

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.

Southwest Power Pool, Inc.

Docket Nos. ER07-314-000  
ER07-314-001

ORDER ACCEPTING IN PART AND REJECTING IN PART UNEXECUTED  
NETWORK INTEGRATION TRANSMISSION SERVICE AGREEMENT

(Issued February 23, 2007)

1. On December 11, 2006, as supplemented on December 26, 2006, Southwest Power Pool, Inc. (SPP) filed an unexecuted revised Network Integration Transmission Service Agreement (Revised NITSA) between SPP as the transmission provider, and American Electric Power Service Corporation (AEP)<sup>1</sup> as the network customer (collectively, the parties). The Commission accepts in part and rejects in part the Revised NITSA, subject to conditions discussed below, to become effective November 10, 2006, as requested.

**I. Background**

2. The parties have an existing NITSA that was approved by the Commission in Docket Nos. ER05-1519-000 and ER05-1519-001,<sup>2</sup> pursuant to which SPP provides AEP with network integration transmission service (network service).

3. Network service allows the network customer to integrate, economically dispatch and regulate its current and planned network resources to serve its network load in a

---

<sup>1</sup> Under the Revised NITSA, AEP is the agent for its affiliates, Public Service Company of Oklahoma, Southwestern Electric Power Company, and Mutual Energy SWEPCO L.P.

<sup>2</sup> *Southwest Power Pool*, Docket Nos. ER05-1519-000 and ER05-1519-001 (Dec. 7, 2005) (unpublished letter order).

manner comparable to that in which the transmission owners utilize the transmission system to serve their native load customers. SPP, as the transmission provider, provides network service to its network customers pursuant to the applicable terms and conditions contained in its Open Access Transmission Tariff (OATT or tariff) and NITSA.

4. In order for a network customer to designate new network resources, it must initiate a request for modification of service pursuant to section 29 of SPP's tariff. Section 29 of SPP's tariff establishes the following four criteria that a network customer must meet prior to designating new network resources: (1) the customer must complete an application for service; (2) the customer and the transmission provider, in coordination with the affected transmission owner(s), must complete the technical arrangements set forth in sections 29.3 and 29.4 of SPP's tariff; (3) the customer must execute a NITSA pursuant to Attachment F of SPP's tariff (or request in writing that the transmission provider file a proposed unexecuted service agreement with the commission); and (4) the customer must execute a network operating agreement with the transmission provider (or request in writing that the transmission provider file a proposed unexecuted network operating agreement).<sup>3</sup>

## **II. Description of the Filing**

5. The Revised NITSA filed by SPP on December 11, 2006 (the December 11 Filing) reflects AEP's proposed designation of new network resources under the parties' existing NITSA, including the Eastman Cogeneration Facility (Eastman), the Weatherford Wind Energy Center (Weatherford), Southwestern Power Station Unit 4, and the Sleeping Bear Wind Project (Sleeping Bear). On December 27, 2006, SPP submitted an amendment to the December 11 Filing to include the Harrison County Power Plant in its list of network resources.

6. SPP states that it can provide network service from the newly designated facilities as network resources pursuant to the terms and conditions of the Revised NITSA, however, in order to do so, a number of assigned network and expansion plan upgrades need to be constructed.<sup>4</sup> SPP also states that the Revised NITSA is unexecuted because

---

<sup>3</sup> SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet Nos. 71-75.

<sup>4</sup> See SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 7A and Original Sheet No. 13 (defining Network Upgrades as "all or a portion of the modifications or additions to transmission-related facilities that are integrated with and support this Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System" and defining Base Plan Upgrades, referred to here as expansion plan upgrades, as "those upgrades included in and constructed pursuant to the SPP Transmission Expansion Plan in order to ensure the reliability of the Transmission System").

the parties could not agree on language regarding interim service and redispatch costs if the upgrades are delayed.

7. SPP explains that, during negotiations, AEP sought to include language in section 8.9 of the Revised NITSA requiring SPP to provide service curtailment or generation redispatch to alleviate the constrained facilities should the network upgrades be delayed beyond the required completion dates. SPP objects to this language because it believes that under section 29.3 of its tariff, it is not obligated to provide network service to AEP until the network upgrades are complete.<sup>5</sup> SPP states that, nonetheless, it offered to provide AEP with interim service on a redispatch basis if AEP agreed to pay the redispatch costs along with any relevant transmission service charges. AEP declined this offer and SPP believes that, since the parties could not reach a consensual agreement, SPP is not required to provide the requested service until the upgrades are complete.

8. In addition, SPP notes that, section 8.10 of the Revised NITSA provides that AEP will pay for the transmission credits to reimburse Chermac Energy Corporation (Chermac)<sup>6</sup> for the cost of network upgrades to Western Farmers Electric Cooperative's

---

<sup>5</sup> Section 29.3 of SPP's tariff states:

**29.3 Technical Arrangements to be Completed Prior to Commencement of Service:** Network Integration Transmission Service shall not commence until the Transmission Provider and the Network Customer, or a third party, have completed installation of all equipment specified under the Network Operating Agreement consistent with Good Utility Practice and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Transmission System. The Transmission Provider shall exercise reasonable efforts, in coordination with the Network Customer, to complete such arrangements as soon as practicable taking into consideration the Service Commencement Date.SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 74A-75.

SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 74A-75.

<sup>6</sup> Sleeping Bear LLC, which owns the Sleeping Bear Wind Project, is a wholly-owned subsidiary of Chermac.

(WFEC) system associated with the Sleeping Bear interconnection.<sup>7</sup> Chermac paid for the network upgrades necessary to enable it to interconnect the Sleeping Bear generating facility to WFEC's transmission system pursuant to a Large Generator Interconnection Agreement between Chermac, SPP, Sleeping Bear LLC, and WFEC (Sleeping Bear LGIA).<sup>8</sup>

9. SPP requests an effective date of November 10, 2006, which requires waiver of the Commission's 60-day prior notice requirement in 18 C.F.R. § 35.11 (2006). SPP contends that waiver of the prior notice requirement is appropriate because construction of certain facilities will require substantial investments and lead time, and this effective date will assure the parties that the Revised NITSA was in place at the earliest possible date. In addition, SPP notes that the Revised NITSA was not filed later than 30 days after the commencement of service.

---

<sup>7</sup>Section 8.10 of the Revised NITSA states:

#### **8.10 Other Charges**

The requested service requires payment of transmission credits for repayment of amounts advanced for Network Upgrades funded by the Generation Interconnection Customer pursuant to SPP Tariff Attachment V, Section 11.4 of the Large Generator Interconnection Agreement. Payments in the amount of \$43,609.74 monthly for a total of 60 months, in accordance with FERC Order 2003-A, totaling \$2,616,584.40 based on the current FERC interest rate of 8.17% shall be made for interconnection facilities including a new 138kV Ring Bus with associated circuit breakers and buswork necessary to interconnect the requested Sleeping Bear Wind 80 MW network resource.

Notwithstanding the term provision of Section 4.0 of this Service Agreement, Customer shall be responsible for paying all charges specified as its obligation in this Section 8.10 of this Attachment I.

SPP's December 11, 2006, Revised Network Integration Transmission Service Agreement, Ex. 1, Attachment I.

<sup>8</sup> The Sleeping Bear LGIA is designated as SPP's Service Agreement No. 1042 and is identified as Contract No. 350 on SPP's Quarterly Report for the third quarter of 2004.

### **III. Notice and Responsive Filings**

10. Notice of SPP's filing was published in *Federal Register*, 71 Fed. Reg. 76,315 (2006), with interventions and protests due on or before January 2, 2007. Notice of SPP's supplement to its filing was published in *Federal Register*, 72 Fed. Reg. 1505 (2007), with interventions and protests due on or before January 17, 2007. On January 3, 2007, Oklahoma Municipal Power Authority (OMPA) filed a timely motion to intervene and protest, and AEP filed a timely motion to intervene and protest. On January 5, 2007, WFEC filed a motion for leave to intervene out of time and protest. On January 19, 2007, SPP filed an answer to AEP's protest. On January 22, 2007, AEP filed an answer to WFEC's protest.

#### **A. AEP's Protest**

11. AEP summarizes the series of negotiations that took place between the parties prior to the December 11 Filing. AEP states that, on September 21, 2006, SPP submitted a draft NITSA to AEP for the Eastman and Weatherford facilities (NITSA One). AEP explains that NITSA One proposed an effective date of January 1, 2007, for the Eastman facility and included the following language: "In the event these Network Upgrades are delayed beyond the required completion dates, service curtailment or generation redispatch may be required to alleviate the specified constrained facilities."<sup>9</sup> AEP states that it objected to this language because it wanted SPP to provide service curtailment and redispatch on a non-discriminatory basis comparable to all other firm reservations impacting the specified constrained facilities. AEP argued that it should not have a lower class of service for its new transmission request simply because SPP was delayed in making upgrades needed by all users of the transmission system. AEP explains that since the parties could not agree on this issue, on September 28, 2006, it requested that SPP file the unexecuted version of NITSA One with the Commission.

12. AEP states that on September 29, 2006, SPP tendered another draft NITSA to AEP (NITSA Two). AEP explains that SPP corrected a few items and changed the list of network upgrades, but the language providing for service curtailment and redispatch was the same as in NITSA One. AEP states that it continued to object to this language and suggested the addition of the following language: "If service curtailment or generation redispatch are required to alleviate the specified constrained facilities, the Network Customer will be treated on a non-discriminatory basis and comparable to all other firm reservations impacting the specified constrained facilities."<sup>10</sup> AEP states that it told SPP

---

<sup>9</sup> AEP's January 3, 2007, Motion to Intervene and Protest at 3.

<sup>10</sup> *Id.* at 4.

that if SPP did not agree with the suggested language, to file the unexecuted NITSA Two with the Commission.

13. AEP states that on October 26, 2006, it received another draft NITSA from SPP (NITSA Three). AEP states that SPP's language regarding redispach and service curtailment remained the same as in NITSA One and NITSA Two. AEP explains that it still objected to this language because SPP would not provide these services on a non-discriminatory basis, and so on November 1, 2006, AEP requested that SPP file an unexecuted version of NITSA Three with the Commission.

14. AEP states that on November 20, 2006, SPP tendered two more NITSAs to AEP (NITSA Four and NITSA Five). AEP explains that NITSA Four included the same provision for service curtailment and redispach as NITSAs One, Two, and Three and an effective date for the Eastman facility of January 1, 2007. AEP states that NITSA Five included no language providing for service curtailment or redispach in the event of upgrade delays and provided for an effective date of June 1, 2008, for the Eastman facility. AEP explains that it rejected these agreements for the same reasons that it rejected the previous NITSAs and requested that SPP file the unexecuted NITSA Three with the Commission.

15. AEP notes that the Revised NITSA that SPP eventually filed with the Commission contains an effective date of October 1, 2007, for the Eastman facility, which is well beyond the effective date of January 1, 2007, that AEP requested. AEP also states that SPP filed the service designation for Sleeping Bear without ever tendering a proposed service agreement to AEP.

16. AEP raises three substantive issues with the Revised NITSA filed by SPP. First, AEP argues that in section 8.9 of the Revised NITSA, SPP improperly proposes to make service associated with the new network resources contingent upon the timely completion of certain network upgrades. AEP argues that there is no support in SPP's tariff for the contingent network service language that SPP proposed. According to AEP, it is not reasonable for SPP to construe section 29.3 of its tariff to mean that SPP will provide network service contingent upon completion of network upgrades for an indefinite period. AEP points out that section 29.3 requires that the equipment associated with the upgrades be installed "consistent with Good Utility Practice" and "taking into consideration the Service Commencement Date."

17. Accordingly, AEP requests that the Commission direct SPP to remove the contingency language from the Revised NITSA and substitute the following language: "If service curtailment or generation redispach are required to alleviate the specified constrained facilities, the Network Customer will be treated on a non-discriminatory basis

and comparable to all other firm reservations impacting the specified constrained facilities.”<sup>11</sup>

18. AEP’s second concern is that SPP is improperly tying its offer to provide redispatch service to AEP’s acceptance of the contingency language discussed above. AEP states that, in the course of negotiations, SPP effectively offered AEP two choices: either sign the agreement offering redispatch service and including the language making network service contingent on completion of the upgrades, or sign an alternative agreement with no redispatch service and with a delayed effective date. Based on these alternatives, AEP believes that SPP is taking the position that redispatch service must only be offered in connection with interim service, and then only if the provider and customer agree on the terms of service. AEP contends that pursuant to Attachment K of SPP’s tariff,<sup>12</sup> which addresses redispatch procedures and redispatch costs, this position is improper. AEP contends that Attachment K requires SPP to provide redispatch service if SPP tells an applicant for network service that the service can only be provided if redispatch occurs, and the applicant agrees to pay redispatch costs, which is the case here.

19. AEP’s third concern deals with payment of LGIA transmission service credits relating to the service designation for Sleeping Bear. Under section 8.10 of the Revised NITSA, AEP would be responsible to repay transmission credits to Chermac for funds advanced by Chermac to SPP for network upgrades associated with the Sleeping Bear interconnection. AEP objects to SPP’s imposition of liability under the Sleeping Bear LGIA because AEP is not a party to that agreement. AEP argues that a more logical candidate to pay the credits would be WFEC because it is WFEC’s transmission system upon which the network upgrades were constructed and WFEC could include the cost of the upgrades in its cost of service for setting its zonal transmission rate. Accordingly, AEP requests that the Commission instruct SPP to remove section 8.10 from the Revised NITSA.

20. In addition to its three substantive objections, AEP also claims that SPP has improperly carried out its tariff administration duties. AEP claims that SPP delayed in processing its service request by refusing to file earlier versions of the unexecuted NITSA despite AEP’s requests to do so and SPP failed to provide any explanation for the delays. AEP also claims that SPP erred in filing the Sleeping Bear designation without first tendering a proposed service agreement to AEP. For these reasons, AEP requests that the Commission admonish SPP to properly follow its tariff.

---

<sup>11</sup> *Id.* at 4 and 10.

<sup>12</sup> SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Second Revised Sheet Nos. 165-171.

## **B. OMPA's Protest**

21. OMPA requests that the Commission reject SPP's proposed contingent service approach because it fails to hold transmission providers accountable for delays in making needed upgrades. OMPA argues that network service should commence on a date certain reflecting a reasonable period for construction of needed upgrades because the customer should not bear all risk of delays, particularly when the customer has no control over the construction process. OMPA also urges the Commission to give AEP's procedural concerns serious consideration and to take action requiring SPP to uphold its tariff obligations.

## **C. WFEC's Protest**

22. WFEC objects to AEP's contention that it should bear responsibility for refunding to Chermac the cost of the network upgrades associated with the Sleeping Bear interconnection. WFEC explains that section 11.4.1 of the Sleeping Bear LGIA<sup>13</sup> requires the interconnection customer, Chermac, to advance the funds to pay for network upgrades associated with the interconnection and the transmission provider, SPP, is obligated to reimburse the interconnection customer for the cost of the network upgrades through transmission service credits. WFEC states that the issue then, is which transmission owner SPP should assign responsibility for paying those credits. WFEC explains that it discussed the issue with SPP and they agreed that AEP should bear the cost of the refunds.

23. WFEC does not believe it should pay for the credits because the only benefit it will receive from the network upgrades is general system reliability. WFEC argues that in comparison, AEP will receive the benefit of general system reliability plus AEP will be able to receive output and designate Sleeping Bear as a network resource. WFEC

---

<sup>13</sup> Section 11.4.1 of the Sleeping Bear LGIA, which is the same as section 11.4.1 of the *pro forma* LGIA attached to SPP's tariff, states in relevant part:

### **11.4.1 Repayment of Amounts Advanced for Network Upgrades.**

Interconnection Customer shall be entitled to a cash refund, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments, associated with Network Upgrades and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility.

contends that the charges associated with the network upgrades should be paid by AEP's load because AEP will receive those transmission service revenues back from SPP, as AEP is the zonal transmission owner. Therefore, WFEC argues that AEP is the logical candidate to bear the costs of the network upgrades associated with the Sleeping Bear interconnection and requests that the Commission accept section 8.10 of the Revised NITSA as filed by SPP.

**D. SPP's Answer**

24. In its answer, SPP reaffirms its position that pursuant to section 29.3 of its tariff, it need not commence network service until upgrades are complete. SPP also cites section 29.1 of its tariff, which explicitly conditions SPP's ability to provide network service on satisfying the requirements in section 29.3.<sup>14</sup> SPP further notes that, if the Commission decides that SPP cannot condition network service on the completion of the upgrades, SPP has no alternative but to deny AEP's service request because unconditionally accepting the request could lead to the curtailment of the native load for SPP members not a party to the Revised NITSA.

25. SPP also contends that it has not refused to provide AEP with redispatch service. Rather, SPP explains that the redispatch service necessary is dependent upon the System Impact and Facilities Studies that SPP conducts, and in this instance, SPP conducted studies based on the network upgrades being completed. SPP states that, if AEP wants redispatch service that assumes the network upgrades are not constructed, SPP would have to conduct new studies. Lastly, SPP contends that its generation-owning members must agree to redispatch before SPP can provide such a service.

26. SPP also argues that section 8.10 of the Revised NITSA, which requires AEP to pay transmission credits to reimburse Chermac for the network upgrades it funded, is consistent with the *pro forma* LGIA attached to the SPP tariff. SPP explains that Article 11.4.1 of the *pro forma* LGIA states that an interconnection customer is entitled to repayment for the amount paid for network upgrades. SPP states that such repayment comes from incremental transmission service taken, and in this instance, AEP is the party taking that incremental service.

27. In addition, SPP states that pursuant to Attachment L of its tariff, which addresses the treatment of revenues, the revenue collected for network service is allocated to the

---

SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet Nos. 372-373.

<sup>14</sup> SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet Nos. 71-72.

zone in which the load is located.<sup>15</sup> SPP notes that while Sleeping Bear is located in WFEC's zone, WFEC does not receive any revenue from the service provided under the Sleeping Bear designation in the Revised NITSA because the load to be served is located in AEP's zone. According to SPP, all revenue will be allocated to AEP, making it the proper customer to pay the credits.

28. SPP also argues that pursuant to Attachment Z of its tariff, which addresses aggregate transmission service study procedures, SPP may collect the costs related to the payment of credits from AEP on an "and" basis.<sup>16</sup> SPP argues that this approach is especially appropriate here because AEP should not reap the benefits of receiving output from Sleeping Bear, designating it a network resource, and obtaining transmission service revenues from it, without bearing the costs of the credits.

29. Finally, SPP contends that its lengthy processing of AEP's service request represents a considerable effort by SPP to accommodate AEP and to resolve the issues with the filing without having to submit the matter to the Commission for adjudication.

**E. AEP's Answer to WFEC's Protest**

30. AEP first argues that WFEC has no interest in any issue that is properly part of the proceeding pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006). AEP concedes that WFEC has an interest in the dispute over who will reimburse Chermac for the upgrades, however, AEP does not believe that this issue is a proper subject for a proceeding regarding a transmission filing. Therefore, if the Commission summarily orders SPP to remove section 8.10 from the Revised NITSA, AEP requests that the Commission also deny WFEC's motion to intervene.

31. If the Commission does not order SPP to remove section 8.10 from the Revised NITSA and WFEC is an appropriate party, AEP disagrees with WFEC that AEP should reimburse Chermac for the cost of the network upgrades. AEP cites 11.4.1 of SPP's *pro forma* LGIA, which according to AEP, clearly states that the transmission provider is responsible for paying back the amounts advanced by the interconnection customer for

---

<sup>15</sup> *Id.* at Fourth Revised Sheet No. 172-Original Sheet No. 175F.

<sup>16</sup> *Id.* at Second Revised Sheet No. 419-Original Sheet No. 424B.

the upgrades.<sup>17</sup> AEP also explains that pursuant to the definitions section of the LGIA,<sup>18</sup> the term “transmission provider” should be read to include the transmission owner when the transmission owner is separate from the transmission provider, which is the case here. Since WFEC is the transmission owner in this case, and the funds advanced were for upgrades to the WFEC system, AEP argues that WFEC should reimburse Chermac for the cost of the upgrades.

32. AEP also clarifies that, despite WFEC’s contentions, section 8.10 of the NITSA does not reflect any agreement on AEP’s part, nor are there any provisions in SPP’s tariff or *pro forma* LGIA that permit SPP and WFEC to agree to shift the liabilities under the agreement to a non-party like AEP.

33. In addition, AEP disagrees with WFEC’s assertion that the network upgrades allow AEP to designate Sleeping Bear as a network resource and receive output from Sleeping Bear. AEP points out that the network upgrades associated with the interconnection of a generator are distinct from network upgrades associated with transmission service. AEP states that here, the network upgrades at issue are those associated with the interconnection of the Sleeping Bear generator and do not provide transmission service.<sup>19</sup>

34. AEP also argues that SPP cannot properly rely on Attachment Z to its tariff to support its claim that AEP should pay for the network upgrades associated with the Sleeping Bear interconnection. AEP contends that Attachment Z, entitled Aggregate Transmission Service Study Procedures, only covers upgrades required to provide transmission service for all transmission service reservations included in the Aggregate Facilities Study. AEP argues that in this instance, the upgrades at issue were not identified as necessary for the transmission service AEP requested, and therefore, Attachment Z is inapplicable.

35. Finally, AEP maintains that it will not receive incremental revenues from the designation of Sleeping Bear as a network resource. AEP clarifies that network service is

---

<sup>17</sup> AEP states that, pursuant to the Sleeping Bear LGIA, SPP is the Transmission Provider, WFEC is the Transmission Owner, and Chermac is the Interconnection Customer.

<sup>18</sup> SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 268.

<sup>19</sup> AEP notes that that Chermac requested Energy Resource Interconnection Service (ERIS), which SPP’s tariff defines as “in and of itself does not convey transmission service.” *Id.* at First Revised Sheet No. 262.

priced on a load ratio share basis and adding a network resource does not affect revenues. Accordingly, AEP requests that the Commission order SPP to remove the objectionable provisions from section 8.10 of the Revised NITSA.

#### **IV. Discussion**

##### **A. Procedural Matters**

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission accepts WFEC's motion for leave to intervene out of time as it was timely filed.<sup>20</sup>

37. The Commission rejects AEP's request that it deny WFEC's motion to intervene. Below, the Commission addresses whether SPP should include section 8.10 in the Revised NITSA and WFEC represents an interest which may be directly affected by that decision. Therefore, WFEC is an appropriate party in this proceeding.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP and AEP's answers because they have provided information that assisted us in our decision-making process.

##### **B. Waiver of Prior Notice**

39. SPP requests that the Commission waive its 60-day notice requirement under section 35.11 of the Commission's regulations (18 C.F.R. § 35.11 (2006)), and make the Revised NITSA effective November 10, 2006. We find that good cause exists to grant SPP's request.<sup>21</sup>

---

<sup>20</sup> The original comment date, based on SPP's December 11, 2006, filing, was January 2, 2007. However, when SPP filed a supplement to its December 11, 2006 filing on December 27, 2006, the comment date was extended to January 17, 2007. WFEC filed its motion to intervene out of time and protest on January 5, 2007.

<sup>21</sup> See *Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84 (explaining that the Commission will grant waiver of notice for a service agreement under an umbrella tariffs if the agreement is filed within 30 days after service commences).

## **C. Commission Determination**

### **1. Network Service Contingent Upon Completion of Upgrades**

40. AEP argues that as filed by SPP, section 8.9 of the Revised NITSA improperly makes network service contingent upon the completion of certain network upgrades. We do not agree with AEP's argument. Section 3.0 of the Revised NITSA states that the terms and conditions of the parties' network service shall be governed by SPP's tariff, and section 8.9 of the Revised NITSA clearly is consistent with SPP's tariff. Specifically, section 29.3 of SPP's tariff states that network service "shall not commence until the ... [transmission provider has] completed installation of all equipment." In addition, as SPP points out, section 29.1 of its tariff conditions SPP's obligation to provide network service on the satisfaction of the requirements in section 29.3, amongst other things. As such, we will deny AEP's request to delete section 8.9 as filed by SPP and substitute the language provided by AEP.

41. OMPA contends that the approach set forth in section 8.9 of the Revised NITSA fails to hold transmission providers accountable for delays in making needed upgrades. To the contrary, SPP may be held accountable if it fails to satisfy its obligations under section 29.3 of its tariff, which require that the equipment associated with the upgrades be installed "consistent with Good Utility Practice" and with the "exercise [of] reasonable efforts ... as soon as practicable taking into consideration the Service Commencement Date." Neither OMPA nor AEP have alleged that SPP violated these tariff standards.

### **2. Redispatch**

42. AEP argues that SPP is improperly tying its offer to provide redispatch service to AEP's acceptance of the contingency language discussed above. We do not agree with AEP on this point. As discussed above, the provision of network service by SPP is contingent upon the completion of the upgrades. This is consistent with SPP's tariff. SPP is not "tying" redispatch to AEP's acceptance of the contingency language. Redispatch is simply an alternative means by which SPP can attempt to satisfy AEP's needs in the interim. The issue then, is whether SPP is required to provide AEP with redispatch service during the interim period before the upgrades are complete.

43. Pursuant to Attachment K of SPP's tariff, if an entity applies for network service and is informed by SPP that the service can only be provided if redispatch occurs, and the entity agrees to pay redispatch costs, SPP must provide redispatch service.<sup>22</sup> In this instance, AEP states that it agreed to pay redispatch costs. Therefore, in the interim period, i.e. until the upgrades are complete, SPP must provide redispatch service as long

---

<sup>22</sup> SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 165.

as AEP pays for the costs of redispatch and other conditions are satisfied. While SPP notes that it has not yet completed necessary studies to provide interim redispatch, we remind SPP that we expect it to do so in accordance with section 32 of its tariff. In addition, we expect SPP to continue to work with AEP to determine the details of any interim redispatch agreement.<sup>23</sup> It is not necessary for SPP to specifically include a provision in the Revised NITSA spelling out its obligation to provide redispatch service because it is described in Attachment K of SPP's tariff, which is incorporated by reference in the Revised NITSA.<sup>24</sup> Therefore, the Commission accepts this portion of SPP's Revised NITSA.

### **3. Sleeping Bear LGIA Transmission Service Credits**

44. SPP and WFEC argue that AEP should be held responsible for reimbursing Chermac for amounts Chermac advanced to fund the network upgrades to WFEC's system. Accordingly, SPP included section 8.10 in the Revised NITSA. However, section 11.4.1 of the *pro forma* LGIA attached to SPP's tariff does not support SPP and WFEC's claim. Section 11.4.1 of SPP's *pro forma* LGIA clearly states that the transmission provider or the affected system operator are responsible for repaying the interconnection customer.<sup>25</sup> In addition, SPP's *pro forma* LGIA defines the term "transmission provider" to include the transmission owner.<sup>26</sup> Therefore, in this case, since SPP is the transmission provider, and WFEC is the transmission owner, one of those two parties must reimburse Chermac, the interconnection customer, the amounts advanced for the network upgrades.

45. It is improper for SPP to pass the responsibility for these costs onto AEP by including such a provision in the Revised NITSA. No portion of the SPP's tariff provides that a transmission provider or a transmission owner may hold a transmission customer

---

<sup>23</sup> The parties may make use of the Commission's dispute resolution services. The Director of Dispute Resolution is Richard L. Miles, who may be reached at 202-502-8702 or 1-877-FERC-ADR (1-877-337-2237).

<sup>24</sup> SPP's December 11, 2006, Submission of Revised Network Integration Transmission Service Agreement, Ex. 1 at 3.0.

<sup>25</sup> SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 332 (defining "affected system operator" as the entity that operates an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection).

<sup>26</sup> SPP, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 340.

under a separate agreement responsible for repayment of these credits. After SPP pays for the transmission credits to Chermac, SPP may recover the costs of the network upgrades from AEP in some other fashion.<sup>27</sup> However, directly assigning the costs to AEP by including section 8.10 in the Revised NITSA is not the appropriate means by which to do this.

46. SPP and WFEC argue that AEP should be directly assigned responsibility for reimbursing Chermac since AEP obtains the greatest benefit from the interconnection of Sleeping Bear. However, Commission precedent does not support SPP and WFEC's argument. In *Consumers Energy Company*, the Commission rejected the direct assignment of improvements (network upgrades) to integrated grid facilities even if those facilities would not have been installed "but for" a particular request for service.<sup>28</sup>

47. The Commission also has held that the cost of network upgrades should be borne by all parties who benefit from them, not just the party receiving the greatest benefit.<sup>29</sup> In *Southern Companies Services*, the Commission stated that:

The Commission's preferred approach...ensures that the costs of the system upgrades are ultimately spread to all system users--as the costs will be reflected in the transmission rate charged (a transmission rate that reflects the costs of the system as expanded, with the interconnection customer getting, as noted above a credit for the amounts it has already paid).<sup>30</sup>

48. SPP also claims that pursuant to Attachment Z of its tariff, SPP may collect the costs related to the payment of credits on an "and" basis from AEP. However, Attachment Z only covers upgrades required to provide transmission service for transmission service reservations included in the Aggregate Transmission Service Study. The upgrades at issue with respect to the Sleeping Bear facility were necessary for interconnection service, but not identified as necessary for the transmission service AEP requested, and therefore, Attachment Z is inapplicable. Accordingly, the Commission directs SPP to remove section 8.10 from the Revised NITSA and to make a compliance filing reflecting this change within 30 days from the date of this order.

---

<sup>27</sup> SPP may recover the costs of the transmission credits by charging a transmission rate that incorporates the costs of the transmission credits, thereby distributing the cost of the upgrades among all of the users of the transmission system.

<sup>28</sup> *Consumers Energy Co.*, 96 FERC ¶ 61,132, at 61,561 (2001).

<sup>29</sup> *Appalachian Power Co.*, 63 FERC ¶ 61,151, at 61,978, *supplemental order*, 64 FERC ¶ 61,327 (1993).

<sup>30</sup> *Southern Companies Services, Inc.*, 95 FERC ¶ 61,078, at n.9 (2001).

**4. SPP's Tariff Administration**

49. Both AEP and OMPA express frustration with SPP's processing of their respective service requests. AEP requests that the Commission admonish SPP to follow its tariff. AEP claims that, among other things, SPP has repeatedly refused to file unexecuted service agreements despite requests to do so by AEP. AEP also claims that SPP filed the Sleeping Bear designation without tendering the service agreement to AEP. However, AEP did not provide evidence that SPP violated its tariff, such as a written request by AEP to SPP that SPP file an unexecuted NITSA.<sup>31</sup> Accordingly, the Commission denies AEP's request to admonish SPP for failing to follow its tariff.

The Commission orders:

(A) The Revised NITSA is hereby accepted in part and rejected in part, effective November 10, 2006, as requested, as discussed in the body of this order.

(B) SPP is hereby ordered to submit a compliance filing within 30 days from the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

---

<sup>31</sup> SPP FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 70. Section 29.1 requires that requests to file a proposed unexecuted service agreement be in writing.