UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc. Docket No. ER05-1416-000

ORDER ACCEPTING SERVICE AGREEMENT, AS MODIFIED, FOR FILING

(Issued October 27, 2005)

1. On August 31, 2005, Southwest Power Pool, Inc.'s (SPP) filed a proposed executed service agreement for 35 MW of long-term firm point-to-point transmission service (Agreement) with Southwestern Public Service Company (Southwestern) d/b/a Xcel Energy Marketing (Xcel). In this order, the Commission accepts the Agreement for filing, as modified below, to become effective August 1, 2005, and directs SPP to make a compliance filing removing limitations on Southwestern's rollover rights. Further, we find that the Agreement, by providing for redispatch service to accommodate the service under the agreement, does not provide an undue preference to Southwestern.

Background

2. On August 31, 2005, SPP filed the Agreement, newly executed by Southwestern. The Agreement has a term of one year and five months, and would terminate on January 1, 2007. The Agreement provides for 35 MW of capacity from within Southwestern's pricing zone to the Eddy County Interchange. The Agreement proposes a provision, section 2.0 of the specifications attached to the Agreement, restricting Southwestern's future use of rollover rights that would otherwise be available for contract terms of one year or more pursuant to section 2.2 of the SPP Open Access Transmission Tariff (OATT). Additionally, under section 2.0, Southwestern commits to operating its Maddox No. 1 and Cunningham No. 4 generation units at sufficient levels to maintain voltage at the Eddy County Interchange 345 kV bus, at or above 90 percent of the nominal level until both Cunningham units No. 2 and No. 3 have been returned to service.

3. SPP requests a waiver of the Commission's 60-day prior notice requirement to allow the Agreement to become effective on August 1, 2005. SPP states that "[i]f the Commission does not accept the proposed limitation on rollover rights, then the Commission should consider the transmission service agreement as withdrawn."[1]

[1] Transmittal Letter at 5.

Notice of Filing and Responsive Pleadings

4. Notice of the August 31, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 54,041 (2005), with interventions and protests due on or before September 21, 2005. On September 21, 2005, Occidental Permian Ltd. and Occidental Power Marketing, L.P. (collectively Occidental) filed a timely motion to intervene and protest. On October 6, 2005, SPP filed an answer to the protest. Finally, on October 10, 2005, Occidental filed an answer to SPP's answer.

Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, motion to intervene filed by Occidental serves to make it a party to this proceeding.

6. 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 SPP's or Occidental's answers and will, therefore, reject them.

B. Limitation on Rollover Rights

SPP's Proposal

7. SPP proposes in section 2.0 to limit Southwestern's exercise of rollover rights. Section 2.0 provides that SPP "will not provide service beyond November 30, 2007 because it has performed an analysis . . . that indicates that, beginning December 1, 2007, insufficient voltage support and thermal capacity exist to accommodate the future rollover of this Service Agreement …" Further, section 2.0 provides that the limitation is due to forecasted increase in native and network load and due to currently committed network and point-to-point reservations.

8. In support of the limitation, SPP cites to its System Impact Study (SIS) assessing the Southwestern 35 MW transmission service request and identifying system problems and potential system modifications necessary to accommodate the request through SPP's remaining planning horizon. SPP states that it used 16 seasonal models and that the results of various scenarios, provided to the Commission, show that SPP will not be able to allow Southwestern to rollover the Agreement without threatening reliability and potentially harming existing customers and native load. SPP states that the base models used in the SIS were modified to reflect current modeling information and account for forecasted increases in native and network load, and pre-existing network and point-to-

point transmission service commitments. Also, in support of its rollover limitation, SPP provides a table listing the load growth in the Southwestern region associated with overloads from Southwestern's 35 MW request in the Fall 2006 Peak, the Winter 2007 Peak and the Summer 2015 Peak and a table showing specific facility overloads compared to load growth in the Southwestern region.

Commission Response

9. The Commission has consistently stated that a transmission provider can deny a customer the ability to rollover its long-term firm service contract only if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term.[2] The Commission has further stated that a transmission provider may limit the terms under which a new long-term agreement may be rolled over if it has a pre-existing contract obligation that commences in the future.[3] For example, if the transmission provider knows at the time of the execution of the original service agreement that available transfer capability to serve the customer will only be available for a particular time period, after which it is already committed to another transmission customer under a previously-confirmed transmission request (*i.e.*, an agreement under which service would commence at some time in the future), the transmission provider can reflect those obligations in the long-term contract and thereby limit the prospective transmission customer's rollover rights.

10. In order to make this demonstration, a transmission provider must identify the pre-existing contracts that commence in the future or show that native load growth projections are sufficiently specific and supported in the record at the time of the original transmission service agreement.[4] We find the situation in *Southern I* and *Southern II* analogous to the situation here. There, the transmission provider failed to demonstrate that native load growth or pre-existing contract obligations would constrain the transmission provider's system such that it could not provide transmission service to the customer beyond the term of the subject transmission service agreements.

11. We find that SPP has failed to make a sufficient demonstration to allow a limitation on rollover rights. Specifically, SPP has not supported its projections of native

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[2] *Southern Company Services, Inc.*, 110 FERC ¶ 61,379 (2005) (*Southern I*), *reh'g pending*; *Southern Company Services, Inc.*, 108 FERC ¶ 61,093 at P 10-11 (2004) (*Southern II*), *reh'g pending*; *accord Southwest Power Pool, Inc.*, 109 FERC ¶ 61,041 at P 6-7 (2004).

[3] *Id*.

[4] *See Nevada Power Co.*, 97 FERC ¶ 61,324 (2001); *American Electric Power Service Corp.*, 101 FERC ¶ 61,384 (2002).

load growth impacting the Southwestern to Eddy County Interchange path in the record. Additionally, SPP has not demonstrated with specificity that native load growth will constrain transmission within the Southwestern pricing zone such that SPP cannot provide transmission service to Southwestern beyond the end of its Agreement.

12. Further, SPP has failed to demonstrate that pre-existing contract obligations that commence sometime in the future will constrain SPP's transmission system such that it cannot provide transmission service to Southwestern beyond the Fall 2006 Peak season. SPP included in the Agreement a list of currently committed network and point-to-point reservations flowing during or extending beyond the period of Southwestern's request that affect the request.[5] SPP also included in this list, transactions that end in early 2006, but have rollover rights thereafter. SPP improperly included agreements with rollover rights in assessing the availability of rollover rights in the Agreement. Such transactions, if rolled over in the future, would not have rights that are superior to the rights reflected in the Agreement. As we have previously stated, once a transmission provider evaluates the impacts on its system of providing transmission service to a customer and decides to grant such requests, as SPP has done here, the Commission' rollover rights policy obligates the transmission provider to plan and operate its system with the expectation that it will continue to provide service to that customer should the customer request rollover of its contract term.[6] If the transmission system becomes constrained (for reasons other than those initially identified, *i.e.*, reasonably forecasted native load growth or pre-existing contract obligations that commence in the future) such that the transmission provider cannot satisfy all existing long-term customers, then the obligation is on the transmission provider to either curtail service to all affected customers (not just the later accepted firm customers) pursuant to provisions of its OATT or to build more capacity to relieve the constraint. Restricting rollover rights based on the potential exercise of other customers' rollover rights is not an option.

13. Therefore, we will reject the rollover limitation in SPP's proposed section 2.0 based on SPP's failure to show evidence of specific and supported native load growth or pre-existing contract obligations that commence in the future that would limit its ability to provide rollover rights to Southwestern. Accordingly, we direct SPP to make a compliance filing removing the rollover limitation in section 2.0 within 30 days of the date of this order.

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[5] Agreement, Table 2.

[6] *Southern Company Services, Inc.*, 104 FERC ¶ 61,140 (2003), *dismissing petition in relevant part sub nom. Southern Company Services, Inc. v. FERC*, 416 F.3d 39 (D.C. Cir. 2005); *accord Southern II* at P 11; *Southern I* at P 14.

C. Undue Preference for Redispatch Service and Cost Shifting

SPP Proposal

14. The Agreement provides that Southwestern will operate its Maddox No. 1 and Cunningham No. 4 generation units to relieve voltage constraints that might occur in the Fall of 2006.[7]

Protest

15. Occidental argues that the Agreement is unjust, unreasonable and unduly discriminatory because it provides undue preference for redispatch service and facilitates cost shifting. Occidental states that the transmission service for Southwestern d/b/a Xcel would not be available absent Southwestern's commitment to redispatch of what it describes to be older, relatively expensive generation units to maintain voltage levels that would not otherwise be run for system reliability. Occidental maintains that Southwestern has granted an undue preference to its affiliate Xcel by agreeing to redispatch the units under terms or conditions that would not be available to non-affiliated entities.

16. Additionally, Occidental contends that the Agreement may allow Southwestern to shift costs to its wholesale and retail cost-of-service customers to subsidize the transmission costs associated with transactions made by Southwestern's power marketing affiliate, Xcel. Occidental asserts that this transaction appears to be part of a pattern of Southwestern using its market power within its control area to force its cost-of-service wholesale and retail customers to subsidize Southwestern's market-based transactions. Occidental requests that the Commission determine that the proposed Agreement will not enable Southwestern to require its cost-of-service customers to bear additional fuel costs either through the redispatch provisions of the Agreement, or through Southwestern's practice of allocating the incremental fuel costs of its market-based rate sales to its cost-of-service customers. Finally, Occidental requests that the Commission set the Agreement for hearing and suspend it for five months.

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[7] Agreement at 3; *see also* SPP System Impact Study (SPP-2004-084-1) at 9 ("if the customer agrees to redispatch the applicable [Southwestern] units to relieve the impacts on the limiting constraints identified during the reservation period, the 35 MW request will be accepted with a term of 8/1/05 to 1/1/07.")

Commission Response

17. We address first Occidental's concern that Southwestern is preferring its affiliate Xcel over non-affiliated entities by committing to operate certain generation units under terms and conditions that would not be available to non-affiliated entities. SPP's OATT provides for redispatch service by a Transmission Owner, such as Southwestern, for any entity requesting firm point-to-point transmission service where: (1) SPP determines that the transmission system is not capable of providing for the service; (2) SPP determines that redispatch is more economic than system upgrades; and (3) the transmission customer agrees to pay SPP for the redispatch service.[8] Further, SPP's OATT provides that any redispatch costs to be charged to the transmission customer on an incremental basis must be specified in the service agreement,[9] and the instant Agreement provides for the payment of redispatch costs consistent with the provisions of Attachment K to SPP's OATT.[10] Therefore, since the terms and conditions of redispatch service, as well as the methodology for determining the price paid for the service are specified in the SPP OATT, we find that all entities seeking firm transmission service, affiliated and non-affiliated, have the opportunity to arrange for a redispatch from a transmission owner. Thus, we find no merit in Occidental's contention that the redispatch service provided in the Agreement by Southwestern is offered at terms and conditions that are not available to entities not affiliated with Southwestern.

18. Turning to Occidental's concern regarding whether Southwestern could use the Agreement to pass its market-based rate related costs to its cost-of-service wholesale or retail customers or to pass the redispatch costs under the Agreement to its costs-of-service customers, we find that Occidental has not shown that the Agreement in itself provides an opportunity to shift costs of sales made pursuant to market-based rates to cost-of-service customers. Nor has Occidental explained a method whereby costs paid to SPP under a transmission service agreement can be shifted to cost-of-service customers who do not benefit from the transmission service. We expect that the redispatch costs that are part of the cost-of-service transmission charge in the Agreement will be paid by Southwestern as required by the Agreement and the OATT and that those costs will not be shifted to those who do not benefit from the firm point-to-point service.

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[8] SPP OATT, § 13.5, FERC Electric Tariff Fourth Revised Vol. No. 1 Original Sheet No. 33. *See also* SPP OATT, Attachment K, § I.B., FERC Electric Tariff Fourth Revised Vol. No. 1 Superseding First Revised Sheet No. 165 (providing that SPP shall arrange for the redispatch of the generation resources of the Transmission Owner(s) in order to accommodate a firm transmission service request).

[9] *Id.*

[10] Agreement at section 8.1.

19. To the extent that Occidental's protest raises market power issues, we note the Commission is currently investigating other allegations that Southwestern and its affiliates have engaged in affiliate abuse and the exercise of market power in Docket No. ER01-205-007, *et al.* Additionally, the Commission is investigating the cost shifting issues raised here by Occidental in determining whether the allocation of average system fuel costs to market-based rate sales by Southwestern is just and reasonable in Docket No. EL05-19-000, *et al.* We note that Occidental is an intervenor in both of these proceedings and has had an opportunity to raise the same issues raised in its protest there.

20. Finally, for the reasons stated above, we reject Occidental's request to suspend the Agreement for five months and set it for hearing, and find that the Agreement does not provide an undue preference for Southwestern.

21. SPP's proposed Agreement, as modified, appears to be just and reasonable and has not been shown to be unduly discriminatory. Also, the Commission will grant waiver of the Commission's 60-day prior notice requirement to make the agreements effective on the date service commenced, as requested.[11] Therefore, we will accept the Agreement, as modified, to become effective on August 1, 2005.

The Commission orders:

(A) SPP's Agreement with Southwestern is hereby accepted for filing, as modified, to become effective August 1, 2005.

(B) SPP is hereby direct to submit a revised Agreement, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[11] *See Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (waiver of prior notice will be granted if service agreements are filed within 30 days after service commences); *accord Southern Company Services, Inc.*, 102 FERC ¶ 61,319 at P 12 (2003).