

155 FERC ¶ 61,002  
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. ER16-846-000

ORDER ACCEPTING SERVICE AGREEMENT, SUBJECT TO CONDITION

(Issued April 1, 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 *pro forma* service agreement for Network Integration Transmission Service (Service Agreement) between SPP as transmission provider and Otter Tail Power Company (Otter Tail) as network customer; and (2) an unexecuted *pro forma* Network Operating Agreement among SPP as transmission provider, Otter Tail as network customer, and Central Power Electric Cooperative, Inc. (Central Power) and Western Area Power Administration (Western) as host transmission owners (together, Otter Tail Agreement).<sup>3</sup> In this order, we accept the Otter Tail Agreement, effective January 1, 2016, subject to condition, as discussed below.

**I. Background and SPP's Filing**

2. On October 30, 2015, SPP filed revisions to its Open Access Transmission Tariff (Tariff) in Docket No. ER16-209-000 to implement an annual transmission revenue requirement and a formula rate for transmission service on Central Power's facilities (October 30 Filing). SPP made this filing to prepare for the transfer of functional control of Central Power's transmission facilities to SPP on January 1, 2016.

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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 Otter Tail Agreement is designated as Original Service Agreement No. 3165.

3. On November 20, 2015, Otter Tail filed a protest in response to the October 30 Filing, raising potential operational and financial issues that would result from Central Power's integration into SPP, including potential rate pancaking for service on the Integrated Transmission System. The Commission accepted the October 30 Filing, subject to refund, and established hearing and settlement judge procedures to address certain concerns raised by the parties.<sup>4</sup> Otter Tail subsequently submitted a request for SPP network integration transmission service (Network Service), resulting in the February 1, 2016 filing by SPP.

## II. Notice of Filing and Responsive Pleadings

4. Notice of SPP's filing was published in the *Federal Register*, 81 Fed. Reg. 6844 (2016) with interventions and protests due on or before February 22, 2016. On February 22, 2016, Otter Tail filed a timely motion to intervene and protest. On March 9, 2016, SPP filed an answer to Otter Tail's protest. On March 10, 2016, Central Power also filed an answer to Otter Tail's protest.

### A. Protest

5. Otter Tail states that for over half a century, it has collaborated with Central Power on planning, developing, and constructing transmission facilities to serve customers in central and eastern North Dakota. This partnership was governed by an agreement referred to as the Integrated Transmission Agreement, which expired on December 31, 2015. Otter Tail states that the partnership resulted in a highly integrated patchwork of transmission facilities and substations owned by Otter Tail and Central Power and known as the Integrated Transmission System.<sup>5</sup>

6. Otter Tail claims that section 8.1 of the Network Operating Agreement—which states that “[Otter Tail] shall provide for the installation of meters, associated metering equipment and telemetering equipment”—conflicts with the settlement agreement reached in Docket Nos. ER14-2850-005 and ER14-2851-005 (Settlement Agreement).<sup>6</sup>

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<sup>4</sup> *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,367 (2015).

<sup>5</sup> Otter Tail Protest at 3-4.

<sup>6</sup> *Id.* at 9. On January 28, 2016, the Commission approved a partial settlement in Docket Nos. ER14-2850-005 and ER14-2851-005 resolving all issues raised by Otter Tail concerning potential impacts to Otter Tail arising out of the integration of Western, Basin Electric Power Cooperative, and Heartland Consumers Power District into SPP as transmission owning members. *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,052 (2016).

Otter Tail states that Central Power owns the metering equipment at the delivery points listed in the Service Agreement, which arrangement was recognized in the Settlement Agreement, and contends that SPP should revise the Network Operating Agreement to clarify that the existing meter ownership arrangement satisfies the Network Operating Agreement's requirements and that Otter Tail is not required to install new meters.

7. Otter Tail also claims that section 3.3 of the Network Operating Agreement is problematic to the extent it would require Otter Tail to obtain approval from SPP, Central Power, and Western to take certain actions to maintain the reliability of its system. Otter Tail alleges that this provision is inconsistent with section 3.2 of the Settlement Agreement which requires that Otter Tail coordinate with its Reliability Coordinator, Midcontinent Independent System Operator, Inc. (MISO), and other transmission operators, and requests that SPP modify the Network Operating Agreement to make clear that Otter Tail may, in its capacity as the Transmission Operator, act to maintain reliable operation of its system in coordination with its Reliability Coordinator, MISO, without seeking pre-approval from SPP, Central Power, or Western.<sup>7</sup>

8. Otter Tail explains that because it receives ancillary services from MISO, subsections (d) through (g) of section 8.4.1 of Attachment 1 of the Service Agreement should be deleted.<sup>8</sup>

9. Otter Tail alleges that SPP has included additional substation information in this Service Agreement that is inconsistent with the level of detail provided in other service agreements entered into by SPP. Otter Tail contends that this information is unnecessary and should be removed.<sup>9</sup> Otter Tail also contends that the Service Agreement fails to delineate between on-system and off-system loads, and argues that SPP should either submit separate service agreements for the two types of service, or at the very least, the Service Agreement should contain separate charts specifying which loads are on-system and which are off-system.<sup>10</sup>

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<sup>7</sup> Otter Tail Protest at 9-11.

<sup>8</sup> *Id.* at 11. Subsections (d) through (g) of section 8.4.1 of the Service Agreement list certain ancillary services that the network customer is responsible for purchasing from SPP, self-supplying, or purchasing from a third-party.

<sup>9</sup> *Id.* at 6-7.

<sup>10</sup> *Id.* at 7-8.

10. Finally, Otter Tail contends that because the Otter Tail Agreement may be affected by the ongoing hearing and settlement judge procedures ordered in Docket No. ER16-209-000,<sup>11</sup> the instant filing should be consolidated with that proceeding. Otter Tail argues that SPP should also include language in the Otter Tail Agreement stating that the agreement is subject to the outcome of Docket No. ER16-209-000.<sup>12</sup>

**B. Answer**

11. In response to Otter Tail, SPP claims no inconsistency exists between the Service Agreement and the Settlement Agreement. Specifically, SPP claims the only metering provisions in the Settlement Agreement pertain to Otter Tail's metering obligations under its pseudo-tie with MISO, and parties' audit rights to metering information. SPP further states that section 8.1 of the Network Operating Agreement only requires Otter Tail to ensure that SPP and the host transmission owners have access to the meter data.<sup>13</sup> Further, SPP states that Otter Tail fails to explain how section 3.3 of the Network Operating Agreement is inconsistent with the Settlement Agreement, and notes that this section contains *pro forma* language included in the Network Operating Agreement for all SPP network customers.

12. Regarding the ancillary service provisions, SPP contends it is unnecessary to revise the Service Agreement to reflect Otter Tail's purchase of ancillary services from MISO because sections 8.4.2 through 8.4.4 already allow Otter Tail to purchase these services from MISO.<sup>14</sup>

13. SPP contends that the additional information contained in Appendix 3 to the Service Agreement is necessary to ensure that network loads can be correctly identified and distinguished from other loads that may also be connected to adjacent facilities. SPP explains that this level of detail is consistent with how delivery points have been listed in

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<sup>11</sup> The aspects Otter Tail believes may be impacted include the appropriate delivery points contained in Appendix 3 to the Service Agreement, as well as Otter Tail's eligibility for section 30.9 credits.

<sup>12</sup> Otter Tail Protest at 11-13.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> *Id.* at 5-6.

other service agreements.<sup>15</sup> SPP also contends that the SPP Tariff provides for one type of Network Service, that the SPP Tariff does not distinguish between Network Service used to serve on-system load and that used to serve off-system load, and thus two different service agreements are unnecessary.<sup>16</sup>

14. Lastly, SPP argues that the Commission should not consolidate this proceeding with the hearing and settlement judge procedures in Docket No. ER16-209-000 because that proceeding aims to determine Central Power's appropriate annual transmission revenue requirement. SPP states that the relevant facts and applicable law in the two proceedings are unrelated and consolidation would not improve administrative efficiency.<sup>17</sup>

15. In its answer, Central Power also argues that consolidation of the two proceedings will not promote administrative efficiency because no common issues of law or fact exist.<sup>18</sup>

### **III. Discussion**

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

16. 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.

17. 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 Central Power's answers because they provided information that assisted us in our decision-making process.

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<sup>15</sup> SPP Answer at 3 (citing *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,355 (2015); *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,368 (2015); *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,375 (2015)).

<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> Central Power Answer at 3.

## **B. Commission Determination**

18. We accept the Otter Tail Agreement for filing, effective January 1, 2016, subject to condition, as discussed below.<sup>19</sup> We also grant waiver of the Commission's 60-day notice requirement because SPP filed the Otter Tail Agreement within 30 days of commencement of service.<sup>20</sup>

19. Because we are unpersuaded that the Otter Tail Agreement conflicts with the Settlement Agreement, we find that Otter Tail's requested non-conforming deviations to the *pro forma* Network Operating Agreement of the SPP Tariff are unnecessary. We agree with SPP that the Otter Tail Agreement requires only that Otter Tail ensure that metering data is available to SPP. The Otter Tail Agreement does not require Otter Tail to own the meters at its delivery points that are used to provide data to SPP at its delivery points. Thus, we are not persuaded that either Central Power's ownership of the meters at the delivery points or the Settlement Agreement requires the non-conforming deviations requested by Otter Tail to the Otter Tail Agreement. Similarly, we are not persuaded that section 3.2 of the Settlement Agreement requires a non-conforming deviation to section 3.3 of the Network Operating Agreement. The Network Operating Agreement specifies that parties will establish the procedures for the Network Customer to obtain approval to operate in parallel, and we expect that these procedures will be consistent with the terms of the Settlement Agreement. We are not persuaded that the deletion of ancillary service descriptions in section 8.4 of the Service Agreement is necessary to reflect Otter Tail's purchase of ancillary services from MISO because the Service Agreement explicitly allows Otter Tail to procure ancillary services from third parties such as MISO.<sup>21</sup>

20. We are unpersuaded that SPP included inappropriate or unnecessary information regarding the delivery points in Appendix 3 of the Service Agreement. This level of detail has been included in other service agreements filed at the Commission.<sup>22</sup>

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<sup>19</sup> 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.

<sup>20</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.”).

<sup>21</sup> *See supra* text accompanying note 8.

<sup>22</sup> *See, e.g., Sw. Power Pool, Inc.*, 153 FERC ¶ 61,355.

However, we do agree that SPP should distinguish within Appendix 3 which delivery points are being used to serve on-system and off-system loads, as it has in other service agreements. Therefore, we direct SPP, in a compliance filing due within 30 days of the date of this order, to revise the Otter Tail Agreement to distinguish on-system and off-system delivery points in Appendix 3.

21. We decline to consolidate this proceeding with Docket No. ER16-209-000. Otter Tail has not identified common issues of law or fact between these proceedings that would merit consolidation, nor would consolidation result in administrative efficiency gains. Finally, we do not require SPP to include language stating that the Otter Tail Agreement is subject to the outcome of Docket No. ER16-209-000.

The Commission orders:

(A) The Otter Tail 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.