

151 FERC ¶ 61,076
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Southwest Power Pool, Inc.

Docket No. ER15-1139-000

ORDER REJECTING TARIFF REVISIONS

(Issued April 30, 2015)

1. On February 27, 2015, Southwest Power Pool, Inc. (SPP) filed, under section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's Regulations,² proposed revisions to Attachment J in its Open Access Transmission Tariff (Tariff) to include a list of potential remedies that SPP may recommend to alleviate imbalanced cost allocations identified through its Regional Cost Allocation Review (RCAR) process. As discussed below, we reject SPP's filing.

I. Background

2. As part of its 2005 base plan funding cost allocation proposal, SPP included an "unintended consequences" review process for allocated costs for base plan upgrades, contained in section III.D of Attachment J in the SPP Tariff. In an order accepting SPP's proposal, the Commission found that the unintended consequences review process would provide "a reasonable check on the outcome of the transmission expansion process, as well as an additional level of review regarding the effectiveness of SPP's transmission expansion plan and cost allocation decisions."³

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2014).

³ *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, at P 61 (Base Plan Upgrade Order), *order on reh'g*, 112 FERC ¶ 61,319 (2005).

3. In 2010, the Commission accepted SPP proposals implementing the Highway/Byway cost allocation methodology,⁴ which amended the base plan funding methodology, and the Integrated Transmission Plan regional transmission planning process.⁵ Both the Highway/Byway and Integrated Transmission Plan proceedings modified the unintended consequences review process, renaming this process the RCAR process. In general, the RCAR process: requires review of the Highway/Byway methodology and allocation factors at least every three years; authorizes the Regional State Committee⁶ to recommend any adjustments to cost allocations if a review shows an imbalanced cost allocation to one or more zones; requires that the Markets and Operations Policy Committee⁷ and Regional State Committee define the analytical methods to be used during review; and enables member companies (beginning in 2015) that believe they have been allocated an imbalanced portion of costs to seek relief from the Markets and Operations Policy Committee.⁸

4. To implement the RCAR process, SPP formed the Regional Allocation Review Task Force in 2011.⁹ SPP states that the Regional Allocation Review Task Force

⁴ Under the Highway/Byway methodology, SPP allocates the costs of transmission facilities on a voltage threshold basis. For facilities at 300 kV or above, SPP allocates costs on a regional, postage stamp basis. For facilities between 100 kV and 300 kV, SPP allocates 33 percent of costs on a regional basis and 67 percent of costs to the zone in which the facilities are located. For facilities at or below 100 kV, SPP allocates costs on a zonal basis. *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010) (Highway/Byway Order), *order denying reh'g*, 137 FERC ¶ 61,075 (2011) (Highway/Byway Rehearing Order).

⁵ *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,042 (2010).

⁶ The Regional State Committee includes a commissioner from each state regulatory commission having jurisdiction over an SPP member. The Regional State Committee provides both direction and input on all matters pertinent to the participation of the members in SPP, including cost allocations. SPP Bylaws, section 7.2.

⁷ The Markets and Operations Policy Committee consists of a representative officer or employee from each SPP member and reports to the SPP Board of Directors (Board). The Markets and Operations Policy Committee's responsibilities include recommending modifications to the SPP Tariff. SPP Bylaws, section 6.1.

⁸ SPP Tariff, Attachment J, section III.D.

⁹ SPP states that, currently, the Regional Allocation Review Task Force has nine members comprising four Regional State Committee members, four SPP members, and one SPP Board member. SPP Transmittal at n.15.

completed a report in January 2012 that included a number of recommendations as to how SPP should conduct the RCAR process. This report also included a list of potential remedies to alleviate inequitable cost allocations. According to SPP, the SPP Board directed SPP's Regional Tariff Working Group to draft Tariff language incorporating a process for the application of remedies, including the list of potential remedies in the Regional Allocation Review Task Force report.¹⁰

II. Notice of Filing and Responsive Pleadings

5. Notice of SPP's filing in Docket No. ER15-1139-000 was published in the *Federal Register*, 80 Fed. Reg. 12,159, with interventions and protests due on or before March 20, 2015.

6. The following entities filed timely motions to intervene: American Electric Power Service Corporation, on behalf of its affiliates Public Service Company of Oklahoma and Southwestern Electric Power Company; Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC; Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Westar Energy, Inc.; the Empire District Electric Company; City Utilities of Springfield, Missouri; and Western Farmers Electric Cooperative. A motion to intervene and protest was filed by Xcel Energy Services, Inc. (Xcel).¹¹ A notice of intervention was filed by Missouri Public Service Commission. Lincoln Electric System and Kansas Corporation Commission filed motions to intervene out-of-time.

7. City Utilities of Springfield, Missouri, Kansas City Power & Light Company, the Empire District Electric Company, and Lincoln Electric System (collectively, Joint Parties) filed a joint motion for leave to answer and answer. SPP filed an answer and Xcel filed an answer to Joint Parties' and SPP's answer.

III. Discussion

A. Procedural Issues

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R.

¹⁰ *Id.* at 4.

¹¹ Xcel submitted its protest on behalf of its utility operating company affiliate Southwestern Public Service Company and its affiliate Xcel Energy Southwest Transmission Company, LLC.

§ 385.214(d) (2014), the Commission will grant the late-filed motions to intervene of Lincoln Electric System and Kansas Corporation Commission given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by Joint Parties, SPP and Xcel because they have provided information that assisted us in our decision-making process.

B. Substantive Issues

1. SPP Filing

10. SPP proposes to include within section III.D.5 of Attachment J in its Tariff a list of potential remedies that SPP may recommend to alleviate imbalanced cost allocations at the conclusion of each RCAR review. These remedies include:

- (i) Acceleration of planned upgrades;
- (ii) Issuance of Notifications to Construct for selected new upgrades;
- (iii) Application of regional allocation to all, or a portion, of the cost of any project that otherwise would not qualify for regional allocation;
- (iv) Recommendation of potential seams transmission projects;
- (v) Transfer of zonal Annual Transmission Revenue Requirement to the region-wide Annual Transmission Revenue Requirement;
- (vi) Exemptions from allocated costs associated with future transmission projects; and
- (vii) Changes to cost allocation percentages, as defined under section III of Attachment J.¹²

11. SPP also proposes revising section III.D.5 to stipulate that any recommended remedy will be reviewed through the appropriate stakeholder process. Additionally, SPP proposes revising language in section III.D.6 of Attachment J to provide that the SPP Board "will initiate the appropriate actions, including any necessary filings with the Commission, to implement any SPP Board of Directors'-approved remedy(ies)."

12. SPP asserts that the proposed Tariff language provides additional clarity and transparency to the ongoing RCAR process. According to SPP, the proposed language does not recommend the application of any specific remedy; rather, SPP will evaluate potential remedies at the time a specific imbalanced cost allocation requires one. Further, SPP recognizes that, for any remedy resulting in a change to the SPP Tariff (i.e., a change

¹² SPP Tariff, Attachment J, proposed sections III.D.5(i)-(vii).

in cost allocation), it will be required to make a section 205 filing with the Commission.¹³ SPP requests a May 1, 2015 effective date for all proposed Tariff revisions.¹⁴

2. Protest

13. Xcel asserts that the Commission should reject SPP's proposed Tariff revisions. Xcel explains that the intent behind the original unintended consequences provisions in Attachment J was to provide a formal review of the cost allocation impacts resulting from SPP implementing its base plan upgrade cost allocation methodology, as well as to provide an opportunity for stakeholders to present any concerns.¹⁵ Xcel asserts that any remedies resulting from this review should be applied prospectively to the overall cost allocation methodology. However, Xcel contends that SPP is proposing to use a non-exclusive list of remedies to address imbalanced cost allocations on a project-by-project basis.

14. Xcel alleges that SPP's proposal would lead to continuous tinkering of the cost allocations for approved and constructed projects, which could lead to potential disputes and modifications. Xcel also contends that this project-level outcome is inconsistent with the purpose of the RCAR process, as well as Commission policies prohibiting retroactive ratemaking and encouraging transmission development, with particular emphasis on the importance of up-front funding certainty.¹⁶ Xcel also raises numerous issues with specific remedies included in SPP's proposed list.¹⁷ Additionally, Xcel argues that SPP has failed to justify its proposal and provide evidence demonstrating a need to modify the cost allocations resulting from the Highway/Byway methodology. Xcel asserts that it is premature to implement any remedial mechanisms, as benefits and costs of a project will even out over the long-term.¹⁸ In the event the Commission does not reject SPP's proposal, Xcel requests that the Commission make clear that all remedies affecting cost allocations for facilities already in-service would require a filing under section 205.¹⁹

¹³ SPP Transmittal at 6-7.

¹⁴ *Id.* at 1, 5.

¹⁵ Xcel Protest at 3-4 (citing Base Plan Upgrade Order, 111 FERC ¶ 61,118 at P 61, *order on reh'g*, 112 FERC ¶ 61,319 at P 23).

¹⁶ *Id.* at 16.

¹⁷ *Id.* at 29-31.

¹⁸ *Id.* at 32-34.

¹⁹ *Id.* at 20-21.

Xcel further requests that, to the extent the Commission permits future changes in cost allocations, any revisions should be prospective in nature. Additionally, Xcel requests that, in the event the Commission accepts SPP's proposal, that acceptance should be subject to hearing and settlement judge procedures or conditioned to address concerns raised in its protest.²⁰

3. Answers

15. In their answer, Joint Parties assert that it is disingenuous for Xcel, a disproportionate beneficiary of the Highway/Byway cost allocation methodology, to challenge the RCAR process and the inclusion of the proposed remedies in the Tariff.²¹ Joint Parties note Xcel's previous support for the approval and implementation of the methodology and the associated RCAR process. Joint Parties assert that the sole purpose of SPP's filing is to codify within the Tariff potential remedies to address inequitable cost allocations resulting from the Highway/Byway methodology, as directed by the SPP Board. Joint Parties contend that limiting the application of remedies to future projects, as requested by Xcel, is incongruent with the principals of the RCAR process.²² Joint Parties contend that at this time, determinations regarding the appropriateness of any remedy are not yet ripe for consideration.²³

16. In its answer, SPP asserts that the proposed Tariff revisions will not change the current RCAR process; rather, it will enhance the transparency of the process by informing stakeholders of possible remedies that SPP might recommend if the review finds imbalances in the regional cost allocation.²⁴ SPP reiterates that any remedies that result in a change to the SPP Tariff would require it to make a filing at the Commission under section 205. SPP notes that it would also make a filing if the Tariff does not already authorize the remedy. SPP contends that there is no need to further clarify that any reallocation of costs will be on a prospective basis, because SPP will justify the implementation of any remedy, any change of cost allocation, and the requested effective date of any Tariff revisions or cost allocation change as a result of that remedy in a section 205 filing.²⁵

²⁰ *Id.* at 35.

²¹ Joint Parties Answer at 3.

²² *Id.* at 10.

²³ *Id.* at 12.

²⁴ SPP Answer at 4.

²⁵ *Id.* at 9.

17. Xcel filed an answer reiterating many of its earlier arguments opposing SPP's proposal, including its position that SPP should review its Highway/Byway methodology to determine whether it provides for the allocation of transmission costs commensurate with benefits rather than using after-the-fact remedies. Xcel repeats its argument that SPP's proposal could result in retroactive ratemaking.²⁶ Additionally, Xcel argues that the vagueness of the proposed remedies provide no meaningful limits on SPP's discretion, which Xcel asserts could lead to unreasonable results and is inconsistent with Commission precedent supporting greater tariff specificity.²⁷

4. Commission Determination

18. In the absence of greater detail, we find that SPP's proposal does not provide clarity and transparency to the RCAR process. We find that SPP has failed to demonstrate the justness and reasonableness of its proposed revisions, and therefore we reject them.

19. We find that several of the proposed remedies are not clearly linked to the RCAR process. In the Highway/Byway Order, the Commission recognized that remedies developed through the RCAR process would result in changes to cost allocations, which would be filed with the Commission pursuant to section 205 of the FPA.²⁸ The Commission further clarified in the Highway/Byway Rehearing Order that it did not consider the RCAR process to be the only means for addressing costs and found the transmission planning process to be the appropriate forum for SPP and its stakeholders to control the costs of future projects.²⁹ Here, several of SPP's proposed remedies—acceleration of planned upgrades, the issuance of a Notification to Construct for selected

²⁶ Xcel Answer at 4-8, 9-10.

²⁷ *Id.* at 12-15.

²⁸ While the Commission in the Highway/Byway Order pointed to an instance where SPP had used the unintended consequences review process to make changes to its overall methodology, the Commission did not specifically preclude other types of cost allocation remedies from being developed through the RCAR process, instead emphasizing that SPP should file, with support, any proposed cost allocation change in a section 205 proceeding. Highway/Byway Order, 131 FERC ¶ 61,252 at PP 83-84.

²⁹ Highway/Byway Rehearing Order, 137 FERC ¶ 61,075 at P 81 (“[T]he Commission did not find the unintended consequences provisions to be a cure all. Rather, the Commission recognized that the appropriate forum for concerns regarding controlling costs is in the transmission planning process where SPP and its stakeholders choose which projects to construct.”). *See also* Highway/Byway Order, 131 FERC ¶ 61,252 at PP 87-88.

new upgrades, and recommendation of potential seams transmission projects—are appropriately within the purview of the transmission planning process. However, by including them in the proposed list of potential remedies, it is unclear whether and how SPP would implement such a remedy as part of the RCAR process, as opposed to the transmission planning process. For example, section III.D.4(ii) of Attachment J in the SPP Tariff provides that, beginning in 2015, any member company that believes it has an imbalanced cost allocation may request relief through the Markets and Operations Policy Committee. SPP’s proposed list of remedies could create a pathway in the Tariff for a member company to receive relief for an inequitable cost allocation, for example, through the issuance of a Notification to Construct for that company’s preferred project in the transmission planning process, without such decision being made through the transmission planning process. While we recognize that outcomes assessed in the RCAR process may inform SPP’s transmission planning process, we do not find it appropriate for remedies developed in the RCAR process to circumvent the open and transparent transmission planning process. As proposed, the relationship between certain potential remedies to cost allocation issues identified in the RCAR process, and other existing Tariff provisions and processes, is unclear. Thus, without additional detail describing these proposed potential remedies and how SPP will implement those remedies within the current framework of the RCAR process and other existing Tariff provisions and processes, we cannot find SPP’s proposal to be just and reasonable. Accordingly, we reject SPP’s filing.

The Commission orders:

SPP’s proposed revisions are hereby rejected, as discussed in the body of the order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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