

154 FERC ¶ 61,279  
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. ER16-862-000

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 Act<sup>1</sup> and section 35.13 of the Commission's regulations,<sup>2</sup> a revised agreement consisting of: (1) an unexecuted service agreement for Network Integration Transmission Service (Service Agreement) between SPP as transmission provider and Western Area Power Administration – Upper Great Plains Region (Western) as network customer; and (2) an unexecuted Network Operating Agreement among SPP as transmission provider, Western as network customer, and Western, Basin Electric Power Cooperative (Basin Electric), Central Power Electric Cooperative, Inc. (Central Power), Corn Belt Power Cooperative, East River Electric Power Cooperative, Northwest Iowa Power Cooperative, NorthWestern Corporation, and Missouri River Energy Services as host transmission owners (together, Western Agreement).<sup>3</sup> In this order, we accept the Western Agreement, effective January 1, 2016, subject to condition, as discussed below.

**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 the Western, Basin Electric, and Heartland Consumers Power District

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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 Western Agreement is designated as First Revised Service Agreement No. 3126.

(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 an earlier version of the Western Agreement. On December 29, 2015, the Commission accepted that earlier version of the Western Agreement, effective October 1, 2015.<sup>7</sup> SPP states that, since the Commission issued the December 2015 Order, the parties revised the agreement to add Central Power as a transmission owner, effective January 1, 2016, which required updates to the delivery points in Appendix 3 of the Service Agreement. SPP states that the Western Agreement retains the non-conforming terms and conditions<sup>8</sup> accepted by the Commission in the December 2015 Order.<sup>9</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 January 1, 2016 for the Western Agreement. SPP argues that waiver is appropriate

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<sup>4</sup> Integrated System Parties 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 on reh'g*, 153 FERC ¶ 61,051 (2015).

<sup>6</sup> *See Sw. Power Pool, Inc.*, 153 FERC ¶ 61,051.

<sup>7</sup> *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,355, at P 1 (2015) (December 2015 Order).

<sup>8</sup> Transmittal at 2 (citing Exh. No. SPP-1). SPP notes that the Network Operating Agreement does not include any non-conforming language and conforms to the *pro forma* Network Operating Agreement as set forth in the SPP Tariff.

<sup>9</sup> *Id.* (citing December 2015 Order, 153 FERC ¶ 61,355).

because the Western Agreement is being filed within 30 days of the commencement of service.<sup>10</sup>

## **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. Nebraska Public Power District (NPPD) and Western filed timely motions to intervene and comments. On March 14, 2016, SPP filed an answer.

### **A. Comments**

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.<sup>11</sup>

7. Western states that it does not necessarily disagree with reasoning behind changing or identifying the delivery points proposed under the Service Agreement, but rather is concerned with 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 (i.e., Central Power) in the existing FES Contract. Western requests that the Commission delay approval of the Western Agreement to allow Western to conclude negotiations with Central Power over the delivery points in its FES Contract.<sup>12</sup>

8. NPPD states that it is concerned with the lack of a detailed description of "Delivery Points on Nebraska Facilities" set forth in the Service Agreement.

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<sup>10</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)).

<sup>11</sup> 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)).

<sup>12</sup> *Id.* at 6-7.

Specifically, NPPD points to SPP's description of the various delivery points in Nebraska as simply "Delivery Points of Lincoln Electric System (LES)" or "Delivery Points of Municipal Energy Agency of Nebraska (MEAN)," with their voltages only listed as "Various."<sup>13</sup> NPPD states that a threshold concern raised by SPP's description of the delivery points of each load serving entity in Nebraska is that Western does not have any direct interconnection with LES, MEAN, or others, but, instead, interconnects with NPPD, who in turn interconnects with the other Nebraska load serving entities.<sup>14</sup> NPPD points out that the descriptions of these delivery points differ from others in Attachment 3 to the Service Agreement, and requests clarification on how SPP should identify and describe delivery points in Nebraska. NPPD contends that, absent such clarification, the Commission should direct SPP to provide an accurate description of these delivery points.

9. NPPD also raises concerns with how the Service Agreement lists NPPD and other Nebraska utilities as a "Co-Supplier." NPPD contends that "Co-Supplier" is a defined term in SPP's Tariff which applies only to Delivery Points in Zone 19. NPPD states that it requested a tariff revision to use the "Co-Supplier" provision of the SPP Tariff for the NPPD Pricing Zone, but was denied. Thus, NPPD contends that it is inappropriate for NPPD, or any of the other Nebraska utilities listed, to be labeled as a "Co-Supplier" within the meaning of the SPP Tariff.<sup>15</sup>

## **B. Answer**

10. SPP clarifies that Western is only taking network integration transmission service up to the systems of the Nebraska entities referenced in Appendix 3 of the Service Agreement, and asserts that the level of detail is thus appropriate. However, since the facilities are not delivery points, SPP proposes to remove the listing of these facilities from Appendix 3 of the Service Agreement, which would also remove their "Co-Supplier" designation. Additionally, SPP proposes to add language to section 11 of Attachment 1 of the Service Agreement to clarify Western's retention of the Available Transfer Capacity within Zone 19 to deliver to Statutory Load Obligations located outside of Zone 19 but still within the SPP system.<sup>16</sup>

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<sup>13</sup> NPPD Comments at 3-4 (citing Western Agreement at 26-27).

<sup>14</sup> *Id.* NPPD also notes that references to "Various" voltage levels were included in the earlier filed version of the Western Agreement. *Id.* at 4 n.6.

<sup>15</sup> *Id.* at 4-5; *see* SPP Tariff, section 39.3(d).

<sup>16</sup> SPP Answer at 3-4.

11. SPP asserts that Western is working with Central Power to update the delivery points within its FES Contract with Central Power to align with those delivery points in the Service Agreement. SPP states that it expects that, if Western and Central Power reach an agreement, Western will execute the Western Agreement, and SPP will submit it to the Commission. SPP further 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.<sup>17</sup>

### **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 answer because it has provided information that assisted us in our decision-making process.

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

14. We will accept the Western Agreement for filing, effective January 1, 2016, subject to condition.<sup>18</sup> We decline to delay acceptance of the Western 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 the designation of delivery points on the NPPD system, we will accept the Western Agreement subject to SPP making a compliance filing incorporating the revisions described in its answer within 30 days of the date of this order. We also will grant waiver of the Commission's

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<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> 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 Western Agreement within 30 days of commencement of service.<sup>19</sup>

The Commission orders:

(A) The Western 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. Commission Clark is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>19</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”).