

143 FERC ¶ 61,295  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER13-1362-000

ORDER ACCEPTING SERVICE AGREEMENT

(Issued June 28, 2013)

1. On April 30, 2013, Southwest Power Pool, Inc. (SPP), pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> submitted for filing an executed Network Integration Transmission Service Agreement (NITSA) and two associated Network Operating Agreements (NOA), one executed and one unexecuted (collectively, Agreement).<sup>2</sup> In this order, we accept the Agreement for filing, to be effective April 1, 2013, as requested.

**I. Background**

2. American Electric Power Service Corporation (AEP), as agent for Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO), is a network integration transmission service customer under the SPP Tariff. Pursuant to Attachment AQ, Delivery Point Addition Process, of the SPP Tariff, AEP requested a new delivery point in the Western Farmers Electric Cooperative (Western Farmers) service area. Western Farmers is a non-jurisdictional generation and transmission cooperative that owns, operates, and maintains transmission facilities located principally in Oklahoma. Western Farmers is a member of SPP, and its transmission facilities are administered through the SPP Tariff. The Agreement supersedes an existing NITSA and

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> SPP designated the Agreement as Fifteenth Revised Service Agreement No. 1148 under its Open Access Transmission Tariff (Tariff). Southwest Power Pool, Inc., FERC FPA Electric Tariff, Service Agreements Tariff, [1148R15 AEP NITSA & NOAs, 1148R15 American Electric Power NITSA and NOAs, 0.0.0.](#)

NOA between SPP and AEP, collectively designated as Fourteenth Revised Service Agreement No. 1148, which was accepted by the Commission on January 11, 2012.<sup>3</sup>

## II. SPP Filing

3. The Agreement comprises: (1) an executed NITSA between SPP as transmission provider and AEP, as agent for PSO and SWEPCO, as network customer; (2) an executed NOA among SPP as transmission provider; AEP, as agent for PSO and SWEPCO, as network customer; and AEP, as agent for PSO, SWEPCO, and AEP Texas North Company, as host transmission owner (AEP NOA); and (3) an unexecuted NOA among SPP as transmission provider; AEP, as agent for PSO and SWEPCO, as network customer; and Western Farmers as host transmission owner (Western Farmers NOA).

4. SPP states that revisions to the AEP NITSA were necessary to update network resources in Appendix 1 and to add delivery points to Appendix 3. In addition, a new NOA (the Western Farmers NOA) was necessary to accommodate the new point of delivery (POD), the Ellis POD.<sup>4</sup>

5. According to SPP, sections 3.0 and 5.0 of Attachment 1 to the AEP NITSA contain the same non-conforming language that was accepted in the currently effective AEP NITSA. SPP explains that, as was previously the case, this language is necessary due to the unique location of AEP's delivery points, and it has been accepted in previous iterations of the agreement.<sup>5</sup> This language provides that load from Minden, Ringgold, and Castor (delivery points physically located on Entergy Corporation's transmission system) will be dynamically telemetered to the AEP control area for scheduling purposes. SPP states that filing was also necessary because AEP declined to execute the Western Farmers NOA due to a dispute between PSO and Western Farmers regarding the facilities necessary to install the new Ellis POD.<sup>6</sup>

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<sup>3</sup> SPP Filing in Docket No. ER13-1362-000 at 1-2 (citing *Southwest Power Pool, Inc.*, Docket No. ER12-444-000 (Jan. 11, 2012) (unpublished letter order)).

<sup>4</sup> PSO requested to interconnect the Ellis POD to Western Farmers' transmission system. SPP Filing at 3.

<sup>5</sup> The AEP and Western Farmers NOAs conform to SPP's *pro forma* NOA, contained in Attachment G of the SPP Tariff.

<sup>6</sup> SPP Filing at 3. SPP asserts that the Ellis POD has been added to the list of delivery points in Appendix 3 of the AEP NITSA. *Id.* at 4.

6. SPP requests an effective date of April 1, 2013 for the Agreement. SPP also requests waiver of the Commission's 60-day notice requirement, set forth in 18 C.F.R. § 35.3 (2012), because it filed the Agreement within 30 days of the commencement of service.<sup>7</sup>

7. SPP states that, pursuant to section 3.2 of Attachment AQ, it performed a preliminary assessment of the impact of the Ellis POD on the transmission system and found no significant impacts resulting from the addition. SPP explains that if the transmission provider finds no significant impact on the transmission system relating to a requested change in delivery point, section 3.2 specifies that the host transmission owner will coordinate the completion of the change in local delivery facilities, including all required studies. Accordingly, once SPP determined that no significant impacts would result from the addition of the Ellis POD, SPP asserts that Western Farmers and PSO were to determine the facilities necessary for the installation of the Ellis POD. SPP explains that PSO requested that SPP include a statement about the dispute in its filing with the Commission.<sup>8</sup>

8. According to PSO's statement, PSO requested that Western Farmers interconnect the Ellis POD by routing Western Farmers' existing 138 kV Mooreland to Red Hills transmission line through PSO's new Ellis substation using a looped configuration, which PSO asserts is necessary for reliability. PSO claims that its requested upgrades qualify as transmission facilities under the SPP Tariff and, therefore, the costs of these facilities should be rolled into Western Farmers' transmission rates. According to PSO's statement, Western Farmers does not view this configuration as necessary to serve load and instead favors a configuration involving a radial tap with three line switches.<sup>9</sup> At PSO's request, SPP included as Attachment A of its filing a Delivery Point Agreement for the Ellis POD prepared by AEP; PSO asserts that Western Farmers has refused to execute the Delivery Point Agreement or offer an alternative version that includes the network upgrades requested by PSO.<sup>10</sup>

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

9. Notice of SPP's April 30, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 28,209 (2013), with interventions and protests due on or before May 21, 2013. AEP, on behalf of its affiliates PSO and AEP Oklahoma Transmission Company,

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 3-4.

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

submitted a timely motion to intervene and comments. A timely motion to intervene was submitted by the East Texas Cooperatives.<sup>11</sup> Western Farmers submitted an untimely motion to intervene and comments. AEP, Western Farmers, and East Texas Cooperatives submitted motions for leave to answer and answers. On June 3, 2013, AEP, on behalf of PSO and AEP Oklahoma Transmission Company, submitted a proposed form of protective agreement governing the handling of critical energy infrastructure information (CEII) contained in AEP's May 21, 2013 comments.<sup>12</sup> Western Farmers submitted a motion for leave to reply and reply to the answers submitted by AEP and East Texas Cooperatives. AEP submitted a motion for leave to reply and reply to Western Farmers' reply.

#### **IV. Discussion**

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

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the unopposed, timely motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), we will grant the late-filed motion to intervene given Western Farmers' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by AEP, Western Farmers, and East Texas Cooperatives and the replies to answers filed by Western Farmers and AEP; therefore, we will reject them.

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<sup>11</sup> East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. are collectively referred to as East Texas Cooperatives.

<sup>12</sup> We remind AEP that, pursuant to 18 C.F.R. § 388.112(b)(1) (2012), any filing containing CEII for which privileged treatment is sought must contain a request and justification for such treatment. A proposed form of protective agreement should be submitted with the filing for which privileged treatment is sought. 18 C.F.R. § 388.112(b)(2)(i) (2012).

**B. Substantive Matters****1. Comments**

12. In short, AEP and Western Farmers dispute the design and construction of new facilities associated with the Ellis POD, as well as the proper allocation of the costs resulting from these facilities. In its comments, AEP requests that the Commission issue a decision on the merits of this dispute in conjunction with a ruling on the Agreement. Western Farmers asserts that Commission action on the delivery point facilities dispute is neither timely nor appropriate.

**a. AEP Comments**

13. AEP states that PSO submitted a delivery point request for the Ellis POD on April 3, 2012, pursuant to Attachment AQ. AEP indicates that the requested looped configuration is necessary to serve reliably the 16 MW load associated with the Ellis POD—a cryogenic processing plant requiring service at or near full load at all times. AEP acknowledges that SPP's preliminary assessment found no significant impacts on the transmission system associated with the addition of the Ellis POD. However, AEP contends that, at this point, it was Western Farmers' duty to coordinate studies to further evaluate the Ellis POD and to respond to the delivery point request within ten business days, as required by Attachment AQ.<sup>13</sup> AEP claims that, instead, Western Farmers responded seven weeks later, suggesting modifications to AEP's proposed looped configuration. AEP further claims that Western Farmers never developed a cost estimate and installation timeline for the Ellis POD as promised; rather, Western Farmers indicated it could not complete the installation of some facilities and requested that AEP complete construction on its behalf. AEP asserts that it was only after AEP tendered a draft Delivery Point Agreement providing that the delivery point facilities would be network upgrades, with costs rolled into Western Farmers' transmission rates, that Western Farmers rejected the requested looped configuration unless the costs of facilities were directly assigned to the network customer.<sup>14</sup>

14. AEP claims that Commission policy and the terms of SPP's Tariff favor the designation of the requested facilities as network upgrades subject to rolled-in transmission rates. AEP argues that: (1) Opinion Nos. 474 and 474-A clearly establish that, in relation to a delivery point, where facilities would be integrated with the

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<sup>13</sup> Section 3.1 of Attachment AQ specifies that the host transmission owner will respond to a request for change in local delivery facilities within 10 business days of receipt of the request and, if necessary, will provide a Load Connection Study Agreement to the transmission customer that submitted the request.

<sup>14</sup> AEP Comments at 5-8.

transmission system, the costs of such facilities should be rolled into the host transmission owner's transmission rates;<sup>15</sup> (2) the requested facilities meet the seven factor transmission facility test specified in Order No. 888;<sup>16</sup> and, (3) the facilities associated with the requested looped configuration meet the definition of transmission facilities under Attachment AI of SPP's Tariff.<sup>17</sup>

15. AEP alleges that Western Farmers has used its discretion as the host transmission owner inappropriately to block completion of the requested network upgrades until the Commission has ruled on the cost allocation of the facilities. AEP claims that it has been forced to allow a temporary arrangement to serve load through a radial tap to Western Farmers' facilities to meet the Ellis POD in-service date.<sup>18</sup> AEP asserts that this radial tap is insufficient to serve load reliably on a long-term basis.

16. AEP requests that the Commission accept SPP's filing and issue a decision on the merits of the dispute. Specifically, AEP requests that the Commission require Western Farmers to permit construction of upgrades necessary to install the Ellis POD, using PSO's requested looped configuration, by accepting the unexecuted Delivery Point Agreement contained in Attachment A of SPP's filing. AEP also requests that the Commission rule that the disputed upgrades qualify as transmission facilities under SPP's Tariff, and that the costs for these facilities should be rolled into Western Farmers' transmission rates.<sup>19</sup>

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<sup>15</sup> *Id.* at 8-9, 20-22 (citing *Northeast Texas Electric Coop., Inc.*, Opinion No. 474, 108 FERC ¶ 61,084 (2004), *reh'g denied*, Opinion No. 474-A, 111 FERC ¶ 61,189 (2005)).

<sup>16</sup> *Id.* at 17-19 (citing *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, at 31,771 (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)).

<sup>17</sup> *Id.* at 16-17. Attachment AI in the SPP Tariff contains criteria for determining if facilities are transmission facilities.

<sup>18</sup> AEP states that the in-service date is April 1, 2013 and that it expects load to come on-line by September 30, 2013. *Id.* at n.6.

<sup>19</sup> *Id.* at 1-3, 13.

**b. Western Farmers Comments**

17. Western Farmers argues that the instant proceeding is an inappropriate forum for ruling on the dispute. Western Farmers urges the Commission to accept the unexecuted Western Farmers NOA to ensure that an effective NOA is in place for AEP to receive network service from SPP for the Ellis POD.<sup>20</sup> Western Farmers asserts that, in the meantime, the parties can continue negotiations, and if they are unable to reach an agreement, either party can seek relief from the Commission or in another appropriate forum.<sup>21</sup> If the Commission decides to address the delivery point facilities dispute, Western Farmers requests that the Commission set the matter for hearing to resolve material issues of fact.

18. Western Farmers argues that the disputed facilities are delivery point facilities under Attachment AQ; thus, the costs of these facilities should be directly assigned to the network customer. Western Farmers also emphasizes that SPP's preliminary assessment determined that the addition of the Ellis POD would not have significant impacts on the transmission system. Western Farmers asserts that, because network upgrades were not necessary, under Attachment AQ, AEP and Western Farmers were free to negotiate the scope of delivery point facilities required to serve AEP's load.<sup>22</sup> Western Farmers contends that the requested looped configuration exceeds the facility specifications and costs it typically undertakes to provide reliable service to its members and customers.<sup>23</sup> Western Farmers also claims that the requested looped configuration itself raises reliability concerns.<sup>24</sup> Western Farmers further asserts that rolling the cost of facilities

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<sup>20</sup> Western Farmers includes a letter agreement in Attachment A of its comments allowing for temporary service while the parties continue to negotiate. This agreement was offered by AEP and has been executed by Western Farmers. Western Farmers states that a tap for service is already under construction to alleviate concerns that the underlying dispute may impede AEP's access to service. Western Farmers Comments at 8.

<sup>21</sup> *Id.* at 1-2, 5-7.

<sup>22</sup> *Id.* at 4 (citing SPP Tariff, Attachment AQ § 4.0).

<sup>23</sup> Western Farmers contends that a design consistent with its own system requirements (i.e., a radial tap) would cost approximately \$750,000. In contrast, Western Farmers asserts that the enhanced facilities requested by AEP cost approximately \$1.9 million. *Id.* at 15-17.

<sup>24</sup> Western Farmers argues that the proposed looped configuration may decrease reliability by disrupting its network system, dismembering its transmission grid, and unnecessarily extending the Western Farmers' line. *Id.* at 11 (citing Opinion No. 474, 108 FERC ¶ 61,084 at P 50).

associated with the looped configuration into Western Farmers' transmission rates is contrary to SPP's Tariff and the Commission's long-held cost causation principles.<sup>25</sup> Nevertheless, Western Farmers claims that it is willing to allow for a looped configuration if AEP agrees to: (1) coordinate facility design efforts with Western Farmers in good faith; (2) propose a design that does not adversely affect reliability on Western Farmers' system; (3) resolve facility ownership; and (4) consent to the direct assignment of facility costs.<sup>26</sup>

## 2. Commission Determination

19. We accept the Fifteenth Revised Service Agreement No. 1148 for filing, to be effective April 1, 2013, as requested. We also grant waiver of the Commission's 60-day notice requirement because SPP filed the Agreement within 30 days of its requested effective date.<sup>27</sup>

We agree with Western Farmers that the instant proceeding is not the appropriate forum to rule on the merits of the dispute between PSO/AEP and Western Farmers. What is before the Commission is a section 205 filing, and the standard under which we determine to accept the filing is whether the Agreement is consistent with or superior to SPP's *pro forma* NITSA and NOA and is otherwise just and reasonable. Applying this standard, we find that the unexecuted Western Farmers NOA conforms to SPP's *pro forma* NOA. Acceptance of the Agreement will allow for the provision of network integration transmission service while the parties continue negotiations.<sup>28</sup> The configuration and cost allocation associated with the requested facilities are not in the filed Agreement and thus are not before us.<sup>29</sup> Accordingly, the dispute presented by PSO and AEP is beyond the scope of this proceeding.<sup>30</sup>

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<sup>25</sup> *Id.* at 12-17.

<sup>26</sup> *Id.* at 12-13.

<sup>27</sup> See *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (“[W]aiver of notice will be granted if service agreements are filed within 30 days after service commences.”).

<sup>28</sup> Temporary service to the Ellis POD will be provided under the temporary connection agreement offered by AEP and executed by Western Farmers.

<sup>29</sup> We note that the unexecuted Delivery Point Agreement contained in Attachment A of SPP's filing is not before the Commission in the instant proceeding.

<sup>30</sup> We encourage PSO/AEP and Western Farmers to continue negotiations. Western Farmers has suggested that Western Farmers' dispute resolution procedures may

The Commission orders:

(A) Fifteenth Revised Service Agreement No. 1148 is hereby accepted for filing, to be effective April 1, 2013, as discussed in the body of this order.

(B) Waiver of the Commission's prior notice requirement is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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be the appropriate forum to resolve the dispute. Western Farmers Comments at 9 n.12. Additionally, the Commission's Dispute Resolution Service (DRS) is available for the purpose of exploring the alternative dispute resolution process and/or to facilitate agreement on the matters at issue. DRS can be reached at 1-877-337-2237.