

120 FERC ¶ 61,297
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 No. ER07-1226-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued September 28, 2007)

1. On July 31, 2007, Southwest Power Pool, Inc. (SPP) filed revised tariff sheets to its Open Access Transmission Tariff (OATT) to implement rate changes for Westar Energy, Inc. (Westar) and Oklahoma Gas & Electric Company (OG&E) and to incorporate Base Plan regional and zonal charges for several SPP pricing zones. As discussed below, we conditionally accept for filing revisions to SPP's tariff reflecting the proposed changes, effective sixty days from the date of the filing.

Background

2. As a Regional Transmission Organization (RTO), SPP administers its OATT on a regional basis across the facilities of SPP's Transmission Owners. Westar and OG&E are public utilities and Transmission Owners in SPP.

3. SPP's OATT uses zonal transmission rates based on the zone in which the point of delivery or load is located. Rates for through-and-out transactions are based on the zone from which the power exits SPP's transmission system. Attachment L of SPP's OATT provides for the distribution of transmission service revenues by SPP to multi-owner zones.

The Instant Filing

4. In the instant filing, SPP states that pursuant to Attachment L, Westar seeks to recover the cost of switchyard transmission facilities associated with the Spring Creek generation station (Spring Creek), which it acquired from ONEOK Energy Service Company, L.P. in a transfer conditionally approved by the Commission on May 22, 2006.¹ Westar's Spring Creek transmission facilities are located in SPP's OG&E pricing

¹ See *Westar Energy, Inc.*, 115 FERC ¶ 61,228, *order on reh'g*, 117 FERC ¶ 61,011 (2006), *order on reh'g*, 118 FERC ¶ 61,237 (2007).

zone and are used by customers in that pricing zone. SPP states that in order to accommodate Westar's recovery of transmission revenues, SPP proposes to revise the stated zonal revenue requirement and the stated rates for Point-to-Point Transmission Service in its OATT for OG&E's pricing zone. SPP has thus submitted revised tariff sheets for Attachment H of its OATT.

5. SPP states that it has also revised Attachment H to specify that the revenue requirements for any facilities Westar owns in other pricing zones will be subtracted from the zonal revenue requirement for the Westar pricing zone to avoid double recovery with respect to the Spring Creek facilities. In addition, SPP submits a revised Attachment T to its OATT increasing OG&E's rates for Point-to-Point Transmission Service to include the incremental revenue requirement for the Spring Creek facilities.

6. SPP explains that the revenue requirement associated with the Spring Creek facilities is the product of the facilities' net plant balance and the Westar net plant carrying charge determined pursuant to the transmission formula rate specified in Westar's OATT. Additionally, SPP recalculated OG&E's rates for Point-to-Point Transmission Service using the average load and rate design represented by the currently effective Point-to-Point rates for OG&E's pricing zone. SPP states that it is modifying its OATT to accommodate Westar's recovery of transmission service revenues for the Spring Creek facilities and notes that it is not independently supporting or justifying these rate changes.

7. SPP states that on April 22, 2005, the Commission conditionally accepted SPP's proposal to implement a regional transmission cost allocation plan with regard to new transmission upgrades.² SPP's cost allocation plan provides for regional allocation of one-third of the costs of Base Plan facilities of 60 kV and above through a postage-stamp rate, with the remaining two-thirds assigned locally to affected zones based on each zone's share of the incremental megawatt-mile benefits as computed under SPP's OATT.

8. SPP states that Westar has constructed five specific network upgrades that qualify for Base Plan funding under Attachment J of SPP's OATT. Additionally, SPP states that certain transmission credits payable by customers to sponsors of economic upgrades pursuant to Attachment Z of SPP's OATT also qualify for Base Plan funding. Specifically, these include credits payable to Redbud Energy, LP by Oklahoma Municipal Power Authority (OMPA) and credits payable by Westar to Kansas City Power & Light Company.

9. SPP explains that it has revised Attachment H of its OATT to reflect the region-wide and zonal Base Plan revenue requirements necessitated by the Base Plan qualifying

² See *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, *order on reh'g*, 112 FERC ¶ 61,319 (2005).

projects described above. In addition, SPP has also established new regional and zonal Base Plan Point-to-Point Transmission Charges necessary to recover the revenue requirements associated with the Base Plan upgrades and the economic upgrade credits noted above. Finally, SPP has addressed double recovery issues by revising Attachment H to specify that the sum of the current year's revenue requirement associated with all Base Plan Upgrades will be subtracted from the zonal revenue requirement for the Westar pricing zone.

10. SPP requests an effective date of August 1, 2007, one day after filing. SPP states that waiver of the Commission's 60-day notice requirement is appropriate because SPP is implementing its regional cost allocation tariff sheets or simply updating revenue requirements using a fixed charge rate from an existing formula.

Notice of Filing and Responsive Pleadings

11. Notice of SPP's filing was published in the *Federal Register*, 72 Fed. Reg. 44,841 (2007), with motions to intervene and protests due on or before August 21, 2007. Westar, American Electric Power Service Corporation and The East Texas Cooperatives filed timely motions to intervene. OG&E and OMPA filed timely motions to intervene and protests. On September 5, 2007, Westar filed an answer.

12. In its protest, OG&E states that SPP's filing does not contain sufficient information to justify the proposed increase to the existing zonal revenue requirement for the OG&E zone. OG&E contends that SPP's filing creates a new Westar "sub-zone" within the OG&E pricing zone under the SPP OATT, and assigns all of the cost of the Spring Creek facilities to that new sub-zone. OG&E states that SPP's OATT does not authorize the establishment of such a sub-zone and that SPP and Westar have not explained why it is appropriate to include the Spring Creek facility costs in a Westar sub-zone within the OG&E pricing zone.³ OG&E also states that the pre-existing transmission rate formula under the Westar OATT addresses only the rates charged in the Westar zone. Thus, according to OG&E, the revenue requirement associated with the Spring Creek facilities is not entitled to any presumption of reasonableness that may attach to the calculation of rates for the Westar zone. OG&E therefore contends that SPP must justify in the instant filing the level and allocation of the Spring Creek facility costs.⁴ OG&E requests that the Commission institute discovery procedures to acquire

³ OG&E Protest at 3-4.

⁴ *Id.* at 4-5.

information to determine the basis for the annual revenue requirements proposed or provide an alternative method for the parties to explore the basis for SPP's proposed rate increase.⁵

13. OMPA protests that SPP and Westar have not shown that the Spring Creek facilities are "Transmission Facilities" under the criteria set forth in Attachment AI of SPP's OATT. OMPA contends that SPP and Westar have not included any testimony or exhibits supporting a conclusion that the Silver Creek facilities are Transmission Facilities. OMPA also states that SPP and Westar have not shown that the Spring Creek investment amount of \$9.2 million or the nearly \$2 million annual revenue requirement are just and reasonable.⁶ OMPA further states that the revenue requirement does not reflect OMPA's existing payment for Spring Creek transmission facilities. OMPA states that it pays a \$4.75/kW-month capacity charge for the 75 MW of capacity that it purchases from the Spring Creek generator via its contract with ONEOK Energy Service Company, LP (ONEOK). OMPA states that the purchase contract does not separate the capacity charge into production and transmission components. Further, OMPA states that under the mirror contract between ONEOK and Westar, Westar receives ONEOK's pass-through of OMPA's capacity payments. OMPA explains that as a result, it already pays for, and Westar already recovers, a portion of the annual revenue requirements associated with the Spring Creek transmission facilities. Hence, OMPA asserts that its double-payment and Westar's double-recovery is not just and reasonable. OMPA argues the Commission should reject SPP/Westar's proposed transmission rate increase, or set the issue for hearing.⁷

14. In its answer, Westar asserts that the Spring Creek transmission facilities meet the definition of Transmission Facilities under SPP's OATT. Westar explains that the Spring Creek transmission facilities consist of a ring bus with three disconnects on the OG&E side of the interconnection and are in the middle of a major 345 kV line connecting OG&E's Northwest and Sooner Substations. Westar further states that because OG&E normally operates the ring bus with the three disconnects closed, the power flowing between the Northwest and Sooner Substations also flows through the entire ring bus regardless of whether the generators at Spring Creek are operating. Westar thus contends the facilities are properly booked as transmission. Westar additionally states that because the facilities are operated at a voltage higher than 60 kV, they cannot be radial facilities.

⁵ *Id.* at 7.

⁶ OMPA Protest at 4-8.

⁷ *Id.* at 9-10.

Finally, Westar states that the Commission has consistently held that interconnection facilities located on the utility's side of the interconnection, as the facilities are here, are network transmission facilities, and not direct assignment facilities.⁸

15. In response to OMPA and OG&E's protests regarding the proposed revenue requirement for the Spring Creek transmission facilities, Westar states that it initially believed it was appropriate to use the depreciated original cost of the facilities for ratemaking. Westar states that upon further review, it believes that the revenue requirement should be calculated based on the lower of Westar Energy's purchase price for the Spring Creek transmission facilities and the depreciated original cost of the facilities. Westar states that, because Westar Energy purchased Spring Creek at a price below the facility's depreciated original cost, Westar Energy's purchase price should be used in the calculation of the revenue requirement. Westar states that based on 2006 data, the revised revenue requirement should be revised by multiplying \$3,401,903.07 (Westar Energy's purchase price) by the 23.9886 percent facility carrying charge, yielding a revenue requirement of \$816,068.92.⁹ Westar had initially claimed a \$9.2 million investment amount equating to a nearly \$2 million annual revenue requirement.

16. In response to OG&E's protest of the Spring Creek facilities' revenue requirement in the OG&E zonal revenue requirement, Westar states that Attachment L of the SPP OATT permits multiple transmission owners in the same pricing zone. Westar further states that the facilities meet the SPP OATT Attachment L criteria because they are located in the OG&E pricing zone and used by customers in that pricing zone, the facilities are Transmission Facilities, and the revenue requirement for the facilities is calculated based on Westar Energy's approved formula rate.¹⁰

17. In response to OG&E's desire to participate in the annual reviews of Westar Energy's transmission formula rate filing, Westar states that it has no objection to customers in the OG&E pricing zone participating in its Formula Rate Implementation Protocols.¹¹

18. Westar argues that OMPA's request for a transmission credit because of the purported double recovery under the ONEOK-OMPA Agreement is without merit. Westar asserts that the real issue for OMPA is that it no longer finds its long-term power

⁸ Affidavit of Dennis L. Reed at 2-3.

⁹ Westar Answer at 5.

¹⁰ Reed Affidavit at 3-4.

¹¹ Westar Answer at 6.

purchase agreement with ONEOK economically beneficial. Westar concludes that if this is OMPA's real concern, it should have filed a complaint under section 206 of the Federal Power Act instead of filing what amounts to a collateral attack on its power purchase agreement with ONEOK in this proceeding.¹²

Discussion

A. Procedural Issues

19. 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. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2007), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will accept Westar's answer because it has provided information that assisted us in our decision-making process.

B. Analysis

20. The Commission will accept SPP's proposed revisions to its OATT including a rate change for Westar and OG&E for the recovery of costs associated with the Spring Creek Facility and the incorporation of Base Plan regional and zonal charges for SPP's pricing zones for network upgrades constructed and put into service by Westar.

21. The Commission concurs with Westar that the Spring Creek transmission facilities are "Transmission Facilities" as defined in SPP's OATT. The ring bus and three disconnects in the middle of a 345 kV line normally operate with the disconnects closed, thus, power flows through the entire ring bus. In addition, the ring bus and disconnects operate at a voltage higher than 60 kV and are used to connect the Northwest and Sooner Substations.

22. Based on data submitted by Westar in its Answer, we find a revenue requirement of \$816,068.92 to be just and reasonable.¹³ We concur that Westar's revenue requirement should be calculated based on Westar's purchase price for the Spring Creek facilities since the purchase price is below the facility's depreciated original cost.¹⁴ Accordingly, we will accept Westar's revised revenue requirement based on Westar's

¹² *Id.* at 6-7.

¹³ *Id.* at 5.

¹⁴ See *Southwestern Public Service Company and New Mexico Electric Service Company*, 23 FERC ¶ 61,153 (1983).

purchase price conditioned on SPP revising its OATT to reflect Westar's revenue requirement for the Spring Creek transmission facilities. We also find that the Spring Creek transmission facilities meet the SPP OATT Attachment L criteria which permit multiple transmission owners in the same pricing zone. The facilities are physically located in the OG&E pricing zone in SPP and are utilized by customers in that pricing zone. Further, the revenue requirement for the facilities is calculated based on Westar's approved formula rate.¹⁵

23. With regard to OMPA's contention that Westar's revenue requirement does not reflect OMPA's existing payment for Spring Creek facilities, we do not agree that OMPA is being assessed a double-payment. OMPA contends that its purchase contract with ONEOK does not separate the capacity charge into production and transmission components, but nonetheless includes payments for transmission. Under its market-based rate authority, ONEOK makes electric energy and capacity available to any wholesale purchaser for resale.¹⁶ Because the 75 MW of capacity that OMPA purchases from the Spring Creek generator is designated as a Network Resource under OMPA's separate network transmission service agreement with SPP, we conclude that OMPA is only purchasing capacity and energy, and is not paying for the transmission facilities, through its purchase contract with ONEOK. Thus, OMPA is not making a double-payment and Westar is not receiving double-recovery.

24. SPP has not provided good cause to justify waiver of the Commission's 60-day prior notice requirement set forth at 18 C.F.R. § 35.3.¹⁷ We therefore deny SPP's request for waiver and make the proposed tariff changes effective September 30, 2007.¹⁸

The Commission orders:

(A) SPP's proposed revisions to its OATT are hereby accepted to become

¹⁵ *Westar Energy, Inc.*, 117 FERC ¶ 61,172 (2006) (approving uncontested settlement and accepting, *inter alia*, Westar's formula rate and Formula Rate Implementation Protocols).

¹⁶ See ONEOK Power Marketing Company, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1.

¹⁷ See *Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

¹⁸ Absent waiver, the earliest date SPP's tariff changes can be made effective is the 61st day after filing, *i.e.* the day after the 60-day prior notice period has expired. See *Utah Power & Light Co.*, 30 FERC ¶ 61,015 at 61,024 n.9 (1985).

effective 60 days from the date of filing, as discussed in the body of this order.

(B) SPP is directed to file, within 30 days of the date of this order, revised tariff sheets as discussed in the body of this order.

(C) SPP's request for waiver of the Commission's prior notice requirement is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.