

110 FERC ¶61,304
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER05-526-000

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

(Issued March 23, 2005)

1. Southwest Power Pool, Inc. (SPP) filed an unexecuted service agreement for network integration transmission service (NITSA) between SPP and Oklahoma Municipal Power Authority (OMPA) and an unexecuted network operating agreement (NOA) between SPP, OMPA, and American Electric Power Company (AEP).¹ As discussed below, the Commission accepts the unexecuted agreements, suspends them for a nominal period, to become effective January 1, 2005, subject to refund, and establishes hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the agreements are just and reasonable.

Background

2. OMPA is a member of SPP and serves as a wholesale power supplier to 35 municipalities in the State of Oklahoma. Under a settlement agreement between OMPA and AEP, OMPA was to begin to take network transmission service under SPP's open access transmission tariff (OATT) on January 1, 2005. Prior to January 1, 2005, OMPA was a network transmission customer under AEP's OATT.²

¹ We note that SPP and AEP are signatories to the NOA.

² On January 31, 2005, AEP filed a notice of cancellation of OMPA's network service agreement in Docket No. ER05-286-000.

Filing

3. On January 31, 2005, SPP filed an unexecuted NITSA with OMPA and an unexecuted NOA between SPP, OMPA and AEP. SPP states that its filing is in part non-conforming and there is a dispute between the parties on the amount of transmission service OMPA is eligible to roll over under section 2.2 of SPP's OATT.³ SPP states that it is willing to provide OMPA with network transmission service. It asserts that the issue here involves the amount of a designated resource, specifically a sale from the Southwestern Power Administration (SWPA), which is subject to section 2.2 and which, therefore, can be accommodated without performing any studies. It explains that historically AEP provided transmission for 46 MWs or less on a firm basis to OMPA load in the Public Service Company of Oklahoma (PSO) control area. SPP asserts that OMPA has 78 MW of firm power from SWPA in the Oklahoma Gas & Electric Company (OG&E) control area, but that this filing does not cover the OMPA loads in the OG&E zone.

4. SPP interprets section 2.2 as requiring SPP to provide rollover rights for the amount of capacity a customer has been using and paying for, and not creating an automatic entitlement to take additional capacity. Thus, SPP believes that OMPA is entitled to reflect only 46 MWs of the SWPA power as a designated resource. SPP states that SPP, AEP, and OMPA have been trying to resolve this matter for several months without resolution and have therefore submitted the dispute to the Commission with its filing.

5. SPP also states that it submits this filing not only because of the above dispute, but also because both the NITSA and NOA contain provisions that differ from the *pro forma* versions that appear in SPP's OATT. Such modifications include: (1) a new section of the NOA defining the requirements for OMPA having sufficient reactive compensation and control and the consequence if it fails to provide such; (2) additional metering

³ Section 2.2 of SPP's OATT provides in part that: "Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more, and retail) of the Transmission Owner(s) or Transmission Provider have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed." It further provides that: "This reservation priority only applies to the facilities of the Transmission Owner(s) where such facility costs have been included as part of the firm service rates that the firm service customer has been paying."

provisions in the NOA; (3) an initial term of 10 years for the NITSA; (4) various modifications to Attachment 1 of the NITSA, including a new section governing the wholesale distribution service charge.

6. SPP avers that these changes to the *pro forma* have been made with OMPA's and AEP's consent, and are necessary to help facilitate the conversion of wholesale distribution service charges and self supply of ancillary services from OMPA's grandfathered transmission services under the AEP bundled pre-OATT power supply agreement to the SPP OATT. In addition, SPP states that the modifications clarify the parties' intent and the use of language from agreements under AEP's OATT that are grandfathered.

7. SPP requests waiver of the Commission's 60-day prior notice requirement to permit an effective date of January 1, 2005. It asserts that waiver is appropriate because the NITSA and NOA are being filed no later than 30 days after commencement of service.

Notice of Filing, Interventions, Comments and Answer

8. Notice of SPP's filing was published in the *Federal Register*, 70 Fed. Reg. 7,253 (2005), with comments, interventions or protests due on or before February 22, 2005. OG&E filed a timely motion to intervene. OMPA filed a timely motion to intervene and comments. SPP filed an answer to OMPA's comments.

9. OMPA states that the parties may have reached an acceptable solution with regard to the SWPA purchase at issue and that rather than protest at this time, OMPA reserves the right to supplement its filing if necessary or appropriate in light of further developments. Absent such supplement, it would not object to the unexecuted agreements being accepted without change.

10. Specifically, OMPA states that it is in the process of converting to SPP's OATT for its load on the OG&E transmission system, and in that context is also facing network resource designation issues. OMPA states that it is hopeful that the arrangements to be agreed to with SPP and OG&E regarding the SWPA deliveries to the OG&E system, combined with the 46 MWs of SWPA deliveries to AEP that SPP recognizes in the NITSA, will provide OMPA with a level of flexibility that OMPA can presently accept. OMPA states that it reserves the right to supplement the filing if it becomes necessary or appropriate.

Discussion

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SPP's answer and will, therefore, reject it.

Hearing Procedures

13. The NITSA and NOA submitted by SPP raise issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

14. The Commission's preliminary analysis of SPP's filing indicates that it 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 SPP's NITSA and NOA for filing, suspend them for a nominal period, to become effective on January 1, 2005,⁴ subject to refund, and set them for hearing and settlement judge procedures as ordered below.

15. 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.⁵ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding;

⁴ See *Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (permitting the Commission to grant waiver if service agreements under an umbrella agreement are filed within 30 days after service commences).

⁵ 18 C.F.R. § 385.603 (2004).

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 the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPP's NITSA and NOA are hereby accepted for filing and suspended for a nominal period, to become effective on January 1, 2005, subject to refund, 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 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 SPP's NITSA and NOA. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2004), 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 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

⁶ 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).

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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 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing 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 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,
Deputy Secretary.