

109 FERC ¶ 61,002
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER04-1088-000

ORDER ACCEPTING SERVICE AGREEMENTS, AS MODIFIED, FOR FILING

(Issued October 1, 2004)

1. Southwest Power Pool, Inc. (SPP) filed an executed service agreement for Network Integration Transmission Service (NITSA) and an executed Network Operating Agreement (NOA)(collectively Agreements) with Southwestern Public Service Company (Southwestern). In this order, we accept the Agreements for filing, as modified below, to become effective as requested, and we direct SPP to make a compliance filing reinstating the original language in section 4.0 of the NITSA to allow future rollover rights. This order benefits customers because it provides certainty regarding transmission customers' rollover rights consistent with Commission policy.

Background

2. On July 8, 2004, SPP and Southwestern executed a NITSA and a NOA to provide for transmission service in accordance with SPP's Open Access Transmission Tariff (OATT). On August 3, 2004, SPP submitted the Agreements for filing to the Commission. SPP states that it is filing the Agreements with the Commission because they contain modifications that do not conform to SPP's standard forms of service agreement. SPP states that the changes are made with Southwestern's consent and are necessary to help facilitate Southwestern's request for network service.

3. SPP states that the provisions of section 4.0 of the NITSA that provide for the continuation of service from year to year unless terminated by either party have been deleted with the mutual consent of SPP and Southwestern. SPP explains that the change is necessary because SPP has not yet determined whether there is sufficient transmission capacity available to support the requested transmission period beyond the termination date of the contract. SPP adds that it is undertaking the necessary studies to ascertain whether sufficient transmission capability would be available, and to identify what additional steps, if any, might be necessary. SPP argues that allowing these service agreements to go into effect with the year-to-year provisions deleted will help facilitate this process, and allow Southwestern to take service at the current time.

4. SPP requests that the Commission waive its notice requirement and permit the Agreements to be effective July 8, 2004, the date upon which service will commence under the Agreement.

Notice, Intervention, and Comments

5. Notice of SPP's filing was published in the *Federal Register*, 69 Fed.Reg. 50,186 (2004) with interventions or protests due on or before August 24, 2004. No motions to intervene or comments were filed.

Discussion

6. The Commission has consistently stated that a transmission provider can deny a customer the ability to roll over its long-term firm service contract only if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract.¹ The Commission has further stated that a transmission provider may limit the terms under which a new long-term agreement may be rolled over if it has a pre-existing contract obligation that commences in the future.² For example, if the transmission provider knows at the time of the execution of the original service agreement that available transfer capability to serve the customer will only be available for a particular time period, after which it is already committed to another transmission customer under a previously-confirmed transmission request (i.e., an agreement under which service would commence at some time in the future), the transmission provider can reflect those obligations in the long-term contract and thereby limit the prospective transmission customer's rollover rights.

7. In order to make this demonstration, a transmission provider must identify the pre-existing contracts that commence in the future or show that native load growth projections are sufficiently specific and supported in the record at the time of the original transmission service agreement.³

¹ See *Nevada Power Co.*, 97 FERC ¶ 61,324 at 62,493 (2001); *Public Service Company of New Mexico v. Arizona Public Service Company*, 99 FERC ¶ 61,162 at 61,667 (2002); *Constellation Power Source, Inc. v. American Electric Power Service Corporation and Southwest Power Pool, Inc.*, 100 FERC ¶ 61,157 at P 34 (2002).

² *Southern Company Services, Inc.*, 108 FERC ¶ 61,174 (2004); *Southern Company Services, Inc.*, 108 FERC 61,093 (2004); *Southern Company Services, Inc.*, 102 FERC ¶ 61,200 (2003).

³ See *Nevada Power Co., et al.*, 97 FERC ¶ 61,324 (2001); *American Electric Power Service Corp.*, 101 FERC ¶ 61,384 (2002).

8. We find that SPP has failed to demonstrate that native load growth or pre-existing contract obligations that commence sometime in the future will constrain SPP's transmission system such that it cannot provide transmission service to Southwestern beyond the term of the Agreements. SPP has not attempted to provide any analysis to support such an argument. In its filings, rather than indicate that it was making such a demonstration, SPP simply removed the "rollover right" language in section 4.0 of the NITSA⁴ and claims that this change is necessary because SPP has not yet determined whether there are sufficient transmission capacity available to support the requested transmission period beyond the termination dates of the contract.

9. As we have previously stated, once a transmission provider evaluates the impacts on its system of providing transmission service to a customer and decides to grant such a request, as it has here, the Commission's rollover rights policy obligates the transmission provider to plan and operate its system with the expectation that it will continue to provide service to that customer should the customer request rollover of its contract term. If the transmission system becomes constrained (for reasons other than those initially identified, i.e., reasonably forecasted native load growth or pre-existing contract obligations that commence in the future) such that the transmission provider cannot satisfy all existing long-term customers, then the obligation is on the transmission provider to either curtail service to all affected customers (not just the later accepted firm customers) pursuant to provisions of its OATT or build more capacity to relieve the constraint. Refusing rollover rights based on the potential limitation of transmission capacity is not an option.

10. We find that SPP has not shown that it cannot provide rollover rights to Southwestern solely because it has native load growth or pre-existing contract obligations that commence sometime in the future. Accordingly, we will accept the proposed Agreements, as modified, for filing, to be effective July 8, 2004. We further direct SPP to make a compliance filing reinstating the original language in section 4.0 of the NITSA within 30 days of the date of this order. This modification allows Southwestern to exercise its rollover rights in accordance with SPP's OATT.

⁴ SPP has deleted the following language from section 4.0 of the NITSA: "Thereafter, it will continue from year to year unless terminated by the Network Customer or the Transmission Provider by giving the other one year advance written notice or by the mutual written consent of the Transmission Provider and Network Customer."

The Commission orders:

The Agreements are hereby accepted for filing, effective July 8, 2004, subject to the filing, within 30 days of the date of this order, of service agreements with the modifications set forth in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.