

157 FERC ¶ 61,179
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 2, 2016

In Reply Refer To:
Western Farmers Electric
Cooperative
Docket No. ER17-158-000

Sutherland Asbill & Brennan LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001

Attention: Daniel E. Frank

Reference: Western Farmers Electric Cooperative Petition for Waiver

Dear Mr. Frank:

1. On October 21, 2016, Western Farmers Electric Cooperative (Western Farmers) submitted, under section 207(a)(5) of the Commission's Rules of Practice and Procedure¹ a petition for waiver of Attachment Y, section IV of Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (Tariff) which describes the acceptance process for notifications to construct (NTC). We grant Western Farmers' petition for waiver of Attachment Y, section IV of the SPP Tariff, as discussed below.

2. Western Farmers is a generation and transmission cooperative headquartered in Anadarko, Oklahoma that owns, operates, and maintains more than 3,400 miles of transmission lines located principally in Oklahoma. Western Farmers is a market participant in the market administered by SPP, and its transmission facilities are administered through the SPP Tariff. Western Farmers serves its 21 distribution cooperative member-owners and Altus Air Force Base, which, in turn, serve the electric needs of their retail customers in Oklahoma, New Mexico, Kansas, and Texas.²

¹ 18 C.F.R. § 385.207(a)(5) (2016).

² Transmittal at 2-3.

3. Western Farmers requests a one-time waiver of Attachment Y, section IV of the SPP Tariff³ to allow it to retain the projects presented in two NTCs for transmission upgrades, which Western Farmers received from SPP on May 17, 2016, and to proceed on schedule. Western Farmers states that it received two NTCs for several reliability network upgrade construction projects. According to Western Farmers, it commenced internal review of and work on the projects, but through an administrative oversight, failed to notify SPP in writing that it was proceeding with the projects. Western Farmers notes that it communicated with SPP's staff regarding the projects through phone calls and emails, but did not provide written acceptance as required by the Tariff. Western Farmers states that after the 90-day deadline had passed, it notified SPP via email of its acceptance of the projects, and undertook steps to ensure that such an oversight not occur again.⁴

4. Western Farmers asserts that its request for waiver satisfies the Commission's criteria for waiver. Western Farmers states that: (1) the underlying error was an unintentional failure to provide a timely written commitment to construct to SPP, and that this was an administrative oversight involving no bad faith or improper intent; (2) the waiver is limited in scope and applies to only the two NTCs issued to Western Farmers on May 17, 2016; (3) granting waiver would solve a concrete problem as it will allow the projects to continue as scheduled rather than delay the projects because of a need for SPP to undertake a request for proposals process to find a replacement transmission owner; and (4) granting waiver will not have any undesirable consequences, like harming third parties, but instead will allow Western Farmers to maintain reliability on its system and prevent SPP from expending administrative resources to undertake a request for proposals process to select a replacement transmission owner.⁵

5. Notice of Western Farmers' filing was published in the *Federal Register*, 81 Fed. Reg. 75,394 (2016), with interventions and protests due on or before November 14, 2016. On November 14, 2016, Sunflower Electric Power Corporation and Mid-Kansas Electric

³ Attachment Y, section IV of the SPP Tariff describes the NTC response requirements for transmission owners. In particular, it specifies that in order for a transmission owner to exercise its right to construct a project as a designated transmission owner, the transmission owner must respond within 90 days after the receipt of the NTC with a written commitment to construct the project or a proposal for an alternative schedule and/or specifications. *See* SPP, OATT, Sixth Revised Volume No. 1, Attachment Y, section IV (1.0.0).

⁴ Transmittal at 1-2.

⁵ *Id.* at 6-11.

Company, LLC filed motions to intervene, and SPP filed a motion to intervene and comments in support of the petition.

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), SPP's, Sunflower Electric Power Corporation's, and Mid-Kansas Electric Company, LLC's timely, unopposed motions to intervene serve to make them parties to this proceeding.

7. In its comments, SPP states that Western Farmers has commenced planning construction associated with the projects in the NTCs and made significant expenditures, in excess of \$1 million, associated with construction of these projects. SPP notes that if the Commission does not grant Western Farmers' waiver request, SPP will be required to find a replacement designated transmission owner to construct the projects, in accordance with Attachment Y, section IV.3 of the Tariff. SPP contends that this will be time consuming and expensive and will introduce increased reliability risks. SPP asserts that granting the waiver request will allow Western Farmers to continue its work on the projects to meet regional reliability needs, prevent delays in the construction process, and avoid additional expense that would result from the selection of a replacement designated transmission owner.⁶

8. We grant Western Farmers' request for a one-time waiver of Attachment Y, section IV of the SPP Tariff. The Commission has granted waiver of tariff provisions where: (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.⁷ We find that Western Farmers has demonstrated good cause to grant the request for a tariff waiver because Western Farmers' requested waiver satisfies the aforementioned waiver criteria. First, we find that the underlying error was unintentional and made in good faith. Western Farmers states that it promptly commenced internal review and work on the NTCs and communicated with SPP staff but inadvertently failed to provide the requisite written communication. We also find that the requested waiver is of limited scope because it is a specific, one-time request from a single customer in order to maintain the project schedule for specific reliability network upgrades. Additionally, we find that the waiver will solve a concrete problem and not have undesirable consequences because it will not only allow Western Farmers to proceed with the projects as scheduled, thereby

⁶ SPP Comment at 1-3.

⁷ 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); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

maintaining reliability on its system, but also will relieve SPP from having to issue a request for proposals to find a replacement designated transmission owner. For these reasons, we grant Western Farmers' waiver request.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.