

137 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Southwest Power Pool, Inc.

Docket No. ER12-140-000

ORDER ACCEPTING AND SUSPENDING FORMULA RATE, SUBJECT TO
REFUND, AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued December 15, 2011)

1. On October 20, 2011, Southwest Power Pool, Inc. (SPP), at the request of Kansas Power Pool (KPP), submitted pursuant to section 205 of the Federal Power Act (FPA),¹ revised tariff sheets to the SPP open access transmission tariff (OATT) to establish a formula rate for determining KPP's annual transmission revenue requirement (ATRR).² In this order, we accept the revised tariff sheets for filing, suspend them for a nominal period, to become effective December 20, 2011, subject to refund and establish hearing and settlement judge procedures.

I. Background

2. The SPP OATT contains zonal rates and allows each transmission-owning member to make filings to maintain a current revenue requirement. The ATRR for each pricing zone is reflected in Attachment H (Annual Transmission Revenue Requirement for Network Integration Transmission Service) of the SPP OATT. The rates for point-to-point transmission service, based on the ATRR in Attachment H are stated in Attachment T (Rate Sheets for Point-To-Point Transmission Service) of the SPP OATT.

3. KPP is a municipal energy agency, authorized by Kansas statutes and created by and for its members. KPP currently has 41 members, and provides power services to 34 municipal utilities in Kansas with a total load of approximately 368 MW.

¹ 16 U.S.C. § 824d (2006).

² SPP states that it is “merely modifying its [t]ariff to accommodate KPP’s formula rate proposal and does not independently support or justify KPP’s proposed changes.” SPP Filing at 4.

4. On January 3, 2011, the City of Winfield (Winfield), a member city of KPP, adopted a resolution to transfer functional control of 35.35 miles of 69 kV transmission lines and associated substation facilities to KPP. The facilities are located in the Westar Energy Inc.'s (Westar) pricing zone within the SPP footprint. On March 17, 2011, KPP applied to SPP to become a transmission-owning member, and identified the transmission facilities and substation equipment that it proposed to transfer to SPP's functional control under the SPP OATT. KPP stated in its application to SPP that the overhead transmission lines and associated substation equipment and breakers met the definition of transmission facilities under Attachment AI (Transmission Definition) of the SPP OATT. In response to KPP's application, SPP extended a membership agreement to KPP, which KPP signed on March 18, 2011.

II. Filing

5. KPP proposes revised tariff sheets to add Addendum 16 to Attachment H of the SPP OATT, and includes the KPP formula rate template and protocols to recover the ATRR for the 69 kV transmission facilities owned by Winfield. Specifically, KPP proposes revised tariff sheets to Attachment H for network integration transmission service that reflect changes to the Westar zonal ATRR. Additionally, KPP proposes revised tariff sheets to Attachment T, which incorporate KPP's ATRR into the point-to-point transmission service within the Westar zone. KPP supports the proposed revenue requirement with direct testimony explaining various aspects of the filing relating to the development of the revenue requirement for the 69 kV transmission facilities owned by Winfield.³ KPP also proposes that the formula rate template will serve to recover revenue requirements of other transmission assets owned by KPP members and/or to recover revenue requirements associated with future transmission assets owned by KPP.

6. KPP's proposed protocols provide that the annual transmission revenue requirement and rates calculated pursuant to the formula rate template shall be revised annually, to be effective from August 1 of such year through July 31 of the following year. KPP proposes to post the results of annual calculations used to develop the annual transmission revenue requirement and rates used pursuant to the formula rate template in a publicly accessible location on SPP's website by May 15 of the calendar year. KPP proposes that written comments will be accepted until June 15 of the calendar year and that, upon request, KPP will make available supporting data for completion of the formula rate template. KPP states that initial rates calculated from the formula rate template for incorporation into the SPP OATT would be in effect through July 31, 2012.

³ SPP Filing, Exhibit K-1, Testimony of Mr. Paul Reising at 2 (Reising Testimony).

7. On KPP's behalf, SPP requests waiver of the Commission's 60-day notice requirement to permit an effective date of December 1, 2011 for the proposed OATT revisions. SPP explains that the December 1, 2011 effective date will aid administrative efficiency by placing KPP on the same settlement timeline as other transmission owners for the December billing cycle, thus avoiding the need to make different mid-month calculations for KPP in the December billing cycle.

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP's Filing was published in the *Federal Register*, 76 Fed.Reg. 67,166 (2011), with interventions and protests due on or before November 10, 2011. Kansas Power Pool filed a motion to intervene with supporting comments. Timely motions to intervene and protests were filed by Sunflower Electric Power Corporation and Mid-Kansas Electric Power Company, LLC (together, Sunflower) and Westar Energy and Kansas Gas and Electric Company (together, Westar). The Kansas Corporation Commission (Kansas Commission) filed a notice of intervention and protest. On November 23, 2011, KPP filed a motion for leave to file an answer, and an answer to the protests.

9. Protestors raise a number of issues related to SPP's Filing on behalf of KPP. For example, Westar states that KPP has not provided sufficient evidence to support its development of initial costs to be included in the formula or the accuracy of the inputs into the calculations done by KPP's consultants. Westar claims that its records indicate that the tie line from the Tie Sub to Westar Interconnection B is only three to four miles long, whereas KPP states that this line is nine miles long.⁴ Similarly, Westar contends that KPP's own witness testifies that data were not available to determine exact costs attributable to the Winfield 69 kV transmission facilities that are the subject of this filing.⁵ Sunflower argues that KPP (1) has shown no support for the actual cost of the facilities that KPP proposes to place in the SPP rates; (2) has double counted the number of circuit breakers in the substation; and (3) improperly uses the costs of a different utility (Westar) rather than establishing the costs actually incurred for providing service.⁶ Sunflower also questions whether the Winfield transmission facilities are appropriately included in the SPP system under Attachment AI and whether KPP has demonstrated

⁴ Westar Protest at 4.

⁵ *Id.* at 3.

⁶ Sunflower Protest at 5.

adequate control of the facilities. Sunflower requests that the Commission find the filing deficient and reject it or set the matter for hearing.⁷

10. While it does not challenge the Commission's jurisdiction over SPP, the Kansas Commission contends that it is the regulatory body vested with jurisdiction and responsibility under Kansas statutes to regulate retail sale of electricity and natural gas in Kansas. Thus, the Kansas Commission argues that KPP ought to have filed the proposed rates for its approval before filing the proposed tariff revisions with the Commission. The Kansas Commission opposes SPP's Filing as an attempt to improperly circumvent the Kansas Commission's jurisdiction and authority over KPP.⁸ Sunflower also argues that SPP's Filing raises the issue of whether KPP is required to file with and obtain the approval of the Kansas Commission. Sunflower states that prior to approving any SPP rate, the Commission should require SPP to document why it isn't obligated to seek the Kansas Commission approval for the proposed rates.⁹

11. In its answer, KPP corrects and clarifies several issues related to the proposed OATT revisions. Specifically, KPP corrected the following items in its proposal: (1) the ATRR is updated using 2010 costs as inputs to the formula; (2) the filing is revised to remove the double counting of the circuit breakers in the substation; (3) the length of lines for the 69kV tie lines found on the Winfield One Line Diagram, Exhibit K-3 is revised for accuracy; and finally (4) the filing is revised to provide credit for the use of Federal Emergency Management Agency funding to rebuild distribution facilities less than 69 kV.¹⁰

12. KPP also argues in its answer that, while the Kansas Commission has jurisdiction over retail rates in Kansas, the Commission has exclusive jurisdiction over wholesale rates, such as the proposed rates by SPP in this proceeding.¹¹

⁷ *Id.* at 12–16.

⁸ Kansas Commission Protest at 3-4.

⁹ Sunflower Protest at 16.

¹⁰ KPP Answer at 2-5.

¹¹ *Id.* at 9-12.

IV. Discussion

A. Procedure Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹³ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept KPP's answer because it provides information that assisted us in our decision-making process.

B. Substantive Matters

15. We disagree with the Kansas Commission's contention that the instant filing is an attempt to circumvent the Kansas Commission's jurisdiction and authority over KPP. As a municipal agency, KPP is not a public utility within the meaning of section 201 of the FPA;¹⁴ hence, KPP is not within the Commission's jurisdiction under FPA section 205. However, the Commission does have jurisdiction under section 205 and 206 of the FPA over the rates for transmission service provided by SPP, a regional transmission organization (RTO) that is a public utility. Court decisions have made clear that when a non-jurisdictional transmission owner voluntarily joins an RTO and has its revenue requirement recovered as part of the RTO's rates, the Commission can examine the non-jurisdictional utility's revenue requirement to ensure that the RTO's rates will ultimately be just and reasonable.¹⁵ Thus, we find that, based on the court's rulings, it is appropriate to apply the just and reasonable standard of FPA section 205 to SPP's revisions to its OATT to implement KPP's proposed formula rate for transmission service, including KPP's revenue requirement in SPP's zonal rates. Accordingly, it is unnecessary to require SPP to document why it isn't obligated to seek Kansas Commission approval for the proposed rates, as Sunflower asserts. Our findings here are not intended to make any determination as to KPP's obligations, if any, under Kansas state law to make filings

¹² 18 C.F.R. § 385.214 (2011).

¹³ 18 C.F.R. § 385.213(a)(2) (2011).

¹⁴ 16 U.S.C. § 824(e) (2006).

¹⁵ See, e.g., *Pac. Gas & Elec. Co. v FERC*, 306 F.3d 1112, at 1116 (D.C. Cir. 2002). See also *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

before the Kansas Commission. Our concern is focused on the justness and reasonableness of proposed wholesale rates under SPP's OATT. To determine the justness and reasonableness of these rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

16. KPP's proposed revisions raise a number of issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement procedures we will order in this proceeding. Our preliminary analysis indicates that KPP's proposed revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed revisions for filing, suspend them for a nominal period to become effective December 20, 2011, subject to refund, and establish hearing and settlement judge procedures.

17. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.¹⁶ 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.¹⁷

18. The Settlement Judge shall report to the Chief Judge and the Commission within 30 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.

19. Finally, we will deny SPP's request for waiver of the Commission's notice requirements because SPP has not shown good cause.¹⁸

¹⁶ 18 C.F.R. § 385.603 (2011).

¹⁷ 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 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).

¹⁸ *Central Hudson Gas & Electric Corp. et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992)

The Commission orders:

(A) SPP's Filing on behalf of KPP is hereby accepted for Filing, suspended for a nominal period, to become effective December 20, 2011, subject to refund and hearing, as discussed in the body of this order and the ordering paragraphs below.

(B) SPP's requested waiver of section 35.3 of the Commission's regulations is hereby denied, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) – (F) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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 the 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 in writing or by telephone within five (5) days of the date of this order.

(E) Within thirty (30) 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 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.

(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 prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, 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.