

141 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER12-2602-000

ORDER GRANTING REQUEST FOR LIMITED TARIFF WAIVER

(Issued November 6, 2012)

1. On September 7, 2012, Southwest Power Pool, Inc. (SPP) filed a request for a temporary limited waiver of certain tariff provisions in Attachment AE of SPP's Open Access Transmission Tariff (Tariff) to avoid the market resettlement of Energy Imbalance Service (EIS) market charges/credits associated with the generation from qualifying facilities (QFs) that SPP involuntarily registered in the EIS market. As discussed below, the Commission grants SPP's request for limited waiver of the Tariff provisions.¹

Background

2. In Docket No. ER09-149-000, the Commission accepted a SPP Tariff provision, which requires that all loads and Resources, excluding Behind the Meter Generation less than 10 MW, register in the SPP EIS Market.² The Commission accepted that Tariff provision conditioned on SPP making a compliance filing removing the obligation for a

¹ SPP requests waiver of those Tariff provisions relating to EIS market charges and credits, including but not limited to: Section 5.2 (Energy Imbalance Service Charges/Credits); Section 5.3 (Under-Scheduling Charges); Section 5.4 (Over-Scheduling Charges); Section 5.5 (Uninstructed Deviation Charges); Section 5.6 (Revenue Neutrality); and Section 7 (Billing) of Attachment AE. SPP September 7, 2012 Filing at 4 (SPP Filing).

² *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,314 (2008).

QF, exercising its right under the Public Utility Regulatory Policies Act of 1978 (PURPA)³ to sell its output to its host utility, to actively participate in the EIS market or be subject to any charges or payments related to the EIS market.⁴

3. Subsequently, in Docket No. ER09-149-001,⁵ SPP sought clarification on whether it would be acceptable for SPP to allocate to the purchasing utility any energy imbalance charges associated with QF generation. The Commission denied SPP's request for clarification, explaining that SPP would need to make a filing pursuant to section 205 of the Federal Power Act (FPA) to seek approval to allocate to the purchasing utility any energy imbalance charges associated with QF generation.⁶

4. In Docket No. ER12-1600-000, SPP filed an unexecuted service agreement to involuntarily register twelve Exelon Generation Company, LLC (Exelon Generation) wind QFs in the EIS market. In that proceeding, Xcel Energy Services Inc. (Xcel), protesting on behalf of its subsidiary Southwestern Public Service Company (SPS), contended that SPP had provided informal notice that it would assess charges/credits owing to Exelon Generation's QFs to SPS. Xcel further claimed that SPP had already begun doing so.⁷ In accepting SPP's involuntary registration of Exelon Generation's QFs, the Commission reiterated that SPP cannot charge the QF's host utility for EIS charges associated with generation from the QF absent authorization pursuant to section 205 of the FPA.⁸ SPP has yet to make a section 205 filing requesting such authority.

SPP Filing

5. SPP explains that on April 1, 2012, it involuntarily registered twelve QFs⁹ (totaling 187.6 MW) in SPP's EIS market pursuant to Section 1.2.2(g) of Attachment AE of its Tariff, and further, that the involuntarily-registered QFs are, in fact, exempt from

³ 16 U.S.C. § 824a-3 (2006).

⁴ *Southwest Power Pool*, 125 FERC ¶ 61,314 at PP 36-38, 40; *see also Southwest Power Pool, Inc.*, 127 FERC ¶ 61,041 (2009); SPP Tariff, Attachment AE, § 1.2.2(g).

⁵ *See Southwest Power Pool, Inc.*, 126 FERC ¶ 61,135 (2009).

⁶ *Id.* P 12.

⁷ *Southwest Power Pool, Inc.*, 139 FERC ¶ 61,235, at P 20 (2012).

⁸ *Id.* P 38 (citing *Southwest Power Pool*, 126 FERC ¶ 61,135 at P 12).

⁹ SPP states that the QFs sell the generation output to their host utility pursuant to PURPA.

EIS market charges and credits. In this regard, SPP states that it does not presently have the authority under its Tariff to charge a QF's host utility under PURPA for EIS charges/credits attributable to generation by the involuntarily-registered QFs. SPP states that, nevertheless, there are charges/credits associated with the generation of the QFs.

6. To address how to treat these charges/credits, SPP plans to propose amendments to Attachment AE in a stakeholder process; the proposed amendments would authorize SPP to assess the host utility with EIS market charges/credits associated with mandatory purchases from the involuntarily-registered QF's generation. SPP asserts that it anticipates filing the Tariff amendments resulting from the stakeholder process within the next six months, and for good cause, will request an effective date of April 1, 2012, (prior to the date that it will file the planned Tariff amendments) in order to apply the new rules to the charges/credits associated with the QFs which were involuntarily registered on April 1, 2012.

7. SPP states that a short-term temporary Tariff waiver of Attachment AE provisions is necessary to enable SPP to implement the planned EIS market amendments (assuming the Commission accepts them) commencing April 1, 2012, without resettlement of EIS market charges/credits. SPP explains that absent a waiver, under Attachment AE, the charges/credits owing to the generation of a QF exercising its PURPA rights to sell its output to its host utility would have to be uplifted to the entire EIS market. SPP states that it would have to assess this uplift to the entire market during SPP's development of the planned tariff amendments, during the ensuing stakeholder process, and until the Commission approves the amendments. However, it explains, because SPP plans to propose an April 1, 2012, effective date for the amendments, after the Commission accepts them, SPP then would have to resettle the EIS market back to April 1, 2012. To avoid this market resettlement, SPP requests a temporary waiver of certain sections of Attachment AE effective from April 1, 2012, until the effective date of SPP's planned tariff amendments or until the Commission otherwise acts on SPP's forthcoming tariff filing.

8. With the requested waiver, SPP proposes to escrow any payments relating to the market charges/credits and defer uplifting the charges/credits associated with the QF

generation to all EIS market participants. To avoid market resettlement back to April 1, 2012, SPP requests that the temporary waiver become effective on April 1, 2012 and extend until the effective date of SPP's Tariff amendments or until the date of the Commission's order acting on the Tariff amendments. Commencing on the effective date of SPP's planned Tariff amendments or the date of a Commission order rejecting the amendments, SPP would begin treating the Attachment AE charges/credits associated with the QF generation in accordance with the SPP Tariff. In the event that SPP and its stakeholders decide not to file the Tariff amendments, SPP avers that it will notify the Commission and request termination of the waiver.

9. SPP states that its waiver request is narrowly applied only to those EIS market charges and credits associated with a limited number of involuntarily-registered QFs. SPP maintains that the waiver would benefit market participants by preventing the disruption and uncertainty that would be caused by market resettlements that, absent a waiver, would be necessary once SPP's planned Tariff amendments become effective.¹⁰ Further, SPP states that the waiver request is limited in scope, temporary, one-time, and to be effective for a short period of time.¹¹

Notice of Filing and Responsive Pleadings

10. Notice of SPP's Filing was published in the *Federal Register*, 77 Fed. Reg. 57,564 (2012), with interventions and protests due on or before September 28, 2012. American Electric Power Service Corporation filed a motion to intervene, and Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC jointly filed a motion to intervene. Exelon Corporation (Exelon) and Western Farmers Electric Cooperative (Western Farmers) filed motions to intervene and comments. Xcel, on behalf of SPS, also filed a motion to intervene and comments.

11. Xcel and Exelon support SPP's request for a temporary waiver of the relevant Tariff provisions.

12. Western Farmers states that it takes no position on whether the Commission should grant the waiver, but it does request that any waiver granted to SPP not prejudice the effective date for any future proposed Tariff amendments addressing the charges to those QFs involuntarily registered in the EIS market. Western Farmers also states that granting the waiver effective April 1, 2012, as requested by SPP, is problematic if it forms the basis for a retroactive effective date for Tariff amendments that have not yet been drafted; in this regard, Western Farmers notes that SPP has indicated that it will seek an April 1, 2012 effective date for the planned Tariff amendments.

Discussion

Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁰ SPP Filing at 6 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184 (2011) (granting waiver to avoid resettlements and rebillings)).

¹¹ SPP Filing at 5 (citing *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,012 at P 36, *order on reh'g*, 126 FERC ¶ 61,215 (2009); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031, at P 19 (2008)).

Determination

14. The Commission grants SPP's request for waiver of the Tariff provisions effective from April 1, 2012, so that SPP may escrow and defer uplifting the relevant EIS charges and credits. The request for waiver is temporary, limited-in-nature, and will remain in effect for a short period of time.¹² Additionally, the request for the waiver was not protested.

15. The Commission has previously advised SPP that it did not, under its Tariff, have authority to assess these QF-associated EIS charges/credits to the host utility, and that SPP would need to make a filing under section 205 of the FPA to request such authorization.¹³ SPP has not yet sought to amend its Tariff under section 205 of the FPA to assess these QF-associated EIS charges and credits to the host utility. Instead, SPP is now requesting a waiver of its Tariff provisions pending a stakeholder process. While we will grant SPP a temporary waiver of its Tariff, we are concerned that deferring settlement of the amounts at issue could disrupt the market in the future if the accrued charges/credits are substantial due to a protracted deferral period. Accordingly, the Commission believes that SPP should act expeditiously to resolve this matter through its stakeholder process, and therefore, we direct SPP either to file its planned Tariff amendments within 90 days of the date of this order or withdraw its request for waiver and resettle the EIS market.

16. This grant of waiver should not be construed as the Commission's prejudging the effective date of as-yet unfiled Tariff amendments. Rather, the Commission emphasizes that, even though it is granting the requested waiver, effective April 1, 2012, it is not addressing the effective date or the merits of any planned Tariff amendments. It would be premature to act on a filing not before us.

¹² The Commission has held that a waiver limited in scope and short-term in nature may be appropriate where good cause for a waiver exists, there are no undesirable consequences, and the resultant benefits to customers are evident. *Southwest Power Pool*, 126 FERC ¶ 61,012 at PP 36-37, *order on reh'g*, 126 FERC ¶ 61,215.

¹³ *Southwest Power Pool*, 139 FERC ¶ 61,235 at P 38; *Southwest Power Pool*, 126 FERC ¶ 61,135.

The Commission orders:

SPP's request for limited waiver is hereby granted as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.