

UNITED STATES OF AMERICA 86 FERC ¶ 61,090
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Southwest Power Pool, Inc.) Docket No. ER99-783-000

ORDER DIRECTING MODIFICATIONS TO AND,
AS MODIFIED, ACCEPTING FOR FILING REVISIONS
TO OPEN ACCESS TRANSMISSION TARIFF

(Issued January 29, 1999)

Southwest Power Pool, Inc. (SPP) has tendered for filing proposed revisions to its regional open access transmission tariff. In this order, the Commission accepts the revisions for filing, subject to SPP's making further revisions discussed in this order.

Background

On December 1, 1998, SPP tendered for filing revisions to its regional open access transmission tariff. SPP proposes to add long-term firm point-to-point transmission service under its regional open access tariff. This modification of its open access tariff will enable SPP to provide its members with both short-term firm and non-firm point-to-point transmission service, which it does now¹ and long-term firm point-to-point transmission service.

Under SPP's proposal, customers taking long-term firm point-to-point service within SPP would pay a single rate, the existing rate in the open access tariff of the transmission provider where the load is located. Customers taking "through" or "out" service would pay a single rate reflecting the average of the SPP members' currently effective individual open access transmission rates. SPP requests that the Commission allow the tariff to become effective on January 30, 1999, in order to allow its members time to meet the 60-day scheduling requirement for long-term transmission service, which

¹Southwest Power Pool, Inc., 82 FERC ¶ 61,267 (1998), modified, 82 FERC ¶ 61,285 (1998), clarified, 85 FERC 61,031 (1998).

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would begin April 1, 1999.

Notice and Responsive Pleadings

Notice of SPP's filing was published in the Federal Register, 63 Fed. Reg. 68,448 (1998), with comments, protests and motions to intervene due on or before December 21, 1998.

On December 16, 1998 East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives) jointly filed a motion to intervene, raising no substantive issues.

On December 21, 1998, Oklahoma Municipal Power Authority (OMPA), Arkansas Electric Cooperative Corporation (AECC), and Public Service Company of Oklahoma and Southwestern Electric Power Company (jointly PSO/SWEPCO), each filed motions to intervene, raising no substantive issues.

On December 21, 1998, Golden Spread Electric Cooperative, Inc. and Kansas Electric Power Cooperative, Inc. (Golden Spread/Kansas Cooperatives), jointly filed a motion to intervene and protest.

On December 21, 1998, Electric Clearinghouse, Inc. (Electric Clearinghouse) and Enron Power Marketing, Inc. (Enron) each filed a motion to intervene and protest.

On December 22, 1998, Coral Power, L.L.C. (Coral) filed an untimely motion to intervene and protest.

On January 5, 1999, SPP filed an answer to the protests.

On January 12, 1999, Golden Spread/Kansas Cooperatives filed a motion to strike SPP's answer.

On January 20, 1999, Electric Clearinghouse filed a motion for leave to answer SPP's answer and an answer.

Discussion

A. Procedural Matters

Under Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (1998), the timely, unopposed motions to intervene of East Texas Cooperatives, OMPA, AECC, PSO/SWEPCO, Golden Spread/Kansas Cooperatives, Electric Clearinghouse and Enron serve to make them parties to this proceeding.

We find good cause to accept Coral's unopposed, late-filed motion to intervene. We are satisfied that Coral has expressed an interest in the outcome of this proceeding that no other party represents, that Coral's late intervention will not unduly prejudice any party or unduly delay this proceeding, and that Coral's participation may be in the public interest. Accordingly, we shall grant Coral's motion to intervene.
18 C.F.R. § 385.214 (1998).

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2)(1998), prohibits the filing of an answer to a protest unless otherwise permitted by the decisional authority. We will deny Golden Spread/Kansas Cooperatives' motion to strike and accept SPP's answer, as it provides information that furthers our understanding of this proceeding. We will also, for the same reason, accept Electric Clearinghouse's answer to SPP's answer.

B. Provisions Requiring Modification

1. Rate Sheets for Long-Term Service

SPP has simply referenced the existing rate sheets of its member companies. This is insufficient.² We will, instead, direct SPP to include its members' rates in the SPP tariff sheets.

2. Penalty for Failure to Curtail

SPP proposes to assess a penalty charge of \$5 per kW/day plus "direct and indirect costs (including opportunity costs)" for failure to curtail. Golden Spread/Kansas Cooperatives (protest at 15-18) object to this charge as an unwarranted deviation from the pro forma tariff and unjustified by cost support or any showing that the charge will deter the conduct that it is supposed to prevent.

We agree with Golden Spread/Kansas Cooperative that SPP has failed to support the proposed penalty. Also, the proposed penalty is vague, since SPP does not explain what it means by "direct and indirect costs (including opportunity costs)." We will direct SPP to delete this charge and direct SPP to include in its tariff a penalty for failure to curtail that is equal to no more than twice the

²Detroit Edison Company, 78 FERC ¶ 61,149 at 61,128 (1997) (rejecting incorporation of rates by reference).

standard rate for the service.³

3. Direct Assignment of Costs of Network Upgrades

Under SPP's proposed tariff, SPP would directly assign the cost of network upgrades to specific transmission customers, who would receive a credit if other transmission customers also used that network upgrade. (Proposed tariff, Attachment J) Golden Spread/Kansas Cooperatives object to this proposal (protest at 11-14), arguing that it violates Order No. 888⁴ and other Commission precedent.

We agree. SPP's proposal does not meet our comparability standard and is unduly discriminatory because the jurisdictional SPP members are not required to take service under and subject themselves to the tariff's pricing rules for their retail and wholesale native load. Therefore, they are not charging themselves an average plus incremental cost rate for their retail and wholesale native load uses of the grid. Intervenors argue that SPP's proposal is impermissible "and" pricing.⁵ Our general prohibition against pricing that combines incremental and average cost rates for transmission services does not apply when all customers (including native load customers)

³Allegheny Power Systems, et al., 80 FERC ¶ 61,143 at 61,545-46 (1997), order on reh'g, 85 FERC ¶ 61,235 (1998) (Allegheny).

⁴See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

⁵See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Policy Statement, FERC Statutes and Regulations, Regulations Preambles, January 1991-June 1996
¶ 31,005 at 31,138, order on reconsideration 71 FERC
¶ 61,195 at 61,690 (1995).

pay the same rates under a regional rate mechanism.⁶ However, we held in Midwest ISO:

we will not allow the Midwest ISO to charge a customer both an average and incremental cost rate, unless it

charges the same rate to all transmission customers, including the owners. [7]

For these reasons, we will direct SPP to remove this provision from its proposed tariff.

4. Service Request Charge

SPP proposes to cease refunding the amounts paid to ensure that requests for transmission services are bona fide (the service request charge). The service request charge is \$100-\$200 depending on the length of the service. Currently, SPP refunds this charge once it has processed the request for service. SPP claims that it must retain deposits because it has not recovered its administrative costs. We disagree. SPP has increased its administrative charge to recover such costs (see section C.1 below). As SPP has submitted no basis for retaining these funds, we will direct SPP to remove this provision from its tariff.

5. Reservation Priority Provisions

SPP has added provisions to section 13.2 of the transmission tariff, specifically addressing priorities over Central and South West Operating Companies' high voltage direct current facilities and noting that they are usually constrained. We will reject these provisions as not consistent with or superior to the pro forma tariff. The provisions of section 13.2 of the tariff apply to all oversubscriptions for service, regardless of the facilities involved.

⁶See Pacific Gas and Electric Company, et al., 80 FERC ¶ 61,128 at 61,429-30 (1997).

⁷Midwest Independent Transmission System Operator, Inc., 85 FERC ¶ 61,372 at ___ (1998).

There is no necessity for a discussion of particular grid components in isolation. In its answer, SPP states that the revised language does not change the operation of section 13.2 but merely applies the pro forma transmission request priorities to customers using such facilities. As the revised language is superfluous, we will direct SPP to delete it. We will also direct SPP to delete the revision to a companion provision, Schedule 2 - Reactive Voltage Control, as similarly unnecessary.

C. Provisions That Do Not Require Modification

1. Scheduling and Administrative Charge

SPP proposes to increase the ceiling for its scheduling and tariff administration charge from \$0.15 per Mwh of energy scheduled to \$0.20 per Mwh of capacity reserved in each hour, subject to true-up. SPP states that its current charge is inadequate and that the revision is necessary to recover costs. (Cover Letter at 10). Golden Spread/Kansas Cooperatives (protest at 18), Entergy (protest at 7) Electric Clearinghouse (protest at 7) and Coral (protest at 3) object to this revision as without cost justification and without explanation for basing the scheduling charge on amounts of capacity reserved rather than amounts of energy scheduled every hour.

We will accept this revision, in order to allow SPP to fully recover its costs for scheduling and administration. Assessing the scheduling charge on the basis of capacity reserved rather than energy scheduled is reasonable, because SPP incurs an administrative cost when it processes a reservation even if the party requesting the reservation does not fully use it.

2. Costs Associated with Generation Step-up Transformers

Golden Spread/Kansas Cooperatives request us to require SPP to show whether they have included the costs of generation step-up transformers in the calculation of long-term transmission rates. (Golden Spread/Kansas Cooperatives protest at 8-9). We will deny this request. Regional service will be provided at the rates which now apply to single-company service. These rates are not being changed and will continue to apply to single-company network service. The rates will, of course, remain subject to any refund obligations previously imposed and to the outcome of any pending Commission proceedings. In any event, if Golden Spread/Kansas Cooperatives believe these existing rates are excessive, they are free to file a complaint.

3. Distance-based Pricing for Short-Term Service

Golden Spread/Kansas Cooperatives (protest at 9-11), Electric Clearinghouse (protest at 3-4) and Enron (protest at 4) argue that SPP should eliminate megawatt-mile pricing on file for short-term service in favor of postage stamp pricing, so that it will price short and long-term point-to-point services on the same basis. We will deny this request. SPP has proposed no change in its pricing for short-term service and intervenors have provided no reason to compel the use of identical pricing for the two services.

4. Penalty Charges

Golden Spread/Kansas Cooperatives (protest at 15-18) oppose SPP's proposed penalty charges equal to 200 percent of the standard charge for: (1) ancillary services taken in excess of prior arrangements; and (2) long-term firm service in excess of reserved capacity. They argue that the proposed penalties are an unwarranted deviation from the pro forma tariff, and that SPP has failed to justify the penalties with cost support or to provide an adequate explanation for them.

SPP's proposed penalty charges are consistent with our decision in Allegheny,⁸ allowing penalties capped at a level equal to twice the standard rate for the service at issue. The proposed penalty charges are not, then, an unwarranted deviation from the pro forma tariff, and we will accept them.

5. Curtailement Requests

SPP's proposed tariff assesses penalties to transmission customers for failure to comply with SPP's directives to curtail service. Enron (protest at 6) argues that it is generators, not transmission customers, that must respond to curtailment orders and that SPP should not subject a transmission customer to penalties for a generator's failure to comply with SPP's directives to curtail service. Enron requests that we direct SPP to modify its proposed tariff accordingly.

We will deny Enron's request. The pro forma tariff provides that the transmission customer, not the generator, must make required reductions upon the transmission provider's request.

⁸80 FERC at 61,545-46 & n. 131 (1997).

6. ATC Calculations

Electric Clearinghouse (protest at 8-9) asks that we require SPP to provide the basis for its calculations with respect to its capacity benefit margin set-aside. We will deny this request, since SPP has made no change to this portion of its tariff.

D. Reporting Regarding Existing Firm Service Contracts

Enron requests (protest at 5) that we require SPP to file reports on which existing firm contracts are expiring and which it has rolled over or renewed under section 2.2 of the tariff. The only reason Enron advances for imposing this requirement is that it would "allow the Commission and interested parties to monitor the status of these . . . contracts." (Id.) As Enron has failed to provide any persuasive reason to impose this reporting burden on SPP, we shall deny its request.

Conclusion

Our analysis indicates that, as modified by our summary disposition of certain matters, discussed above, SPP's proposed revisions to its open access transmission tariff appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept SPP's proposed revisions for filing, without hearing or suspension, and allow the tariff revisions, as modified, to become effective on January 30, 1999. The Commission orders:

(A) Coral's unopposed, late-filed motion to intervene in this proceeding is hereby granted.

(B) SPP's answer is hereby accepted; Golden Spread/Kansas Cooperatives' motion to strike is hereby denied.

(C) Electric Clearinghouse's answer to SPP's answer is hereby accepted.

(D) SPP is hereby directed to submit a compliance filing as discussed in the body of this order within 30 days of the date of this order.

(E) With the modifications discussed in the body of this order, SPP's proposed revisions are hereby accepted for filing, without hearing or suspension, to become effective January 30, 1999.

(F) SPP is hereby notified of the following rate schedule designation:

Southwest Power Pool
FERC Electric Tariff,
Second Revised Volume No. 1
(Supersedes First Revised Volume No. 1)

By the Commission.

(S E A L)

David P. Boergers,
Secretary.