

125 FERC ¶ 61,296
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

American Electric Power Service Corporation

Docket No. ER09-12-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 18, 2008)

1. On October 1, 2008, as clarified on November 20, 2008, pursuant to the Commission's September 30, 2005 Order in Docket No. ER05-1285-000,¹ American Electric Power Service Corporation submitted on behalf of Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, AEP) a compliance filing supporting changes in its accounting for transmission and distribution plant-in-service to reclassify certain facilities that will be reflected in the revenue requirements for transmission service of PSO and SWEPCO under the Southwest Power Pool Inc.'s (SPP) open access transmission tariff (OATT or Tariff) to conform to requirements of the SPP Tariff.² In this order, the Commission accepts and nominally suspends AEP's compliance filing, subject to refund, to become effective January 1, 2009, and we establish hearing and settlement judge procedures regarding AEP's proposed accounting changes, as discussed below.

I. Background

2. Attachment AI to the SPP OATT was developed in order to provide a uniform and consistent basis for establishing transmission rates under the SPP Tariff by determining which transmission facilities are to be included in transmission rates. Pursuant to

¹ See *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,355 (2005) (September 30, 2005 Order) (approving SPP's proposal to modify the definition of Transmission Facilities in Attachment AI).

² PSO and SWEPCO are transmission-owning members of SPP, which offers open access transmission service pursuant to the SPP Tariff. On November 20, 2008, AEP submitted a letter clarifying the requested effective date for its October 1, 2008 filing.

Attachment AI, each transmission owner under the SPP Tariff must file a request by September 30, 2008 for a determination as to which of its facilities qualify as Transmission Facilities as defined in Attachment AI.³

3. Specifically, section II of SPP's Attachment AI provides that "Transmission Facilities" include all existing non-radial power lines, substations, and associated facilities operated at 60 kV or above, plus all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not affiliates of each other. This section clarifies that "open loops" are radial lines, but at such time as an existing radial is incorporated into a looped transmission circuit, that existing radial will be eligible for inclusion in rates on the same basis as the remainder of the facilities in the loop.

4. Section II further specifies that Transmission Facilities include (a) all facilities used to interconnect various internal zones to each other and that interconnect SPP with other surrounding entities; (b) control equipment and facilities to control and protect facilities qualifying as transmission facilities; (c) with respect to substations connected to power lines qualified as Transmission Facilities, where power is transformed from a voltage higher than 60 kV to a voltage lower than 60 kV, all facilities on the high voltage side of the transmission with the exception of transformer isolation equipment; (d) portions of direct current interconnect with areas outside SPP's region (DC tie) that are owned by a Transmission Owner in the SPP region, including portions of the DC tie that operate below 60 kV; and (e) all facilities operated below 60 kV that have been determined to be transmission using the Commission's seven factor test set forth in Order No. 888,⁴ or any applicable successor test.

5. Section III of Attachment AI describes facilities that are not Transmission Facilities including, generator step-up transformers and generator leads, radial lines from a generation station to a single substation or switching station on the Transmission System, and direct assignment facilities.

³ SPP OATT, Attachment AI section IV.

⁴ *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 (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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

6. Under section IV of Attachment AI, each Transmission Owner is required to file, within three years from the Commission's acceptance of the new definition of Transmission Facilities (i.e., by September 30, 2008), a request based on the criteria set forth in Attachment AI with appropriate regulatory authorities for a determination as to which of the transmission owner's facilities are Transmission Facilities. Transmission Owners must use reasonable efforts to adjust the applicable transmission service rates as soon as possible after such a determination is made.

II. AEP's Filing

7. In its filing, AEP states that, historically, for accounting purposes, it used a "bright-line" identification method that made clear which existing AEP substations and radial transmission lines were included in its transmission formula rate under the SPP Tariff. Specifically, a substation was recorded based on the substation's predominant use or function, i.e., distribution or transmission. Radial transmission lines with voltage greater than 60 kV were recorded as transmission and lines with voltage less than 60 kV were recorded as distribution. AEP states that Attachment AI discontinues use of the existing bright-line cost assignment method, and instead assigns individual substation costs between the transmission and distribution functions, and removes from transmission costs some radial transmission lines that source distribution stations, even though some of these lines operate at transmission voltages.

8. Specifically, as it pertains to substations, AEP states that it developed allocators for each substation to represent the percentage of investment related to facilities that meet the Attachment AI inclusion criteria (transmission), and those facilities that do not (distribution). According to AEP, these allocators were determined by (1) direct inspection of single-line drawings; (2) use of previous substation-specific (i.e., "special case") analysis; or (3) use of current estimated construction costs for five typical substation configurations. AEP states that the use of these allocators results in a decrease in PSO's transmission substation net plant of \$14.8 million and an increase in SWEPCO's transmission substation net plant of \$7.7 million for a net overall \$7.1 million reduction to AEP's transmission substation net plant.

9. With regard to radial transmission voltage lines, AEP states that it used accounting and engineering records to identify the nature of the lines, that it developed radial exclusion allocation factors, and that it multiplied those factors against associated plant accounts by vintage year within particular asset locations to determine the allocated gross plant exclusion amount. AEP also calculated accumulated depreciation and net plant for each property record determined to incur an investment transfer or exclusion. AEP states that the reclassification of single customer radial transmission lines to distribution resulted in a \$42.4 million reduction of AEP's net transmission plant (\$26.2 million reduction for PSO and a \$16.2 million reduction for SWEPCO).

10. AEP states that after it determined the gross plant, accumulated depreciation, and net plant for each applicable plant account record, it only included records with a net plant exclusion or transfer greater than \$1,000 in the total amounts for radial transmission lines and substations shown in its filing. This \$1,000 threshold results in a 67 percent reduction in the number of plant accounting records that need to be processed to implement the requirements of Attachment AI while capturing 98 percent of the costs that require a change for accounting and ratemaking. AEP states that it also used a \$1,000 threshold for the reclassification of substations which resulted in a 62 percent reduction in the number of substation plant records that needed to be processed while capturing 99 percent of the affected plant costs.

11. With regard to when its proposed revisions will be reflected in its transmission rates under the SPP tariff, AEP notes that PSO and SWEPCO have proposed a formula rate in Docket No. ER07-1069 that became effective, subject to hearing and settlement judge procedures, as of February 1, 2008. According to AEP, a final Commission order has not been issued in that proceeding and settlement discussions are on-going. AEP states that during the course of settlement discussions it proposed to seek an effective date of January 1, 2009 in the instant proceeding for the implementation of a change in the AEP-SPP revenue requirements and rates that result from the formula rate. Accordingly, AEP requests an effective date of January 1, 2009 for its filing.

III. Notice of Filing and Responsive Pleadings

12. Notice of AEP's filing was published in the *Federal Register*, 73 Fed. Reg. 60,685 (2008), with interventions and protests due on or before October 22, 2008. East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives) filed a timely motion to intervene and protest. Arkansas Electric Cooperative Corporation and Golden Spread Electric Cooperative (collectively, Customer Protesters) filed a timely motion to intervene and protest.

13. Customer Protesters contend that AEP's filing is supported by brief descriptions and summary supporting documents that do not contain sufficient detail to permit a thorough evaluation of the methods used and the results claimed by AEP. Most notably, they state, AEP did not provide any workpapers that would show more detailed aspects of its analyses and calculations regarding reclassification of its facilities. Specifically, Customer Protesters state that AEP's filing does not provide enough information on the following issues: (1) how accumulated depreciation associated with the radial lines to be excluded from gross transmission plant investment was determined; (2) AEP's use of five generic substation configurations as a basis for assessing how the majority of its substation investments should be classified between transmission and distribution in lieu of an actual evaluation of each substation; (3) if and how AEP has taken account of any line segments of looped lines with a normally open point in the loop; (4) the effect of

using a net plant transfer threshold value of \$1,000 as part its process of reclassification of certain transmission lines; and (5) how AEP accounts for and will reclassify dual-function substations to comply with Attachment AI.

14. In addition, Customer Protesters state that AEP's filing contains classification inconsistencies. They cite, for example, Exhibit AEP-104, page 25, which indicates that SWEPCO's Texas Eastern 69 kV substation is booked to transmission but that the percentage allocation to distribution should be 100 percent.⁵ According to Customer Protesters, notwithstanding this indicated investment reclassification, the dollar investment reclassification on Exhibit AEP-104, page 6 does not identify any such reclassification. Additionally, Customer Protesters state that Exhibit AEP-104, page 24 indicates that the Sabine Mining Co. 138 kV facility is booked to transmission but is to be allocated 100 percent to distribution, while the investment reclassification shown for Sabine is yet a different allocation.⁶ Customer Protesters further point out that PSO's Copan South 69 kV substation is shown as booked to transmission but is allocated 100 percent to distribution, but AEP's analysis indicates no reclassification of Copan investments from transmission to distribution.⁷

15. Customer Protesters assert that without access to AEP detailed workpapers, and an opportunity to conduct discovery, it is impossible to assess meaningfully AEP's filing or to determine whether it is in compliance with Attachment AI. However, they do not recommend that AEP's filing be rejected, subjected to a deficiency letter, or suspended for the maximum period. Instead, Customer Protesters request that the Commission accept AEP's filing but suspend it for a nominal period, set it for hearing, and establish settlement judge proceedings to allow open information exchange and discussions.

16. East Texas Cooperatives also express concerns regarding the lack of detail in AEP's filing. They state that it is important to ensure the accuracy of the classifications proposed by AEP, because under the SPP tariff and AEP's formula rate, all customers will bear higher transmission rates to the extent that facilities that should properly be designated as distribution and directly assigned to a customer are instead included in AEP's transmission rate base. They also state that they support Customer Protesters' protest and join their recommendation that AEP's filing should be suspended for a nominal period, and set for hearing and settlement judge procedures.

⁵ Customer Protesters Protest at 10. They also note that the SWEPCO FERC Form No. 1 does not identify such a substation. *Id.*

⁶ *Id.*

⁷ *Id.* at 10-11.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

18. The Commission finds that AEP's compliance filing adopting the definition of "Transmission Facilities" under Attachment AI of the SPP Tariff raises issues of material fact that cannot be resolved based on the record before us, and is more appropriately addressed in the hearing and settlement judge procedures ordered below.

19. The Commission's preliminary analysis indicates that AEP's compliance filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, the Commission will accept and suspend AEP's filing for a nominal period, subject to refund, effective January 1, 2009.

20. While we are setting this matter for a trial-type evidential hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in the 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.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge 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.

⁸ 18 C.F.R. § 385.603 (2008).

⁹ If the parties decide to request a specific judge, they must make their 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 listing of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) AEP's tariff filing is accepted for filing and suspended for a nominal period, to become effective January 1, 2009, 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 AEP's filing to adopt the definition of "Transmission Provider" under Attachment AI of the SPP Tariff, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering 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 (2008), 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.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) 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 prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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)

Kimberly D. Bose,
Secretary.