

105 FERC ¶ 61, 075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Southwest Power Pool, Inc.

Docket Nos. ER03-896-000
and ER03-896-001

ORDER ACCEPTING AND SUSPENDING SERVICE AGREEMENT,
SUBJECT TO REFUND, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued October 20, 2003)

1. On May 30, 2003, Southwest Power Pool, Inc. (SPP) filed an unexecuted service agreement for firm point-to-point transmission service with Kansas Municipal Energy Agency (KMEA). In this order, we will accept the service agreement for filing, suspend it to become effective May 1, 2003, subject to refund, and establish settlement judge procedures. This order benefits customers because it provides a forum to resolve disputed issues pertaining to the transmission of electricity to the City of Iola, Kansas (Iola).

Background

2. The unexecuted service agreement at issue, Service Agreement No. 890, provides KMEA with up to 2 MW of firm point-to-point transmission service from Empire District Electric to Westar Energy, from May 1, 2003 to May 1, 2004. SPP states that the proposed agreement is identical in all material respects to the applicable form of service agreement set forth in the SPP tariff. SPP requests an effective date of May 1, 2003. It asks the Commission to waive the 60-day prior notice requirement because the service agreement was filed no later than 30 days after the date of commencement of service.

Notice of Filing, Intervention and Protest

3. Notice of SPP's filing was published in the Federal Register, 68 Fed. Reg. 35,397-98 (2003), with comments, interventions and protests due on or before June 20, 2003. On June 20, 2003, past the Commission's filing deadline of 5:00 p.m., KMEA and Iola (jointly, Protestors) filed a motion to intervene, protest and request for hearing.

Protestors refiled their motion on June 23, 2003, stating that they erroneously filed the motion under an incorrect docket number on June 20, 2003 and did not timely rectify their error. They ask the Commission to accept their intervention one day out of time.

4. KMEA, as Iola's agent, buys Southwest Power Administration (SPA) hydropower and delivers the power, in part, using SPP long-term firm point-to-point service. Protestors explain that the long-term firm transmission service acquired by KMEA is to roll over long-term firm transmission service along a three-segmented contract path that leads: (1) from SPA generation to its interface with Empire District Electric, (2) across Empire District Electric to the Westar transmission interface, and (3) from the Westar border to the City of Iola. Due to "the numerous, complex factual issues posed by the proposed transmission agreement in its relationship to other KMEA transmission agreements," Protestors ask the Commission to set the matter for hearing.¹

5. On July 22, 2003, the Director, Division of Markets, Tariffs and Rates Development – Central, acting pursuant to delegated authority, issued a deficiency letter to SPP requesting detailed information relating to the unexecuted service agreement. Specifically, the Director asked SPP to: (1) identify all existing service arrangements (and service requests) between itself and KMEA or Iola; and (2) to explain any redundant service or billing to KMEA or Iola. On August 21, 2003, SPP filed its response to the deficiency letter. Notice of SPP's response was published in the Federal Register, 68 Fed. Reg. 58,582 (2003), with comments, interventions and protests due on or before September 11, 2003. None was filed.

6. SPP's response to the deficiency letter indicates that SPP has provided network service to serve Iola's load under SPP Service Agreement No. 892 (with Westar) since May 1, 2003. It also explains that KMEA rolled over 2 MW of point-to-point service from Empire District Electric to Westar provided under the SPP open access transmission tariff, under SPP Service Agreement No. 890. At the time of the deficiency letter, SPP says that a request for point-to-point service by KMEA on behalf of Iola, in the amount of 2 MW from SPA to Westar (including the Empire District Electric to Westar partial path), was in study status. That study concluded that the service could be provided without upgrade. SPP says that it accepted service on July 30, 2003, and that KMEA confirmed service on August 9, 2003.

7. SPP goes on to state that the firm transmission path from SPA to Iola was not complete, and that until July 28, 2003, when it completed its study of KMEA's request for service from SPA to Westar, it did not have an assessment indicating that it could provide this service. As such, the partial path service under the SPP tariff, *i.e.*, Service Agreement No. 890, provided "a necessary bridge" to the final end state. SPP indicates

¹ Protest at 6.

that it is willing to annul the partial path reservation from Empire District Electric to Westar effective August 9, 2003, since point-to-point service has been awarded for the full path. SPP also states that it is willing to treat the 2 MW SPA allocation as a designated network resource, thereby eliminating the billing associated with SPA to Westar point-to-point service.

Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), given the early stage of this proceeding, the interest in this proceeding of KMEA and Iola, and the absence of any prejudice or delay, we will grant KMEA and Iola's untimely, unopposed motion to intervene.

B. Commission Decision

9. KMEA contends that Service Agreement No. 890, filed in the instant submittal, is for service from Westar to Iola. According to SPP, since May 1, 2003, SPP has billed Westar for network service to Iola under SPP Service Agreement No. 892 and has billed KMEA for point-to-point service between Empire District Electric and Westar under the instant filing's unexecuted agreement (Service Agreement No. 890).² KMEA also argues that it is now paying for both SPP network service and for point-to-point service on the partial path from Empire District Electric to Westar.

10. SPP's response to the deficiency letter explains that because a portion of the contract path from SPA to Iola remained non-firm, the SPA 2 MW resource did not qualify for network service. SPP states that at the time of the deficiency letter, a request by KMEA on behalf of Iola for 2 MW for point-to-point service from SPA to Westar was being studied. On July 28, 2003, the study was completed and concluded that the service could be provided without upgrade. According to SPP, the service was accepted by SPP on July 30, 2003 and confirmed by KMEA on August 9, 2003.

11. As discussed above, SPP states that it is willing to annul the partial path reservation from Empire District Electric to Westar (*i.e.*, Service Agreement No. 890) since point-to-point service has been awarded for the full path. SPP says it is also willing to treat the 2 MW as a designated network resource under SPP network service and, therefore, to eliminate the billing associated with the SPA to Westar point-to-point

² It appears that KMEA has incorrectly identified Service Agreement No. 890 as an agreement for service from Westar to Iola, rather than from Empire District Electric to Westar.

reservation under the SPP tariff. However, we are unclear whether SPP intends to treat Iola's 2 MW SPA allotment as a network resource under its service agreement with Westar (Service Agreement No. 892) or include it as part of another long-term firm point-to-point service agreement, as referenced in its response to the deficiency letter.³

12. SPP's answer to the deficiency letter does not fully resolve the issues described therein. Those questions cannot be resolved on the record before us and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the service agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the service agreement for filing, suspend it for a nominal period, make it effective May 1, 2003, subject to refund, and set it for hearing.⁴

13. In order to provide the parties an opportunity to resolve this matter among themselves, we will hold the hearing in abeyance and establish settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.⁶ The settlement judge shall report to the Chief Judge and the Commission within 60 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.

³ In its response to question 2(b) of the deficiency letter, SPP states that:

As of August 9, 2003 KMEA will be billed for 2 MW of point-to-point service, SPA to Westar. Additionally, Westar will continue to be billed for the network service it has taken to service Iola's load.

SPP Response at 3.

⁴ See 18 C.F.R. ' 35.3 (2003). See *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC & 61,106 at 61,338-39, reh-g denied, 61 FERC & 61,089 (1992).

⁵ 18 C.F.R. § 385.603 (2003).

⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge in writing or by telephone at (202) 502-8500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov -- click on Office of Administrative Law Judges).

The Commission orders:

(A) Service Agreement No. 890 is hereby accepted for filing and suspended, to become effective May 1, 2003, subject to refund.

(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 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 1), a public hearing shall be held in Docket Nos. ER03-896-000 and ER03-896-001 into the reasonableness of the proposed rate schedules, as discussed in the body of this order. As discussed in the body of this order, we will hold the proceeding in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.603 (2001), 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 in writing or by telephone within five (5) days of the date of this order.

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

(E) If settlement discussions fail, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The

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presiding administrative law 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)

Linda Mitry,
Acting Secretary.