

point transmission service customer under SPP's OATT, will take and pay for ancillary services consistent with the terms of SPP's OATT.³ SPP requests that the Agreement become effective May 1, 2005.

3. As relevant here, section 3.0 of the Agreement provides that KPP may self-supply all or a portion of its ancillary services as allowed in section 3.0 of SPP's OATT. In addition, the Agreement provides a list of ancillary services that KPP will self-provide or purchase.

Notice of Filing and Responsive Pleadings

4. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 34,752, 37,387 (2005), with interventions and protests due on or before June 21, 2005. On June 20, 2005, KPP filed a motion to intervene and a protest. On June 21, 2005, Westar filed a motion to intervene. On July 5, 2005, Westar filed an answer to KPP's protest. On July 7, 2005, SPP filed an answer to KPP's protest.

5. KPP states that Westar has taken the position that KPP must either purchase or self-supply all of the ancillary services that it may contract or provide for, and may not self-supply only a portion of an ancillary service.⁴ KPP also argues that the Agreement wrongly requires KPP to demonstrate its ability to self-supply ancillary services to both the transmission owner and the transmission provider.⁵

6. KPP also challenges the filing as premature and the requested effective date as unnecessary, since, it argues, it has not yet received ancillary services. It states that, although service began on May 1, 2005, it terminated quickly due to a billing dispute.⁶ KPP states that it has advised SPP that the effective date of the agreement should be the date on which network service commences. Otherwise, KPP contends, Westar could be charging KPP for ancillary services that it does not need and is not taking.⁷

³ KPP currently has a pending application for Network Integration Transmission Service under the SPP OATT.

⁴ KPP Protest at 7-10.

⁵ *Id.* at 9.

⁶ *Id.* at 6-7.

⁷ KPP Protest at 6-7, 11.

7. KPP argues that the Agreement does not contain all of the arrangements that the parties have agreed upon. KPP also argues that the Agreement: (a) fails to provide that the parties may modify the Agreement based upon further discussions; (b) fails to include the parties' agreement regarding metering of city-owned generation; (c) wrongly requires KPP to hold Westar harmless if there is an interruption of Westar's supply of ancillary services to KPP; (d) does not properly provide for the handling of imbalances; (e) does not provide for the proper compensation for the provision of reactive power and spinning and supplemental reserves; (f) does not contain the proper support for or properly explain the proposed distribution facilities charge; and (g) includes vague standards (*i.e.*, North American Electric Reliability Council, OATT, and SPP criteria)⁸ that KPP must meet in order to qualify to self-supply ancillary services.⁹

8. Westar argues that there is a present need for an ancillary services agreement, since Westar, as KPP's local control area operator, provided KPP with all of the ancillary services to support KPP's receipt of electric energy throughout the month of May 2005.¹⁰ Westar also argues that, absent KPP's demonstration that it actually self-supplied the ancillary services that supported its receipt of electric energy during May 2005, SPP's OATT allows SPP to impose a penalty equal to 200 percent of the specific ancillary service charge for the host control area (*i.e.*, the control area where the load is located) for the entire length of the reserved period but not exceeding one month. Westar submits that either the Commission should accept the Agreement, effective on May 1, 2005, or SPP should assess KPP the applicable penalty for the month of May 2005.¹¹

9. Westar further argues that the criteria governing KPP's demonstration that it can self-supply ancillary services is not vague, since nothing in SPP's OATT places any limitation on SPP's sole discretion to determine whether the customer has demonstrated that it has adequate resources to self-supply ancillary services.¹² Westar also maintains

⁸ KPP argues that section 3.0 of the Agreement refers to NERC, OATT, and SPP criteria without indicating what those criteria are for each type of ancillary service.

⁹ KPP Protest at 3-5.

¹⁰ Westar Answer at 3-4, 11.

¹¹ *Id.* at 4, 11.

¹² *Id.* at 6.

that the Commission itself relied upon NERC criteria when it defined the six ancillary services that it required transmission providers to supply.¹³

10. Westar further maintains that, as the local control area operator, it should have the authority to judge whether KPP has demonstrated that it can self-supply ancillary services.¹⁴ Westar contends that KPP has failed to show that it is capable of self-supplying ancillary services, that any ancillary services its generators can provide would benefit the transmission system, or that it is prepared to commit to make its resources available to supply the necessary ancillary services.¹⁵ Finally, Westar argues that KPP is not entitled to either a credit or other compensation for supplying reactive power, because SPP's OATT does not permit KPP to supply reactive power and voltage control services in the first place.¹⁶

11. SPP states that the Agreement should have an effective date of May 1, 2005, since KPP has been taking transmission service since that date and there is no other ancillary service agreement in place.¹⁷ SPP further states that, under its OATT, KPP can self-supply ancillary services.¹⁸ so long as it can make a satisfactory showing to SPP that it

¹³ *Id.* Westar cites *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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,706-10 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 4, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁴ Westar Answer at 5.

¹⁵ *Id.* at 7-11.

¹⁶ *Id.* at 7-8.

¹⁷ SPP Answer at 1.

¹⁸ Under SPP's OATT, KPP can self-supply Ancillary Services 3 through 6 (Schedule 3 – Regulation and Frequency Response Service; Schedule 4, Energy Imbalance Service; Schedule 5 – Operating Reserve – Spinning Reserve Service; and Schedule 6, Operating Reserve – Supplemental Reserve Service). *Id.* at 2.

can provide these services.¹⁹ SPP submits that it makes sense to allow Westar, the transmission owner, to participate in evaluating whether KPP can self-supply ancillary services because Westar will be the one that has to provide ancillary services in the event that KPP cannot reliably and adequately self-supply ancillary services. SPP also argues that because the Agreement refers to objective criteria that govern the determination of whether or not KPP can self-supply ancillary services,²⁰ SPP and Westar cannot be arbitrary in their determination of whether or not KPP can adequately self-supply these services.²¹

12. SPP opposes KPP's request for credit or other compensation to provide reactive power and voltage control services. SPP notes that, under the SPP OATT, KPP is not allowed to self-supply reactive power or voltage control services, but must purchase these services from SPP.²² SPP argues that, in any event, KPP has not demonstrated that it can provide such service.²³ SPP opposes KPP's request that it need not use revenue quality meters at certain generation plants;²⁴ SPP points out that the SPP OATT requires that a transmission customer have and maintain suitable metering.²⁵

13. SPP agrees that it has improperly billed KPP for network service for May 2005. It states that it will send a corrected invoice to KPP. SPP submits, however, that KPP is responsible for paying for the point-to-point transmission service that it has taken during May 2005, and for all related ancillary service charges.²⁶

¹⁹ *Id.*

²⁰ SPP refers to the NERC, OATT and SPP Criteria specified in section 3 of the Agreement. *Id.* at 4.

²¹ *Id.*

²² *Id.* at 5, citing SPP OATT, Schedule 2,

²³ *Id.* at 5.

²⁴ *Id.* at 5-6.

²⁵ *Id.* at 5.

²⁶ *Id.* at 6.

14. Regarding the proposed effective date of May 1, 2005, SPP points out that since that date it has been providing KPP with non-firm point-to-point transmission service and that it is necessary to have an ancillary services agreement in place as of May 1, 2005, to support deliveries of power to KPP. SPP notes that, absent an ancillary services agreement, KPP would be subject to the 200 percent penalty set forth in section 3 of SPP's OATT.²⁷

15. Regarding KPP's observation that the Agreement contains no language preserving KPP's rights to continue to negotiate certain provisions of the Agreement or to seek recourse at the Commission, SPP replies that such language is unnecessary. SPP states that, under section 3 of its OATT, it is obligated to continue to evaluate KPP's proposals, and that, as the Agreement is unexecuted, KPP is free to raise its arguments before the Commission regardless of any language in the Agreement.²⁸

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁹ KPP and Westar's timely, unopposed motions to intervene serve to make them a party to this proceeding.

B. Notice of Withdrawal

17. No party raised concerns regarding Westar's Notice of Withdrawal of its filing of the Agreement. We will accept Westar's request to withdraw its filing of the Agreement, since the identical Agreement was filed by SPP.

C. Self-Supply of Ancillary Services

18. On the basis of an e-mail that KPP received from Westar,³⁰ KPP argues that Westar is taking an "all-or-nothing" approach to KPP's self-supplying ancillary services.

²⁷ *Id.* at 7. SPP also notes that it filed the agreement within 30 days of commencement of service. *Id.*

²⁸ *Id.* at 7.

²⁹ 18 C.F.R. § 385.214 (2005).

³⁰ KPP Protest, Exhibit A.

That is, according to KPP, it is Westar's position that KPP may not self-supply a portion of an ancillary service.³¹

19. We do not understand the concern that KPP raises, especially since the OATT and the Agreement both allow KPP to supply a portion of an ancillary service. SPP states that under the SPP OATT "a Transmission Customer can supply *some or all* of Ancillary Services 3 through 6 . . ."³² Likewise, the Agreement explicitly provides that KPP "may self-supply *all or a portion* of its ancillary services as allowed in section 3.0 of SPP's OATT."³³ SPP concurs that the Agreement clearly allows KPP to self-supply ancillary services so long as it demonstrates to SPP that it can self-supply these services.³⁴ To the extent that SPP or Westar would refuse to allow KPP to self-supply less than 100 percent of an ancillary service,³⁵ doing so would be inconsistent with the OATT and the Agreement, which we are accepting, and would violate both the filed rate doctrine and Commission precedent.³⁶

D. Demonstration of Ability to Self-Supply

20. Section 3.0 of the Agreement states that "the ability of the Transmission Customer to self-supply an ancillary service will begin upon the satisfactory demonstration to the *Transmission Owner* and the *Transmission Provider* that the Transmission Customer has the ability to self-supply the specific ancillary service."³⁷ Section 3.0 of SPP's OATT, however, provides that "[t]he *Transmission Provider* shall determine whether the

³¹ KPP Protest at 7-10.

³² SPP Answer at 2 (emphasis supplied). In the Transmittal Letter that it filed in Docket No. ER05-1051-000, Westar similarly stated: "Under the Agreement, KPP may self-supply all or a portion of its ancillary services as allowed in the SPP OATT." Westar Transmittal Letter at 1.

³³ Agreement at section 3.0. (emphasis supplied).

³⁴ SPP Answer at 4.

³⁵ KPP will not self-supply scheduling and reactive supply and voltage control services, but will purchase those services from SPP.

³⁶ See *Midwest Independent Transmission Operator, Inc.*, 98 FERC ¶ 61,075 at 61,213 (2002), *order on reh'g*, 99 FERC ¶ 61,198 (2002) (*Midwest*).

³⁷ Emphasis supplied.

Transmission Customer has adequately demonstrated that it has acquired the Ancillary Service from another source.”³⁸ In contrast to the OATT, the Agreement vests authority not only in SPP as the transmission provider, but also in Westar, as the transmission owner, to determine whether KPP has the ability to self-supply a specific ancillary service. This provision goes beyond SPP’s OATT; as noted above, the OATT vests that authority only in the transmission provider, SPP. Accordingly, we will require SPP to revise the Agreement by removing the reference to the transmission owner.

E. Hearing and Settlement Judge Procedures

21. With regard to the other concerns raised, our preliminary analysis indicates that the Agreement has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept in part, and reject in part, as discussed above, the proposed rate schedule for filing, as discussed above, suspend it for a nominal period, make it effective May 1, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures.

22. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure.³⁹ 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.⁴⁰ The settlement judge 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 commencement of a hearing by assigning the case to a presiding judge.

³⁸ SPP OATT section 3.0 (emphasis supplied).

³⁹ 18 C.F.R. § 385.603 (2005).

⁴⁰ 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. The Commission’s website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

F. Effective Date

23. KPP argues that there is no need for an ancillary services tariff at this time because it is not taking ancillary services. Although currently suspended due to a billing dispute, service actually began on May 1, 2005.⁴¹ SPP filed the Agreement on May 31, 2005, within 30 days of the commencement of service. We will, therefore, waive the 60-day prior notice requirement and make the Agreement effective May 1, 2005, subject to refund.⁴²

The Commission orders:

(A) Westar's withdrawal of its filing in Docket No. ER05-1051-000 is hereby accepted.

(B) The Agreement filed in Docket No. ER05-1052-000 is hereby accepted in part, and rejected in part, and suspended for a nominal period, to become effective May 1, 2005, as requested, subject to refund, as discussed in the body of this order.

(C) 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 Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), 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 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 within five (5) days of the date of this order.

⁴¹ KPP Protest at 6.

⁴² See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 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 in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.