

153 FERC ¶ 61,356
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. ER16-247-000

ORDER ACCEPTING SERVICE AGREEMENT

(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 executed service agreement for Network Integration Transmission Service (Service Agreement) between SPP as transmission provider and Montana-Dakota Utilities Co. (Montana-Dakota Utilities)³ as network customer; and (2) an unexecuted Network Operating Agreement among SPP as transmission provider, Montana-Dakota Utilities as network customer, and Basin Electric Power Cooperative (Basin Electric) and Western Area Power Administration (Western) as host transmission owners (together, Montana-Dakota Utilities Agreement).⁴ In this order, we accept the Montana-Dakota Utilities Agreement, effective October 1, 2015, subject to the outcome of the ongoing hearing and settlement judge procedures in Docket Nos. ER14-2850-000 and ER14-2851-000.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ Montana-Dakota Utilities is a Division of MDU Resources Group, Inc. Transmittal at 1.

⁴ SPP, Montana-Dakota Utilities, Western, and Basin Electric are referred to collectively as "the Parties." The Montana-Dakota Utilities Agreement is designated as Original Service Agreement No. 3127.

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 District (Heartland) (collectively, Integrated System Parties),⁵ 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 revisions.⁶ 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 ER14-2851-000.⁷

3. On November 2, 2015, in connection with the Integrated System Parties' integration into SPP, SPP filed the Montana-Dakota Utilities Agreement. SPP explains that Montana-Dakota Utilities requested, pending resolution of its issues in the settlement proceedings in Docket Nos. ER14-2850-000 and ER14-2851-000, which involves the integration of the Integrated System Parties into SPP, that SPP file an unexecuted Network Operating Agreement.⁸ SPP states that the Montana-Dakota Utilities Agreement contains certain language that does not conform to the *pro forma* agreements, specifically that the Parties added references to the ongoing settlement proceedings in Docket Nos. ER14-2850-000 and ER14-2851-000. SPP states that the language in section 10.0 of the Service Agreement provides that the Service Agreement is subject to the final outcome in the settlement proceedings, and to the extent that a settlement agreement between SPP and Montana-Dakota Utilities is approved by the Commission, conflicts between the settlement agreement and the Service Agreement shall be resolved in favor of the settlement agreement.⁹ SPP also explains that references to section 10.0 of the Service Agreement were added to section 3 and sections 8.2 and 9 of Attachment 1 to the Service Agreement, and that language was added to the Network Operating

⁵ 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, Integrated System).

⁶ *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,113 (2014) (November 2014 Order), *order on reh'g*, 153 FERC ¶ 61,051 (2015) (Rehearing Order).

⁷ *See* Rehearing Order, 153 FERC ¶ 61,051.

⁸ Transmittal at 2.

⁹ *Id.* at 3.

Agreement that provides that “the final rates, terms and conditions are subject to the final outcome of Commission Docket Nos. ER14-2850 and 2851.”¹⁰

4. SPP explains that these non-conforming provisions are necessary to clarify that Montana-Dakota Utilities’ participation in SPP as a transmission customer and ability to receive credits under section 30.9 of the SPP Tariff are subject to the outcome of the ongoing proceedings in Docket Nos. ER14-2850-000 and ER14-2851-000. SPP states that, if the settlement agreement is approved by the Commission in these dockets, SPP will work with Montana-Dakota Utilities to update the Montana-Dakota Utilities Agreement to comply with the settlement.

5. SPP also explains that Montana-Dakota Utilities requested the removal of section 5 of the Service Agreement because Montana-Dakota Utilities declined to execute the Network Operating Agreement. In addition, SPP states that Montana-Dakota Utilities requested the addition of language in section 8.0 of the Service Agreement providing that the Network Customer may seek unilateral changes to the Tariff or the Service Agreement under section 206 of the Federal Power Act. SPP states that this language provides additional clarity and is consistent with section 9 of the Tariff.¹¹

6. SPP explains that the Parties deleted subsections (d) through (g) of section 8.4.1 of Attachment 1 of the Service Agreement related to the required ancillary services in Schedules 3 through 6 of the Tariff. SPP states that Montana-Dakota Utilities’ load will be located in the Midcontinent Independent System Operator, Inc. (MISO) balancing authority area, so Montana-Dakota Utilities will obtain these ancillary services from the MISO market. SPP states that this deletion is consistent with section 3 of the Tariff, which specifically provides that these ancillary services may be acquired from a third party.¹²

7. SPP requests waiver of the Commission’s 60-day notice requirement set forth in section 35.3 of the Commission’s regulations in order to permit an effective date of October 1, 2015 for the Montana-Dakota Utilities Agreement. SPP argues that waiver is

¹⁰ *Id.* at 4.

¹¹ *Id.* Section 9 of the Tariff provides: “Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission’s rules and regulations promulgated thereunder.”

¹² Transmittal at 4.

appropriate because the Montana-Dakota Utilities Agreement is being filed within 30 days of the commencement of service.¹³

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 filed a timely motion to intervene. Timely motions to intervene and comments were filed by Montana-Dakota Utilities and Missouri River Energy Services (Missouri River). On December 8, 2015, SPP filed an answer.

A. Comments

9. Montana-Dakota Utilities supports SPP's request that the Montana-Dakota Utilities Agreement be accepted for filing subject to the outcome of the proceedings in Docket Nos. ER14-2850-000 and ER14-2851-000. Montana-Dakota Utilities states that the Service Agreement is non-conforming because SPP and Montana-Dakota Utilities have agreed that the transmission service Montana-Dakota Utilities will take from SPP is subject to ongoing settlement proceedings in Docket Nos. ER14-2850-000 and ER14-2851-000. According to Montana-Dakota Utilities, these proceedings involve seams issues relating to the impact the integration of the Integrated System Parties will have on Montana-Dakota Utilities' customers.¹⁴

10. Montana-Dakota Utilities states that in setting such seams issues for hearing and settlement judge procedures, the Commission specifically recognized the following:

utilities in this area have facilities that are highly integrated with each other as a result of joint planning and ownership of transmission, and that these arrangements may need to be reflected in their service arrangements with SPP, such as, e.g., through transmission facilities credits under section 30.9 of the Tariff, and may present other seams issues.¹⁵

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

¹⁴ Montana-Dakota Utilities Comments at 3 (citing November 2014 Order, 149 FERC ¶ 61,113 at P 112).

¹⁵ *Id.* (quoting November 2014 Order, 149 FERC ¶ 61,113 at P 112) (emphasis omitted).

Montana-Dakota Utilities states that the Service Agreement reflects the fact that the service Montana-Dakota Utilities takes from SPP must account for the unique circumstances recognized by the Commission.

11. In addition, Montana-Dakota Utilities states that SPP, the Integrated System Parties, MISO, and Montana-Dakota Utilities have made significant progress in negotiating a settlement agreement to address the issues the Commission set for hearing. Montana-Dakota Utilities states that, assuming the parties reach final settlement, such agreement will be filed with the Commission, and upon approval, the Service Agreement will be revised to conform to the terms of the settlement agreement. Accordingly, Montana-Dakota Utilities supports SPP's request that the Commission accept the non-conforming Service Agreement, with the understanding that the service provided thereunder will be subject to the resolution of the issues set for hearing and settlement judge procedures in Docket Nos. ER14-2850-000 and ER14-2851-000.¹⁶

12. Montana-Dakota Utilities explains that it elected not to execute the Network Operating Agreement because it was uncertain how or whether the Network Operating Agreement is the appropriate vehicle for establishing how the Parties will operate their respective systems in light of the current direction of the ongoing settlement discussion. Montana-Dakota Utilities expects that many of the types of system coordination activities that would occur under the Network Operating Agreement would be accomplished through transmission-to-transmission interconnection agreements between Montana-Dakota Utilities, Western and Basin Electric. Therefore, Montana-Dakota Utilities supports SPP's request that the Commission accept the Network Operating Agreement for filing effective October 1, 2015, but make the acceptance subject to the outcome of the proceedings in Docket Nos. ER14-2850-000 and ER14-2851-000.¹⁷

13. Missouri River states that it purchases network integration transmission service from SPP for the portion of its load located in the Upper Missouri Zone, and for delivery to an adjoining utility for delivery to two other members in MISO. According to Missouri River, issues in this proceeding have the potential to affect the allocation of SPP transmission costs to load in the Upper Missouri Zone, including to Missouri River load, and thus could affect the overall transmission costs paid by Missouri River in SPP.¹⁸

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

¹⁸ Missouri River Comments at 3.

14. Missouri River asserts that some issues need to be examined further before the Commission can approve the Montana-Dakota Utilities Agreement. Missouri River states that issues concerning how SPP has calculated Montana-Dakota Utilities' load, and what load is included as Upper Missouri Zone network integration transmission service load should be examined. Missouri River comments that SPP's filing does not include detail on the specific amount of load designated as Upper Missouri Zone network integration transmission service load. Missouri River argues that SPP should share these details of the load included in the Upper Missouri Zone, and should confirm Montana-Dakota Utilities is designating the network load fully where service has been reserved on a firm basis, not simply the scheduled deliveries for loads located off of SPP.¹⁹

15. Missouri River also argues that SPP should clarify what grandfathered load noted in Attachment W of the Tariff served by Montana-Dakota Utilities is reported in network integration transmission service. If grandfathered load is not being reported by Montana-Dakota Utilities in this arrangement, Missouri River states that SPP should clarify how the grandfathered load is accounted for in the calculation of Upper Missouri Zone load. According to Missouri River, exclusion of grandfathered load from this network integration transmission service and exclusion from the ultimate Upper Missouri Zone load calculations results in other customers who take network integration transmission service subsidizing the service to the customers who take service under grandfathered agreements.²⁰ Missouri River argues that additional issues may require further study and comment after completion of the anticipated settlement agreement related to Docket No. ER14-2850-000, and Missouri River reserves the right to raise these additional issues.

B. Answer

16. SPP states that while the Tariff clearly provides that a Network Operating Agreement is required for Network Integration Transmission Service,²¹ SPP agrees that the Network Operating Agreement should be subject to the outcome of the settlement proceedings. SPP states that upon the conclusion of the settlement proceedings, SPP expects that the Network Operating Agreement will be revised, if necessary, to incorporate the terms of the settlement.²²

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ SPP Answer at 3 (citing SPP Tariff at Part III, section 29.1).

²² *Id.* at 4.

17. In response to Missouri River's comments requesting more information, SPP states that it does not calculate network load amounts. Instead, network load amounts are provided by the network customer to SPP in accordance with section 2.0 of Attachment 1 of the Service Agreement and section 31.6 of the Tariff. Moreover, SPP states that section 31.1 of the Tariff provides that the network customer must designate the individual network loads on whose behalf SPP will provide network integration transmission service.²³ The network loads designated by Montana-Dakota Utilities are specified in the Service Agreement. SPP states that section 2.0 of Attachment 1 of the Service Agreement provides that the network load consists of the bundled native load or its equivalent network customer load in the Upper Missouri Zone. SPP states that Appendix 3 of the Service Agreement identifies the delivery points associated with network load designated by Montana-Dakota Utilities.

18. With respect to Missouri River's comment that SPP should confirm that Montana-Dakota Utilities is designating the network load fully where service has been reserved on a firm basis, not simply the scheduled deliveries for loads located off of SPP, SPP explains that section 31.1 of the Tariff provides that the network customer must designate the network loads that will be taking network integration transmission service from SPP. SPP states that it is providing network integration transmission service to all network loads designated by Montana-Dakota Utilities.²⁴

19. Finally, with respect to Missouri River's request for clarification concerning whether grandfathered load noted in Attachment W of the Tariff is being reported in the Service Agreement, SPP states that the Service Agreement specifies the network integration transmission service that SPP is providing to the network load designated by Montana-Dakota Utilities. SPP states that loads served by a grandfathered agreement are included in resident load, and that section 41 of the Tariff requires transmission owners to report load under grandfathered agreements as part of the resident load reporting obligations.²⁵

²³ *Id.* at 5 (citing SPP Tariff at Part III, section 31.1).

²⁴ *Id.*

²⁵ *Id.* at 6 (citing SPP Tariff at Part V, section 41).

III. Discussion

A. Procedural Matters

20. 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.

21. 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 SPP's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

22. We accept the Montana-Dakota Utilities Agreement for filing, effective October 1, 2015, subject to the outcome of the ongoing hearing and settlement judge procedures in Docket Nos. ER14-2850-000 and ER14-2851-000. We also grant waiver of the Commission's 60-day notice requirement because SPP filed the Montana-Dakota Utilities Agreements within 30 days of the commencement of service.²⁶

23. We find that SPP has demonstrated that the proposed non-conforming revisions to the Montana-Dakota Utilities Agreement are appropriate. We find that SPP's answer addresses Missouri River's request for more information concerning how SPP has calculated the Montana-Dakota Utilities' load. Specifically, SPP points to provisions in its Tariff that demonstrate that SPP does not calculate the load itself, but rather obtains the load data from network customers. Thus, we find that the Service Agreement adequately specifies the load, as required by SPP's Tariff, and will not require additional revisions. Finally, we find that the clarifications provided in SPP's answer adequately explain how grandfathered load is accounted for in the calculation of load in the Upper Missouri Zone.

²⁶ 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.”).

The Commission orders:

The Montana-Dakota Utilities Agreement is hereby accepted, effective October 1, 2015, subject to the outcome of the ongoing hearing and settlement judge procedures in Docket Nos. ER14-2850-000 and ER14-2851-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.