

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Associated Electric Cooperative, Inc.,  
Complainant

v.

Docket Nos. EL06-61-001

Southwest Power Pool, Inc.,  
Respondent

ORDER DENYING REHEARING

(Issued October 26, 2006)

1. On June 15, 2006, Associated Electric Cooperative, Inc. (Associated Electric) filed a request for rehearing of the Commission's May 19, 2006 Order.<sup>1</sup> In the May 19 Order, the Commission denied Associated Electric's complaint against Southwest Power Pool, Inc. (SPP). Associated Electric had argued that SPP violated its Open Access Transmission Tariff (OATT) in granting a rollover request by American Electric Power Service Corporation, as agent for the subsidiaries of the American Electric Power Company, Inc. d/b/a AEP (collectively, AEP) for 250 megawatts (MW) of long-term firm point-to-point transmission service from the Union Electric Company d/b/a AmerenUE (AmerenUE) transmission system to the Central and South West Services, Inc. transmission system. In that order, the Commission also instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>2</sup> to determine whether certain language in section 2.2 of SPP's existing OATT may be unjust, unreasonable, or unduly discriminatory or preferential. In this order, we will deny the request for rehearing.

**Background**

2. In its complaint, Associated Electric contended that it is not possible for SPP to grant AEP's rollover request for 250 MW of long-term firm service to begin on June 1,

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<sup>1</sup> Associated Elec. Coop., Inc. v. SW. Power Pool, Inc., 115 FERC ¶ 61,213 (2006) (May 19 Order).

<sup>2</sup> 16 U.S.C. § 824e (2000).

2005, because SPP no longer has the rights to the underlying contract path needed to provide such service. Associated Electric stated that the preceding AEP service arrangements to be rolled over relied on a contract path provided by an Interchange Agreement dated September 22, 1971, as amended December 31, 1996, among Associated Electric, Kansas Gas and Electric Company, Public Service Company of Oklahoma, and Union Electric Company for the Missouri-Kansas-Oklahoma 345kV interconnection (MoKanOk Line), which agreement was terminated effective June 1, 2005,<sup>3</sup> the same day AEP's requested service was to begin.

3. Associated Electric stated that without the MoKanOk Line available to SPP to support AEP's rollover request, SPP should not have granted AEP's request without first determining if sufficient available flowgate capacity existed to continue to provide the service. Associated Electric further stated that, alternatively, SPP should have considered AEP's request for a new transmission service request and processed it pursuant to the procedures for handling new service requests under SPP's OATT.

4. Associated Electric also stated that SPP was obliged to perform a study to determine whether sufficient transmission capability existed to accommodate AEP's service request. Associated Electric contended that, by rolling over AEP's service without first determining the sufficiency of available flowgate capacity, SPP had adversely affected the reliability of Associated Electric's system and neighboring systems.<sup>4</sup>

### **May 19 Order**

5. In the May 19 Order, the Commission denied Associated Electric's complaint. The Commission found that, contrary to Associated Electric's arguments, SPP had properly applied section 2.2 of its OATT in granting AEP's rollover request.<sup>5</sup> The Commission stated that it has consistently held that, under section 2.2, all firm service customers (requirements and transmission-only with contract terms of one year or more) have the right to continue to take transmission service from their existing transmission providers when their contracts expire, roll over, or are renewed. The Commission found that SPP had correctly implemented section 2.2 of its OATT and had granted AEP's

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<sup>3</sup> See Union Elec. Co., 112 FERC ¶ 61,089, order denying clarification, 113 FERC ¶ 61,320 (2005) (Union Electric).

<sup>4</sup> Complaint at 39.

<sup>5</sup> In relevant part, section 2.2 of SPP's OATT provides that "[e]xisting firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more, and retail) of the Transmission Owner(s) or Transmission Provider have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed."

rollover request. Moreover, in explaining a transmission provider's obligation to maintain available transmission capacity to provide the rollover right, the Commission explained that, in another proceeding, it had rejected arguments made by a transmission provider that it could not provide the requested rollover service "due to changes to existing firm uses on its system including native load growth, changes in external trading patterns, generation dispatch modeling assumptions, and loop flow changes."<sup>6</sup> The Commission found that SPP, consistent with Commission precedent, had maintained available transmission capacity to provide AEP's requested rollover and that Associated Electric's unsupported allegations to the contrary were unavailing.<sup>7</sup>

6. Furthermore, the Commission concluded that, contrary to Associated Electric's complaint, section 2.2 contains no requirement that SPP perform any studies before granting a rollover request.

### **Associated Electric's Request for Rehearing**

7. Associated Electric maintains that the May 19 Order ignores the fact that the MoKanOk Line, which was the basis for the initial service agreement, is no longer available for SPP to use and, therefore, SPP cannot continue to provide AEP with the same service that it previously received. Associated Electric further argues that the service request of June 1, 2005, should have been considered a new service request and the burden should be on SPP to provide quantitative support for its statements that it has the available transmission capacity to provide service.

8. Associated Electric also contends that the May 19 Order fails to provide a sound legal basis for why SPP must roll over AEP's service given the Commission's conclusion in *Union Electric* that rollover is not required in this particular circumstance.<sup>8</sup> Associated

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<sup>6</sup> Citing *Exelon Generation Co.*, 99 FERC ¶ 61,235, at P 26 (2002) (*Exelon*). The Commission explained that SPP could restrict a transmission customer's rollover rights only in certain limited circumstances. Absent the limited circumstances that the Commission has identified for a transmission provider to restrict a transmission customer's rollover—and Associated Electric does not argue that those circumstances exist—SPP had no basis to deny AEP's rollover request.

<sup>7</sup> The Commission also found that SPP could not deny AEP's rollover request on a claim that there was insufficient capacity on a third-party's transmission system. Citing *Commonwealth Edison Co.*, 95 FERC ¶ 61,252, at 61,875 (2001) ("A transmission provider may not condition a transmission customer's rights to roll over transmission service on the transmission provider's system at the end of an existing service agreement based on whether there is enough transmission capacity available on a third-party's transmission system.").

<sup>8</sup> Request for Rehearing at 8-9 (citing *Union Electric*, 112 FERC ¶ 61,089 at P 18).

Electric argues that *Union Electric* is directly on point, as it plainly states that SPP has no obligation to hold its customers harmless, *i.e.*, SPP had no obligation to roll over AEP's service.

9. Finally, Associated Electric contends that the May 19 Order unjustly and unreasonably relies upon SPP's statements that it has sufficient available transmission capacity to serve AEP, even though SPP has failed to provide any supporting quantitative analysis of available transmission capacity. Associated Electric argues that "SPP only demonstrates the total contract path capacity on the system between SPP and AmerenUE and not [the available transmission capacity]." <sup>9</sup>

### **Discussion**

10. We will deny Associated Electric's rehearing request. We disagree with Associated Electric's assertion that the Commission ignored the fact that the MoKanOk Line is no longer available for SPP to use and therefore SPP cannot continue to provide AEP with the same service that it previously received. In the May 19 Order, the Commission explained that under section 2.2 of SPP's OATT, SPP is obligated to maintain transmission capacity for its existing long-term transmission customers with rollover rights. The Commission further explained that in another proceeding it had rejected arguments made by a transmission provider that it could not provide a requested rollover service "due to changes to existing firm uses on its system including native load growth, changes in external trading patterns, generation dispatch modeling assumptions, and loop flow changes."<sup>10</sup> Associated Electric has cited to no provision of SPP's OATT that would require SPP to consider a change in the contract path with respect to a rollover request. Indeed, SPP's OATT only contains language that obligates SPP to maintain available transmission capacity for AEP upon a rollover. As the Commission found in the May 19 Order, SPP correctly implemented section 2.2 and granted AEP's rollover request.

11. We also disagree with Associated Electric that *Union Electric* is dispositive of this proceeding. In *Union Electric*, the Commission accepted notices of cancellation filed by Union Electric and AEP to be effective on the same date that Associated Electric terminated its participation in the MoKanOk Agreement. While the Commission explained that it would 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 Independent Transmission System Operator,

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<sup>9</sup> Request for Rehearing at 10.

<sup>10</sup> May 19 Order, 115 FERC ¶ 61,213 at P 15 (quoting *Exelon*, 99 FERC ¶ 61,235 at P 26).

Inc. OATTs, it did not prohibit them from doing so.<sup>11</sup> Here, SPP has indicated that it has sufficient capacity to provide the requested rollover request and, pursuant to section 2.2 of its OATT, provided the requested rollover.

12. Finally, we disagree with Associated Electric's contention that SPP should not have granted the rollover request because SPP failed to provide any supporting quantitative analysis of available transmission capacity. Under section 2.2 of SPP's OATT and Order No. 888,<sup>12</sup> SPP is under no obligation to perform any studies or provide any data demonstrating that it has sufficient transmission capability to provide a particular rollover request. To the contrary, section 2.2 of SPP's OATT and Order No. 888 require SPP to maintain transmission capability to provide a rollover. SPP is under no obligation to maintain particular contract paths; rather, it only need maintain the transmission capability to transmit power and energy between the contractual point of receipt and the point of delivery. Only if a transmission customer with a rollover right requests a change to its receipt or delivery points would the transmission provider perform a study to determine whether it could provide the rollover request.

The Commission orders:

Associated Electric's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>11</sup> *Id.* P 18.

<sup>12</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 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).