

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. ER05-519-000
ER05-520-000
ER05-523-000

ORDER ACCEPTING FOR FILING AND SUSPENDING
UNEXECUTED AGREEMENTS, SUBJECT TO REFUND,
CONSOLIDATING PROCEEDINGS, AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued March 25, 2005)

I. Introduction

1. On January 31, 2005, Southwest Power Pool, Inc. (SPP) filed three unexecuted Network Integration Transmission Service Agreements (NITS) and Network Operating Agreements (NOA) (collectively, Agreements) with Tex-La Electric Cooperative of Texas, Inc. (Tex-La), East Texas Electric Cooperative (ETEC), and Northeast Texas Electric Cooperative (NTEC) (collectively, the Parties), for unbundled transmission service. Because SPP has proposed either similar or identical language in the filed Agreements, the Commission will address them together in this order. This order accepts for filing the unexecuted Agreements, suspend them for a nominal period, subject to refund, consolidate the proceedings, waives the prior notice requirement, and establishes an effective date of January 1, 2005, as requested, and sets the Agreements for hearing and settlement judge procedures. This order benefits customers because it provides the parties with a forum in which to resolve their disputes.

II. Background

2. The Parties have historically taken transmission service under the American Electric Power Operating Power Company (AEP) Open Access Transmission Tariff (OATT), but is in the process of converting their service to unbundled transmission service taken under SPP OATT. According to SPP, the filings are being submitted in order to allow additional time for the parties to finalize the Agreements and to consider

the bilateral agreements between the parties (*e.g.*, convert direct assignment charges, wholesale distribution service charges and self supply of ancillary services from the AEP Open Access Transmission Tariff (OATT) to the SPP OATT). SPP states that it has no known disputes with parties and that this additional information is required in order to finalize the Agreements.

3. SPP also states that, with the exception of Section 3.8 of both ETEC and NTEC NOAs, the Agreements are identical in all material respects to the form of NITS and NOA under SPP OATT.

4. SPP explains that the proposed change to Section 3.8 of the NOAs with ETEC and NTEC is to ensure that the reactive compensation and voltage control are provided to maintain the integrity and reliable operation of the local transmission system.¹ Section 3.8 of the NOA states that ETEC and NTEC will be required to have sufficient reactive compensation and control: (1) to meet voltage schedules designated by AEP's operations personnel for each Network Resource or at each AEP interface with ETEC and NTEC (or designated Control Area) system where both operate a Network Resource behind the interface; or (2) at each meter or delivery point behind which ETEC and NTEC do not operate a Network Resource, to maintain a power factor that is practical. If the power factor falls below either (a) the higher 0.98 lagging as an average or the power factor maintained by AEP for the equivalent delivery level and general location or (b) 0.95 lagging at any individual delivery point during AEP system peak, AEP will notify ETEC or NTEC to take the required action to correct the situation. And should either ETEC or NTEC fail to provide the necessary reactive compensation and control within a reasonable time, AEP will have the unilateral right to install equipment at ETEC or NTEC's expense.

III. Notice of Filings and Responsive Pleadings

5. Notice of SPP's filings were published in the *Federal Register*, 70 Fed. Reg. 7,098 (2005), with protests and interventions due on or before February 22, 2005. On February 22, 2005, Tex-La, ETEC, and NTEC filed timely motions to intervene, consolidate proceedings, protests and requests for a hearing in their respective dockets. SPP filed an answer to the protests.

¹SPP notes that this provision was in a previous power supply agreement between ETEC, NTEC and AEP which they agreed to allow in SPP's NOA for their load under SPP's OATT.

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SPP's answer and will, therefore, reject it.

B. Analysis

1. Section 3.8 of the NOA

8. No party to this proceeding objects to the proposed revision to Section 3.8 of ETEC's and NTEC's NOA.

9. Our preliminary analysis indicates that the unopposed proposed modifications to the NOAs are just and reasonable since the modifications ensure that reactive compensation and voltage control are provided to maintain reliable operation of SPP transmission system. Accordingly, we will accept these modifications, without suspension or hearing to become effective on January 1, 2005, as requested.

2. Parties' Motions to Consolidate and Protests

10. The parties agree that the Agreements are substantially similar in nature and the negotiations would involve all the parties. Therefore, they suggest that it would be more efficient to resolve the issues as a group rather than individually. The parties also agree to SPP's requested effective date of January 1, 2005. If the Agreements are accepted subject to nominal suspension and subject to refund, the parties request that the Commission set the Agreements for hearing, but hold the hearing in abeyance pending settlement discussions between the parties. The parties note that settlement talks among the parties have been productive and are likely to lead to revised Agreements the parties can execute.

11. The parties did not execute the Agreements because they maintain that the agreements are inaccurate and incomplete, with several unresolved issues between SPP and AEP (the former supplier). While the parties disagree on a number of significant issues, they believe that they may be able to reach agreement on: (1) the scope of the

Mobile-Sierra rate change in the Network Integration Transmission Service Agreement; (2) the proper language to use in response to the questions over any claimed transmission credits for customer-owned transmission; (3) lack of symmetry as between the host Transmission Owner (AEP) and the Transmission Customer respecting Good Utility Practice for planning, operations and maintenance; and (4) the Agreements' reservation of the "sole right" for SPP and AEP to discontinue network service.

12. However, the parties maintain that the issues listed below are still being negotiated and require further clarification and discussion: (1) assurance that Tex-La does not double-pay costs of transmission and ancillary services in its purchase of transmission and ancillary services once from SPP and again in its payment of bundled requirements power from SWEPCO; (2) assurance that ETEC and NTEC do not double-pay the costs of ancillary services; and (3) whether the definition of transmission "delivery points" will include points off the AEP system at which ETEC and NTEC own generation.

13. Our preliminary review of the proposed Agreements indicates that with the exception of section 3.8 of the NOA, they have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Agreements for filing, suspend them for a nominal period, to become effective January 1, 2005, subject to refund, and set them for hearing and settlement judge procedures. Because of the commonality of the issues in the respective dockets, the Commission will grant the motions to consolidate Docket Nos. ER05-519-000, ER05-520-000, and ER05-523-000.

14. While we set these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their differences before hearing procedures commence. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.³ The settlement judge

² 18 C.F.R. § 385.603 (2004).

³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPP's proposed Agreements are hereby accepted for filing and suspended for a nominal period, to become effective on January 1, 2005, subject to refund and set for hearing and settlement judge procedures, and the proceedings consolidated, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed Agreements, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for the settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 (sixty) days thereafter, apprising the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the presiding judge's appointment, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.