

153 FERC ¶ 61,370  
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. ER16-242-000

ORDER ACCEPTING SERVICE AGREEMENT

(Issued December 30, 2015)

1. On November 2, 2015, Southwest Power Pool, Inc. (SPP) submitted, pursuant to section 205 of the Federal Power Act<sup>1</sup> and section 35.13 of the Commission's regulations:<sup>2</sup> (1) an unexecuted service agreement for Network Integration Transmission Service (Service Agreement) between SPP as transmission provider and Heartland Consumers Power District (Heartland) as network customer; and (2) an unexecuted Network Operating Agreement among SPP as transmission provider, Heartland as network customer, and East River Electric Power Cooperative, Inc. (East River), NorthWestern Corporation (NorthWestern), Northern States Power Company (Northern States Power), and Western Area Power Administration (Western) as host transmission owners (together, Heartland Agreement).<sup>3</sup> In this order, we accept the Heartland Agreement, effective October 1, 2015.

**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 Power Cooperative (Basin Electric),

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.13 (2015).

<sup>3</sup> The Heartland Agreement is designated as Original Service Agreement No. 3101.

and Heartland (collectively, Integrated System Parties),<sup>4</sup> 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.<sup>5</sup> On October 15, 2015, the Commission issued a rehearing order affirming the issues set for hearing and settlement judge procedures, which are pending in Docket Nos. ER14-2850-000 and ER14-2851-000.<sup>6</sup>

3. On November 2, 2015, in connection with the Integrated System Parties' integration into SPP, SPP filed the Heartland Agreement. SPP states that the Heartland Agreement conforms to the standard forms of service agreements set forth in SPP's Tariff, but that, due to time constraints, Heartland was not able to execute the Service Agreement and the Network Operating Agreement, and Northern States Power was not able to execute the Network Operating Agreement.<sup>7</sup>

4. 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 Heartland Agreement. SPP argues that waiver is appropriate because the Heartland Agreement is being filed within 30 days of the commencement of service.<sup>8</sup>

## **II. Notice of Filing and Responsive Pleadings**

5. 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. Heartland filed a timely motion to intervene and conditional protest. Missouri River filed a timely motion to intervene and comment. Western-UGP filed a timely motion to intervene. On

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<sup>4</sup> 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.

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

<sup>6</sup> *See* Rehearing Order, 153 FERC ¶ 61,051.

<sup>7</sup> Transmittal at 2.

<sup>8</sup> *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)).

December 8, 2015, SPP filed an answer. On December 22, 2015, Heartland filed, pursuant to Rule 216,<sup>9</sup> a Notice of Withdrawal of Protest.

**A. Comments**

6. Missouri River states that the reason for its intervention here is the same as in Docket No. ER16-244-000 where Missouri River did not execute the Service Agreement, in part, because of the ambiguous treatment of GFA #496, a grandfathered 1977 Transmission Service Agreement between Nebraska Public Power District and Basin Electric. Missouri River asserts that it understands that Heartland did not execute the Service Agreement in this case in part because of the ambiguous treatment of GFA #496. Missouri River argues that, since it and Heartland share the same interest in obtaining carved out treatment for their service under grandfathered agreement #496, it is appropriate for Missouri River to intervene in this proceeding to ensure equivalent treatment on this issue.<sup>10</sup>

7. Missouri River also questions how SPP calculated the Heartland load, and asks that SPP shares the details of the calculation, given that substantial changes have occurred in the Upper Missouri Zone network load. Missouri River requests, specifically, that SPP should confirm Heartland is designating the network load fully where service has been reserved on a firm basis, and not simply the “scheduled deliveries” for loads located off of the SPP system. Missouri River contends that additional issues may require more study and further comment.<sup>11</sup>

8. Heartland explains that Missouri River raises concerns regarding the 1977 Transmission Service Agreement between Nebraska Public Power District and Basin Electric for transmission service. According to Heartland, the Transmission Service Agreement, referenced as GFA #496, is a grandfathered agreement under SPP’s Tariff because it predates the establishment of SPP as a FERC-approved Regional Transmission Organization and that this Transmission Service Agreement transmits the Laramie River Power Station’s power to its participants, Missouri River and Heartland. Heartland further explains that Missouri River requested, in Docket No. ER14-2850, that the agreement be transitioned from exempt status to carved-out status to enable Missouri River to realize its remaining invested value in that arrangement. Heartland states that

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<sup>9</sup> 18 C.F.R. § 385.216 (2015).

<sup>10</sup> Missouri River Comments at 2-3.

<sup>11</sup> *Id.* at 4.

this issue has been set for settlement procedures in Docket Nos. ER14-2850-000 and ER14-2850-001.<sup>12</sup>

9. Heartland conditionally protests the points of receipt listed in Appendix 2 of the Service Agreement. Heartland states that SPP rejected Heartland's request to add Grand Island as a point of receipt for the Laramie River Station, and that SPP maintained that including Grand Island as a point of receipt would memorialize grandfathered service that is not included in the Service Agreement. Heartland argues that accepting SPP's rejection of Grand Island as a point of receipt could affect Heartland's settlement position in Docket No. ER14-2850. Thus, Heartland conditionally protests this rejection to the extent SPP's rejection of Grand Island as a point of receipt hinders Heartland's ability to pursue carved-out status for GFA #496. Heartland states that if SPP agrees that the differences in the points of receipt listed in the Heartland Service Agreement and GFA #496 are not dispositive as to whether service under GFA #496 may be carved out then Heartland will agree to withdraw its conditional protest.<sup>13</sup>

10. In its Notice of Withdrawal of Protest, Heartland states that, based on its understanding, SPP's statement 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" complies with Heartland's request to agree that the differences in the points of receipt are not dispositive as to whether service under GFA #496 may be carved out. Heartland thus respectfully requests that the Commission allow it to withdraw its Protest.<sup>14</sup>

## **B. Answer**

11. SPP states that it declined to include the Grand Island point of receipt in Appendix 2 of the Service Agreement because SPP does not include grandfathered transactions in its service agreements. SPP contends that the purpose of the Service Agreement is to reflect the network integration transmission service that Heartland is taking from SPP, not to reflect grandfathered transactions on the SPP system. SPP states 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 Nos. ER14-2850-000 and ER14-2851-000. SPP further contends

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<sup>12</sup> Heartland Conditional Protest at 4-6.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> Heartland Notice of Withdrawal of Protest at 4-5.

that, as an intermediate point on the SPP transmission system, the Grand Island Substation cannot be a point of receipt for network integration transmission service.<sup>15</sup>

12. In response to Missouri River's comments, SPP notes that it does not calculate load amounts. Instead, SPP notes that these amounts are provided by the network customer to SPP in accordance with the Service Agreement and the SPP Tariff. SPP contends that the Tariff provides that the network customer must designate the network loads that will be taking Network Service from SPP, and that SPP is providing network service to all network loads designated by Heartland.<sup>16</sup>

### **III. Discussion**

#### **A. Procedural Matters**

13. 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.

14. 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 provided information that assisted us in our decision-making process.

#### **B. Commission Determination**

15. We accept the Heartland Agreement for filing, effective October 1, 2015. We also grant waiver of the Commission's 60-day notice requirement because SPP filed the Heartland Agreement within 30 days of commencement of service.<sup>17</sup>

16. We find that SPP's answer addresses Missouri River's request for more information concerning how SPP calculates Heartland's load. Specifically, SPP identifies 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

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<sup>15</sup> SPP Answer at 2-3.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> 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 (“[W]aiver of notice will be granted if service agreements are filed within 30 days after service commences.”).

Service Agreement adequately specifies the load, as required by SPP's Tariff and will not require additional revisions. Finally, we note that SPP and Heartland 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 Nos. ER14-2850-000 and ER14-2851-000.

The Commission orders:

The Heartland Agreement is hereby accepted effective October 1, 2015, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.