

161 FERC ¶ 61,166  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, and Robert F. Powelson.

Southwest Power Pool, Inc.

Docket No. ER17-889-000

ORDER ON SERVICE AGREEMENT

(Issued November 16, 2017)

1. On January 30, 2017, pursuant to section 205 of the Federal Power Act,<sup>1</sup> Southwest Power Pool, Inc. (SPP) submitted (1) an executed Service Agreement for Network Integration Transmission Service between SPP as transmission provider and Kansas Municipal Energy Agency (KMEA) as network customer (KMEA Service Agreement) and (2) an executed Network Operating Agreement among SPP as transmission provider, KMEA as network customer, and Sunflower Electric Power Corporation (Sunflower) as host transmission owner (KMEA NOA) (together, KMEA Agreement).<sup>2</sup> On March 28, 2017, pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,<sup>3</sup> the KMEA Agreement was accepted for filing, suspended for a nominal period, to become effective January 1, 2017, as requested, subject to refund and further Commission order.<sup>4</sup>
2. As discussed below, in this order, we accept the KMEA Agreement, effective January 1, 2017, and direct SPP to submit a compliance filing within 30 days of the issuance of this order.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> Transmittal at 1.

<sup>3</sup> *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

<sup>4</sup> *Sw. Power Pool, Inc.*, Docket No. ER17-889-000 (Mar. 28, 2017) (delegated letter order).

## **I. Filing**

3. SPP states that the KMEA Agreement modifies and supersedes the prior agreements among the parties that were accepted by the Commission in Docket No. ER16-1951-000.<sup>5</sup> SPP states that the KMEA Service Agreement includes terms and conditions that do not conform to the standard forms of service agreements in the SPP Open Access Transmission Tariff.<sup>6</sup> SPP states that it is revising Attachment 1 of the KMEA Service Agreement to correct a reference in section 8.9, and to update the information in section 8.12, and update the network resources in Appendix 1.<sup>7</sup> In addition, SPP asserts that the parties updated the network resources in Appendix 1 of the KMEA Service Agreement. SPP notes that the KMEA Service Agreement retains the non-conforming terms and conditions in section 8.9 of Attachment 1 from the prior version of the agreement, and that these non-conforming terms and conditions were accepted for filing in the August 2016 Letter Order.

## **II. Notice of Filing and Responsive Pleadings**

4. Notice of SPP's filing was published in the *Federal Register*, 82 Fed. Reg. 9210 (2017), with interventions and protests due on or before February 21, 2017. Sunflower and Mid-Kansas Electric Company LLC (Mid-Kansas) filed a timely motion to intervene and comments. On March 13, 2017, SPP filed an answer to Sunflower's and Mid-Kansas's comments. On March 16, 2017, KMEA filed a motion to intervene out of time and comments.

5. Sunflower and Mid-Kansas argue that there is an inconsistency in the KMEA Service Agreement, and request that, if the Commission accepts the KMEA Agreement as filed in this proceeding, the Commission must accept it on the condition that SPP submit a compliance filing to address the inconsistent treatment of the Garden City #2 facility.<sup>8</sup> Specifically, Sunflower and Mid-Kansas assert that the inconsistency relates to KMEA's network resources listed in Appendix 1 of the KMEA Service Agreement which excludes Garden City #2 and a corresponding requirement in section 8.12.A.2 of Attachment 1 that the Garden City #2 facility pay revenue credits as a network resource.

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<sup>5</sup> Transmittal at 1 (citing *Sw. Power Pool, Inc.*, Docket No. ER16-1951-000 (Aug. 11, 2016) (delegated letter order) (August 2016 Letter Order)).

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Sunflower/Mid-Kansas Comments at 4.

6. Sunflower and Mid-Kansas explain that the Garden City #2 facility was the subject of a modeling discrepancy in the SPP power flow analysis, and that SPP incorrectly determined that Garden City units #1, #2, and #3 would trigger an overload, and, therefore, require a transformer upgrade.<sup>9</sup> Sunflower and Mid-Kansas request that the Commission require SPP to remove Garden City #2 from the revenue credit payment provisions in section 8.12 of the KMEA Service Agreement or add Garden City #2 as a network resource in Appendix 1 of the KMEA Service Agreement and address any associated upgrades and cost allocation for the same.<sup>10</sup>

7. In its answer, SPP acknowledges that Sunflower and Mid-Kansas are correct that there was a modeling discrepancy, which resulted in Garden City #2 not being listed in Appendix 1 of the KMEA Service Agreement as a network resource effective January 1, 2017.<sup>11</sup> SPP states that it performed an additional analysis using updated model information and reposted the results for the Aggregate Transmission Service study on February 24, 2017. SPP states that it was able to confirm network integration transmission service for KMEA utilizing the Garden City #2 facility as a designated network resource commencing on March 1, 2017. SPP states that it is working with KMEA on revisions to the KMEA Service Agreement to reflect this additional network resource in Appendix 1 with an effective date of March 1, 2017, which is intended to amend and supersede the KMEA Service Agreement that has an effective date of January 1, 2017.<sup>12</sup> SPP states that it will remove the reference to Garden City #2 in Attachment 1, section 8.12.A.2 of the KMEA Service Agreement that imposes revenue crediting requirements in a compliance filing.

8. KMEA states that it supports the assertions in SPP's answer that the issues raised by Sunflower and Mid-Kansas are being addressed and also supports SPP's request that the Commission accept the KMEA Agreement effective January 1, 2017.<sup>13</sup>

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<sup>9</sup> *Id.* at 5-6.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> SPP Answer at 2-3.

<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> KMEA Comments at 4.

### III. Discussion

#### A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motion to intervene made 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) (2017), the Commission will grant KMEA's late-filed motion to intervene given KMEA's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process.

#### B. Commission Determination

11. We accept the KMEA Agreement subject to condition, effective January 1, 2017.<sup>14</sup> All parties agree that there is an inconsistency in the KMEA Service Agreement with respect to the Garden City #2 facility, and SPP must modify the KMEA Service Agreement to clarify the treatment of the Garden City #2 as a network resource.<sup>15</sup> Specifically, all the parties agree that there was a modeling discrepancy in the SPP power flow analysis, which resulted in Garden City #2 not being listed in Appendix 1 of the KMEA Service Agreement as a network resource effective January 1, 2017. As noted above, SPP has committed to file revisions to the KMEA Service Agreement to reflect this additional network resource in Appendix 1 with an effective date of March 1, 2017.<sup>16</sup> In addition, SPP has committed to submit a compliance filing to remove the reference to Garden City #2 in Attachment 1, section 8.12.A.2 of the KMEA Service Agreement that imposes revenue crediting requirements. Finally, KMEA states that the issues raised by

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<sup>14</sup> The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has "authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications.*" *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

<sup>15</sup> Sunflower/Mid-Kansas Comments at 4-6; SPP Answer at 2-4; KMEA Comments at 4.

<sup>16</sup> SPP Answer at 3-4. We note that SPP filed, and the Commission accepted, a revised KMEA Agreement effective March 1, 2017, with a corrected Appendix 1 reflecting Garden City #2 as a network resource. *Sw. Power Pool, Inc.*, Docket No. ER17-1319-000 (May 22, 2017) (delegated letter order).

Sunflower and Mid-Kansas are being addressed and KMEA supports SPP's request that the Commission accept the KMEA Agreement effective January 1, 2017. As such, we direct SPP, in a compliance filing to be submitted within 30 days of the issuance of this order, to remove the reference to Garden City #2 in Attachment 1, section 8.12.A.2 of the KMEA Service Agreement that imposes revenue crediting requirements.

The Commission orders:

(A) The KMEA Agreement is hereby accepted, subject to condition, effective January 1, 2017, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing within 30 days of the issuance of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.