

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER06-767-000 and
ER06-448-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND
CONSOLIDATING PROCEEDINGS

(Issued May 18, 2006)

1. On March 21, 2006, Southwest Power Pool, Inc. (SPP) filed proposed modifications to a Network Integration Transmission Service Agreement (NITSA) between Oklahoma Municipal Power Authority (OMPA) and SPP that was originally submitted on January 3, 2006, in Docket No. ER06-448-000. In addition, SPP filed a Network Operating Agreement (NOA) among Oklahoma Gas & Electric Company (OG&E), OMPA and SPP that was omitted from its January 3, 2006 filing. As discussed below, the Commission accepts the agreements, suspends them for a nominal period, makes them effective December 1, 2005, subject to refund, establishes hearing and settlement judge procedures, and consolidates the instant filing with the ongoing proceeding in Docket No. ER06-448-000.¹

I. Background

2. On January 3, 2006, SPP filed an unexecuted NITSA between OMPA and SPP, an executed NOA among OMPA, American Electric Power Company and SPP, and an unexecuted NOA among Western Farmers Electric Cooperative (WFEC), OMPA and SPP in Docket No. ER06-448-000. In the March 3 Order, the Commission accepted the agreements for filing, suspended them, made them effective December 1, 2005, subject to

¹ *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,241 (2006) (March 3 Order).

refund, and set them for hearing and settlement judge procedures. The parties have engaged in settlement negotiations before the judge, and have agreed to principles for settlement.²

3. The filing in this proceeding is a supplement to the filing by SPP in Docket No. ER06-448-000. Here, SPP has tendered for filing an executed NOA between SPP, OMPA and OG&E, which was inadvertently omitted from the January 3 filing in Docket No. ER06-448-000. In addition, SPP has tendered for filing in this proceeding a revised NITSA that reflects updated information concerning the charges for the wholesale distribution service provided by WFEC to OMPA in connection with OMPA's obtaining network transmission service from SPP. The updated information, which WFEC provided to SPP, reflects revised cost-of-service data and corresponding modifications to the wholesale distribution service charges. SPP has requested an effective date of December 1, 2005, consistent with the March 3 Order.

II. Notice of Filing, Interventions, and Protests

4. Notice of SPP's filing was published in the *Federal Register*, 71 Fed. Reg. 16770 (2006), with interventions and protests due on or before April 11, 2006. OG&E filed a timely motion to intervene. WFEC also filed a timely motion to intervene and comments. OMPA filed a motion for late intervention and motion to consolidate.

5. WFEC notes that SPP's filing reflects updated information concerning wholesale distribution service charges provided by WFEC to OMPA in connection with OMPA's obtaining transmission from SPP. However, it comments that, while settlement negotiations are ongoing and the parties have agreed on principles, they do not render moot the jurisdictional issues raised in its request for rehearing in Docket No. ER06-448-001, *i.e.* that the services WFEC provides, and the rates, terms and conditions are not under the Commission's jurisdiction under section 205 of the FPA.³

6. OMPA requests that the Commission consolidate the two dockets, to avoid potential conflicting outcomes in the two cases. It argues that the outcome of Docket No. ER06-448-000 — which OMPA hopes will settle — should be the same for Docket No. ER06-767-000, since they relate to essentially the same proposed agreements.

² See "Report of Settlement Judge," Docket No. ER06-448-000 (April 5, 2006).

³ 16 U.S.C. 824(d)(2000).

III. Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. We will also grant OMPA's motion for late intervention given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

8. The instant filing raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

9. 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 consistent with our action in the March 3 Order on December 1, 2005, subject to refund, and set them for hearing and settlement judge procedures as ordered below.

10. Given common issues of law and fact, we will consolidate this proceeding with the proceeding currently ongoing in Docket No. ER06-448-000 for purposes of settlement, hearing and decision.

The Commission orders:

(A) SPP's filing is hereby accepted for filing and suspended for a nominal period, to become effective December 1, 2005, as requested, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on 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 compliance filing, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures.

(C) Docket Nos. ER06-767-000 and ER06-448-000 are hereby consolidated for purposes of settlement, hearing and decision.

(D) The presiding administrative law judge designated to preside in Docket No. ER06-448-000, or the settlement judge in Docket No. ER06-448-000, as appropriate, shall determine the procedures best suited to accommodate consolidation of Docket No. ER06-767-000 with Docket No. ER06-448-000.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.