

132 FERC ¶ 61,159
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. ER10-1558-000

Southwest Power Pool, Inc. ER10-1591-000
(Not Consolidated)

ORDER REJECTING METER AGENT SERVICES AGREEMENTS

(Issued August 24, 2010)

1. On June 25, 2010, and June 28, 2010, Southwest Power Pool, Inc. (SPP) filed non-conforming meter agent services agreements (TEA and Westar Agreements) under section 205 of the Federal Power Act.¹ In this order, we reject the TEA and Westar Agreements because they do not conform to SPP's current *pro forma* meter agent services agreement (*pro forma* Meter Agent Agreement), and we direct SPP to revise the TEA and Westar Agreements to conform to SPP's *pro forma* Meter Agent Agreement, as discussed below. Henceforth SPP should report the revised TEA and Westar Agreements in SPP's electric quarterly reports.

I. Background

2. In earlier orders approving SPP's energy imbalance service market, the Commission ordered SPP to adopt a *pro forma* meter agent services agreement establishing the terms and conditions governing the relationship between a market participant and its designated meter agent.² On March 15, 2010, SPP submitted revisions to its open access transmission tariff to modify the *pro forma* Meter Agent Agreement

¹ 16 U.S.C. § 824d (2006).

² See, e.g., *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, at P 115 (2006), *order on reh'g*, 116 FERC ¶ 61,289 (2006).

and related tariff provisions. On May 3, 2010, the Commission accepted these revisions effective May 14, 2010.³

II. The Filings

3. On June 25, 2010, in Docket No. ER10-1558-000, SPP submitted an agreement between The Energy Authority, Inc. and Nebraska Public Power District (TEA Agreement), requesting an effective date of June 2, 2010. SPP states that the TEA Agreement revises and supersedes an agreement that the Commission accepted, as non-conforming, on May 18, 2010.⁴ SPP explains that the TEA Agreement revises the effective date and the list of load settlement locations in Exhibit A of the superseded agreement, and that these changes are necessary to reflect the new effective date and provide additional clarity and specificity.⁵ SPP states that the TEA Agreement differs from the current *pro forma* Meter Agent Agreement in that it adds a clause reciting the identity of the meter agent, omits articles 3.6 through 3.8, and omits certain format revisions.⁶ The TEA Agreement was executed on June 2, 2010.

4. On June 28, 2010, in Docket No. ER10-1591-000, SPP submitted an agreement between Westar Energy, Inc. Generation Services and Westar Energy, Inc. Transmission Services (Westar Agreement), requesting an effective date of June 1, 2010. The Westar Agreement revises and supersedes an agreement that the Commission accepted as non-conforming on May 10, 2010.⁷ SPP states that the Westar Agreement revises the effective date and the list of load settlement locations in Exhibit A of the superseded agreement, and the revisions are necessary in order to reflect the new effective date and provide additional clarity and specificity.⁸ SPP explains that, like the TEA Agreement, the Westar Agreement differs from the current *pro forma* Meter Agent Agreement in that

³ *Southwest Power Pool, Inc.*, Docket No. ER10-888-000 (May 3, 2010) (delegated letter order) (May 3 Order).

⁴ *See Southwest Power Pool, Inc.*, Docket No. ER10-957-000 (May 18, 2010) (delegated letter order).

⁵ SPP, Docket No. ER10-1558-000 Filing at 2.

⁶ *Id.*

⁷ *See Southwest Power Pool, Inc.*, Docket No. ER10-822-000 (May 10, 2010) (delegated letter order).

⁸ SPP, Docket No. ER10-1591-000 Filing at 3.

it adds a clause reciting the identity of the meter agent, omits articles 3.6 through 3.8, and omits certain format revisions.⁹ The Westar Agreement was executed on June 1, 2010.

III. Notice of Filings and Responsive Pleadings

5. Notice of SPP's filing in Docket No. ER10-1558-000 was published in the *Federal Register*, 75 Fed. Reg. 39,226 (2010), with interventions and protests due on or before July 16, 2010. Notice of SPP's filing in Docket No. ER10-1591-000 was published in the *Federal Register*, 75 Fed. Reg. 39,238 (2010), with interventions and protests due on or before July 19, 2010. No interventions or protests were filed in either docket.

IV. Discussion

6. We reject SPP's request to accept the TEA and Westar Agreements, because they do not conform to SPP's current *pro forma* Meter Agent Agreement, and because SPP has not provided sufficient justification to warrant the Commission's acceptance of these deviations from the *pro forma* Meter Agent Agreement. Using a *pro forma* agreement minimizes opportunities for undue discrimination.¹⁰ Using a *pro forma* agreement also eliminates the need for parties to negotiate the individual terms of each agreement and eliminates the need for a transmission provider to file conforming agreements with the Commission, instead allowing the relevant information to be included in the transmission provider's electric quarterly reports.¹¹

⁹ *Id.* at 2.

¹⁰ See, e.g., *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 11, 12 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 374 U.S. App. D.C. 406 (D.C. Cir. 2007).

¹¹ See *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, at P 152-153, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 120 FERC ¶ 61,334 (2003).

7. The Commission recognizes that agreements that do not conform to *pro forma* agreements may be necessary for a small number of individuals with specific reliability concerns, novel legal issues, or other unique factors. A transmission provider seeking Commission acceptance of a non-conforming agreement bears a high burden to justify and explain that the non-conforming aspects of the agreement are not merely “consistent with or superior to” a *pro forma* agreement but are *necessary*.¹² Because of this high standard, the Commission has rejected various types of deviations from *pro forma* agreements as unnecessary.¹³

8. As noted above, SPP’s current *pro forma* Meter Agent Agreement was accepted in the May 3 Order, effective May 14, 2010. SPP acknowledges that the TEA and Westar Agreements are based on the *pro forma* Meter Agent Agreement that was in effect prior to the current *pro forma* Meter Agent Agreement,¹⁴ and yet SPP offers no explanation for why that is so. The TEA and Westar Agreements were executed on June 2, 2010 and June 1, 2010, respectively, over four weeks after SPP’s revisions to the *pro forma* Meter Agent Agreement were accepted by the Commission and over two weeks after the effective date of such revisions. SPP does not assert any specific reliability concerns, novel legal issues, or other unique factors as justification for why the TEA and Westar Agreements do not conform to the current *pro forma* Meter Agent Agreement. Therefore, we will require SPP to revise the TEA and Westar Agreements so that they conform to the current *pro forma* Meter Agent Agreement.¹⁵

¹² See *PJM Interconnection, LLC*, 111 FERC ¶ 61,163 (2005) (*PJM*).

¹³ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,277 (2008) (rejecting agreements containing deviations that were based on superseded *pro forma* language because new *pro forma* language had been accepted before the agreements were executed) (*Midwest ISO*); *MidAmerican Energy Co.*, 116 FERC ¶ 61,018 (2006) (rejecting non-conforming deviations including stylistic changes, clarifying phrases, and modifications to insurance provisions; rejecting deviations that were requested by the customer; and rejecting deviations that the customer asserted were necessary to reflect the positions of the parties); *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,121 (2005) (rejecting deviations to correct mistakes in the *pro forma* agreement); and *PJM*, *supra* note 12 (rejecting a one-sided indemnification provision and changes corresponding to a cancelled agreement).

¹⁴ SPP, Docket No. ER10-1558-000 Filing at 2; SPP, Docket No. ER10-1591-000 Filing at 2.

¹⁵ As noted above, in *Midwest ISO*, the Commission rejected two interconnection agreements containing deviations that were based on previous *pro forma* language

(continued...)

9. Because we direct SPP to revise the TEA and Westar Agreements to conform to SPP's current *pro forma* Meter Agent Agreement, and because an agreement that conforms to the current *pro forma* Meter Agent Agreement must be reported only in SPP's electric quarterly transaction reports, no further Commission action is required.¹⁶ Accordingly, we reject the TEA and Westar Agreements and require that, after they are revised pursuant to the directives in this order, they be included as conforming agreements in SPP's electric quarterly reports.

The Commission orders:

(A) The Commission hereby rejects the TEA Agreement and directs SPP to revise the TEA Agreement to conform to SPP's current *pro forma* Meter Agent Agreement, as discussed in the body of this order.

(B) The Commission hereby rejects the Westar Agreement and directs SPP to revise the Westar Agreement to conform to SPP's current *pro forma* Meter Agent Agreement, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

because new *pro forma* language had been accepted before the interconnection agreements were executed. The Commission also directed Midwest ISO to "revise the proposed [i]nterconnection [a]greements so that they conform to its new *pro forma* Generator Interconnection Agreement," and required that the conforming agreements be included in Midwest ISO's electric quarterly reports. *Midwest ISO* at P 12.

¹⁶ See Order No. 2001 at P 18.