Laramie River Substation to the Missouri River points of delivery.¹⁰

7. SPP requests waiver of the Commission's 60-day notice requirement set forth in section 35.3 of the Commission's regulations to allow an effective date of October 1, 2015 for the Missouri River Agreement. SPP argues that waiver is appropriate because the Missouri River Agreement is being filed within 30 days of the commencement of service.¹¹

II. Notice of Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 69,205 (2015), with interventions and protests due on or before November 23, 2015. Western

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3 (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); 18 C.F.R. § 35.3(a)(2) (2015)).

filed a timely motion to intervene. Missouri River filed a timely motion to intervene, conditional protest, and protest. On December 8, 2015, SPP filed an answer.

A. Protest

9. Missouri River states that it purchases network integrated transmission service from SPP for that portion of its load located in the Upper Missouri Zone, as well as for delivery to an adjoining utility for delivery to two other members in MISO.¹² Missouri River asserts that a point of receipt for the Laramie River Resource should be designated as the Grand Island Substation because of grandfathered service that Missouri River has across the NPPD system from the Sydney Substation to the Grand Island Substation. According to Missouri River, the inclusion of the Grand Island point of receipt is needed to properly represent the Missouri River deliveries from the Laramie River Substation to the Missouri River network loads pursuant to the 1977 Agreement.¹³ Missouri River argues that SPP suggests in its filing that the transmission path from the Laramie River Substation to the Sidney Substation would need to be represented in addition to the path from the Sidney Substation to Grand Island under the 1977 Agreement in order for Missouri River to have a full path from the Laramie River Resource to its network load. According to Missouri River, it has suggested previously that both the Sidney Substation and the Grand Island Substation would need to be represented as interchange/tie points to be able to properly settle the SPP Integrated Marketplace charges for the grandfathered treatment sought by Missouri River under the 1977 Agreement. Missouri River argues that this issue is being litigated in Docket No. ER14-2850-000.¹⁴ Missouri River states that it is agreeable to list both the Sidney Substation and the Grand Island Substation as interchange/tie points in the Service Agreement as interchange/tie points between areas that are commonly included in service agreements offered by SPP.

10. According to Missouri River, the dispute over whether to identify Grand Island as a point of receipt concerns the broader issue of how grandfathered service should be reflected in the Service Agreement. Missouri River states that this issue is the central focus of the proceeding in Docket No. ER14-2850-000, and in that proceeding, Missouri River has requested that SPP “carve out” the service provided to Missouri River under Grandfathered Agreement No. 496 from the application of congestion charges and marginal losses between the Sidney Substation and Grand Island Substation in SPP. Missouri River states that it and SPP have come to an agreement that differences in the

¹² Missouri River Protest at 5.

¹³ *Id.* at 2-3.

¹⁴ *Id.* at 3.

points of receipt listed in the Service Agreement and 1977 Agreement are not dispositive as to whether service under the 1977 Agreement may be carved out.¹⁵

11. In addition, Missouri River protests SPP's refusal to include multiple alternate emergency ties and backup feeds in the point of delivery listing in the Service Agreement. Missouri River argues that SPP has not provided sufficient rationale as to why backup feeds are listed in some service agreements, such as those offered to Basin Electric and Western in related proceedings,¹⁶ and not needed in other service agreements such as Missouri River's Service Agreement in this docket. Missouri River asserts that to be in a comparable position to others in the Upper Missouri Zone, it should either be permitted to have its alternate emergency ties and backup feeds listed in its Service Agreement, or SPP should not list them in any service agreement it offers.¹⁷ Thus, Missouri River suggests alternate emergency ties that could be added to its Service Agreement to make it consistent with the service agreements offered to others.

B. Answer

12. SPP states that it and Missouri River have agreed that any differences in the representation of the points of receipt for the Laramie River Substation in the Service Agreement are not dispositive of the outcome of the settlement proceedings in Docket No. ER14-2850-000. SPP states that the Laramie River Substation (the generator) is the appropriate receipt point, and that unlike point-to-point service, which focuses on points of receipt and points of delivery that may be located at intermediate points on a transmission provider's transmission system, network service provides for firm transmission service from the network resource (generator bus or interconnection with another transmission provider's transmission system) to network load.¹⁸ SPP argues that the Grand Island Substation is not a network resource; rather it is an intermediate point on the SPP transmission system, and therefore it cannot be a receipt point for network integration transmission service.

13. With respect to Missouri River's protest to SPP's exclusion of alternate emergency ties and backup feeds from the Service Agreement, SPP states that these types

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* (citing Sw. Power Pool, Docket No. ER16-241-000 (filed Nov. 2, 2015); Sw. Power Pool, Docket No. ER16-245-000 (filed Nov. 2, 2015)).

¹⁷ *Id.* at 6.

¹⁸ SPP Answer at 3 (citing Tariff, Part III, section 28.3).

of delivery points are not typically included in service agreements. SPP states that because the network integration transmission service transitioned to SPP during the integration of Western into SPP is equivalent to the network integration transmission service formerly provided by Western, SPP included the alternate emergency ties and backup feeds in the service agreements for Western and Basin Electric because they were listed in Western's and Basin Electric's previous service agreement for service with Western.¹⁹ SPP states that these types of delivery points were not listed in Missouri River's previous service agreement for service with Western; therefore, SPP did not include them in the Service Agreement when the network integration transmission service transitioned to SPP.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

16. We accept the Missouri River Agreement, effective October 1, 2015, subject to condition, as discussed below.²⁰ We note that SPP and Missouri River have agreed that any differences in the representation of the points of receipt for the Laramie River Substation in the Service Agreement are not dispositive of the outcome of the settlement proceedings in Docket No. ER14-2850-000. We also grant waiver of the Commission's

¹⁹ *Id.* at 4.

²⁰ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

60-day notice requirement because SPP filed the Agreement within 30 days of the commencement of service.²¹

17. We agree with Missouri River that its Service Agreement should be consistent with the service agreements offered to others so that it is in a comparable position to others in the Upper Missouri Zone, and we find SPP's rationale for excluding emergency and backup feeds for Missouri River, but including them for other transmission owners, to be unpersuasive. Accordingly, we accept the Missouri River Agreement, subject to condition. We direct SPP to include the alternate emergency ties and backup feeds in the point of delivery listing in the Service Agreement, as requested by Missouri River, and to submit a compliance filing within 30 days of the date of this order to reflect this change. In this regard, we find that to the extent that SPP seeks to include multiple alternate emergency ties and backup feeds in the point of delivery listing in any service agreement it offers, SPP must include similar emergency ties and backup feeds in the service agreements of other customers that make this request. If SPP believes changes are necessary to the *pro forma* service agreement to include multiple alternate emergency ties and backup feeds in the point of delivery listing, SPP should seek to amend its *pro forma* service agreement.

The Commission orders:

(A) The Missouri River Agreement is hereby accepted, subject to condition, effective October 1, 2015, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²¹ 18 C.F.R. § 35.3(a)(2) (2015); *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.”).