

108 FERC ¶ 61,078  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER99-4392-004

ORDER ON REMAND

(Issued July 28, 2004)

1. In this order, the Commission is acting on the remand ordered by the June 13, 2003 decision of the United States Court of Appeals for the District of Columbia Circuit, *East Texas Electric Cooperative, Inc., et al. v. FERC*, 331 F.3d 131 (D.C. Cir. 2003) (Remand Order). Pursuant to the Remand Order, the Commission reaffirms its “integration” standard as the standard that all transmission owners must meet to receive revenue allocations pursuant to the Southwest Power Pool (SPP) Regional Tariff. In addition, we find, based on our findings in Docket No. EL98-66-000,<sup>1</sup> that the transmission facilities owned by East Texas Electric Cooperative, Inc. (ETEC), Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, Cooperatives) are not integrated with SPP and thus the Cooperatives should not receive revenue allocations under the SPP Regional Tariff.

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<sup>1</sup>East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company, 108 FERC ¶ 61,077 (2004).

## **Background**

### **Prior Commission Orders**

2. In an order issued December 17, 1999, the Commission accepted for filing, as modified, SPP's amendments to its regional transmission tariff. The Commission also accepted for filing SPP's new Membership Agreement. *Southwest Power Pool*, 89 FERC ¶ 61,284 (1989) (December 17 Order). As relevant here, the Commission addressed the allocation of the transmission revenues that SPP receives for service provided under its regional transmission tariff. 89 FERC at 61,890-91.
3. The Cooperatives opposed SPP's proposed allocation of network transmission revenues on the basis that, under the proposal, the Cooperatives would not share in the revenues. The Cooperatives stated that, while each owns transmission facilities that are integrated with SPP (through Central and South West Corporation (CSW)), the Cooperatives were not designated as a "host" or transmission pricing zone, and thus were not entitled to share in the revenues, as were other larger transmission owners. Moreover, the Cooperatives complained that the only way each could receive any revenues was to seek credits for customer-owned transmission facilities through section 30.9 of SPP's tariff (which tracks section 30.9 of the *pro forma* tariff). The Cooperatives complained that this section is an inadequate remedy for small transmission-owning members of SPP. The Cooperatives argued that other large transmission owners receive revenue directly from SPP operations, while small transmission owners are forced to meet the requirements of section 30.9. The Cooperatives suggested that SPP should be required to suballocate revenues between multiple transmission owners in a zone. In the alternative, the Cooperatives suggested that each transmission owner be designated as a transmission pricing zone.
4. SPP responded that the Cooperatives' concerns were addressed during the development of the SPP tariff and that it was not willing to permit transmission facilities to be reflected in the SPP tariff without a demonstration that the facilities were integrated into the grid, consistent with section 30.9 of its tariff. SPP also noted that the issue of whether one of the Cooperatives' facilities (those of ETEC) are integrated was then being litigated in Docket No. EL98-66-000.

5. In the December 17 Order, the Commission accepted for filing SPP's proposed allocation of revenues, subject to the outcome of the ongoing litigation in Docket No. EL98-66-000.<sup>2</sup>

6. On rehearing, the Cooperatives again requested that the Commission require SPP to place the Cooperatives' transmission facilities under the SPP tariff and designate them as a transmission pricing zone. The Cooperatives also objected to the Commission making this proceeding subject to the outcome of Docket No. EL98-66-000. The Cooperatives further argued that SPP does not require other SPP-member transmission owners, such as CSW, to make a showing of integration before being treated as transmission pricing zones. The Cooperatives also maintained that the Commission's reliance on Docket No. EL98-66-000 is misplaced, since only one of the Cooperatives' facilities is at issue in that proceeding, and the question being addressed is whether those facilities are integrated with CSW, not SPP.

7. The Commission agreed with the Cooperatives that the dispute in Docket No. EL98-66-000 was not sufficiently connected with the dispute in the instant docket to subject the outcome of the instant proceeding to the outcome in Docket No. EL98-66-000. *Southwest Power Pool*, 98 FERC ¶ 61,038 at 61,108-10 (2002) (January 17 Order). The Commission continued, however, that the Cooperatives had not adequately demonstrated that: their facilities are integrated with the facilities of other SPP transmission providers, and are used other than solely to distribute power to their distribution members; provide any benefits to SPP in terms of additional capability or reliability; and are relied upon for coordinated operation of the grid -- which is why the Cooperatives' facilities were not included under the SPP tariff and the Cooperatives were not treated as a transmission pricing zone eligible to share in the revenues. The Commission concluded that the Cooperatives did not meet the criteria for inclusion of their transmission facilities under the SPP tariff, and reaffirmed its acceptance of SPP's proposed revenue allocation.<sup>3</sup>

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<sup>2</sup> December 17 Order at 61,890-91. Docket No. EL98-66-000 is the subject of an order issued concurrently with this order. *See East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company*, 108 FERC ¶ 61,077 (2004).

<sup>3</sup> January 17 Order at 61,109-10.

### **Court Remand**

8. The Cooperatives sought judicial review of the Commission's decisions. In the Remand Order, the Court acknowledged that neither the SPP tariff nor SPP's Membership Agreement indicated how an entity, upon joining SPP as a transmission-owning member, becomes a "host" or transmission pricing zone eligible to share in SPP's revenues. The Court nevertheless stated that the purpose of host zones is to compensate utilities for the services they provide to SPP so that SPP, in turn, could provide service under its tariff, and that the identification of a host zone can only follow from a determination that a utility is providing transmission service that benefits the SPP system as a whole. The Court concluded that, in this context, the standard for transmission-owning members to qualify as a host zone could reasonably require ETEC to show that its transmission facilities "would contribute to the overall functioning of the SPP system, *i.e.*, the integration standard."<sup>4</sup>

9. The Court continued that the Commission, although it referenced "earlier findings" in its January 17 Order, never, in fact, made findings in this proceeding that the Cooperatives' facilities were not integrated with the SPP system. The Court therefore remanded the case to the Commission for the purpose of determining whether the Cooperatives' facilities were or were not integrated with the SPP system. The Court continued that, on remand, the Commission may consider the findings in Docket No. EL98-66-000, *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, 89 FERC ¶ 63,005 (1999), where an administrative law judge had concluded that ETEC's facilities were not integrated with those of SPP member CSW. The Court also stated that the Commission may, or may not, conduct a hearing on the issue, as needed.<sup>5</sup>

### **Filings on Remand**

10. On July 24, 2003, the Cooperatives filed a motion requesting that the Commission: (1) state explicitly on remand the standard that transmission owners must meet under the SPP tariff to qualify as a transmission pricing zone and thus share in the revenues SPP receives for the transmission service it provides under its tariff; and (2) if necessary institute procedures to apply that standard. The Cooperatives suggest that the Commission's policy should be one of ensuring that regional organizations are as inclusive as possible when it comes to including transmission facilities. The Cooperatives also suggest that the Commission adopt one of two standards to determine whether a transmission owner is integrated with SPP. The first suggestion is that a SPP

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<sup>4</sup> Remand Order at 137. In its decision, the Court contrasted this integration standard with "mere interconnection between a customer's facilities and the transmission provider's facilities." *Id.* at 133.

<sup>5</sup> *Id.* at 138-39.

transmission owner need only sign the Membership Agreement as a transmission owner to be integrated with SPP and entitled to a share of SPP transmission revenues. Alternatively, the Cooperatives' suggest, the Commission require that all transmission owners must meet the integration test of section 30.9 of the tariff.

11. Of the alternatives, the Cooperatives suggest that the most straight-forward test is the former, *i.e.*, the membership standard. The Cooperatives point out that this standard would mean that, by signing the Membership Agreement, a transmission owner's facilities would automatically be considered integrated as part of the SPP grid under the tariff and automatically would be designated a transmission pricing zone. In addition, the Cooperatives point out that this standard is fundamentally fair, as opposed to the integration test of section 30.9 standard, which, by its nature, is a fact-specific determination.

12. SPP filed an answer to the Cooperatives' motion. SPP argues that most of the Cooperatives' arguments relating to what standard a transmission owner must meet to be a transmission pricing zone and thus share in transmission revenues have already been addressed by this Commission (in its December 17 and January 17 Orders) and by the Court (in the Remand Order). SPP states that these issues do not need to be relitigated here. The only issue that the Commission needs to address on remand is whether the Cooperatives' transmission facilities are actually integrated with those of SPP.

13. In response to the Cooperatives' suggestion that the Commission should adopt a standard based on signing the Membership Agreement, SPP argues that this is contrary to principles of cost causation.

14. Public Service Company of Oklahoma and Southwestern Electric Power Company (PSO/SWEPCO) filed an answer to the Cooperatives' motion. PSO/SWEPCO urge the Commission (1) to deny the Cooperative's request to expand the scope of the remand proceeding and (2) citing the Remand Order, 331 F.3d at 138, to institute a paper hearing to determine "whether [ETEC] facilities within the SPP pool area are integrated with SPP's transmission system."

15. The Cooperatives filed an answer. The Cooperatives argue that the Commission has full authority to act on remand to articulate and apply a standard for determining what facilities and what owners should receive revenues from SPP. The Cooperatives further argue that the Commission cannot leave to SPP's unfettered discretion the determination of which transmission owners will share in SPP's revenues.

## Discussion

16. As discussed below, we reaffirm that SPP has properly used the integration standard to determine whether an entity, upon joining SPP as a transmission owning member, can become a “host” or transmission pricing zone eligible to share in SPP’s revenues.

17. Traditionally, the Commission has required that a customer claiming transmission credits must demonstrate that its facilities not only are integrated with the transmission provider’s system, but also provide additional benefits to the transmission grid in terms of capability and reliability and can be relied on by the transmission provider for the coordinated operation of the grid.<sup>6</sup>

18. Thus the Commission has provided for credits for customer-owned transmission facilities in the *pro forma* tariff upon an appropriate showing:<sup>7</sup>

**30.9 Network Customer Owned Transmission Facilities:** The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers. For facilities constructed by the Network Customer subsequent to the Service Commencement Date under Part III of the Tariff,

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<sup>6</sup> Order No. 888-A, FERC Stats. & Regs. at 30,271.

<sup>7</sup>*Id.* The Commission applied this integration test prior to Order 888-A. See *Florida Municipal Power Agency v. Florida Power & Light Company*, 67 FERC ¶ 61,167 (1994) (*FMPA*), *reh'g denied*, 74 FERC ¶ 61,006 (1996), *reh'g dismissed and denied*, 96 FERC ¶ 61,130 (2001), *aff'd*, 315 F.3d 362 (D.C. Cir. 2003). In *FMPA*, the Commission concluded that, although FMPA owned transmission facilities that were interconnected with Florida Power & Light Company's (Florida Power) facilities, the FMPA facilities were not integrated, *i.e.*, they were not used by Florida Power to provide transmission service to FMPA or any other party nor were they used by Florida Power to provide transmission service to its non-FMPA customers. Therefore, the Commission found that a credit was not appropriate. See 74 FERC at 61,010-11.

Indeed, the approach to credits that the Commission took in Order 888 was informed by its experience in FMPA.

the Network Customer shall receive credit where such facilities are jointly planned and installed in coordination with the Transmission Provider. Calculation of the credit shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

19. The Commission stated that the intent of section 30.9 of the *pro forma* tariff was that, for a customer to be eligible for a credit, its facilities must not only be integrated with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid. The Commission continued that the mere fact that a transmission customer's facilities may be interconnected with a transmission provider's system does not prove that the two systems comprise an integrated whole such that the transmission provider is able to provide transmission service to itself or other transmission customers over these facilities.<sup>8</sup>

20. The Commission also explained that this standard was premised on a fundamental cost allocation concept that applied to the transmission provider as well as the customer: just as the transmission provider cannot charge the customer for facilities not used to provide transmission service, the customer cannot get credits for facilities not used by the transmission provider to provide service.<sup>9</sup>

21. On at least two occasions recently, including in the Remand Order, the District of Columbia Circuit has spoken approvingly of this integration test,<sup>10</sup> and the Commission used this same approach in December 2003. *See Florida Power & Light Company*, 105 FERC ¶ 61,287 (2003). Indeed, in the Remand Order, the Court specifically found that the Commission did not act arbitrarily in interpreting the SPP Regional Tariff as requiring application of the integration test.<sup>11</sup> The Court, however, found that the Commission had failed to provide a valid basis for its finding that ETEC's facilities are not integrated with any SPP transmission provider. The Court stated that, on remand, the Commission could consider the findings in the initial decision in Docket No. EL98-66-000, *East Texas Cooperative, Inc. v. Central and South West Services, Inc.*, 89 FERC ¶ 63,005 (1999).

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<sup>8</sup> Order 888-A, FERC Stats. & Regs. at 30,271.

<sup>9</sup> *Id.* at 30,271 & n.277.

<sup>10</sup> *East Texas Electric Cooperative, Inc. v. FERC*, 331 F.3d 131 (D.C. Cir. 2003); *Florida Municipal Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003).

<sup>11</sup> Remand Order at 137.

22. The Commission, in an order issued concurrently with this order,<sup>12</sup> has affirmed the initial decision in Docket No. EL98-66-000. The initial decision found that the transmission facilities owned by ETEC are not integrated with the facilities of Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (SWEPCO) (referred to collectively as CSW), and that ETEC accordingly was not entitled to credits from CSW. In affirming the initial decision, the Commission applied its traditional integration test and determined that ETEC's facilities are not integrated with CSW's facilities. In this case, the Cooperative's claim for an allocation of transmission revenues under the SPP Regional Tariff rests on ETEC's facilities being integrated with CSW's facilities. Because ETEC's facilities are not integrated with an SPP member's facilities, *i.e.*, CSW's facilities, the Cooperative's facilities are not integrated with the SPP system. We accordingly find that the Cooperatives should not receive revenue allocations under the SPP Regional Tariff.

The Commission orders:

In light of the finding in the body of this order, SPP need not revise the SPP Regional Tariff to provide a revenue allocation to the Cooperatives.

By the Commission. Chairman Wood concurring with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>12</sup> East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company, 108 FERC ¶ 61,077 (2004)

UNITED STATES OF AMERICA  
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Southwest Power Pool, Inc.  
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Docket No. ER99-4392-

(Issued July 28, 2004)

WOOD, Chairman, concurring:

This order finds the Cooperatives are not entitled revenue allocations from SPP because their transmission facilities are not integrated with the SPP system. Because we have applied long-standing precedent regarding the integration standard to reach this conclusion, I support the order. However, I write separately to express misgivings about the integration standard. We have stated in other contexts that the transmission grid is a single piece of equipment such that system expansions are used by and benefit all users due to the integrated nature of the grid. See *Entergy Gulf States, Inc.* 99 FERC ¶ 61,095 at P 13 (2002). And, as I stated in my concurrence in *Florida Power & Light Company*, 105 FERC ¶ 61,287 (2003), if the parties were in a regional transmission organization (RTO) there would be no dispute because all transmission facilities within the RTO, whether owned by CSW or East Texas, would have been treated comparably and the rates would have reflected such treatment. We recently approved SPP's proposal for RTO status (*Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004)), and encourage the Cooperatives to become part of the RTO. In that regard, I expect this situation will get resolved on a going-forward basis.

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Pat Wood, III  
Chairman