

105 FERC ¶ 61,313  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

AEP Operating Companies

Docket No. ER04-64-000

ORDER REJECTING TRANSMISSION SERVICE AGREEMENTS AND  
INTERCONNECTION AND OPERATING AGREEMENT

(Issued December 19, 2003)

1. In this order, we will reject, without prejudice to AEP Operating Companies' (AEP) refiling at a later date, the unexecuted transmission service agreements (TSAs) submitted by AEP for Electric Reliability Council of Texas (ERCOT) Regional Transmission Service to a number of customers, and a separate executed Interconnection and Operating Agreement (IA) between AEP Texas North Company (AEP Texas) and the City of Brady, TX (Brady) which is one of the TSA customers.

**AEP Filing**

2. AEP states that it presently has transmission service agreements approved by the Commission with all eligible ERCOT customers, identified by ERCOT and the Public Utility Commission of Texas (Texas Commission), as load serving entities in 2002.

3. AEP explains that the Texas Commission will issue some time this year an order in Texas Docket No. 26950 that will identify the load serving entities in ERCOT who will be the customers for ERCOT wholesale transmission services in 2003. AEP states that it has filed TSAs with the Commission, under Part IV of its Open Access Transmission Tariff (AEP's OATT), in anticipation of the Texas Commission's final order in Texas Docket No. 26950; AEP claims that the customers that it filed TSAs with are expected to be identified by the Texas Commission this year as additional load serving entities in ERCOT. AEP states that it filed these TSAs before the issuance of the Texas Commission's order to ensure that AEP will have TSAs in place with all past and future expected load serving entities in ERCOT. AEP states that these TSAs are being

filed for Commission approval in compliance with Commission Order No. 2001,<sup>1</sup> which requires nonconforming agreements, such as unexecuted agreements, to be filed.

4. AEP also filed a non-conforming IA in compliance with Order No. 2001. AEP states that it is now necessary to provide this IA with Brady since the bundled wholesale service agreement between Brady and AEP Texas terminated in December 2002. AEP states that there have been no contractual provisions for AEP's transmission service to Brady since the expiration of its bundled wholesale service agreement with Brady. AEP states that Brady is the only customer that is directly interconnected to AEP's system (more specifically, AEP Texas). AEP states, in regards to the IA, there are no AEP or AEP Texas related rates or charges to Brady. AEP states that each party to that agreement has borne the cost of the transmission facilities it provided to establish the points of interconnection between the parties.

5. AEP requests waiver of the prior notice requirement to allow the TSAs and IA to become effective January 1, 2003. AEP asserts that January 1, 2003 coincides with the effective date of the Transmission Cost of Service (TCOS) payment matrix (which determines "load serving entities" for 2003) that will be established by the Texas Commission. AEP states that it could not have anticipated that these customers would become eligible customers prior to January 1, 2003, or until now, because the Texas Commission did not issue their order prior to January 1, 2003, and, as of the date of AEP's October 22, 2003 filing (October 22 Filing) still had not issued its order. AEP also states that at the time of its October 22 Filing, no customers had been billed and the IA has no AEP or AEP Texas related rates or charges to Brady.

### **Responsive Filings**

6. Notice of AEP's filing was published in the Federal Register, 68 Fed. Reg. 62,450 (2003), with interventions and protests due on or before November 12, 2003. Tex-La Electric Cooperative of Texas, Inc. (Tex-La) filed a timely motion to intervene and protest on November 12, 2003. On November 21, 2003, AEP filed an answer to Tex-La's protest.

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<sup>1</sup>Revised Public Utility Filing Requirements, Order No. 2001, 67 Fed. Reg., 31,043 (2002), FERC Stats. & Regs. ¶ 31,127 (2002), reh'g denied, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), reconsideration and clarification denied, Order No. 2001-B, 100 FERC ¶ 61,342 (2002), order on rehearing and clarification, Order No. 2001-C, 101 FERC ¶ 61,314 (2002).

### **Tex-La's Protest**

7. Tex-La contends that AEP, by filing these TSAs, is unilaterally proposing to eliminate Tex-La's role in providing ERCOT transmission service to its member cooperatives. Tex-La adds that it, and not its members, is the proper party for an AEP transmission agreement for ERCOT regional service.

8. Tex-La maintains that AEP's purpose in filing the TSAs in this proceeding is to ensure that AEP will have service in place with all past and future expected load serving entities in ERCOT, including six members<sup>2</sup> of Tex-La. Tex-La states that AEP, on the strength of the anticipated Texas Commission ruling in Texas Docket No. 26950, seeks Commission approval of the unexecuted TSAs with the six member cooperatives of Tex-La in lieu of AEP's existing TSA with Tex-La.

9. Tex-La asserts, however, that the Texas Commission has not authorized AEP to substitute Tex-La's member cooperatives for Tex-La. Tex-La contends that there is no basis to be found in Texas Docket No. 26950 for AEP to claim that Tex-La's six member cooperatives will become newly eligible customers of AEP, and in turn, that Tex-La will cease to be an eligible customer. Tex-La adds that the question of customer eligibility was never an issue in Texas Docket No. 26950. Tex-La claims that no party proposed any change from ERCOT's past practice of billing Tex-La for transmission for its six ERCOT members instead of billing the member cooperatives. Tex-La further contends that it has been and remains the proper party to contract for and pay for transmission service within ERCOT.

10. Tex-La argues that, even if the Texas Commission finds that Tex-La's member cooperatives and not Tex-La are the proper load serving entities for contracting for and payment for transmission service within ERCOT, the Commission would still be required to review that determination to see if the Texas Commission's ruling complies with the Federal Power Act. Tex-La further contends that AEP's proposed TSAs violate AEP's existing TSA with Tex-La. Tex-La states that AEP, by filing these TSAs, is attempting to implicitly terminate its existing TSA with Tex-La. Tex-La adds that AEP's proposed TSAs contain terms and conditions that, if applied to Tex-La member cooperatives, would be unreasonable.

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<sup>2</sup>The six member distribution cooperatives of Tex-La selling power in ERCOT: Cherokee County Electric Cooperative Association, Deep East Texas Electric Cooperative, Inc., Houston County Electric Cooperative, Inc., Jasper-Newton Electric Cooperative, Inc., Rusk County Electric Cooperative, Inc. and Sam Houston Electric Cooperative, Inc.

11. Tex-La asserts that the current practice of the Texas Commission and ERCOT does not require AEP's proposed unexecuted TSAs for Tex-La member cooperatives. Tex-La adds that such filings are actually contrary to current Texas Commission and ERCOT practice. Tex-La contends that it is the selected load entity authorized to provide transmission service to its members, and therefore, the Commission should defer to this current ERCOT practice. Tex-La requests that the Commission reject AEP's proposed TSAs as applied to Tex-La's member cooperatives.

### **AEP's Answer to Tex-La's Protest**

12. AEP states that its proposed TSAs are not intended to implicitly or explicitly revoke Tex-La's TSA with AEP, to change any billing or other relationship among AEP, Tex-La and the six member cooperatives or to cause any of the other potential adverse effects discussed by Tex-La in its protest. AEP maintains that it filed the TSAs as a precautionary measure in light of the unique ERCOT method of charging for transmission service, and its juxtaposition with the Commission's regulation of transmission service provided by AEP in ERCOT pursuant to the dual jurisdiction exercised by this Commission and the Texas Commission.

13. AEP states that the TSAs in question are for service under Part IV of AEP's OATT, for service in ERCOT. AEP adds that the terms and conditions of transmission service in ERCOT are set forth in Chapter 25 of the Substantive Rules of the Texas Commission. AEP claims that it has adopted and incorporated those terms and conditions of service by reference in Part IV of its OATT, and that the Commission has accepted Part IV as reflective of an acceptable regional practice under Order No. 888.<sup>3</sup>

14. AEP states that transmission service under Texas Commission Chapter 25 is provided for and charged on a region-wide basis. AEP further states that each load serving entity using the ERCOT transmission system is charged a load ratio share of the costs of the entire system, and each transmission provider receives payments based on its share of the system's costs. AEP states that all of the payment and cost relationships among the various transmission customers and providers are set forth in a TCOS payment matrix published each year by the Texas Commission.

15. AEP concedes that Tex-La correctly states that it has a TSA with AEP, pursuant to which it obtains the transmission service necessary to serve its members. AEP also does not dispute the Texas Commission's view that "Tex-La has been and remains the proper party to pay for, and contract for transmission service within ERCOT." AEP claims that it does not have any intention of billing Tex-La members under the present matrix, because they are not listed as "load serving entities" on the final load matrix. However, AEP notes that these members are listed as "load serving entities" on the ERCOT report

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<sup>3</sup>Citing Central Power & Light Co., et al., 81 FERC ¶ 61,311 (1997).

on the calculation of the 2002 4-CP loads, that upon aggregation of many load entities become the list of aggregated load entities on the payment matrix.

16. AEP claims that it is filing the TSAs in this proceeding as a precautionary measure to ensure that it is able to avoid difficulties it is presently encountering in Docket No. ER02-2007-000. In Docket No. ER02-2007-000, AEP explains it has a TSA (as it has in this proceeding with Tex-La) under Part IV of its tariff with Lower Colorado River Authority (LCRA), which had been filed with and accepted by the Commission (in Docket No. ER97-1478-000). AEP states that, like Tex-La, LCRA has member utilities (municipals and cooperatives) that it provides wholesale electric service. AEP states that, prior to 2002, LCRA was listed on the TCOS payment matrix as the transmission customer for the service it provides to its wholesale customers. AEP states that it had billed LCRA for such service, and LCRA, in turn, recovered its transmission costs from each of its customers in the bundled rates it charged them for electric service.

17. In Docket No. ER02-2007-000, AEP states that the Texas Commission approved, on February 19, 2002 an interim TCOS payment matrix for the year 2002. AEP states that the final matrix was not approved by the Texas Commission until December 19, 2002, at which time it became effective as of January 1, 2002. AEP states that, in the interim matrix, LCRA identified each of its wholesale customers separately as transmission customers. AEP adds that, in April 2002, it began preparing separate bills for each of LCRA's wholesale customers. AEP adds, though, that LCRA, acting as the billing agent for thirty-eight of these customers, receives these bills and pays these bills (AEP states that two of its customers receive and pay their own bills and one receives and pays its bill through another billing agent; AEP states that it presumed that LCRA requested separate bills to make it easier to account for transmission costs to its wholesale customers).

18. AEP claims that, as soon as it became aware of the billing change, AEP prepared separate TSAs for the LCRA wholesale customers, believing that it should have TSAs on file at the Commission for each load serving entity identified on the TCOS payment matrix and because the bills are being issued in the names of the wholesale customers. AEP states that it filed the TSAs on June 3, 2002 in Docket No. ER02-2007-000. AEP states that it asked that the TSAs become effective January 1, 2002 – the date when the TCOS matrix was anticipated to become effective, once approved. AEP states that it asked for waiver of the Commission's prior notice requirement so as to allow the agreements to become effective as of the date requested.

19. AEP states that, on July 18, 2002, the TSAs were accepted for filing in a "basket (letter) order," which also accepted for filing a number of service agreements submitted by various utilities; however, waiver of the prior notice requirement was denied. AEP states that the basket order explained that requests for waiver of the prior notice requirement will be granted when service agreements under umbrella tariffs are filed

more than 30 days after service has commenced only where there are extraordinary circumstances and the letter order did not grant waiver the prior notice requirement. Consequently, AEP was required to pay time value refunds for amounts collected under the TSAs computed from the date payments were received until the later of sixty days following the filing or the date the refunds are made.

20. AEP indicates that it has sought rehearing, arguing that it had extraordinary circumstances to justify a waiver of prior notice so as to allow the TSAs to become effective commensurate with the effective date of the finally-approved ERCOT matrix, *i.e.*, January 1, 2002.<sup>4</sup>

21. AEP asserts that it has filed, in this docket, TSAs for all of the loads, aggregated or disaggregated, represented in the Texas Commission's Staff's proposed 2003 matrix in order to avoid paying time value refunds in this proceeding as it did in Docket No. ER02-2007-000.

22. AEP argues that the Commission could deal with AEP's concerns by granting AEP's request for rehearing and/or by clarifying in this case that it would grant waiver of notice should AEP be required to file TSAs as a result in changes to the ERCOT TCOS matrix that are made retroactively effective by the Texas Commission.

### **Discussion**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), Tex-La's timely motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept AEP's answer because it has provided information that assisted us in our decision-making process.

24. Who is entitled to the service (and who gets charged the rates) at issue here is determined annually by the Texas Commission, to be effective January 1 of each year. The Texas Commission does this after, rather than prior to, the beginning of the year, however.

25. AEP speculates as to whom the Texas Commission ultimately will determine to be "load serving entities" and based on its speculation has filed with the Commission agreements that, depending on the Texas Commission's ultimate determination, may not be necessary. Consequently, we will reject AEP's filing, but without prejudice to AEP filing appropriate agreements based on the Texas Commission order that will identify the "load serving entities" for 2003. At that time, the Commission will determine the

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<sup>4</sup>The request for rehearing is presently pending.

appropriateness of granting waiver of its prior notice requirement and allowing an effective date of January 1, 2003.

The Commission orders:

AEP's proposed TSAs and IA are hereby rejected, without prejudice to refiling, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.