

132 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Southwest Power Pool, Inc.

Docket Nos. ER09-342-001
ER08-1206-002

ORDER DISMISSING REQUEST FOR REHEARING AND SUSPENSION

(Issued August 11, 2010)

1. On May 26, 2009, Southwest Power Pool, Inc. (SPP) filed a request for rehearing and suspension of the Commission's April, 24, 2009 order in this proceeding.¹ For the reasons discussed below, the Commission dismisses the request for rehearing and suspension as moot.

I. **Background**

2. On November 25, 2008, in Docket No. ER09-342-000, SPP filed an unexecuted amended Service Agreement for Network Integration Transmission Service (AEP Service Agreement) between SPP as the Transmission Provider and American Electric Power Service Corporation as Agent for Southwestern Electric Power Company and Public Service Company of Oklahoma (collectively, AEP) as the Network Customer as well as an executed amended Network Operating Agreement between SPP as the Transmission Provider, AEP as the Network Customer, and AEP and AEP Texas North Company as Host Transmission Owners.

3. On July 1, 2008, in Docket No. ER08-1206-000, as amended on December 17, 2008, SPP submitted an unexecuted amended Service Agreement for Network Integration Transmission Service (OMPA Service Agreement) between SPP as the Transmission Provider and Oklahoma Municipal Power Authority (OMPA) as the Network Customer, as well as an executed amended Network Operating Agreement between SPP as the Transmission Provider, OMPA as the Network Customer, and AEP, Oklahoma Gas and Electric Company, and Western Farmers Electric Cooperative as Host Transmission Owners. SPP filed these agreements unexecuted because of disputes concerning language in the agreements assigning to AEP and to OMPA a portion of the costs of

¹ *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,076 (2009) (April 2009 Order).

reconducting the Southwestern Power Administration (Southwestern)² Clarksville-Dardanelle 161 kV transmission line (Network Upgrade), which SPP stated was needed to meet AEP's and OMPA's service requests.

4. In the April 2009 Order, the Commission consolidated the dockets, accepted the agreements for filing, suspended them for a nominal period, and made the AEP agreements effective November 1, 2008 and the OMPA agreements effective June 1, 2008, subject to refund. The Commission also established hearing and settlement judge procedures regarding the costs associated with the proposed Network Upgrade.

5. Subsequently, on October 20, 2009, SPP filed an uncontested Settlement Agreement and Offer of Settlement (Settlement), which the Commission approved on January 5, 2010.³ The Settlement resolved all issues set for hearing in Docket Nos. ER09-342-000, ER08-1206-000, and ER08-1206-001.⁴ Specifically with regard to the Network Upgrade, SPP stated that based on further evaluation as a result of the settlement discussions, SPP determined that the network service requests do not require the construction of the Network Upgrade. Accordingly, as part of the Settlement, SPP filed revised agreements removing language specifying that SPP's provision of network service to AEP and OMPA is contingent on the completion of the Network Upgrade, and requiring AEP and OMPA to pay for portions of the Network Upgrade.⁵

II. Request for Rehearing

6. On rehearing, SPP argued that the April 2009 Order required AEP and OMPA to make payments for the Network Upgrade and SPP to arrange for the construction of the Network Upgrade, without an agreement in place between SPP and Southwestern for the

² Southwestern is an agency of the U.S. Department of Energy. Southwestern was established in 1943 by the Secretary of the Interior, as a bureau of the Department of the Interior. On October 1, 1977, pursuant to the Department of Energy Organization Act, 42 U.S.C. § 7101, Southwestern was transferred to the Department of Energy. Southwestern operates under the direction of an Administrator with delegated authority to carry out the responsibilities of the Secretary under section 5 of the Flood Control Act of 1944, 16 U.S.C. § 825(s), to market power generated at multiple-purpose reservoir projects constructed in the Southwest by the Corps of Engineers of the Department of the Army.

³ *Southwest Power Pool, Inc.*, 130 FERC ¶ 61,012 (2010).

⁴ *See Southwest Power Pool, Inc.*, 129 FERC ¶ 63,018, at P 12 (2009).

⁵ *See id.* P 14.

construction of the Network Upgrade.⁶ SPP argued that the Commission should not require the parties to fulfill these obligations pending the resolution of the issues in this case, because of the potential inability to require Southwestern to commence construction of the Network Upgrade. SPP requested that the Commission suspend the following requirements of the service agreements until the issues set for hearing and settlement proceedings are resolved: (1) for AEP and OMPA to pay for the Network Upgrade, and (2) for SPP to arrange with Southwestern for the construction.⁷

III. Determination

7. As discussed above, the Commission-approved Settlement resolved all issues in the instant dockets, including issues concerning whether AEP and OMPA are required to pay for the Network Upgrade in order for SPP to provide the requested transmission services. SPP has determined that the Network Upgrade is not required and has revised the AEP and OMPA Service Agreements to remove the language regarding construction of the Network Upgrade and payment for the Network Upgrade by AEP and OMPA. Accordingly, we find that the issues SPP raises on rehearing have been superseded by the Settlement. Further, in the April 2009 Order the Commission accepted AEP and OMPA Service Agreements subject to refund, however, it does not appear from the record that SPP collected any payments from AEP and OMPA for the Network Upgrade as SPP and Southwestern did not enter an agreement for construction of the Network Upgrade. Therefore, no refunds are due. For these reasons, we dismiss SPP's request for rehearing and suspension as moot.

The Commission orders:

SPP's request for rehearing is hereby dismissed as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ See SPP Request for Rehearing at 3.

⁷ See *id.* at 6.