

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Union Electric Company
American Electric Power Service Corporation

Docket Nos. ER05-1012-000
ER05-1072-000

ORDER ACCEPTING NOTICES OF CANCELLATION

(Issued July 22, 2005)

1. On May 24, 2005, Union Electric Company (Union Electric)¹ filed a notice of cancellation of an Amended Interchange Agreement for the Missouri-Kansas-Oklahoma 345 kV Interconnection (MoKanOk Agreement) between Associated Electric Cooperative, Inc. (Associated), Kansas Gas & Electric Company (KG&E), Public Service Company of Oklahoma (PSO) and Union Electric. On June 3, 2005, American Electric Power Service Corporation (AEP), on behalf of PSO, also filed a notice of cancellation of the MoKanOk Agreement. The Commission will accept both Union Electric's and AEP's notices of cancellation of the MoKanOk Agreement.

I. Background

2. The MoKanOk Agreement was initially entered into in 1971 for the construction and operation of a 345 kV transmission line extending 370 miles through the service territories of Union Electric and Associated in Missouri, the service territory of KG&E in Kansas, and the service territory of PSO in Oklahoma. Each participant owned and maintained the portion of the line in its service area. Associated's portion of the 345 kV line is interconnected with the facilities of Union Electric and KG&E. Associated is an electric cooperative and, because it receives financing through the Rural Utilities Service, is not considered a public utility subject to the Commission's jurisdiction. Associated's

¹ In its application, Union Electric uses the name Union Electric Company d/b/a AmerenUE. However, Union Electric Company is the legally recognized name of the company. Therefore, Union Electric Company is the official name used throughout this order.

system is situated between Southwest Power Pool, Inc. (SPP), a regional transmission organization (RTO) of which KG&E and PSO are transmission-owning members, and Midwest Independent Transmission System Operator, Inc. (Midwest ISO), an RTO, of which Union Electric is a transmission-owning member.

3. The MoKanOk Agreement initially limited the use of the line exclusively to the owners, thus prohibiting third party access. However, on November 17, 1998, the Commission accepted for filing a revised MoKanOk Agreement² that incorporated third-party access to comply with Order No. 888³ and clarified the parties' capacity rights in the line as follows: Associated – 33 percent; KG&E – 20 percent; PSO – 25 percent; and Union Electric – 22 percent. KG&E and PSO have placed their capacity rights in the MoKanOk line under the control of SPP, and Union Electric's capacity rights have been placed under Midwest ISO's control.⁴ As a result, the MoKanOk Agreement provides a direct interconnection between SPP and Midwest ISO.

4. Section 12.1 of the MoKanOk Agreement provides that it will be in effect for 30 years starting from June 1, 1971 and is subject to cancellation by any party at the end of the initial term, provided that the party seeking to cancel the agreement submits written notice to all other parties not less than four years before the end of the term. On June 1, 2001, Associated notified all parties of its intent to terminate the agreement, as of June 1, 2005. Accordingly, Union Electric and PSO submitted notices of cancellation to terminate their respective agreements.

² *Western Resources, Inc.*, 85 FERC ¶ 61,243 (1998). The MoKanOk Agreement was designated as Union Electric FERC Rate Schedule No. 171, PSO FERC Rate Schedule No. 241, and KG&E FERC Rate Schedule No. 241.

³ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴ The capacity rights are governed by the terms and provisions of SPP's and Midwest ISO's Open Access Transmission Tariff (OATT).

5. Union Electric and AEP request that the Commission waive its 60-day prior notice requirement and allow the cancellations to be effective June 1, 2005.

II. Notice of Filing and Pleadings

6. Notice of Union Electric's notice of cancellation was published in the *Federal Register*,⁵ with comments and interventions due on or before June 14, 2005. Notice of AEP's notice of cancellation was published in the *Federal Register*,⁶ with comments and interventions due on or before June 24, 2005. Numerous parties filed motions to intervene in both dockets.⁷

7. Westar filed a protest in both dockets. The Kansas Commission and Midwest Energy filed protests to Union Electric's notice of cancellation in Docket No. ER05-1012-000. NRECA and Midwest Energy filed protests to AEP's notice of cancellation in Docket No. ER05-1072-000. Associated filed comments in support of both Union Electric and AEP's notices of cancellation. Xcel filed comments in response to both Union Electric and AEP's notices of cancellation. NRECA filed a response to Union Electric's notice of cancellation.

8. Union Electric and Associated both filed answers to protests of Union Electric's notice of cancellation. Associated filed an answer to protests of AEP's notice of

⁵ 70 Fed. Reg. 37,384 (2005).

⁶ 70 Fed. Reg. 35,244 (2005).

⁷ Motions to intervene were filed by: the Empire District Electric Company (Empire); Kansas Corporation Commission (Kansas Commission); Westar Energy, Inc. and Kansas Gas and Electric Company (Westar); and Associated. Motions to intervene out-of-time were filed by Midwest Energy, Inc. (Midwest Energy), Kansas City Power and Light Company (KCP&L), Xcel Energy Services, Inc. (Xcel) on behalf of Southwestern Public Service Company (SPS), Northern States Power Company (NSP), Northern States Power Company Wisconsin (NSPW), SPP, and the National Rural Electric Cooperative Association (NRECA). Midwest Energy, KCP&L, Xcel, NSP, and NSPW also filed motions to consolidate the proceedings in Docket Nos. ER05-1012-000 and ER05-1072-000. The Arkansas Public Service Commission filed a Notice of Intervention to AEP's notice of cancellation in Docket No. ER05-1072-000. Boston Pacific Company, Inc. filed comments in Docket No. ER05-1072-000.

cancellation. Westar and Xcel filed answers to Associated's answer to protests of Union Electric's notice of cancellation.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. The Commission will grant the motions to intervene out-of-time of Midwest Energy, KCP&L, Xcel, NSP, NSPW, SPP, and the NRECA given their interest in and the early stage of the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of Union Electric, Associated, Westar and Xcel and will, therefore, reject them.

10. Due to the fact that the issues raised in Docket No. ER05-1012-000 and those raised in Docket No. ER05-1072-000 involve common issues of law and fact, we will consolidate the proceedings for purposes of this decision.

B. Protests and Comments

11. Protestors assert that termination of the MoKanOk Agreement will create an additional rate pancake between SPP and Midwest ISO and that such rates would be unjust and unreasonable. Specifically, protestors note that deliveries to Midwest ISO from SPP currently are provided under the SPP OATT using the capacity available across the MoKanOk interconnection subject only to the through-and-out rate under the SPP OATT. However, the protestors assert that, absent the MoKanOk Agreement, Associated will be able to assess a second and new charge for point-to-point transmission service across its territory, resulting in an additional rate pancake for deliveries from SPP to Midwest ISO. The protestors believe that such rate pancaking is unjustified, as the physical nature of the transaction will remain unchanged and no new facilities will be added that would justify the new cost.

12. Protestors continue that the creation of the additional rate pancake is unjust and unreasonable as it would result in Associated collecting windfall revenues, and result in Associated over-collecting its cost-of-service unless the rates in its reciprocity OATT are

revised.⁸ The protestors also argue that the additional rate pancake between SPP and Midwest ISO will result in a seam between the two regional transmission systems that would unnecessarily restrict the movement of power at competitive prices between them. For example, as stated by protestors, Associated would be able to sell or buy power in the RTOs by paying two rates (one rate pancake), while at the same time, SPP members attempting to transact with Midwest ISO would pay a new Associated rate in addition to the RTO rates, resulting in a second rate pancake. Thus, protestors conclude, Associated's transactions would receive a competitive advantage.

13. Protestors also voice concerns regarding the reduction of Available Transfer Capability (ATC) between Midwest ISO and SPP due to the removal of PSO's share of the existing capacity under the MoKanOk Agreement. As explained by protestors, ATC reserved by parties under the SPP OATT could be reduced. SPS and NSP have existing through-and-out transmission service reservations under SPP's OATT, which are used to wheel energy between SPP and Midwest ISO over the MoKanOk transmission line. According to protestors, these firm transactions were confirmed with the expectation that the reserved ATC would be available for the full term of the reservations.

14. Protestors request that if the Commission accepts the notices of cancellation, it should condition the acceptance on AEP's and Union Electric's commitment to hold customers with existing transmission reservations harmless from reduced capacity under the SPP and Midwest ISO OATTs. As an alternative, the protestors request that if the Commission accepts the notices of cancellation, it should do so either subject to Associated filing restated rates to reflect the revenues Associated would recover as a result of the additional rate pancaking or subject to Associated joining either SPP or Midwest ISO. At the very least, the protestors request that the Commission suspend the notices of cancellation for the maximum statutory period of five months and establish procedures to resolve the issues presented prior to the expiration of the suspension period.

15. Westar, as part of its protest, requests that the Commission treat its pleading herein as a notice of cancellation of KG&E's Rate Schedule No. 199, and grant any waivers necessary to implement such notice.

16. NRECA specifically states that it opposes any suggestion that the Commission interfere with Associated's lawful termination of its obligations to provide service under the MoKanOk Agreement. NRECA also opposes any suggestion that the Commission

⁸Protestors note that Associated is currently recovering the costs of its portion of the MoKanOk line in its rates, but that those rates do not reflect the additional revenues Associated will receive if the MoKanOk Agreement is terminated.

may assert any jurisdiction to investigate or order changes in rates, charges, or terms and conditions of Associated's service.

D. Commission Determination

17. We find Union Electric and AEP's notices of cancellation are just and reasonable. We find that Union Electric and AEP complied with the Commission's Regulations⁹ in filing their notices of cancellation. Union Electric and AEP's notices of cancellation simply provide notice to the Commission and the parties to the agreement that Union Electric and AEP are terminating their obligations under the terms of the MoKanOk Agreement, in response to Associated terminating its participation in the MoKanOk Agreement effective June 1, 2005.

18. The Commission finds that many of the issues raised by protestors are outside the scope of this proceeding. Since Associated is a cooperative that receives funding from the Rural Utilities Service, it is not a public utility whose rates we would regulate under sections 205 and 206 of the Federal Power Act (FPA).¹⁰ Therefore, we cannot, under sections 205 or 206 of the FPA, require Associated to continue to offer service under the terms of a contract that it terminates, or to modify the rates for service it provides over its facilities, as the protestors request.¹¹ In addition, we will not require Union Electric and AEP to hold customers with existing transmission reservations harmless from reduced capacity along the MoKanOk line available under the SPP and Midwest ISO OATTs. It would be unreasonable to require the public utility parties to the agreement to hold others harmless for the consequences of Associated's termination of the agreement, an event that is beyond their control. Accordingly, we will accept Union Electric and AEP's notices of cancellation, to become effective June 1, 2005, the date that Associated terminated its participation in the MoKanOk Agreement, as required.¹²

⁹ 18 C.F.R. § 35.15 (2005).

¹⁰ 16 U.S.C. §§ 824d, 824e (2000).

¹¹ We do not here address issues related to the reciprocity requirement of Order No. 888. *See supra note 3.*

¹² *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

19. Finally, we note that KG&E requests that the Commission treat its protest and intervention as its notice of cancellation. We cannot grant this request. The Commission requires that when a rate schedule that is on file with the Commission is scheduled to terminate, each party shall be required to file with the Commission a notice of cancellation.¹³ This notice of cancellation should be filed with the Commission as a separate filing and not as part of a protest or intervention in another docketed proceeding. Therefore, KG&E should file a notice of cancellation with the Commission.

The Commission orders:

(A) Union Electric's notice of cancellation is hereby accepted effective June 1, 2005, as requested.

(B) AEP's notice of cancellation is hereby accepted effective June 1, 2005, as requested.

(C) Union Electric and AEP's request for waiver of the 60-day prior notice requirement is hereby granted.

(D) This proceeding is hereby consolidated with the proceeding in Docket No. ER05-1072-000.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹³ 18 C.F.R. § 35.15 (2005).