

155 FERC ¶ 61,202
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

May 27, 2016

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER16-1312-000

Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223

Attention: Tessie Kentner, Attorney

Dear Ms. Kentner:

1. On March 31, 2016, Southwest Power Pool, Inc. (SPP) submitted for filing, pursuant to section 205 of the Federal Power Act¹ and section 35.13 of the Commission's regulations,² an executed revised Network Integration Transmission Service Agreement between SPP as Transmission Provider and Nebraska Public Power District (NPPD)³ as Network Customer; and an executed revised Network Operating Agreement among SPP as Transmission Provider and NPPD as both Network Customer and Host Transmission Owner (together, Sixth Revised NPPD Agreements).⁴ The Sixth Revised NPPD

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ NPPD is a public corporation and public subdivision of the State of Nebraska. It is not a "public utility" as defined by the Federal Power Act. NPPD is governed by an 11 person Board that is publicly elected from all or parts of 86 of 93 counties in Nebraska. NPPD generates, transmits, and delivers electric power and energy to wholesale and retail customers throughout the State of Nebraska.

⁴ The Sixth Revised NPPD Service Agreements are designated as Sixth Revised Service Agreement No. 1771, which supersedes the Fifth Revised NPPD Agreement. The Fifth Revised NPPD Agreement conformed to the *pro forma* Network Integration Transmission Service Agreement and *pro forma* Network Operating Agreement, which were reported solely in SPP's electric quarterly report.

Agreements⁵ reflect the changes to the Fifth Revised NPPD Agreement necessary to effectuate NPPD's request to convert grandfathered transmission service to SPP network integration transmission service (network service) by adding new designated network resources. SPP also requests waiver of section 30.2 of the SPP Open Access Transmission Tariff (SPP Tariff), which requires that all requests for new designated network resources with a term of one year or longer be evaluated under SPP's Aggregate Transmission Service Study process. In this order, as discussed below, we accept the Sixth Revised NPPD Agreements, effective March 1, 2016, and grant SPP's waiver request.

2. SPP states that, to serve load within the SPP transmission system, NPPD takes network service from SPP pursuant to the Fifth Revised NPPD Agreement. SPP states that Western Area Power Administration-Upper Great Plains Division (Western-UGP) supplies energy from Federal hydropower projects to preference power customers within Nebraska. SPP states that NPPD facilitates the transmission of this power to the preference power customers using transmission service under two grandfathered agreements (GFAs) designated as GFA 501 and GFA 502 on Attachment W of the SPP Tariff.

3. SPP explains that over the past year, the preference power customers assigned their power supply contracts to NPPD, and NPPD desires to convert this service from GFA service to SPP network service. SPP states that NPPD has represented that the power supply contracts assigned to NPPD meet the definition of a designated network resource in the SPP Tariff, and that NPPD would like to use SPP network service to deliver this Western-UGP power to the preference power customers. Further, SPP states that NPPD has requested the inclusion of the power supply contracts and the assignment agreements that transfer rights from the preference power customers to NPPD as designated network resources in the Sixth Revised NPPD Agreements.

4. SPP states that section 30.2 of the SPP Tariff requires that all requests for new designated network resources with a term of one year or longer be evaluated under SPP's Aggregate Transmission Service Study process in Attachment Z1 of the SPP Tariff. However, SPP states that a waiver of section 30.2 is justified because the purpose of adding the new designated network resources is simply to identify NPPD's contractual rights obtained from the preference power customers and Western-UGP, and accordingly the same Western-UGP resources will supply the power over the same transmission system to the same preference power customers, with no significant impact to the transmission system.⁶

⁵ Southwest Power Pool, Inc., FERC FPA Electric Tariff, [Service Agreements Tariff>1771 NPPD NITSA NOA, 1771 NPPD NITSA NOA, 0.0.0.](#)

⁶ SPP Filing at 3.

5. SPP also argues that waiver is appropriate because it meets the criteria for waivers spelled out in prior Commission decisions, and that the Commission has granted waivers in the past when “(1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.”⁷

6. SPP argues that its waiver request satisfies these factors, and should therefore be approved. Specifically, SPP states that the waiver request (1) does not involve an error; (2) is for a specific request from NPPD to convert GFA service to SPP network service in order to modify the Fifth Revised NPPD Agreement to accommodate the long-term arrangement reflected in GFA 501 and GFA 502 and SPP is not seeking a blanket authorization or tariff revision regarding section 30.2 or the Aggregate Transmission Service Study process; (3) will remedy NPPD’s need to convert the GFA service to SPP network service; and (4) will not have undesirable consequences nor harm third parties, as SPP does not expect a significant impact to the transmission system as a result of conversion of the GFA service to SPP network service and the modification will be revenue-neutral to SPP and the SPP transmission owners.⁸

7. 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 March 1, 2016. SPP argues that waiver is appropriate because the Sixth Revised NPPD Agreements are being filed within 30 days of commencement of service.⁹

8. Notice of SPP’s filing was published in the *Federal Register*, 81 Fed. Reg. 19,963 (2016), with interventions and protests due on or before April 21, 2016. On April 21, 2016 NPPD filed a timely motion to intervene and comment.

9. NPPD supports SPP’s filing, and provides additional background information. NPPD states that it has been providing GFA transmission service to Western-UGP under two long-term contracts: GFA 501, dated April 20, 1988, and GFA 502, dated July 30, 1988, expiring in 2019 and 2020, respectively. NPPD states that Western-UGP delivers preference power to fifteen municipal preference customers under these two contracts. NPPD states that, prior to joining SPP in 2009, it began providing transmission service, through SPP network service, to eleven municipal preference customers for which Western-UGP was no longer making delivery arrangements.¹⁰ NPPD further states that it conferred with the fifteen municipal preference customers and it was agreed that the most

⁷ *Id.* (citing *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006)).

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ NPPD Comments at 2.

efficient way to convert GFA 501 and GFA 502 transmission services to SPP network service was to have NPPD utilize SPP network service. NPPD states that, to facilitate the conversion, and to meet SPP tariff requirements to claim the Western-UGP preference power as a designated network resource, each of the fifteen affected preference customers, and the eleven preference customers already receiving SPP network service, executed agreements with Western and NPPD to assign their preference power contract rights to NPPD. NPPD states that these assignments allowed NPPD to add the Western-UGP generators as NPPD network resources under the SPP network service purchased by NPPD. NPPD notes that section 1 of the SPP Tariff defines network resources as any designated generation resource “owned, purchased, or leased by a Network Customer.”¹¹

10. NPPD states that it supports Commission approval of the Sixth Revised NPPD Agreements and the related request for waiver of SPP’s Aggregate Transmission Service Study. NPPD states that the addition of the Western-UGP generators as NPPD network resources and the delivery of preference power to the preference customers will not affect the SPP transmission system. NPPD explains that, though the transmission service provided under the grandfathered contracts is described as “point-to-point” under NPPD’s applicable rate schedule, it is essentially a network service that allows Western-UGP to deliver preference power from several receipt points to fifteen separate delivery points for each preference customer. NPPD further states that these receipt and delivery points have not changed and the allocations of preference power to each customer have been relatively fixed and are not likely to change in the future. Therefore, NPPD concludes, conversion of GFA transmission service to SPP network service will have no change on existing system flows of firm power.¹²

11. NPPD echoes SPP’s evaluation of the criteria for waivers under prior Commission decisions, outlined above, agreeing that SPP’s request for waiver meets the criteria. NPPD also adds that if the Commission does not grant the waiver, NPPD could be subjected to paying for transmission upgrades pursuant to the SPP Aggregate Study process, which combines many different transmission service requests into one large study.¹³

12. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motion to intervene of NPPD serves to make it a party to this proceeding.

¹¹ *Id.* at 3.

¹² *Id.* at 4-5.

¹³ *Id.* at 5.

13. The Commission has granted waiver of tariff provisions where the following criteria are met: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁴ Based on the information in the record, we find that the circumstances of the instant case satisfy the foregoing criteria and we will grant SPP's request for waiver of section 30.0 of its tariff, as discussed below.

14. First, SPP acted in good faith in seeking waiver of section 30.2 given that the purpose of adding the new designated network resources is to identify NPPD's contractual rights obtained from the preference power customers and Western-UGP, and accordingly the same Western-UGP resources will supply the power over the same transmission system to the same preference power customers. Second, we agree with SPP that the requested waiver is limited in scope because it is for a specific request from NPPD to convert GFA service to SPP network service to accommodate the long-term arrangement reflected in GFA 501 and GFA 502, and SPP is not seeking a blanket authorization or tariff revision regarding section 30.2 or the Aggregate Transmission Service Study process. Third, the waiver addresses a concrete problem of remedying NPPD's need to convert GFA service for specific customers to SPP network service. Fourth, the waiver will not have undesirable consequences, such as harming third parties. SPP states that it does not expect a significant impact to the transmission system as a result of the conversion of the grandfathered service to SPP network service.¹⁵ NPPD supports this claim, stating that "the conversion of GFA services to SPP Network Service will have no change on existing system flows of firm power."¹⁶ Also, in 2011, the Commission indicated that a system impact study might not be necessary under a scenario such as the instant one:

We find it reasonable that a grandfathered agreement switching to network service in which the resources and load remain the same does not require a new system impact study, but if the resources or load change, or any other factor changes that could produce substantial changes to power flows, then a system impact study may be necessary.¹⁷

¹⁴ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

¹⁵ SPP Filing at 3.

¹⁶ NPPD Comments at 5.

¹⁷ *Entergy Servs., Inc.*, 137 FERC ¶ 61,199 (2011).

15. Here, all parties indicate that converting the transmission service provided to the preference power customers under GFA 501 and GFA 502 to SPP network service will not significantly impact the transmission system.

16. Accordingly, we grant SPP's request for waiver of section 30.2 of SPP's Tariff. We also accept the Sixth Revised NPPD Agreements for filing, effective March 1, 2016, to enable the conversion of service.

17. Finally, we also grant waiver of the Commission's 60-day notice requirement because SPP filed the Sixth Revised NPPD Agreements within 30 days of commencement of service.¹⁸

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ 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 (1993) (“[W]aiver of notice will be granted if service agreements are filed within 30 days after service commences.”).