

137 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Southwest Power Pool, Inc.

Docket No. ER11-4405-000

ORDER CONDITIONALLY ACCEPTING PROPOSED AGREEMENTS,
SUBJECT TO COMPLIANCE FILING

(Issued October 28, 2011)

1. Southwest Power Pool, Inc. (SPP) submitted a proposed Network Integration Transmission Service Agreement (NITSA) and a proposed Network Operating Agreement (NOA), involving SPP, Kansas Electric Power Cooperative, Inc. (Kansas Electric), and Mid-Kansas Electric Company, LLC (Mid-Kansas). In this order, we conditionally accept SPP's proposed NITSA and NOA, subject to SPP filing an amendment to Appendix 3 of the NITSA, within 30 days of the date of issuance of this order, as discussed below.

I. Background

2. On August 31, 2011, SPP submitted for filing the NITSA and NOA referenced above. The parties to the NITSA are SPP, as Transmission Provider, and Kansas Electric, as Network Customer. The parties to the NOA are SPP, as Transmission Provider, Kansas Electric, as Network Customer, and Mid-Kansas, as Host Transmission Owner. The proposed NITSA and NOA are signed by the respective parties. SPP requests an effective date of August 1, 2011 for the two agreements.

3. SPP states that its proposed NITSA and NOA modify and supersede the currently effective NITSA and NOA, which were accepted by the Commission in February 2010.¹

¹ SPP August 31, 2011 Transmittal Letter at 1-2 (citing *Southwest Power Pool, Inc.*, Docket Nos. ER10-338-000 and -001 (Feb. 4, 2010) (delegated letter order)). The NITSA and NOA are on file with the Commission because the NITSA contains language that does not conform to the *pro forma* NITSA in the SPP open access transmission tariff (OATT).

SPP states that the changes to the agreements (1) add a delivery point to Appendix 3 of the NITSA and (2) reflect changes SPP has made to the *pro forma* NITSA and NOA in the SPP OATT, since the time the original NITSA and NOA were accepted.

4. SPP also notes that the proposed NITSA contains the same non-conforming language that was accepted in the currently effective NITSA and, as then, the non-conforming language is required because of Kansas Electric's status as a borrower from the Rural Utilities Service (RUS).² SPP identifies the non-conforming language as (1) a statement in section 7.0 of the NITSA that RUS approval must be obtained for any transfer or assignment of the NITSA, (2) a statement in section 7.0 of the NITSA that RUS has rights of succession under the NITSA, and (3) statements in sections 2.0, 3.0, and 5.0 of Attachment 1 of the NITSA that network load will be dynamically telemetered to the Westar Energy Control Area.

Notice of Filing

5. Notice of SPP's filing was published in the *Federal Register*, 76 Fed. Reg. 55,901 (2011), with interventions and protests due on or before September 21, 2011. On September 29, 2011, Mid-Kansas filed a late-filed motion to intervene and protest. On October 14, 2011, SPP filed an answer to Mid-Kansas's protest. On October 18, 2011, Kansas Electric filed a late-filed motion to intervene that expresses support for SPP's filing.

II. Discussion

A. Procedural Issues

6. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant the late-filed motions to intervene of Mid-Kansas and Kansas Electric, given their interests in the proceeding, the early state of the proceeding, and the absence of undue prejudice or delay.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. Accordingly, the Commission accepts SPP's answer because it provided information that aided our consideration.

² *Id.*

B. Substantive Issues

1. Parties' Positions

8. Mid-Kansas notes that, in Appendix 3 of the NITSA (the list of KEPCO's Delivery Points under the NITSA), the voltage level of the new delivery point, which Mid-Kansas takes to be "Peterson Grain," is given as 115 kV, where in fact it should be 34.5 kV. Mid-Kansas attaches a letter from Kansas Electric to Mid-Kansas identifying the delivery point's voltage as 34.5 kV.³

9. Additionally, Mid-Kansas asks the Commission to reject SPP's filing because section 8.9 of Attachment 1 to the NITSA, a provision entitled Wholesale Distribution Service Charge, is blank, and because SPP did not attach, for informational purposes, the local delivery service agreements (LDSA) and local delivery operating agreements (LDOA), by which Kansas Electric would receive wholesale distribution service from Mid-Kansas.

10. Mid-Kansas explains that the relevant LDSAs and LDOAs are pending before the Kansas Corporation Commission (Kansas Commission), but in previous situations involving NITSA and NOAs, SPP has included the section 8.9 reference and attached the LDSAs and LDOAs for informational purposes, and therefore SPP should have done the same in this case.⁴ In particular, Mid-Kansas references a proceeding (the Kansas Power Pool (KPP) NITSA Proceeding) involving SPP's filing of a NITSA and NOA among SPP, KPP and Mid-Kansas, which Mid-Kansas states includes a Commission directive for SPP to file the LDSAs and LDOAs for informational purposes.⁵

11. Mid-Kansas states that it asked SPP to file the NITSA as unexecuted, with the reference in section 8.9 and with the LDSAs and LDOAs attached for informational purposes, but that SPP refused on grounds that it was honoring Kansas Electric's request to hold off filing them until they were finalized by the Kansas Commission. However, Mid-Kansas claims that the LDSAs and LDOAs in the KPP NITSA proceeding were at the time also pending before the Kansas Commission. Thus, Mid-Kansas argues that the Commission should require SPP to amend section 8.9 of the NITSA to describe the Wholesale Distribution Service Charge and to attach the LDSAs and LDOAs, to avoid a suggestion that the Commission has reached a legal conclusion that would affect the

³ Mid-Kansas Protest at 3.

⁴ *Id.* at 4-6.

⁵ *Id.* at 6 (citing *Southwest Power Pool, Inc.*, 135 FERC ¶ 61,223, at P 31 (2011) (June 2011 Order)).

pending Kansas Commission proceeding. Mid-Kansas also argues that by not including the section 8.9 reference or attaching the LDSAs and LDOAs, SPP is failing to ensure that Kansas Electric has made appropriate arrangements for using non-SPP facilities.

12. Mid-Kansas also challenges SPP's description of the NITSA and NOA as "executed," because Mid-Kansas believed that an executed NITSA would include the section 8.9 reference and that the LDSAs and LDOAs would be attached for informational purposes.

13. SPP argues that Mid-Kansas's protest is without merit. SPP argues that its decision not to attach the pending LDSAs and LDOAs is consistent with Commission precedent, specifically the June 2011 Order.⁶ SPP contends that, in the June 2011 Order, the Commission accepted the unexecuted LDSAs and LDOAs "for informational purposes only" because the services the agreements describe are not jurisdictional to this Commission.

14. SPP notes that in the KPP NITSA proceeding, the network customer (KPP) requested that the LDSAs and LDOAs be attached as unexecuted, whereas, in this case, the network customer (Kansas Electric) requested that they not be attached until the Kansas Commission makes a determination on them. SPP states that, while Mid-Kansas and Kansas Electric are involved in a dispute over the LDSAs and LDOAs before the Kansas Commission, SPP's decision not to attach the LDSAs and LDOAs is not affecting the Kansas Commission proceeding because, as Mid-Kansas acknowledges, Kansas Electric has paid Mid-Kansas the disputed charges. SPP states that its decision not to include the section 8.9 reference or attach the LDSAs and LDOAs is not a failure on SPP's part to ensure that Kansas Electric has appropriate arrangements for the use of non-SPP transmission facilities because the use of non-SPP transmission facilities is governed not by SPP but by the Kansas Commission.

15. SPP also addresses Mid-Kansas's claim that SPP filed the NITSA and NOA as "executed" despite Mid-Kansas's intention that they be filed as unexecuted. SPP states that Mid-Kansas signed the NOA on its own volition and did not subsequently ask SPP to remove its signature. SPP states that if Mid-Kansas had asked, SPP would have removed Mid-Kansas's signature and filed the NOA as unexecuted.

2. Commission Determinations

16. The Commission conditionally accepts SPP's proposed NITSA and NOA, subject to SPP filing, within 30 days of the issuance of this order, an amended Appendix 3 to the NITSA, as discussed below. The proposed modifications add a new delivery point to

⁶ SPP Answer at 4 & n.13 (citing June 2011 Order, 135 FERC ¶ 61,223 at P 29).

Appendix 3 of the NITSA or reflect changes SPP has made to the *pro forma* NITSA and NOA in the SPP OATT, since the time the original NITSA and NOA were accepted, and are just and reasonable subject to the modification ordered below.

17. Regarding the issues raised in Mid-Kansas's protest, we agree with Mid-Kansas that, based on the letter attached to Mid-Kansas's protest, the Peterson Grain delivery point should have a facility voltage level of 34.5 kV. SPP's answer did not address this issue. Therefore, we direct SPP to file within 30 days to amend Appendix 3 to state that the Peterson Grain delivery point's voltage level is 34.5 kV.

18. However, we reject the other requests in Mid-Kansas's protest. We decline to require SPP to amend the NITSA to refer in section 8.9 to Wholesale Distribution Service Charge, and to attach the LDSAs and LDOAs pending before the Kansas Commission for informational purposes. SPP is not required to do so under the June 2011 Order, under the SPP OATT, or to be consistent with its action in the proceeding surrounding the June 2011 Order.

19. In the June 2011 Order, we accepted the LDSAs and LDOAs at issue in that proceeding for informational purposes only because they were included in the filing, although, like the ones at issue in this proceeding, they are not jurisdictional to this Commission.⁷ Moreover, we did not require SPP to include in future filings the non-jurisdictional LDSAs and LDOAs as attachments to service agreements for informational purposes.

20. The relevant provision of the SPP OATT does not require SPP to file all LDSAs or LDOAs. Schedule 10 of the SPP OATT, titled "Wholesale Distribution Service," states, as relevant here, "All rates and charges for Wholesale Distribution Service shall be on file with the appropriate agency as required by law or regulation." In this case, the appropriate agency is the Kansas Commission.

21. In addition, we reject Mid-Kansas's argument that SPP should be directed to include the section 8.9 reference to Wholesale Distribution Service Charge and attach the LDSAs and LDOAs with this Commission for informational purposes in order to be consistent with its previous actions. SPP is required to comply with its OATT and with Commission policy, neither of which require SPP to file the LDSAs and LDOAs with the Commission.

22. Moreover, our finding in this matter does not make any findings affecting the Kansas Commission proceeding, and should not be interpreted to do so. As in the June 2011 Order, our only legal finding here is that SPP *may* attach LDSAs and LDOAs for

⁷ June 11 Order, 135 FERC ¶ 61,223 at P 29, 31.

informational purposes to NITSA and NOAs filed with the Commission. Additionally, we agree with SPP that it is the role of the Kansas Commission, and not SPP, to determine whether Kansas Electric has made appropriate arrangements for the use of non-SPP facilities.

23. We also accept as reasonable SPP's explanation that it did not remove Mid-Kansas's signature from the NOA and file the agreements as unexecuted because Mid-Kansas did not ask it to do so.

24. For the reasons discussed above, we conditionally accept SPP's proposed NITSA and NOA, subject to SPP filing a correction to the facility voltage level for Peterson Grain, in Appendix 3 of the NITSA, within 30 days of the date of issuance of this order.

The Commission orders:

SPP's proposed NITSA and NOA are hereby accepted for filing, subject to SPP submitting a compliance filing within 30 days of the issuance of this order, as discussed in the body of the order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.