

122 FERC ¶ 61,068
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.

Cargill Power Markets, LLC

Docket No. EL08-9-000

v.

Southwest Power Pool, Inc.

ORDER DENYING COMPLAINT

(Issued January 30, 2008)

1. In this order, the Commission denies Cargill Power Markets, LLC's (Cargill) November 9, 2007 complaint against Southwest Power Pool, Inc. (SPP) (the complaint). Cargill alleged that SPP violated its Open Access Transmission Tariff (OATT) and Commission precedent in processing a queue of requests for long-term, firm point-to-point transmission service on the East DC Tie (East DC Tie).

Background

2. The East DC Tie serves as an interface between SPP's transmission system and the Electric Reliability Council of Texas (ERCOT) region. At the time of the complaint, SPP was providing 450 MW of long-term firm point-to-point transmission service to Calpine Energy Services L.P. (Calpine) on the East DC Tie under nine transmission service agreements that were set to expire on December 31, 2007. Under section 2.2 of SPP's Order No. 888¹ OATT, Calpine had, and ultimately exercised, the option to renew its service under the agreements.

¹ *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, *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).

3. On September 5, 2006, Cargill submitted five requests for long-term, firm, point-to-point transmission service on the East DC Tie to SPP, each for 100 MW of service commencing January 1, 2008 and each with a term of 10 years. Subsequently, on July 20, 2007, Constellation Energy Commodities Group, Inc. (Constellation) submitted two requests for 50 MW of long-term firm, point-to-point transmission service on the same line commencing January 1, 2008, each with a term of 10 years, and eight requests for 50 MW of service commencing January 1, 2008, each with a term of 11 years.

4. On October 18, 2007, SPP conditionally accepted both Cargill's and Constellation's transmission service requests making Cargill first and Constellation second in the queue for transmission service on the East DC Tie should Calpine decide not to continue taking transmission service from SPP after December 31, 2007.

5. SPP subsequently advised Calpine that, in order to renew its transmission service on the East DC Tie, it would be required to match Constellation's requests for transmission service for 11 years. On October 30, 2007, Calpine renewed its transmission service on the East DC Tie by matching Constellation's 11-year requests and entered into new long-term transmission service agreements with SPP with 11-year terms.

Complaint

6. Cargill's complaint argues that, although Cargill held a superior queue position by virtue of its earlier-submitted, 10-year transmission requests, SPP required Calpine to match Constellation's later-submitted, 11-year requests allegedly because Constellation requested service for a longer term. Cargill alleges that SPP processed the queue of requests for long-term, firm, point-to-point transmission service on the East DC Tie in a manner that violates the Commission's "first come, first served" policy in Order No. 888 and sections 2.2 and 13.2 in SPP's OATT. Cargill points out that it submitted its 10-year requests for transmission service more than ten months before Constellation submitted its requests, rendering its queue position superior to Constellation's position when considered on a first-come, first-served basis. According to Cargill, SPP should not have conditionally accepted Constellation's transmission service requests because Cargill's requests, once conditionally accepted and confirmed by SPP, would have reserved, subject to Calpine's right to match, all of the 450 MW of service available on the tie, leaving zero transmission capacity available to satisfy Constellation's later-queued transmission service requests.

7. Citing *Tenaska Power Services Co.*,² Cargill argues that Commission precedent supports its argument that SPP erred when it processed the queue of transmission service requests on the East DC Tie. According to Cargill, the Commission addressed a similar issue vis-à-vis Midwest Independent System Operator, Inc.'s (Midwest ISO) processing of rollover rights, and required Midwest ISO to process requests for service based solely on queue position. Cargill asserts that the Commission's holding in *Tenaska* is applicable in this case.

8. Cargill requests that the Commission instruct SPP on the proper application of the "first-come, first-served" principle, and direct SPP to reprocess the renewal queue for service on the ERCOT East DC Tie in a manner consistent with that principle and the SPP OATT.

Notice of Filing and Responsive Pleadings

9. Notice of Cargill's filing was published in the *Federal Register*, 72 Fed. Reg. 65,716 (2007), with interventions and protests due on or before November 29, 2007. Tenaska Power Services Co. (Tenaska) and Calpine Corporation (Calpine) filed timely motions to intervene and comments. Constellation filed a timely motion to intervene. SPP filed an answer to Cargill's complaint.

10. Tenaska states that it supports Cargill's complaint. According to Tenaska, SPP's interpretation of its OATT runs counter to the Commission's "first-come, first-served" principle and SPP's OATT. Tenaska alleges that, under application of that principle, SPP must give Cargill's September 5, 2006 transmission service requests priority over Constellation's June 20, 2007 transmission service requests. Tenaska asserts that SPP treated Constellation's lower-queued request as the "competing request" that Calpine was required to match under section 2.2 if it wished to retain the capacity. Tenaska, therefore, requests the Commission to grant Cargill's complaint, and to provide certainty regarding the future processing of SPP's transmission service queue.

11. Calpine takes no position on the merits of Cargill's complaint; but it does oppose Cargill's proposed resolution that would require Calpine to resubmit its rollover request and enter into new transmission service agreements with SPP. Calpine states that it complied with all the requirements of SPP's OATT in order to retain its transmission capacity. According to Calpine, it should not now be forced to go through these steps again in order to retain that capacity. Calpine requests that, if the Commission finds that Cargill's complaint has merit, it should grant the complaint, but it should not penalize

² *Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,230 at P 48, *reh'g denied*, 107 FERC ¶ 61,308 (2004) (*Tenaska*).

Calpine by requiring Calpine to resubmit requests to retain the capacity and then match the competing bids.

12. In its answer, SPP argues that its processing of competing new service requests for the East DC Tie is consistent with section 2.2 of its OATT and its Business Practices. SPP declares that, under section 2.2, if at the time of the existing customer's rollover notification, its transmission system cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract term at least equal to the longest term competing request by any new eligible customer. SPP argues that "first-come, first-served" sorting procedures in section 13.2 of its OATT apply only where there is existing available capacity, or in cases where the incumbent customer declines to exercise rollover rights.

13. According to SPP, section 2.2 of its OATT is an exception to section 13.2. SPP states that section 13.2 requires it to process service requested across the East DC tie based upon queue order where renewals of requests having section 2.2 rollover rights are not an issue. According to SPP, when the only capacity potentially available to new requests would be capacity committed to service having rollover rights, section 2.2 obligates it to allow the incumbent customer, in this case Calpine, to continue taking service, provided that Calpine agrees to match the longest term competing request by any new eligible customer. SPP declares that section 2.2 negates the queue priority of all earlier requests over a later renewal request (including any earlier, shorter, long-term requests not considered to be competing). As a result, SPP argues that all earlier longer term requests should be considered able to compete with the later renewal requests regardless of the queue order of the new requests. SPP concludes that Cargill failed to satisfy its burden under section 206 of the Federal Power Act,³ and that the Commission, therefore, should deny Cargill's complaint.

Discussion

Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Commission Determination

15. Section 2.2 of the Commission's Order No. 888 *pro forma* OATT provides that, if, at the time of the incumbent customer's rollover notification, a transmission provider's transmission system cannot accommodate all of the requests for transmission service, the

³ 16 U.S.C. § 824e(b) (2000 & Supp. V 2005).

incumbent customer must match a contract term at least “*equal to a competing request*” by any new eligible customer. Section 2.2 of SPP’s Order No. 888 OATT provides that, if, at the time of an incumbent customer’s rollover notification, SPP’s transmission system cannot accommodate all of the requests for transmission service, the incumbent customer must agree to accept a contract term at least as long as “*the longest term confirmed competing request*” by any new eligible customer. SPP, thus, modified section 2.2 of the Commission’s *pro forma* OATT. The Commission accepted SPP’s Order No. 888 OATT, including this modified section 2.2.⁴

16. The facts are not in dispute in this proceeding. We find that, based on these facts, SPP correctly applied the provisions in section 2.2 of its Order No. 888 OATT.⁵ Constellation was the new eligible customer in the transmission service queue with the longest term competing service request, i.e., an 11-year transmission service request. As such, SPP was correct to require Calpine to match the term in Constellation’s transmission service request.

17. Cargill’s attempt to rely on the Commission’s treatment of Midwest ISO’s processing of rollover rights is misplaced. As we noted in *Tenaska*, we have never found that there is only one way to process rollover requests.⁶ We also stated that we would not specify the mechanics by which a transmission provider exercises its rollover provisions.⁷ The mechanics of Midwest ISO’s Commission-approved rollover process differ from those of SPP’s Commission-approved rollover process. The Commission has approved deviations to Order No. 888’s *pro forma* OATT based on the characteristics of a transmission provider’s transmission service. In this case, we accepted SPP’s rollover provision in section 2.2, as modified.⁸

⁴ *Southwest Power Pool, Inc.*, 96 FERC ¶ 61,034 (2001).

⁵ We decline to address in this complaint proceeding how SPP should process competing requests for rollover in the future. To do so would be speculative and would prejudice how SPP should process competing requests for rollover under its pending Order No. 890 OATT. Cargill should raise any issues regarding SPP’s rollover process in SPP’s Order No. 890 proceeding in Docket No. OA08-5-000, not in the context of this complaint regarding SPP’s Order No. 888 OATT. See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

⁶ *Tenaska*, 106 FERC ¶ 61,230 at P 48.

⁷ *Id.*

⁸ The Commission notes that Cargill does not contest the Commission’s acceptance of SPP’s “longest term competing request” language in section 2.2 of its

18. We decline Cargill's request that we interpret section 2.2 of SPP's Order No. 888 OATT in a manner consistent with section 13.2 of its OATT, which states that the first-come, first-served principles will apply when allocating limited interface capacity. Section 13.2 addresses requests for new transmission service or situations where the incumbent customer does not exercise its rollover rights. The latter situation did not occur in this case. Rather, Calpine, as the incumbent customer, elected to roll over the entire 450 MW of transmission capacity. Therefore, the rollover provisions in section 2.2 of SPP's Order No. 888 OATT apply, not the provisions in section 13.2. Accordingly, we shall deny Cargill's complaint.

The Commission orders:

Cargill's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.