

154 FERC ¶ 61,280
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER16-863-000

ORDER ACCEPTING SERVICE AGREEMENT, SUBJECT TO CONDITION

(Issued March 31, 2016)

1. On February 1, 2016, 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 a revised agreement consisting of: (1) an executed service agreement for Network Integration Transmission Service (Service Agreement) between SPP as transmission provider and Basin Electric Power Cooperative (Basin Electric) as network customer; and (2) an unexecuted Network Operating Agreement among SPP as transmission provider, Basin Electric as network customer, and Basin Electric, Central Power Electric Cooperative, Inc. (Central Power), Corn Belt Power Cooperative, East River Electric Power Cooperative, Inc., Northwest Iowa Power Cooperative, Nebraska Public Power District (NPPD), NorthWestern Corporation, Tri-State Generation and Transmission Association, Inc. (Tri-State), and Western Area Power Administration (Western) as host transmission owners (together, Basin Agreement).³ In this order, we accept the Basin Agreement, effective January 1, 2016, subject to condition, as discussed below.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ The Basin Agreement is designated as First Revised Service Agreement No. 3125.

I. Background

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 Western Area Power Administration-Upper Great Plains (Western-UGP), Basin Electric, and Heartland Consumers Power 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 revisions.⁵ 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 ER14-2851-000.⁶

3. On November 2, 2015, in connection with the Integrated System Parties' integration into SPP, SPP filed an earlier version of the Basin Agreement. On December 30, 2015, the Commission accepted that earlier version of the Basin Agreement, effective October 1, 2015.⁷ SPP states that, since the Commission issued the December 2015 Order, the parties revised the agreement to add Tri-State and Central Power as transmission owners, Appendices 1 and 3 of the Service Agreement, and the header, the first paragraph, and the notice information in section 20.1 of the Network Operating Agreement.⁸ SPP states that the Basin Agreement retains the non-conforming terms and conditions accepted by the Commission in the December 2015 Order.⁹

⁴ Integrated System Parties together jointly own and operate a significant portion of the bulk electric transmission system in the Upper Great Plains region of the United States.

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

⁶ *See Sw. Power Pool, Inc.*, 153 FERC ¶ 61,051.

⁷ *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,368, at P 1 (2015) (December 2015 Order).

⁸ Transmittal at 2. SPP notes that the Network Operating Agreement conforms to the *pro forma* Network Operating Agreement as set forth in the SPP Tariff.

⁹ *Id.* (citing December 2015 Order, 153 FERC ¶ 61,368).

4. SPP also 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 January 1, 2016 for the Basin Agreement. SPP argues that waiver is appropriate because the Basin Agreement is being filed within 30 days of the commencement of service.¹⁰

II. Notice of Filing and Responsive Pleadings

5. Notice of SPP's filing was published in the *Federal Register*, 81 Fed. Reg. 6845 (2016), with interventions and protests due on or before February 22, 2016. Timely motions to intervene were filed by Central Power and Basin Electric. NPPD and Western filed timely motions to intervene and comments. On March 10, 2016, SPP and Basin Electric filed answers.

A. Comment

6. Western asserts that the points of delivery for Central Power set forth in Appendix 3 of the Service Agreement conflict with Western's point of delivery obligations under the existing Firm Electric Service (FES) Contract with Central Power. Western contends that one of the requirements under the Energy Policy Act of 2005 for Western joining SPP was that, by entering into a contract or agreement for membership in a transmission organization, that agreement shall be consistent with Western's existing contracts, as well as its statutory authorities, obligations, and limitations.¹¹

7. Western states that it does not necessarily disagree with the reasoning behind changing or identifying the delivery points proposed under the Service Agreement, but rather the timing of, and process in, making those revisions. Western contends that it should be included in discussions identifying those points of delivery which may differ from the existing points of delivery in the FES Contract, and provided the opportunity to negotiate revisions with its preference customer (in this case, Central Power) in the existing FES Contract. Western requests that the Commission delay approval of the Basin Agreement to allow Western to conclude negotiations with Central Power over the delivery points in its FES Contract.¹²

¹⁰ *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)).

¹¹ Western Comments at 6 (citing Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594, 42 U.S.C. § 16431(c)(1)(B) (2005)).

¹² *Id.* at 6-7.

8. NPPD states that it is concerned with SPP's description of "Delivery Points on Nebraska Public Power District." Specifically, NPPD contends that some of the delivery points SPP added to NPPD's system may be mislabeled. Similarly, NPPD alleges that some delivery points are not physically connected to the SPP system and should be identified as Off-System.¹³

9. NPPD also states that it is concerned that SPP's list of Delivery Points on Rushmore appears to include delivery points served by NPPD Grandfathered Agreements (GFAs) 497 and 524.¹⁴ NPPD claims that, according to its understanding, load at the Rushmore Delivery Points cannot be served by both GFA service and SPP network integration transmission service. While NPPD states it would not be opposed to termination of GFAs 497 and 524, such termination requires the agreement of all parties to the affected GFAs. NPPD contends that absent such agreement, Appendix 3 of the Service Agreement should be revised to accurately reflect delivery points that are served by SPP network integration transmission service.

B. Answers

10. SPP and Basin Electric assert that Western is working with Central Power to update the delivery points within its FES Contract with Central Power to align with the Service Agreement. SPP states that if Western and Central Power are unable to reach an agreement, further revisions to the Service Agreement may be necessary to modify the delivery points therein to correspond with the delivery points in Western's FES Contract with Central Power.¹⁵

11. SPP and Basin Electric contend that NPPD is correct that SPP has mislabeled certain delivery points within the Service Agreement. SPP states that it will make a compliance filing to correct these mislabeled delivery points, including distinguishing between on-system and off-system loads, and to effectuate certain other clean-ups.¹⁶ However, SPP and Basin Electric assert that nothing prevents Basin Electric from taking

¹³ NPPD Comments at 4-5.

¹⁴ *Id.* at 5 (citing *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,254 (2013)).

¹⁵ SPP Answer at 3-4; Basin Electric Answer at 3-4. SPP and Basin Electric also state that Western and Central Power have reached a settlement in principle to align the FES Contract with the delivery points listed in the Service Agreement, and that Western will inform the Commission once that agreement is finalized.

¹⁶ SPP Answer at 4 & Attachment A; Basin Electric Answer at 2-3.

network integration transmission service at the Rushmore delivery points, provided that Basin Electric includes the full network load located at the Rushmore delivery points in the Service Agreement.¹⁷

III. Discussion

A. Procedural Matters

12. 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.

13. 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 and Basin Electric's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

14. We will accept the Basin Agreement for filing, effective January 1, 2016, subject to condition.¹⁸ We decline to delay acceptance of the Basin Agreement pending completion of the negotiations between Western and Central Power over the delivery point designations. However, our acceptance is conditioned on SPP making a compliance filing once negotiations are complete. This filing may include amendments to the delivery points to address Western's concerns or some other proposal to resolve the issue, or an explanation why such revisions are unnecessary. Regarding NPPD's concerns, we agree with SPP and Basin Electric that nothing prevents Basin Electric from being granted network integration transmission service at the delivery points listed in Appendix 3 of the Service Agreement as long as Basin Electric designates the entirety of its load at those delivery points. Commission policy prohibits designation of less than the entire load.¹⁹

¹⁷ SPP Answer at 4; Basin Electric Answer at 3.

¹⁸ The Commission can revise a proposal filed under section 205 of the FPA 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.

¹⁹ *Ariz. Pub. Serv. Co.*, 151 FERC ¶ 61,191, at P 26 (2016) (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission*

15. We accept SPP's commitment to revise the Basin Agreement to correct the delivery point designations, including distinguishing between on-system and off-system loads and direct SPP to submit a compliance filing within 30 days of the date of this order. Finally, we grant waiver of the Commission's 60-day notice requirement because SPP filed the Basin Agreement within 30 days of commencement of service.²⁰

The Commission orders:

(A) The Basin Agreement is hereby accepted, effective January 1, 2016, subject to condition, 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 this order, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,260-62, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 1619, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

²⁰ 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.”).