

144 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER13-2031-000
ER13-2033-000

ORDER ON PROPOSED REVISIONS TO TARIFF,
BYLAWS, AND MEMBERSHIP AGREEMENT

(Issued September 19, 2013)

1. On July 25, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP) submitted two companion filings: proposed revisions to the SPP Bylaws and Membership Agreement in Docket No. ER13-2031-000, and proposed revisions to the SPP open access transmission tariff (OATT) in Docket No. ER13-2033-000.² SPP's proposed revisions to the SPP Bylaws and Membership Agreement provide, among other things, that members voluntarily withdrawing from SPP are obligated for the costs of transmission facilities approved prior to the member's withdrawal, and that the details of the withdrawing member's rights and obligations will be negotiated between the withdrawing member and SPP. SPP's proposed revisions to the SPP OATT provide that members withdrawing from SPP could be responsible for their share of certain penalty costs assessed against SPP for conduct or events prior to the member's withdrawal. In this order, we conditionally accept the proposed revisions for filing, effective September 23, 2013, as requested, subject to SPP filing additional revisions, as discussed below.

I. Background

2. SPP is a regional transmission organization (RTO) headquartered in Little Rock, Arkansas. It administers an OATT providing transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas as well as a centralized real-time energy imbalance services market. Since 2005, SPP has

¹ 16 U.S.C. § 824d (2006).

² eTariff links to the proposed revisions are in the Appendix.

allocated across the SPP region some portion of the costs for transmission facility upgrades. The existing SPP Bylaws and Membership Agreement are silent with respect to a withdrawing member's responsibility for the costs of transmission facilities that are allocated prior to a member's withdrawal.

3. The SPP Bylaws and Membership Agreement are also silent as to whether a withdrawing or former member of SPP is potentially liable for its share of costs associated with penalties assessed against SPP by a governmental or regulatory entity incurred as a result of conduct or events that occurred prior to the former member's withdrawal. Similarly, Attachment AP of the OATT, which addresses the potential liability for costs of penalties assessed against SPP by governmental or regulatory entities for violations of NERC reliability standards, is silent as to whether a withdrawing SPP member is potentially liable for penalty costs assessed against SPP for violations that occurred prior to the member's withdrawal.

II. SPP's Proposed Revisions to the Bylaws and Membership Agreement (Docket No. ER13-2031-000)

4. SPP's proposed revisions to the SPP Bylaws and Membership Agreement include provisions stating that a member that terminates its membership in SPP is obligated for the costs of transmission facilities approved prior to the termination of its membership, with the details regarding the rights and obligations regarding cost responsibility and continuing use of facilities to be negotiated between SPP and the withdrawing member at the time of withdrawal.³ In addition, under the proposed revisions, a withdrawing member must give SPP notice of withdrawal 24 months in advance (instead of the 12-month notice currently required), a member may rescind or supersede its withdrawal notice, and a former member who rejoins SPP may receive credit for part of the obligations it paid on withdrawing.⁴ The proposed revisions also require the withdrawing member to post a withdrawal deposit that SPP can use to defray the costs of processing the member's withdrawal.⁵ SPP states that the proposed revisions to the SPP Bylaws and Membership Agreement regarding transmission facilities are needed to address concerns that a member withdrawing from SPP will leave remaining members and customers

³ SPP July 25, 2012 Filing in Docket No. ER13-2031-000, Transmittal Letter at 2-3, 11-12.

⁴ *Id.* at 13-16.

⁵ *Id.* at 14-15.

responsible for the costs of transmission facilities built in part to serve the withdrawing member's load that were allocated to that member prior to its withdrawal.⁶

5. The proposed revisions to the SPP Bylaws also specify that a withdrawing member remains liable for its share of costs associated with potential penalties assessed to SPP by governmental or regulatory entities relating to events that occurred while the member was still a member of SPP.⁷

6. In addition, SPP proposes revisions to streamline sections of the Bylaws describing various committees.⁸ SPP requests an effective date of September 23, 2013 for all the proposed revisions to the Bylaws and the Membership Agreement.

III. SPP's Proposed Revisions to the SPP OATT (Docket No. ER13-2033-000)

7. SPP's proposed revisions to Attachment AP of the SPP OATT provide that SPP can seek recovery from an entity that has withdrawn from membership in SPP (i.e., a "Terminated Member") for a share of the costs of a penalty imposed on SPP for a violation of a reliability standard if the penalty relates to conduct that occurred prior to the member's withdrawal.⁹ SPP requests an effective date of September 23, 2013 for the proposed OATT revisions.

IV. Notice of Filings and Responsive Pleadings

8. Notice of SPP's filings was published in the *Federal Register*, 78 Fed. Reg. 46,937 (2013), with motions to intervene or protests due on or before August 15, 2013. Timely motions to intervene in both proceedings were filed by Midcontinent Independent System Operator, Inc., Western Farmers Electric Cooperative, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, and Nebraska Public Power District. Exelon Corporation filed a timely motion to intervene in Docket No. ER13-2033-000. Xcel Energy Services Inc. (Xcel) filed a timely motion to intervene and comments in both proceedings. SPP filed an answer to Xcel's comments. In a letter

⁶ *Id.* at 2, 12-13.

⁷ *Id.* at 13.

⁸ The proposed revisions are to section 6.1 (Market and Operations Policy Committee); section 6.2 (Strategic Planning Committee); section 6.3 (Human Resources Committee); section 6.4 (Oversight Committee); section 6.5 (Finance Committee); and section 6.6 (Corporate Governance Committee).

⁹ SPP July 25, 2013 Filing in Docket No. ER13-2033-000, Transmittal Letter at 4.

dated August 20, 2013, the Louisiana Public Service Commission (Louisiana Commission) requests that the Commission delay action on the filings until the Louisiana Commission and other state commissions have reviewed the filings and determined whether to intervene formally or to file comments.

1. Xcel's Comments

9. Xcel generally supports the proposed revisions but notes concerns in three areas. First, regarding the proposal to revise the SPP Bylaws and Membership Agreement to provide for SPP and the withdrawing member to negotiate the withdrawing member's transmission facility cost obligations, Xcel supports the proposal as long as the negotiated arrangement is filed with the Commission for approval.¹⁰ Xcel asserts that if the negotiated arrangement is not required to be filed with the Commission, then SPP members and market participants, who will bear the costs of the negotiated arrangement, will not have an opportunity to weigh in on whether it is just and reasonable.¹¹ Xcel also believes that a negotiated arrangement should not necessarily require the withdrawing member to be responsible financially for its current load ratio share of the cost of the transmission assets approved during its membership period for the entire remaining life of those assets, because the load of remaining SPP members will increase over time, effectively replacing a former member's use of the system.¹² Xcel further asserts that the negotiated arrangement should allow for analysis of compensation not only from the withdrawing member, but also from SPP and the remaining SPP members to the withdrawing member.¹³

10. Second, Xcel argues that the proposed revision increasing the notice period for withdrawal from 12 months to 24 months could, under certain circumstances, impose out-of-cycle planning costs on a withdrawing member.¹⁴ Xcel asks that the Commission specify either that a shorter withdrawal notice period could be part of the negotiated arrangement, or that the Commission would consider a request for a waiver of the

¹⁰ Xcel August 15, 2013 Comments in Docket Nos. ER13-2031-000 and ER13-2033-000, at 4-5.

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 6.

24-month notice requirement, to ensure that the costs imposed on the withdrawing member are just and reasonable.¹⁵

11. Third, regarding SPP's proposed withdrawal deposit, Xcel argues that it is inconsistent with SPP's not requiring any such deposit for new SPP members, even though adding a new member's load to the software and databases would cause SPP to incur similar administrative costs to removing a member's load.¹⁶ In addition, Xcel asserts that the administrative activities that the withdrawal deposit is supposed to cover are already being recovered through the SPP administrative fee. Therefore, Xcel asks that the Commission specify that SPP is to account for the withdrawal deposit money as revenue offsetting the SPP administrative fee.¹⁷

2. SPP's Answer

12. Regarding Xcel's request that the Commission clarify that SPP is required to file any negotiated arrangement for approval with the Commission, SPP states that such clarification is not necessary, because SPP is required to file any withdrawal with the Commission for approval, pursuant to the Membership Agreement¹⁸ and Commission precedent.¹⁹ SPP explains that any withdrawal application would include any withdrawal agreements that affect the rates, terms, and conditions of future jurisdictional service.²⁰

13. Regarding Xcel's concern about a withdrawing member's load ratio share, SPP explains that the proposal allows SPP and the withdrawing member flexibility to

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 8.

¹⁸ SPP August 30, 2013 Answer in Docket Nos. ER13-2031-000 and ER13-2033-000, at 4 (citing section 4.2.2(a) of the Membership Agreement).

¹⁹ *Id.* at 4-5 (citing, *inter alia*, *Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements under the Federal Power Act*, 104 FERC ¶ 61,248, at P 2 (2003); *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at PP 3, 27 (2006), *clarified sub nom. E.On U.S. LLC* 116 FERC ¶ 61,020 (2006)).

²⁰ *Id.* at 5.

negotiate a just and reasonable method for determining the withdrawing member's financial obligations.²¹

14. Regarding Xcel's comment that SPP's proposal should be clarified to allow for the possibility of the withdrawing member receiving compensation for facilities, SPP answers that Xcel's requested clarification is not necessary. SPP explains that the proposed revisions to the Bylaws and the Membership Agreement refer to rights, as well obligations, to be honored by SPP and the terminated member.²²

15. In response to Xcel's concern that replacing the current 12-month withdrawal notice period with the proposed 24-month notice period could impose extraordinary transmission costs or other out-of-cycle costs on the withdrawing member, SPP states that the purpose of adopting a longer notice period is to ensure the member's withdrawal is considered in SPP's Integrated Transmission Plan (ITP) process, to prevent the approval of unnecessary or unwarranted transmission facilities.²³ SPP explains that its 20-year and 10-year assessments occur in alternating 18-month periods during the three-year planning cycle, so a 24-month notice period will ensure that a member's withdrawal is factored into each assessment.²⁴ SPP also notes that the arrangement negotiated between SPP and the withdrawing member will include a list of facilities included in the member's withdrawal obligations, and if the member believes a withdrawal obligation is unreasonable, the withdrawing member can seek relief from the Commission.²⁵ SPP further notes that a notice period shorter than 24 months would let a member submit a withdrawal notice in order to avoid responsibility for large-scale transmission expansion considered in the ITP process.²⁶

²¹ *Id.* at 5-6.

²² *Id.* at 6 (citing proposed section 8.7.3 of the Bylaws; proposed section 4.3.3A of the Membership Agreement; *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,204, at PP 1, 13 (2011)).

²³ *Id.* at 7.

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.* at 9.

16. SPP also argues that Xcel's requests concerning the proposed withdrawal fee and deposit should be rejected.²⁷ According to SPP, Xcel is wrong to assert that SPP's proposal to assess a withdrawal fee is inconsistent with SPP's current practice of not assessing a fee for the costs associated with integrating a new member, because withdrawing members are not similarly situated to prospective members. SPP explains that under the Membership Agreement, an entity joining SPP undertakes financial obligations, including payment of the annual membership fee.²⁸ SPP also argues that the Commission should reject Xcel's suggestion that the withdrawal fee be accounted for as an offset to the SPP administrative charge.²⁹ SPP asserts that the costs associated with a withdrawal will not be recovered through SPP's administrative charge, so the costs should be accounted for separately from the administrative charge.

V. Discussion

1. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process. In light of the 60-day deadline for Commission action on these filings, we are unable to grant the Louisiana Commission's request to defer action on these filings.³⁰

2. Commission Determination

18. We conditionally accept SPP's proposed revisions to the SPP Bylaws and Membership Agreement and to the SPP OATT, effective September 23, 2013, as

²⁷ *Id.* at 9-10.

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ See, e.g., *Southern Company Services, Inc.*, 60 FERC ¶ 61,297, at 62,065 (1992) (citing FPA section 205(d), 16 U.S.C. § 824d(d) (2006); *Indiana & Michigan Electric Co v. FPC*, 502 F.2d 336, 341 (D.C. Cir. 1974), *cert. denied*, 420 U.S. 946 (1975)); *see also PJM Interconnection, L.L.C.*, 85 FERC ¶ 61,111, at 61,413 (1998).

requested. The proposed revisions outline the rights and obligations of a member upon voluntary withdrawal in a manner that is just, reasonable and not unduly discriminatory to the withdrawing member and to SPP, the remaining SPP members, and SPP market participants. However, the proposed revisions are unclear regarding whether non-transmission owning members would be obligated for costs of transmission facilities approved before their withdrawal.³¹ Therefore, we direct SPP to file, within 30 days of the date this order issues, revisions to clarify that the withdrawal obligation for the costs of transmission facilities is limited to transmission owning members.

19. In response to Xcel's concern, to the extent the negotiated arrangements affect the rates, terms, and condition of jurisdictional service, SPP must file them with the Commission. As SPP points out, SPP must file any withdrawal with the Commission for approval. We also agree with SPP that the proposal provides flexibility to consider factors such as changes to the withdrawing member's load ratio share over time in the determination of a just and reasonable withdrawal obligation. In addition, in response to Xcel's argument that the negotiated arrangement should allow for analysis of compensation to the withdrawing member as well as from the withdrawing member, provisions in both the Bylaws and the Membership Agreement refer to the negotiated arrangement as establishing the "rights" as well as the "obligations" of the withdrawing member, so the negotiated agreement should allow for the analysis of compensation to the withdrawing member. In addition, regarding the proposed 24-month notice requirement for withdrawal, we agree with SPP's assertion that a 24-month notice period is reasonable in light of the various assessment cycles in SPP's ITP process. However, the Commission will consider any requests for waiver of the notice requirement.

20. The Commission will also accept the proposed revisions providing for a withdrawal fee and deposit. As SPP notes, the withdrawal deposit will not only ensure that SPP's costs for processing a withdrawal are not imposed on remaining members and market participants, but will also discourage frivolous withdrawal notices. We also find that SPP is not required to account for the withdrawal deposit (after true-up) as an offset to the SPP administrative fee. As SPP explains in its answer, the SPP administrative fee would not recover the administrative costs of processing the withdrawal of a member's facilities or load. Therefore, the withdrawal costs should not be accounted for as an offset to the SPP administrative fee.

The Commission orders:

(A) SPP's proposed revisions to the SPP Bylaws and Membership Agreement are conditionally accepted for filing, as discussed in the body of this order.

³¹ See, e.g., *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,198, at PP 59-61 (2011).

(B) SPP is directed to submit, within 30 days of the date this order issues, additional revisions, as discussed in the body of this order.

(C) SPP's proposed revisions to the SPP OATT are accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

eTariff links to proposed revisions to SPP Bylaws and Membership Agreement:

Southwest Power Pool, Inc., FERC FPA Electric Tariff, Governing Documents Tariff, Table of Contents, Bylaws Table of Contents, 0.0.1
Table of Contents, Bylaws Table of Contents, 1.1.0
Section 1 Definitions, Bylaws 1.0 Definitions, 1.0.0
Section 6.1, Bylaws 6.1 Markets and Operations Policy Committee, 1.0.0
Section 6.2, Bylaws 6.2 Strategic Planning Committee, 1.0.0
Section 6.3, Bylaws 6.3 Human Resources Committee, 1.0.0
Section 6.4, Bylaws 6.4 Oversight Committee, 1.0.0
Section 6.5, Bylaws 6.5 Finance Committee, 1.0.0
Section 6.6, Bylaws 6.6 Corporate Governance Committee, 1.0.0
Section 8.7, Bylaws 8.7 Financial Obligation of Withdrawing Members, 1.0.0
MA Table of Contents, MA Table of Contents, 0.0.1
MA Table of Contents, MA Table of Contents, 1.1.0
Section 1.0, MA 1.0 Definitions, 2.0.0
Section 4.2, MA 4.2 Termination Procedures and Effective Dates, 1.0.0
Section 4.3, MA 4.3 Obligations Upon Termination, 1.0.0

eTariff link to proposed revisions to SPP OATT, Attachment AP:

Southwest Power Pool, Inc., FERC FPA Electric Tariff, Open Access Transmission Tariff, Sixth Revised Volume No. 1, Attachment AP, Attachment AP Allocation of Costs Associated With ..., 1.0.0