

161 FERC ¶ 61,289
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Southwest Power Pool, Inc.

Docket No. ER18-208-000

ORDER ACCEPTING SERVICE AGREEMENT

(Issued December 21, 2017)

1. On November 1, 2017, Southwest Power Pool, Inc. (SPP) submitted, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations,² an unexecuted Agreement Establishing a Pseudo-Tie Electrical Interconnection Point (AECC Agreement)³ among SPP, Arkansas Electric Cooperative Corporation (AECC) as the market participant, and Entergy Arkansas, Inc. (Entergy Arkansas) as the external balancing authority. As discussed below, we accept the AECC Agreement, effective January 1, 2018.

I. Background and SPP's Filing

2. AECC is a market participant and transmission owning member of SPP and the Midcontinent Independent System Operator, Inc. (MISO), with loads and resources of its members located in SPP, MISO, and the Southwestern Power Administration. AECC became a market participant in MISO on December 18, 2013, and a transmission-owning member on June 1, 2014. Entergy Arkansas joined MISO as a transmission owner and integrated its loads and resources into MISO on December 19, 2013. Prior to integration into MISO, Entergy Arkansas was a stand-alone Balancing Authority. After integration, Entergy Arkansas contracted to provide reliability-related services in conjunction with the MISO Balancing Authority.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2017).

³ SPP designated the AECC Agreement as Third Revised Service Agreement No. 2891.

3. On June 20, 2014, in Docket No. ER14-2226-000, SPP submitted an executed Agreement Establishing a Pseudo-Tie Electrical Interconnection Point (2014 Agreement) among SPP, AECC and Entergy Arkansas with a termination date of December 19, 2018. The 2014 Agreement established four points of pseudo-tie interconnection for AECC load located in SPP to be pseudo-tied to MISO and was accepted by the Commission on August 19, 2014.⁴ On August 29, 2014, the Commission approved revisions to Attachment AO of SPP's Tariff to modify SPP's *pro forma* Agreement Establishing a Pseudo-tie Electrical Interconnection Point for use in all pseudo-tie arrangements.⁵ As the 2014 Agreement was identical in language to the newly modified *pro forma* agreement, the 2014 Agreement was subsequently superseded by the *pro forma* pseudo-tie agreement and that has been reported in SPP's Electric Quarterly Report since the second quarter of 2017 (Revised 2014 Agreement).⁶

4. On November 1, 2017, SPP filed the AECC Agreement to replace the Revised 2014 Agreement currently reported in SPP's Electric Quarterly Report. SPP states that the AECC Agreement conforms to the *pro forma* agreement in Attachment AO of the SPP Open Access Transmission Tariff, but that SPP is submitting the AECC Agreement because Entergy Arkansas declined to execute it. The proposed AECC Agreement eliminates one pseudo-tie interconnection point, designated as the Avoca load point, effective January 1, 2018 and retains the December 19, 2018 termination date.

II. Notice of Filing and Responsive Pleadings

5. Notice of SPP's filing was published in the *Federal Register*, 82 Fed. Reg. 51,625 (2017) with interventions and protests due on or before November 22, 2017. On November 22, 2017, Entergy Arkansas filed a motion to intervene and protest. On November 27, 2017, MISO filed a motion to intervene out-of-time. On December 4, 2017, AECC filed a motion to intervene out-of-time. On December 8, 2017, AECC filed an answer to the protest of Entergy Arkansas. On December 15, 2017, Entergy Arkansas filed an answer to the answer of AECC. On December 15, 2017, SPP filed an answer to the protest of Entergy Arkansas and on December 19, 2017 SPP amended its December 15, 2017 answer.

⁴ *Sw. Power Pool, Inc.*, 148 FERC ¶ 61,132 (2014).

⁵ *Sw. Power Pool, Inc.* 148 FERC ¶ 61,145 (2014).

⁶ SPP designated the agreement in the Electric Quarterly Report as First Revised Service Agreement No. 2891R1. SPP Transmittal, Docket No. ER17-1805-000, at 1-2 (June 14, 2017).

A. Protest

6. Entergy Arkansas requests that the Commission direct that the Revised 2014 Agreement terminate on January 1, 2018, the date the Avoca load is removed from the MISO Balancing Authority Area, because SPP has not shown the unexecuted AECC Agreement to be just and reasonable, SPP and AECC propose a unilateral material modification to the Revised 2014 Agreement, and Entergy Arkansas cannot fulfill all of the obligations under the AECC Agreement. Alternatively, if the Commission determines that termination is not within its powers, Entergy Arkansas requests that the Commission reject the AECC Agreement.⁷

7. Entergy Arkansas argues that SPP fails to meet its burden under section 205 of the FPA to show that the change that it seeks to the AECC Agreement is just and reasonable. Entergy Arkansas asserts that SPP has not explained why Entergy Arkansas should have to sign the AECC Agreement as the External Balancing Authority given that SPP is aware that Entergy Arkansas is not a Balancing Authority and cannot meet the obligations of a Balancing Authority under the unexecuted AECC Agreement.⁸ Entergy Arkansas asserts that SPP has made no attempt to show that it would be just and reasonable to bind Entergy Arkansas to the obligations of an External Balancing Authority under the AECC Agreement. Entergy Arkansas explains that it, SPP, and AECC entered into the 2014 Agreement shortly after Entergy Arkansas and AECC integrated into MISO, and that once operations under the 2014 Agreement began, Entergy Arkansas realized that it was unable to fulfill some of its obligations under the 2014 Agreement, but has attempted to perform its responsibilities to the extent possible.⁹ Entergy Arkansas states that MISO is now the Balancing Authority for Entergy Arkansas, and that Entergy Arkansas is a Local Balancing Authority. Entergy Arkansas maintains that the AECC Agreement imposes several obligations that it cannot fulfill such as including the real time pseudo-tie value in its calculation of Area Control Error and treating energy consumed by the AECC pseudo-tied loads as balancing authority interchange.¹⁰ Entergy Arkansas maintains that because the AECC Agreement imposes obligations that it cannot fulfill and because AECC and SPP propose to make a material

⁷ Entergy Arkansas Protest at 1-2.

⁸ *Id.* at 7.

⁹ *Id.* at 9.

¹⁰ *Id.*

modification to the 2014 Agreement, the Commission should terminate the Revised 2014 Agreement.¹¹

8. In addition, Entergy Arkansas argues that eliminating the Avoca load point is a unilateral and material change to the Revised 2014 Agreement. Entergy Arkansas asserts that with this change, AECC will eliminate one of four pseudo-tie interconnection points for loads that AECC agreed to have served by the MISO Balancing Authority when it became a MISO Transmission Owner. Entergy Arkansas states that it has attempted to perform its responsibilities under the Revised 2014 Agreement and has not sought to be excused from its obligations until this material modification.

9. Finally, Entergy Arkansas asserts that the AECC Agreement is unnecessary, as shown by the existence of the SPP-MISO Joint Operating Agreement (SPP-MISO JOA), and by SPP's inconsistent application of its *pro forma* Agreement Establishing a Pseudo-tie Electrical Interconnection Point to all pseudo-tie arrangements. Entergy Arkansas asserts that the SPP-MISO Joint Operating Agreement controls all the Commission-jurisdictional rights and obligations included in the *pro forma* Agreement Establishing a Pseudo-tie Electrical Interconnection Point, and therefore there is no need for a three-party pseudo-tie agreement. Entergy Arkansas adds that SPP does not consistently apply its *pro forma* Agreement Establishing a Pseudo-tie Electrical Interconnection Point to all pseudo-tie arrangements into or out of SPP. Entergy Arkansas states that while it does not have perfect or complete information concerning SPP agreements, Entergy Arkansas's research indicates that there is a material question of fact as to whether SPP applies its *pro forma* Agreement Establishing a Pseudo-tie Electrical Interconnection Point consistently across all pseudo-tie arrangements, and that this information is material to this proceeding because it provides facts relevant to whether SPP can or should continue to impose the obligations in the AECC Agreement on Entergy Arkansas. Specifically, Entergy Arkansas states that it is uncertain whether pseudo-tie agreements exist for two loads pseudo-tied in SPP—City of Minden, Louisiana, and City of Thayer, Missouri.¹²

10. Entergy Arkansas concludes that the Commission should direct that the Revised 2014 Agreement terminate on January 1, 2018, or if the Commission does not terminate the Revised 2014 Agreement, it should reject the AECC Agreement. Entergy Arkansas states that, in the alternative, the Commission should set the issue for hearing and settlement procedures because there is a material factual issue of whether SPP applies its Agreement Establishing a Pseudo-tie Electrical Interconnection Point consistently across all pseudo-tie arrangements.

¹¹ *Id.*

¹² *Id.* at 11.

B. AECC Answer

11. AECC argues that the Commission should deny Entergy Arkansas's requests and accept the AECC Agreement. AECC notes that Entergy Arkansas signed the 2014 Agreement, as well as an amendment to the 2014 Agreement on June 1, 2017, as the External Balancing Authority. AECC argues that, by signing in such a capacity, Entergy Arkansas warranted to the parties and the Commission that it was capable of fulfilling the role of an External Balancing Authority.¹³ AECC states that as early as April and May of 2017, AECC began the process of unwinding the Avoca load from the existing pseudo-tie arrangement with SPP and MISO. AECC states that as a result of this process, AECC learned that SPP would require a modification to the Revised 2014 Agreement to be executed between SPP, AECC, and Entergy Arkansas for the remaining delivery points in SPP once the Avoca load was removed. AECC states that MISO opined, and research supports, that Entergy Arkansas is the appropriate party to sign the revised agreement.¹⁴

12. AECC further argues that the AECC Agreement does not place any additional obligation on Entergy Arkansas that it has not agreed to in the past and that, by removing the Avoca load from the agreement, Entergy Arkansas's obligations and burdens will decrease.¹⁵

13. In addition, AECC argues that Entergy Arkansas has not provided a reason for termination of the existing Revised 2014 Agreement, which is a different remedy than a rejection of the unexecuted AECC Agreement, and that Entergy Arkansas's request to terminate the Revised 2014 Agreement is outside the scope of this proceeding.¹⁶

C. SPP Answer

14. SPP argues that the Commission should accept the unexecuted AECC Agreement. SPP states that, under the SPP Tariff, an Attachment AO agreement is required in order

¹³ AECC Answer at 2.

¹⁴ *Id.* at 3 (citing Sw. Power Pool, Inc., Filing, Docket No. ER15-899-000, at 2 (filed Jan. 23, 2015) (“The Midcontinent Independent System Operator, Inc. (“MISO”) utilizes Local Balancing Authorities (“LBA”) to perform tasks within the MISO Balancing Authority. Entergy Louisiana is an LBA within the MISO Balancing Authority.”)).

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 4.

for AECC to effectuate its pseudo-tie arrangement.¹⁷ In addition, SPP rebuts Entergy Arkansas's argument that pseudo-tie arrangements are adequately covered by the SPP-MISO JOA, and states that the coordination required by the *pro forma* Agreement Establishing a Pseudo-Tie Electrical Interconnection Point is not detailed in the SPP-MISO JOA. SPP also notes that Entergy Arkansas has executed previous versions of the AECC Agreement, remains registered as a Balancing Authority in the NERC functional model, and, as a MISO Local Balancing Authority, is required to collect and submit real-time actual interchange with external Balancing Authorities to MISO.¹⁸ SPP argues that the obligations in the AECC Agreement have not changed since the previous versions that Entergy Arkansas executed, and argues that Entergy Arkansas has failed to demonstrate what has changed in the AECC Agreement that now renders Entergy Arkansas unable to comply with the AECC Agreement.¹⁹

15. SPP acknowledges that Entergy Arkansas is not an External Balancing Authority. SPP notes that when other market participants and SPP have reached out to MISO regarding similar arrangements, MISO has indicated that the MISO Local Balancing Authority is the appropriate party to the agreement. SPP further notes that, in these instances, SPP has worked with the MISO Local Balancing Authorities to modify pseudo-tie agreements to reflect their role as Local Balancing Authorities, and such agreements have been filed with the Commission. SPP states that Entergy Arkansas has never requested any changes to the AECC Agreement and has not reached out to SPP regarding its inability to meet the requirements under the AECC Agreement. SPP states that it is willing to work with Entergy Arkansas to modify the AECC Agreement to reflect Entergy Arkansas's status as a Local Balancing Authority. SPP requests that the Commission accept the AECC Agreement with an effective date of January 1, 2018. In the alternative, SPP requests that the Commission require the parties to modify the AECC Agreement to reflect that Entergy Arkansas is a Local Balancing Authority rather than an External Balancing Authority.²⁰

D. Entergy Arkansas Answer

16. Entergy Arkansas reiterates its argument that the Commission should reject the AECC Agreement because SPP and AECC propose a material modification to the agreement; Entergy Arkansas is unable to fulfill all of the obligations of the AECC

¹⁷ SPP Answer at 2.

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 5-6.

Agreement; SPP did not show that it is just and reasonable that Entergy Arkansas be forced to continue a materially modified agreement under which it cannot meet all the obligations; and, the AECC Agreement is unnecessary as it is redundant to the SPP-MISO JOA.²¹ In addition, Entergy Arkansas claims that the removal of the Avoca load point harms Entergy Arkansas.²² Entergy Arkansas also notes that the AECC Answer conflicts with the support AECC offers for its late motion to intervene as AECC seeks to clarify and supplement the record in its answer when it earlier represented that AECC would accept the record as it currently exists.²³

III. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed 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) (2017), we will grant the late-filed motions to intervene of MISO and AECC given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. 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 the answers of AECC, SPP, and Entergy Arkansas because they provided information that assisted us in our decision-making process.

B. Commission Determination

19. We find the AECC Agreement to be just and reasonable and therefore accept it effective January 1, 2018. Contrary to Entergy Arkansas's assertions, we are not persuaded that the Revised 2014 Agreement should be terminated, that the AECC Agreement should be rejected, or that hearing and settlement judge procedures need be instituted.

20. We find to be without merit Entergy Arkansas's argument that SPP failed to meet its burden under section 205 of the FPA. Because the proposed revision to the Revised

²¹ Energy Arkansas Answer at 1.

²² *Id.* at 3.

²³ *Id.* at 4 (citing AECC Dec. 4, 2017 Motion to Intervene at 1).

2014 Agreement does not alter the terms and conditions of the 2014 Revised Agreement other than to remove the Avoca interconnection point, SPP was not obligated to demonstrate that “it would be just and reasonable to bind Entergy Arkansas to the obligations of an External Balancing Authority under [the AECC Agreement],”²⁴ as Entergy Arkansas contends. As Entergy Arkansas explains in its protest, in May 2014, Entergy Arkansas, SPP, and AECC entered into the 2014 Agreement, which conformed to what was to become SPP’s *pro forma* Agreement Establishing a Pseudo-tie Interconnection Point²⁵ and which has a termination date of December 19, 2018.²⁶ Entergy Arkansas states that once operations under the 2014 Agreement began, it realized that it was unable to fulfill some of its obligations under the 2014 Agreement. However, despite Entergy Arkansas’s assertions that it should not be bound to the obligations of an External Balancing Authority, Entergy Arkansas admits that it has attempted to perform its responsibilities under the current agreement.²⁷ We note that Entergy²⁸ is currently registered as a Balancing Authority in the North American Electric Reliability Corporation (NERC) Compliance Registry, and that MISO and Entergy are members of the Coordinated Functional Registration CFR00001 for Balancing Authority Function with NERC.²⁹ Further, Entergy Arkansas has contracted to be a Local Balancing Authority providing reliability-related services in conjunction with the MISO Balancing

²⁴ Entergy Arkansas Protest at 7.

²⁵ *Id.* at 4 (citing Sw. Power Pool, Inc., Submission of Agreement Establishing a Pseudo-Tie Electrical Interconnection Point, Docket No. ER14-2226-000, at 2 (filed June 20, 2014) (“the non-conforming language in the [2014] Agreement is identical to the proposed revisions to Attachment AO that are pending before the Commission in [a separate] Filing” in Docket No. ER14-1653-000)).

²⁶ In several places in its protest, Entergy Arkansas states that the 2014 Agreement expires on December 1, 2018. However, we note that the termination date listed in the Revised 2014 Agreement and in the AECC Agreement is December 19, 2018.

²⁷ Entergy Arkansas also explains that it agreed to amend the 2014 Agreement twice during 2017—when it agreed to increase the granularity of meter points for the East Fayetteville load point in June, and to increase the granularity of meter points for the East Centerton load point in October. Entergy Arkansas Protest at 5.

²⁸ Entergy Arkansas is a subsidiary of Entergy.

²⁹ North American Electric Reliability Corporation Requirement Applicability List for Coordinated Functional Registration CFR00001 (Formerly JRO00001) for Balancing Authority Function as of 04/01/2017.

Authority.³⁰ Entergy Arkansas is therefore able to coordinate to have MISO meet, on Entergy Arkansas' behalf, any of its obligations under the AECC Agreement reflecting Balancing Authority functions that it no longer performs itself. Further, Entergy Arkansas states that it has consistently pledged and continues to pledge to AECC that it will assist MISO in administering the remaining AECC pseudo-ties.³¹

21. With regard to removal of the Avoca interconnection point, while SPP revised the Revised 2014 Agreement to modify the existing pseudo-tie arrangements by removing one of the four interconnection points, we do not see how reducing the number of pseudo-tie interconnection points in what is otherwise a *pro forma* agreement constitutes a change that necessitates the termination of the Revised 2014 Agreement.³² While Entergy Arkansas notes that the removal of the Avoca load point will change its benefits under the AECC Agreement,³³ Entergy Arkansas has not explained why this reduction in the number of interconnection points hinders its ability to perform under the AECC Agreement.

22. Finally, the issue for the Commission to determine in this proceeding is whether SPP has met its burden under section 205 of the FPA to demonstrate that the AECC Agreement is just and reasonable, which we find SPP has done. Issues raised by Entergy Arkansas regarding the redundancy of the SPP-MISO JOA or the consistency of SPP's application of its *pro forma* Agreement Establishing a Pseudo-tie Electrical Interconnection Point are not before the Commission and are therefore beyond the scope of this FPA section 205 proceeding. If Entergy Arkansas has concerns with SPP's application of its *pro forma* Agreement Establishing a Pseudo-tie Electrical

³⁰ Entergy Arkansas Protest at n.2 (citing Amended Balancing Authority Agreement between the Midwest ISO and the Midwest ISO Local Balancing Authorities, MISO Rate Schedule No. 3).

³¹ *Id.* at 12.

³² Section 14 of SPP's *pro forma* Agreement Establishing a Pseudo-tie Electrical Interconnection Point provides as follows: "Modifications: Nothing in this Agreement is intended to modify or limit the right of SPP to submit under FPA Section 205 or Section 206 unilateral changes to this Agreement." Agreement Establishing a Pseudo-tie Electrical Interconnection Point, Attachment AO, Third Revised Service Agreement No. 2891.

³³ Entergy Arkansas Answer at 3.

Interconnection Point, the appropriate forum to raise such concerns is in a complaint filed under section 206 of the FPA.³⁴

The Commission orders:

The AECC Agreement is hereby accepted, effective January 1, 2018, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁴ 16 U.S.C. § 824e.