

170 FERC ¶ 61,164  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Southwest Power Pool, Inc.

Docket No. ER19-460-004

ORDER GRANTING IN PART REQUEST FOR  
DEFERRAL OF EFFECTIVE DATE

(Issued February 27, 2020)

1. On December 12, 2019, Southwest Power Pool, Inc. (SPP) filed a request to defer the effective date for revisions to the SPP Open Access Transmission Tariff (Tariff) that SPP submitted to comply with Order No. 841.<sup>1</sup> As discussed below, we grant SPP's request for deferral in part, and direct an effective date of August 5, 2021.

**I. Background**

2. On December 3, 2018, SPP submitted revisions to modify its Tariff to comply with Order No. 841's requirements to remove barriers to the participation of electric storage resources in the capacity, energy, and ancillary markets operated by Regional Transmission Organizations and Independent System Operators (RTOs/ISOs).<sup>2</sup> SPP subsequently filed an amendment to propose further modifications to several sections of its Tariff,<sup>3</sup> and also submitted a request to defer the effective date of the Tariff provisions submitted in the proceeding.<sup>4</sup> In its February 2019 Request for Deferral, SPP stated that,

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<sup>1</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018), *order on reh'g*, Order No. 841-A, 167 FERC ¶ 61,154 (2019).

<sup>2</sup> Sw. Power Pool, Inc., Order No. 841 Compliance Filing, Docket No. ER19-460-000 (filed Dec. 3, 2018).

<sup>3</sup> Sw. Power Pool, Inc., Amendment to Order No. 841 Compliance Filing, Docket No. ER19-460-001 (filed Feb. 6, 2019).

<sup>4</sup> Sw. Power Pool, Inc., Request for Deferral of Effective Date for Order No. 841 Compliance Filing, Docket No. ER19-460-002 (filed Feb. 28, 2019) (February 2019

because it would need a number of months after Commission action on its proposal to build, test, and implement the proposed changes and because it did not know when the Commission would act, SPP requested an effective date of “12/31/9998” for the Tariff records submitted in Docket Nos. ER19-460-000 and ER19-460-001. SPP also committed to submit a filing with the Commission specifying a precise effective date at a later time. On October 17, 2019, the Commission accepted in part, and rejected in part, SPP’s compliance filing, subject to a further compliance filing, effective nine months from the date of issuance of the order (i.e., July 17, 2020).<sup>5</sup> The Commission found that SPP’s request to submit a filing specifying a precise effective date at a later time was unreasonable because it would create uncertainty for prospective and existing market participants expecting to participate in SPP’s markets using the Electric Storage Resource participation model.<sup>6</sup>

## II. Filing

3. On December 12, 2019, SPP submitted a request to defer the effective date for the revisions to its Tariff that were accepted by the Commission in the October 2019 Order. SPP states that it cannot implement the required system changes by the July 17, 2020 effective date for several reasons: the complexity of the required changes it must make to comply with Order No. 841; the queue of other changes that have been approved or ordered by the Commission; a delay to the go-live date of the Settlement Management System; constraints that Commission-ordered changes have placed on common RTO/ISO vendor resources; and an upcoming reliability-driven change.<sup>7</sup>

4. SPP explains that, when it submitted its February 2019 Request for Deferral to the Commission, it expected implementation to take six to twelve months after its Settlement Management System went live.<sup>8</sup> SPP asserts that this expectation was based on SPP’s initial understanding of the required changes, the limited number of competing initiatives known at the time, and an assumption regarding the timing of a Commission order addressing SPP’s compliance filing. SPP states that its Settlement Management System is now planned to go live on February 5, 2020, as opposed to the previous expectation

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Request for Deferral).

<sup>5</sup> *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,048 (2019) (October 2019 Order).

<sup>6</sup> *Id.* P 187.

<sup>7</sup> Filing at 4-5.

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

that it would go live in the fourth quarter of 2019.<sup>9</sup> SPP states that it now has a more accurate understanding of the depth of the system changes ordered by the Commission and of the other issues affecting its ability to implement the changes it must make to comply with Order No. 841, and expects that the required software changes can be completed approximately 18 months after its Settlement Management System goes live.

5. SPP states that, given these circumstances, it requests an effective date of “12/31/9998” for the Tariff records submitted in Docket Nos. ER19-460-000 and ER19-460-001. SPP commits to submit a filing with the Commission specifying a precise effective date at a later time but not less than nine months before that precise effective date.<sup>10</sup> SPP states that it will continue to work as quickly as practicable to implement the necessary Tariff revisions upon Commission acceptance of SPP’s compliance filing and the completion of the Settlement Management System.

6. SPP asserts that granting its request for deferral will not have a material impact on the ability of electric storage resources that will be eligible to utilize the Tariff provisions submitted in SPP’s Order No. 841 compliance proceeding to participate in SPP’s markets.<sup>11</sup> SPP states that nearly all electric storage resources seeking to interconnect to its transmission system remain under study, and that the generator interconnection studies for these resources are not expected to be completed until the beginning of 2022 and, as such, SPP does not believe that these resources will be adversely impacted by granting SPP’s request for deferral of the effective date.

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

7. Notice of SPP’s filing was published in the *Federal Register*, 84 Fed. Reg. 70,181 (2019), with interventions and protests due on or before January 2, 2020. On December 20, 2019, NextEra Energy Resources, LLC (NextEra) filed a motion requesting that the Commission extend the time for submitting comments in response to SPP’s filing to January 10, 2020. On December 27, 2019, the Commission’s Secretary issued a notice extending the deadline to and including January 10, 2020.<sup>12</sup> On January 10, 2020, NextEra filed a protest. On January 27, 2020, SPP filed an answer to NextEra’s protest.

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

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Notice of Extension of Time, Docket No. ER19-460-004, et al. (Dec. 27, 2019).

#### IV. Protest

8. NextEra protests SPP's request for deferral of effective date, arguing that the Commission should either reject SPP's request and reaffirm that SPP's Order No. 841 participation model rules become effective nine months from the date of the October 2019 Order (i.e., July 17, 2020), or reject SPP's request for deferral without prejudice to allow SPP to request a limited extension of time if in the future SPP is unable to meet the original nine month deadline to complete any software changes.

9. NextEra argues that the Commission should disregard SPP's assertion that a further extension of time is necessary due to SPP learning that its Settlement Management System would be delayed subsequent to SPP's submission of its February 2019 Deferral Request.<sup>13</sup> NextEra asserts that SPP has been aware of further delay to its Settlement Management System since March 2019 and, therefore, SPP's notification of delays to the Commission in the instant proceeding should not be deemed timely.<sup>14</sup> NextEra asserts that this situation calls into question why SPP failed to seek rehearing of the directive in the October 2019 Order for an effective date nine months from the date of the order.

10. In addition, NextEra disagrees with SPP's assertion that an implementation delay will not have a material effect on electric storage resources.<sup>15</sup> NextEra states its subsidiary, Rush Springs Energy Storage, LLC (Rush Springs), owns and operates a 10 MW/20 MWh electric storage resource that is scheduled to achieve commercial operation in February 2020 and that Rush Springs' ability to participate in the SPP market will be materially impacted by the delay.<sup>16</sup> NextEra asserts that, without the effectiveness of SPP's tariff provisions, under certain circumstances, Rush Springs cannot participate in, or economically offer into, SPP's regulation down market and must limit its offer quantity in SPP's regulation up market. NextEra further notes that there will be a loss of a portion of expected production tax credits from the co-located wind generation facility due to existing rules that force Rush Springs to take charging energy from the wind facility when performing regulation down, rather than taking charging energy directly from the SPP transmission system.

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<sup>13</sup> NextEra Protest at 4 (citing Appendix A).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.*

**V. SPP Answer**

11. SPP argues that the precise date upon which it became aware of the changed go-live date for SPP's new Settlement Management System is not material to its request for deferral of the effective date.<sup>17</sup> SPP contends that the changes to its markets and settlements system necessary to comply with the October 2019 Order are significant, complex, require a substantial effort on the part of an outside vendor, and could not prudently be undertaken absent a final order on compliance from the Commission.

12. SPP argues that NextEra made the commercial decision to move forward with registering Rush Springs in SPP's markets without knowing how, and when, the Commission might act on SPP's Order No. 841 compliance filing, and despite uncertainty as to the effective date by which the required technological upgrades could be implemented.<sup>18</sup> SPP contends that NextEra's willingness to proceed with participating in SPP's markets despite these unknowns appears to indicate that NextEra found it beneficial to participate in SPP's markets before SPP implemented its Order No. 841 participation model. SPP avers, therefore, that a deferral of the effective date will not affect Rush Springs' ability to participate in SPP's markets in the manner that both NextEra and SPP intended and agreed on at the time the Rush Springs Generator Interconnection Agreement was executed. SPP also restates that the electric storage resources currently in SPP's generator interconnection queue would be unaffected by SPP's proposed delay as they will not have completed the required studies necessary to interconnect and participate in SPP's market until the end of 2021 at the earliest.<sup>19</sup>

**VI. Discussion****A. Procedural Matters**

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept SPP's answer because it has provided information that assisted us in our decision-making process.

**B. Substantive Matters**

14. We find that SPP's request to implement the requirements of Order No. 841 after the effective date established in the October 2019 Order is reasonable based on the

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<sup>17</sup> SPP Answer at 7-8.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 12-13.

specific circumstances outlined in SPP's request for deferral. Specifically, based on SPP's filing, we understand that the software changes necessary to effectuate the changes required by Order No. 841 cannot be implemented until after SPP's Settlement Management System goes live, which SPP now states will occur on February 5, 2020. SPP estimates that it will now require a further 18 months for software implementation after this system goes live. However, consistent with the Commission's finding in the October 2019 Order,<sup>20</sup> we find that SPP's request to submit a filing with the Commission specifying a precise effective date at a later time is unreasonable because it creates uncertainty for prospective and existing market participants expecting to participate in SPP's markets using the Electric Storage Resource participation model. Therefore, we grant SPP's request for deferral, in part, and direct an effective date of August 5, 2021, i.e., 18 months from the February 5, 2020 go-live date of SPP's Settlement Management System, for the Tariff provisions accepted in the October 2019 Order.

15. We note NextEra's protest that its Rush Springs electric storage resource will be materially affected by a delay in the effective date of SPP's participation model for electric storage resources. However, we agree with SPP that some uncertainty was inherent in the commercial decision for the Rush Springs resource to participate in the SPP market prior to implementation of SPP's Order No. 841 compliance filing. Given SPP's statement that it requires additional time for changes to its markets and settlements systems, we believe that granting in part SPP's request is necessary in order to allow SPP to successfully implement the changes required by Order No. 841.

The Commission orders:

(A) SPP's request is hereby granted, in part, as discussed in the body of this order.

(B) The effective date of the Tariff revisions accepted in the October 2019 Order shall be set to August 5, 2021, as discussed in the body of this order.

By the Commission. Commissioner McNamee is concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> October 2019 Order, 169 FERC ¶ 61,048 at P 187.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket No. ER19-460-004

(Issued February 27, 2020)

McNAMEE, Commissioner, *concurring*:

1. I concur with today's order granting in part SPP's request for deferral of the effective date originally accepted in *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,048 (2019) (October 2019 Order), for its revised Open Access Transmission Tariff provisions to comply with Order No. 841.<sup>1</sup> In today's order, the Commission directs the specific effective date for SPP's filed Tariff provisions to comply with Order No. 841 to be August 5, 2021.

2. While I approve the order granting in part SPP's request for deferral of effective date today, I reiterate the concerns I expressed in my concurring opinion to the October 2019 Order<sup>2</sup> and in my partial concurrence and partial dissent to Order No. 841-A<sup>3</sup> over the Commission's assertion of jurisdiction over energy storage resources interconnecting on the distribution system or behind-the-meter, and I believe that the Commission should have included, at a minimum, an opt-out provision for states.

For these reasons, I respectfully concur.

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Bernard L. McNamee  
Commissioner

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<sup>1</sup> *Elec. Storage Participation in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018) (Order No. 841).

<sup>2</sup> *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,048 (2019) (McNamee, Comm'r concurring).

<sup>3</sup> *Elec. Storage Participation in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 841-A, 167 FERC ¶ 61,154 (2019) (Order No. 841-A) (McNamee, Comm'r concurring in part and dissenting in part).