

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

CenterPoint Energy Houston Electric, LLC

Docket No. ER04-41-000

ORDER ACCEPTING FORM OF TRANSMISSION SERVICE AGREEMENT

(Issued December 12, 2003)

1. On October 14, 2003 CenterPoint Energy Houston Electric, LLC (CenterPoint) filed a form of transmission service agreement under CenterPoint Houston's Transmission Service Agreement for Transmission Service To, From and Over Certain Interconnections ("TFO Tariff"). As discussed below, we will accept CenterPoint's form of transmission service agreement effective December 14, 2003.

Filing

2. CenterPoint explains that the form of transmission service agreement is required to be a part of CenterPoint's tariff pursuant to Order No. 2001,¹ but was inadvertently omitted from the TFO Tariff when the TFO Tariff was filed on July 3, 2002. CenterPoint further explains that it is now correcting that omission and asks that the form of transmission service agreement have the same effective date as the TFO Tariff – January 1, 2002. The form of transmission service agreement is being added to the TFO Tariff as Original Sheet Nos. 31 through 33.

Notice of Filing and Responsive Pleading

3. Notice of CenterPoint's filing was published in the Federal Register, 68 Fed. Reg. 61,408 (2003), with motions to intervene and protests due on or before November 4, 2003.

¹ See 18 C.F.R. § 35.10a (2003); Revised Public Utility Filing Requirements, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002); reh'g denied, Order No. 2001-A, 100 FERC ¶ 61,074 (2002); reconsideration and clarification denied, Order No. 2001-B, 100 FERC ¶ 61,432 (2002); Order No. 2001-C, 101 FERC ¶ 61,314 (2002) (Order No. 2001).

4. The Oklahoma Municipal Power Authority (OMPA) filed a timely motion to intervene and protest. OMPA states that it does not take service under CenterPoint's TFO Tariff, but has an interest in clarifying and establishing that CenterPoint's filing does not affect the procedures that CenterPoint would follow if it were to seek to apply that tariff to OMPA in the future. OMPA further states that while CenterPoint, in a letter to OMPA prior to OMPA's filing of its protest, provided some assurances to OMPA, CenterPoint has not ruled out the possibility that CenterPoint may seek to apply its tariff to OMPA in the future without having first negotiated an agreement with OMPA. Thus, OMPA states that it has an interest in clarifying the procedures that CenterPoint would need to follow and the effect of CenterPoint's filing on OMPA in such circumstances.

5. OMPA states that it discussed with CenterPoint its concerns regarding the retroactivity of the form of transmission service agreement and explains that it is authorized to state that CenterPoint will agree to withdraw its request for waiver of notice and accept an effective date of December 13, 2003, sixty days after the date of filing. OMPA adds that it does not seek suspension or a hearing in connection with CenterPoint's filing.

6. OMPA asserts that the Commission should confirm that CenterPoint's filing can have no effect on entities, like OMPA, that have not executed a conforming service agreement. It also asserts that the Commission should take this opportunity to clarify CenterPoint's filing obligations under Part 35 of the Commission's regulations, including the obligation to report all transactions under its TFO Tariff in quarterly electronic reports and to continue to file all nonconforming and unexecuted service agreements, and to direct CenterPoint to bring itself into compliance if it has not yet done so.

7. CenterPoint filed an answer to OMPA's protest. CenterPoint asserts that because OMPA states that it does not take service under the relevant tariff and CenterPoint agrees with OMPA that the form of transmission service agreement was not intended to affect OMPA, there seems to be no basis for OMPA's participation in this proceeding. CenterPoint also notes that OMPA has offered no objection to CenterPoint's form of transmission service agreement.

8. CenterPoint further points out that OMPA has merely raised concerns about how CenterPoint may administer its TFO Tariff in the future. In this regard, in response to a request by OMPA that CenterPoint confirm that it would not seek to charge OMPA under the TFO Tariff for certain exports unless and until a service agreement is negotiated or an unexecuted nonconforming agreement is filed with the Commission for prospective application only, CenterPoint responded that it will abide by the Commission's regulations and requirements governing tariffs and the filing of service agreements. Thus, CenterPoint asserts, there is no controversy here warranting any action by the Commission and OMPA's motion is a "thinly-disguised request for an advisory opinion regarding the Commission's filing requirements for jurisdictional transmission service."

Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), OMPA's motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CenterPoint's answer because it has provided information that assisted us in our decision-making process.

10. Pursuant to Order No. 2001, CenterPoint is required to file a form of transmission service agreement.² CenterPoint inadvertently omitted the form of transmission service agreement from the TFO Tariff when the TFO Tariff was originally filed. Thus, we will accept CenterPoint's filing and allow the form of transmission service agreement to be effective after 60 days notice from CenterPoint's filing or December 14, 2003.

11. OMPA fails to raise any specific objection to CenterPoint's proposed form of transmission service agreement. Instead, OMPA raises concerns it has with how CenterPoint may administer its TFO Tariff in the future, how OMPA may be affected by these concerns and whether CenterPoint is complying with the Commission's filing requirements with respect to transactions under its TFO Tariff. These concerns are beyond the scope of this proceeding.

The Commission orders:

CenterPoint's form of transmission service agreement is hereby accepted, to be effective December 14, 2003.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

² Id.