

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Southwest Power Pool, Inc.

Docket Nos. ER02-2222-002
ER02-2223-002
ER02-2224-002
ER02-2225-002
ER02-2226-002
(Not Consolidated)

ORDER DENYING REHEARING

(Issued June 5, 2003)

1. In an order issued on August 30, 2002,¹ the Commission accepted for filing service agreements for long-term firm point-to-point transmission service between Southwest Power Pool, Inc. (SPP) and five transmission customers.² The order accepted the agreements as modified to remove certain restrictions on the transmission customers' rollover rights under Section 2.2 of the SPP open access transmission tariff (OATT). As discussed below, we deny SPP's request for rehearing of that order.

BACKGROUND

2. On July 1, 2002, SPP filed the unexecuted service agreements for long-term firm point-to-point transmission service. With the exception of Tex-La, each of the transmission customers was an existing long-term transmission service customer of SPP that sought to roll over its existing transmission service under Section 2.2 of the SPP

¹ 100 FERC ¶ 61,239 (2002) (August 30 Order).

² The service agreements accepted in the August 30 Order were between SPP and Exelon Generation Company (Exelon), Tex-La Cooperative of Texas, Inc. (Tex-La), Tenaska Power Services Company (Tenaska), Aquila Merchant Services, Inc. (Aquila), and Reliant Energy Services, Inc. (Reliant).

OATT. In each filed service agreement, SPP proposed language that would restrict future rollover rights.

3. In the case of Aquila, Tex-La, and Reliant, SPP states that it has sufficient transmission capacity to support these service reservations for the terms sought, but was concerned that it will not have sufficient capacity available to support future rollovers once these terms expired. SPP proposed to include the following language in Section 2.0 of the specifications page of each agreement:

Service for the requested renewal term is available pursuant to the terms of this agreement. However, the capacity available for any future renewal of service under this agreement may be reduced due to factors such as other previously approved, non-competing service requests, the need to meet growth in the native load served by the transmission provider, changes in transmission system topology, loop flow impacts due to changes in transactions on other transmission systems, redispatch of designated network resources or other circumstances. Furthermore, the conditions associated with renewal of this service will depend on the final outcome of FERC Dkt. No. ER02-86 [sic] (Exelon v. SPP) and the impact of any challenge to the Commission's initial decision that SPP may make. As a result, renewal of service under this agreement or subsequent renewals is subject to any changes in that decision or related ones by the FERC or by a Court.

4. In the case of Exelon and Tenaska, SPP proposed to include the following language in Section 2.0 of the specifications page of the service agreements:

SPP has determined that provision of the requested service for the requested renewal term requires SPP to operate its system in violation of applicable NERC and SPP reliability criteria. However, pursuant to the initial decision of the FERC in Docket No. ER02-86 [sic] (Exelon v. SPP), service is being conditionally provided hereunder. Continuation of service under this agreement and any subsequent renewals of this service will depend on the final outcome of the Exelon case and the impact of any challenge to the Commission's initial decision that SPP may make. Consequently, service under this agreement or subsequent renewals may be invalidated and this agreement terminated before the specified termination date,

and subsequent renewal of service under this agreement is subject to any changes in that decision or related ones by the FERC or by a Court.

5. In the August 30 Order, the Commission found that the proposed service agreement language was inconsistent with Section 2.2 of the Commission's pro forma OATT and the Commission's rollover rights policy. The Commission directed SPP to remove the proposed rollover rights restrictions from the service agreements.

REQUEST FOR REHEARING

6. On September 30, 2002, SPP filed a request for rehearing of the August 30 Order, alleging, among other things, that the Commission erred by requiring SPP to remove language from its service agreements notifying transmission customers of possible limitations on their ability to rollover their transmission service. SPP argues that the Commission erred by finding that a transmission provider can limit a customer's ability to roll over its service only when this restriction has been set forth in the initial service agreement, and only if the capacity is needed to serve native load, even if capacity is no longer available due to events or circumstances that arose after the initial service agreement was entered into and were beyond the transmission provider's control. SPP stresses that the Commission's recent decisions concerning rollover rights have the potential to threaten reliability as well as SPP's ability to serve other long-term customers, and that long-term customers who were willing to commit to contracts for more than one year should not be interrupted simply to accommodate the rollover requests of parties who are unwilling to commit to service for similar amounts of time. Therefore, SPP states it should be permitted to reinstate the notification language eliminated by the August 30 Order.

DISCUSSION

Impact on Reliability

7. In support of its rehearing request, SPP argues that with the exception of Exelon, each of the service agreements involves service over the "ERCOT East DC Tie," which interconnects the SPP transmission system with ERCOT. SPP states that it will not be able to accommodate all of the rollover requests for service over the ERCOT East DC Tie without having to curtail service. According to SPP, after January 1, 2004, once Tex-La begins to increment its service, the total amount of service that SPP must provide over this facility will exceed ERCOT's capacity. SPP stresses that the 600 MW total transmission capacity over the ERCOT East DC Tie is a fixed amount that does not vary with

circumstances on the AC grid, and that SPP cannot transmit amounts of power in excess of this amount.

8. SPP contends that if it is forced to accept rollover requests for all its customers, as directed by the August 30 Order, it would have to curtail service to all its customers in order to avoid overloading the ERCOT East DC Tie. SPP adds that while it is possible that this facility could be upgraded, it is not likely that such an upgrade would be economically feasible. SPP argues that the Commission's order has exacerbated the need for SPP to call TLRs (Transmission Loading Relief) in the past, and will likely increase SPP's need to do so in the future. SPP adds that while Exelon's reservation does not involve transmission service over the ERCOT East DC Tie, similar concerns apply. SPP states that it cannot accommodate the requested rollover service without threatening reliability or SPP's ability to serve its customers.

9. SPP further argues that the August 30 Order would encourage gaming because customers could sign up for one-year service terms when they intend to take service over a much longer period of time, in order to avoid paying for upgrades that will eventually be needed to support their service request. SPP submits that many of the customers whose service would be curtailed are long-term customers and transmission owners who serve native load and have paid for and helped support the transmission system for many years. SPP argues that their service should not be interrupted simply to accommodate the rollover requests of parties who are only willing to commit to service for one year at a time.

Commission Response

10. SPP's arguments are basically collateral attacks on the Commission's rollover rights policy as established in Order No. 888.³ In that order, the Commission concluded that all firm transmission customers with contracts for a term of one-year or more should have the right to continue to take transmission service from their existing transmission provider upon the expiration of their contracts or at the time their contracts become subject to

³See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,694 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom., New York v. FERC, 122 S. Ct. 1012 (2002).

renewal or rollover.⁴ Once a transmission provider evaluates the impacts on its system of providing transmission service to a customer and decides to grant such a request, the rollover rights policy obligates the transmission provider to plan and operate its system with the expectation that it will continue to provide service to that customer should the customer request rollover of its contract term. In other words, the transmission provider is expected to plan its system to accommodate transmission customers' rollover rights. If the transmission system becomes constrained such that the transmission provider cannot satisfy existing customers, then the obligation is on the transmission provider to either curtail service pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.

11. Thus, many of the issues raised by SPP on rehearing (*e.g.*, the impact of rollover on reliability of the transmission system; the one-year minimum term) go to the heart of the Commission's rollover rights policy established in Order No. 888. On this basis, they are issues that should have been raised on rehearing of Order No. 888. The Commission will not revisit in this order its prior determinations in Order No. 888, which have been affirmed by the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Supreme Court.

12. SPP's argument that the Commission's approach has affected the reliability of its system and has been shown to exacerbate the need to call TLRs is disingenuous. SPP has not provided any evidence in support of its assertion that the TLRs it has called are the direct result of the Commission's policy on rollover rights. To the extent that SPP has needed to call TLRs, we think such action is more likely due to its failure to follow the requirements of Order No. 888. Under Section 2.2 of its OATT, SPP is responsible for maintaining available transmission capacity for existing long-term transmission customers with rollover rights, until the time expires for those customers to exercise their rollover rights.⁵ In providing for rollover rights in Section 2.2, SPP is responsible for evaluating the impact of the exercise of these rights on its system.

13. Notwithstanding SPP's attempt to portray rollover rights as detrimental to reliability, rollover rights are intended to promote system planning and reliability, not to

⁴Order No. 888 at 31,665; Order No. 888-A at 30,195.

⁵*See, e.g.*, *Tenaska Power Services Company v. Southwest Power Pool, Inc.*, 102 FERC ¶ 61,140 at P 20 (2003) (*Tenaska*); *Exelon Generation Company, LLC v. Southwest Power Pool, Inc.*, 101 FERC ¶ 61,226 at P 14 (2002) (*Exelon*).

undermine it.⁶ Rollover rights should facilitate a transmission provider's orderly planning and operation, *i.e.*, provide for available transmission capacity, which is essential to SPP's obligation to preserve system reliability. A transmission provider is expected to include all long-term transmission customers (*i.e.*, those with rollover rights) in its long-term planning. While it may be the case, as SPP suggests, that subsequent circumstances may negatively impact a transmission's provider's available transmission capacity, the presence of such constraints does not give a transmission provider the right to deny a rollover request. Under Section 2.2 of its OATT, SPP is responsible for maintaining available transmission capacity for existing long-term transmission customers with rollover rights until the time expires for those customers to exercise their rollover rights. It was the intent of the Commission in establishing the rollover policy that long-term customers have the right to continue to take service, and accordingly, that the transmission provider continue to provide it. If constraints arise after a transmission provider enters into a long-term agreement with a transmission customer (and that agreement contains no restrictions on the transmission customer's rollover rights), the obligation is on the transmission provider to either build additional transmission facilities to relieve the constraint or to implement the curtailment procedures set forth in its OATT.⁷

14. The Commission has consistently found that Section 2.2 of the pro forma OATT requires a transmission provider to allow a customer with a one-year firm reservation to roll over that service, subject to matching competing requests for that service. Order No. 888 contemplated such an arrangement,⁸ and the policy took effect at the time Order No. 888 was issued. On this basis, we will not reexamine our decision that the rollover rights provisions of Section 2.2 apply to contracts with terms of one year or more.

15. Furthermore, a long-term firm transmission service customer cannot game the system and avoid paying for upgrades simply by choosing a contract with a one-year term. Regardless of the length of the contract term, a transmission provider will grant a request for long-term firm transmission service only if it determines that it has sufficient available transmission capacity to provide the service. In making this determination, the transmission provider is obligated to plan its system to meet all of its firm loads, including any prospective rollovers of the transmission services used to meet those loads. Thus, if a transmission customer requests transmission service for only one year, but the

⁶Id.

⁷ See, *e.g.*, Tenaska, 102 FERC ¶ 61,140 at P 20-21; Exelon, 101 FERC ¶ 61,226 at P 14-15. Any such curtailment would be done without regard to the length of the long-term firm transmission agreement. See SPP OATT Section 13.6.

⁸See Order No. 888 at 31,655. See also Order No. 888-A at 30,195, 30,197-98.

transmission provider determines that it has native load growth or another contract obligation that commences in the future, it can reflect those obligations up front in the initial long-term contract and thereby limit the prospective transmission customer's rollover rights. If the transmission customer seeks service beyond the period when the native load growth or future contractual obligation becomes effective, it must pay for the facility upgrades necessary to support its service request. Likewise, if a customer requests transmission service for ten years, but the transmission provider indicates that it has available capacity to provide the service for only three years, the customer must pay for facility upgrades if it wants service beyond the initial three-year period. Thus, if the transmission provider properly reflects its planning in the initial transmission contract as discussed above, there will be no opportunity for a firm transmission service customer to game the system by requesting a shorter-term contract.⁹

Application of Rollover Rights Policy – Reservation in Initial Service Agreement

16. SPP also argues that its proposed service agreement language merely provides transmission customers with the notification of possible limitations on their rollover rights, and does not limit their rights in any way. SPP emphasizes that allowing the proposed provisions to remain in the transmission service agreements will not interfere with a customer's right to obtain the service, but will simply provide an incentive for a customer who knows that it will need transmission over a longer time period to consider entering into a contract of a suitable term.

17. SPP argues that it does not make sense to allow a transmission provider to limit a customer's rollover rights in the initial service agreement and only to accommodate native load, because future events not foreseeable at the time the initial service agreement is entered into may change the amount of capacity that is available when the customer

⁹See Tenaska, 102 FERC ¶ 61,140 at P 30; Exelon, 101 FERC ¶ 61,226 at P 24. We also note that transmission customers do have incentives to request service for more than one year. If, for example, a transmission customer enters into a ten-year contract instead of a one-year contract, it does not face having to exercise its rollover rights every year, with the risk that a competing customer will seek its transmission capacity, and the attendant risk that it must match any longer-term request in order to retain its transmission service. The transmission customer with the ten-year contract has much more certainty than the customer with the one-year contract.

renews.¹⁰ SPP explains that each of the service agreements at issue here provided a listing of factors that can legitimately influence the amount of transmission capacity available to support a rollover request. SPP states that under Commission precedent, a transmission provider can deny a rollover request to the extent the capacity is needed to support increases in native load, which SPP has listed in the agreements as one of the factors. SPP submits that the service agreements also state that the amount of capacity available to support a rollover request may be diminished by the need to serve other previously approved non-competing service requests. SPP contends that the remaining limitations it proposed to include also presented legitimate reasons why the amount of transmission capacity may be reduced over time, and should be allowed. SPP submits that changes on other systems and loop flows from other systems will affect the amount of transmission capacity available on the SPP system. SPP adds that, in its orders addressing seams issues and in other contexts, the Commission has recognized that events on one system can affect neighboring systems.¹¹ SPP argues further that transmission service requests are granted based on the expected transmission system topology for the term of the initial request, and if that topology changes, then transmission availability will change as well.

Commission Response

18. As the Commission explained in the August 30 Order, there are limited circumstances under which a transmission provider can restrict a transmission customer's rollover rights under Section 2.2, and any limitation to the rollover rights must be clearly stated in the original service agreement.¹² In announcing the rollover rights policy in Order No. 888, we explained that there are circumstances under which a transmission provider can restrict a transmission customer's rollover rights under Section 2.2. For example, the Commission determined that public utilities may reserve existing transmission capacity needed for native load growth reasonably forecasted within the public utility's current planning horizon.¹³ In Order No. 888-A, the Commission stated that "if a utility provides firm transmission service to a third party for a time until native load needs the capacity, it should specify in the contract that the right of first refusal does not apply to that firm

¹⁰ SPP's Request for Rehearing at 10-11.

¹¹ *Id.* at 12.

¹² 100 FERC ¶ 61,239 at P 22-23.

¹³ Order No. 888 at 31,694.

service due to a reasonably forecasted need at the time the contract is executed.¹⁴ Thus, the industry was on adequate notice with the issuance of Order Nos. 888 and 888-A of the Commission's policy regarding restrictions on rollover rights. To the extent that, after the issuance of those orders, SPP was uncertain as to the Commission's policy in this regard, SPP could have sought clarification at that time.

19. Since the issuance of Order Nos. 888 and 888-A, the Commission has consistently reaffirmed this policy, stating that a transmission provider can deny a customer the ability to roll over its long-term firm transmission service agreement only if the transmission provider includes in the original service agreement a specific limitation, such as demonstrated native load growth or a prior reservation of capacity for service that commences in the future.

20. On this basis, we will reject SPP's request that the Commission allow it to add restrictions to existing customers' rollover rights in subsequent renewals of those customers' transmission service agreements. The Commission's decision in the August 30 Order directing SPP to remove the proposed restrictions on rollover rights that SPP sought to add to the service agreements in Docket Nos. ER02-2222-000, ER02-2223-000, ER02-2225-000 and ER02-2226-000 was fully consistent with Commission precedent as such restrictions were not included in the original service agreements.

21. In the case of Tex-La, SPP sought to include in the original service agreements certain limitations on Tex-La's rollover rights. However, the Commission explained in the August 30 Order why the particular language proposed by Tex-La was not sufficient to limit Tex-La's rollover rights. The Commission noted that, "as [it] stated in Nevada Power Company,¹⁵ general statements that a transmission provider is experiencing high load growth and that its obligation to serve native load customers is projected to significantly increase 'do not provide a sufficient basis upon which a customer can reasonably ascertain the extent to which its rights under Section 2.2 are being limited."¹⁶ The Commission noted that the language proposed by SPP, which refers to "the need to meet growth in the native load served by the transmission provider," is similar to that which the Commission rejected in Nevada Power, and rejected it on that basis. SPP has failed to demonstrate on rehearing that the Commission's decision rejecting a restriction based on generalized statements regarding possible native load growth was in error.

¹⁴Order No. 888-A at 30,198.

¹⁵97 FERC ¶ 61,324 at 62,493 (2001).

¹⁶August 30 Order, 100 FERC ¶ 61,239 at P 25.

22. SPP also sought to limit Tex-La's rollover rights based on other factors, and argues on rehearing that these other factors present legitimate reasons why the amount of transmission capacity may be reduced over time, and therefore should be allowed to restrict a customer's rollover rights. In the August 30 Order, the Commission rejected SPP's proposal to reduce the capacity available for any future renewal of transmission service by Tex-La "due to factors such as . . . changes in transmission system topology, loop flow impacts due to changes in transactions on other transmission systems, redispatch of designated network resources."¹⁷ As the Commission explained in the August 30 Order, SPP had pointed to no provision in its tariff or to any Commission precedent that would permit the inclusion of such limits on a customer's rollover rights, and there are none. The factors that SPP lists are merely generalized descriptions of factors that any transmission provider may face. Such general factors, however, are not the specific, limited circumstances under which the Commission has decided that a transmission provider can restrict a customer's rollover rights. SPP has failed to demonstrate on rehearing that the Commission's decision rejecting these generalized restrictions was in error.

23. Similarly, SPP's proposal that the amount of capacity available to support a rollover request may be diminished by the need to serve other "previously approved non-competing service requests," is not sufficient to satisfy the Commission's requirements. Although the Commission has explained that it may be reasonable for a transmission provider to limit the terms under which a new long-term agreement may be rolled over based on a pre-existing contract obligation that commences in the future,¹⁸ the limitation that SPP seeks here does not meet that requirement. Indeed, the explanation that SPP gives to support its request that it be able to restrict a customer's rollover rights based on "previously approved non-

¹⁷August 30 Order, 100 FERC ¶ 61,239 at P 26. See also Southwest Power Pool, Inc., 100 FERC ¶ 61,358 at P 12 (2002).

¹⁸For example, to the extent that a system impact study completed prior to the execution of the original service agreement indicates that available transfer capability to serve the customer will only be available for a particular time period, after which time it is already committed to another transmission customer under a previously-confirmed transmission request (*i.e.*, an agreement under which service would commence at some time in the future), the transmission provider can reflect those obligations in the long-term contract and thereby limit the prospective transmission customer's rollover rights. See Section 19.7 of the Order No. 888 pro forma tariff (concerning partial interim service). See also Tenaska, 102 FERC ¶ 61,140 at P 38; Exelon, 101 FERC ¶ 61,226 at P 32; Morgan Stanley Capital Group v. Illinois Power Company, 93 FERC ¶ 61,081 at 61,220 (2000) ("[H]ad Morgan Stanley requested, for example, long-term service for a two-year period, but only one year was available, Illinois Power would have been obligated to offer service for that one available year").

competing service requests" confirms that the rationale for the proposed limitation is not a prior reservation for service that commences in the future. Instead, SPP supports its requested limitation on the basis that other firm customers who "are long-term customers and transmission owners who serve native load, and who have paid for and helped support the transmission system for many years . . . should not be interrupted simply to accommodate the rollover requests of parties who are unwilling to commit to serve for similar amounts of time."¹⁹ As the Commission has explained, however, the rollover rights policy obligates the transmission provider to plan and operate its system with the expectation that it will continue to provide service to a long-term customer (regardless of whether that customer's contract term is one year or ten years) should the customer request to roll over its contract term. To the extent that SPP disagrees with the Commission's policy call in this regard, it should have sought clarification at the time that the Commission established the rollover rights policy.

24. In the August 30 Order, the Commission also rejected as inappropriate SPP's attempt to condition renewal of transmission service based on subsequent Commission or Court decisions (namely, the proceeding in Docket No. EL02-86 "or related ones").²⁰ On rehearing, SPP argues that the statement that a customer's rollover rights may be affected by the eventual outcome of the proceeding in Docket No. EL02-86 does not harm the transmission customers in any way and therefore should be allowed. We do not find SPP's argument in this regard to be persuasive. Indeed, future Commission or Court decisions could affect all aspects of SPP's operation of its system and any such effect should be borne by all of SPP's customers and not just those seeking to exercise rollover rights. SPP has provided no rational justification for treating one long-term customer differently from another. We continue to find it inappropriate for a transmission provider to attempt to condition a customer's right to roll over its transmission service based on subsequent Commission or Court decisions in other proceedings.

25. Based on the foregoing, we deny SPP's request for rehearing.

The Commission orders:

SPP's request for rehearing is hereby denied.

By the Commission.

¹⁹SPP Request for Rehearing at 11.

²⁰August 30 Order, 100 FERC ¶ 61,239 at P 27 n.17.

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Magalie R. Salas,
Secretary.