

143 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER12-1179-000
ER12-1179-001

ORDER ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued June 6, 2013)

1. The Commission issued an order on October 18, 2012¹ conditionally accepting the Southwest Power Pool, Inc.'s (SPP) proposal to establish the SPP Integrated Marketplace. The Commission conditionally accepted SPP's proposal to integrate existing grandfathered agreements (GFA)² into the Integrated Marketplace. Further, the Commission directed SPP to negotiate the integration of the GFAs that have not yet been integrated into the Integrated Marketplace, and established a reporting requirement for SPP. In this order, we grant a motion submitted by Omaha Public Power District (OPPD) to establish settlement judge procedures to address the unresolved issues regarding the integration of OPPD's GFAs into the Integrated Marketplace. We also establish a schedule for further submissions in the event that settlement judge procedures are not successful.

¹ *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) (October Order), *order on reh'g*, 142 FERC ¶ 61,205 (2013).

² SPP defines GFAs, in part, as "agreements providing long term firm transmission service executed prior to April 1, 1999 and Network Integration Transmission Service executed prior to February 1, 2000." *See* SPP Tariff section 1.1(G) for complete definition.

I. October Order

2. In conditionally accepting SPP's Integrated Marketplace proposal, the Commission accepted SPP's proposed treatment of GFAs. The Commission found that SPP had constructed a well-reasoned proposal for treatment of those GFAs that are being integrated into the new market and that in doing so, SPP had managed to address and largely resolve a very complex issue that has challenged other markets. However, the Commission found that, in preparation for a successful launch of the Integrated Marketplace, SPP needed to address all GFAs within the Integrated Marketplace construct. The Commission directed SPP to negotiate with parties to the remaining GFAs that had not been integrated into the new market, and directed SPP to file an informational report with the Commission on the status of its negotiations.³

3. In the October Order, the Commission also stated that it was necessary to integrate the remaining GFAs into the Integrated Marketplace because the new market is likely to create an overall environment that will be significantly different from what existed when the parties negotiated the GFAs. The Commission noted similarities between the Midwest Independent Transmission System Operator, Inc.'s (MISO)⁴ energy markets proceeding and the development of MISO's Transmission and Energy Markets Tariff.⁵ There, the Commission approved a carve-out of GFAs, based upon its determination that the Commission had no authority to modify some of the GFAs that had a non-

³ *Id.* P 317 (directing SPP to file the informational report 90 days after the issuance of the October Order).

⁴ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

⁵ October Order, 141 FERC ¶ 61,048 at P 314 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236 (2004), *order on reh'g*, 111 FERC ¶ 61,042, *order on reh'g*, 112 FERC ¶ 61,311 (2005) (MISO GFA Order), *aff'd sub.nom. Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007)).

jurisdictional entity as the transmission owner.⁶ The Commission also noted in the October Order that MISO's carve-out might serve as a model for SPP.⁷

4. In the October Order, the Commission noted OPPD's representation that it would voluntarily convert its grandfathered rights as long as all of those rights were converted. According to OPPD, in order to qualify in the Integrated Marketplace for an award of financial rights, which include auction revenue rights (ARR) and transmission congestion rights (TCR), SPP was requiring a GFA to have a source and sink that mapped to a valid settlement location, and that a GFA must represent a full firm transmission path.⁸ OPPD explained that its GFAs used to sink at the OPPD border with SPP, but when OPPD joined SPP's Energy Imbalance Service (EIS) Market, SPP made changes to its firm transmission reservations such that these sinks became internal points in SPP's system, which did not have valid settlement locations.⁹ OPPD also asserted that as a result of these alterations, its GFAs now represent only partial path rights on the OPPD system.¹⁰ In the October Order, the Commission directed SPP to negotiate with OPPD to integrate these GFAs into SPP's new market. The Commission also stated that SPP could make other arrangements, if such arrangements were mutually satisfactory to both SPP and OPPD, in order to integrate these GFAs into the market. As an example, the Commission

⁶ The Commission also noted that following the MISO GFA Order, the Commission held in *Dairyland Power Coop. v. Midwest Indep. Transmission Sys. Operator*, 129 FERC ¶ 61,221, *reh'g denied*, 131 FERC ¶ 61,163 (2010) (*Dairyland*), that certain GFAs between a non-jurisdictional transmission-owning cooperative and its cooperative owner-members did not need to be carved-out from the MISO market because Dairyland was able to modify these contracts. Thus, the Commission found that in certain circumstances, not all GFAs of a non-jurisdictional transmission-owning member merit a carve-out as long as it can be shown that the non-jurisdictional transmission-owning member is able to modify the GFA. The Commission directed the negotiating parties to examine the contracts to determine whether the GFAs meet this policy for carve-outs. October Order, 141 FERC ¶ 61,048 at P 315.

⁷ *Id.* PP 314, 317.

⁸ *Id.* P 305.

⁹ *Id.*

¹⁰ *Id.* (citing OPPD May 25 Answer at 4-5).

noted OPPD's suggestion that SPP should calculate the financial value of the partial path reservation to internal points of SPP without requiring a corresponding pancaked transmission request. The Commission stated that if such a calculation would facilitate the integration of the GFAs into the Integrated Marketplace and would be administratively easier than establishing settlement locations, then SPP could pursue this alternative method of integrating the GFAs.¹¹

II. Status Reports

A. January 2013 Status Report

5. On January 16, 2013, SPP filed a status report (January 2013 Status Report) describing the status of the negotiations to integrate GFAs into the Integrated Marketplace. SPP stated that each party with whom it had initiated negotiations has unique circumstances that must be considered and, thus, each GFA would require a unique resolution. SPP explained that it was evaluating the financial impacts and potential precedential implications of creating pseudo settlement locations at or near the old SPP/OPPD border that could serve as the basis for determining ARR for the paths of these GFAs. SPP stated that it intends to continue discussions with OPPD and other parties with GFAs that have not been integrated into the Integrated Marketplace.¹²

B. March 2013 Status Report

6. On March 15, 2013, SPP filed its second status report (March 2013 Status Report) describing the status of the negotiations to integrate GFAs into the Integrated Marketplace. According to SPP, all issues raised by Missouri River Energy Services and Heartland Consumers Power District have been resolved, and, because it made significant progress with Nebraska Public Power District and Lincoln Electric System, SPP planned to continue these negotiations. However, SPP stated that it informed OPPD that it would be unable to provide OPPD the treatment it sought for its GFAs. Thus, SPP stated that it would not provide ARR and TCRs for OPPD's GFAs with partial path reservations to sinks that are not valid settlement locations. SPP asserted that awarding ARRs and TCRs for these partial paths is inconsistent with North American Energy Standards Board (NAESB) definitions of valid sink points and is contrary to SPP's proposed market

¹¹ *Id.* P 310, n.475.

¹² January 2013 Status Report at 4.

design. SPP stated that because it considered its negotiations with OPPD to be at an impasse, no further negotiations are scheduled.¹³

C. May 2013 Status Report

7. On May 15, 2013, SPP filed its third status report (May 2013 Status Report) providing a status update of GFA negotiations. SPP explained that it has drafted a GFA carve-out proposal, modeled upon the MISO carve-out, and that it intends to take this proposal to its stakeholders by July 30, 2013.¹⁴ In addition, SPP reiterated its position, outlined in SPP's March 2013 Status Report, that SPP notified OPPD that its partial path reservations would not qualify for TCRs or ARRs because these reservations do not sink to a valid settlement location and could not be used to schedule service. SPP also repeated its statement that it is not negotiating with OPPD.¹⁵

III. Protest and Responsive Pleadings

A. OPPD Protest to March 2013 Status Report

8. OPPD asserts that since the issuance of the October Order, it has not had any meaningful negotiations with SPP. OPPD states SPP and OPPD engaged in telephone conferences in December 2012 and January 2013, but that these discussions involved only fact-finding by SPP to understand OPPD's GFA issues. Moreover, OPPD contends that despite the January 2013 Status Report representation that SPP intended to schedule additional discussions with OPPD within the next several weeks, no negotiations were ever scheduled. OPPD states that on March 12, 2013, SPP sent an email to OPPD reiterating SPP's view that OPPD's grandfathered rights were not usable, because they represent a path to the former SPP/OPPD border that is no longer a valid settlement location in the Integrated Marketplace.¹⁶ OPPD contends that three days later, SPP filed its March 2013 Status Report, representing that negotiations with OPPD were at an

¹³ March 2013 Status Report at 4.

¹⁴ May 2013 Status Report at 4.

¹⁵ *Id.* at 3 n.8.

¹⁶ OPPD March 22, 2013 Protest, Exhibit A.

impasse and contending that SPP has not offered any rationale as to its conclusion that OPPD's GFA rights were no longer usable.¹⁷

9. Moreover, OPPD asserts that even though SPP previously said it was evaluating the financial impacts and potential precedential implications of creating a pseudo settlement location at or near the former SPP/OPPD border to establish ARR's for these paths, OPPD has not seen any results regarding this study. OPPD contends that such a financial impact evaluation could serve as a basis for negotiating and resolving the integration of its GFAs.¹⁸

10. OPPD asserts that SPP fails to give proper recognition to OPPD's firm transmission rights at SPP "border points" that predate OPPD's entry into SPP in 2009. According to OPPD, after OPPD joined SPP, these border points were designated by SPP as "internal" border points within the SPP footprint and, for some of these reservations, SPP changed the source, sink, point of receipt and point of delivery. OPPD argues that SPP will not recognize two of these border points, OPPD.WR and OPPD.MPS, as settlement locations for transmission reservations. OPPD points out that it holds 515 megawatts of transmission rights, and that it will continue to pay for transmission reservations with rights on the congested flowgates. However, OPPD claims that because SPP will not recognize these border points as settlement locations, OPPD will not be able to obtain TCR or ARR's for some of its grandfathered transmission reservations in the Integrated Marketplace.¹⁹ Therefore, OPPD requests that the Commission direct SPP to recognize OPPD's GFA sink points at the former OPPD/SPP border as settlement locations so that OPPD may obtain and use ARR's and TCR's.

B. SPP Answer

11. SPP responds to OPPD's protest by stating that the Commission can summarily rule on the GFA issue because there are no material facts in dispute. SPP states that under prior interchange transactions, OPPD reserved transmission capacity on its own system in order to move power to the former border points for delivery and sale to Westar Energy, Inc. and Missouri Public Service Company. According to SPP, OPPD's GFA

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 5.

counterparties now use network service under SPP's Open Access Transmission Tariff (Tariff), which provides for secondary transmission service from sources within SPP (including OPPD) to network loads. SPP adds that under its Tariff, there is no right to schedule service on these partial paths; rather, any service across these paths must be combined with a downstream, "completing" reservation that sinks to a valid settlement location.²⁰

12. SPP asserts that creating pseudo settlement locations, as requested by OPPD, would be unsound. Moreover, SPP contends that partial paths do not satisfy the NAESB standards for coordinating interchange transactions. SPP explains that NAESB requires that all e-tag interchange transactions contain specific physical information on "load" and "sink," but OPPD's partial paths do not represent physical or contractual locations where energy sinks or is consumed. Thus, SPP contends that OPPD's partial paths cannot serve as the basis for receiving ARR or TCR in the new market. According to SPP, because SPP based its market design on NAESB standards, OPPD's partial paths do not meet the Tariff's requirements for scheduling transmission service or for providing source and sink data for ARRs and TCRs. SPP states that OPPD's partial paths do not constitute firm transmission rights and are not comparable to reservations on which a customer is entitled to schedule service. For these reasons, SPP contends that the Commission should reject OPPD's arguments.²¹

C. OPPD Answer

13. In its April 15, 2013 answer, OPPD alleges that SPP has ignored the Commission's directive to negotiate with OPPD regarding its GFAs, and that the Commission did not give SPP the option to declare an impasse. OPPD requests that the Commission reject SPP's argument that OPPD's GFAs be excluded from the Integrated Marketplace and direct SPP to resolve the GFA issues through negotiation.

IV. OPPD Motion to Establish Settlement Judge Procedures and SPP Answer

14. On May 10, 2013, OPPD filed a motion requesting that the Commission appoint a settlement judge to resolve the outstanding GFA issues. OPPD asserts that SPP unilaterally declared that it was at an impasse with OPPD, thereby contravening the

²⁰ SPP April 8, 2013 Answer at 3.

²¹ *Id.* at 4.

Commission's directive to negotiate a resolution of OPPD's GFAs. OPPD asserts that the integration of its GFAs needs to be settled prior to the TCR process scheduled to commence October 28, 2013 and, thereafter, the launch of the Integrated Marketplace on March 2014. To resolve this impasse, OPPD requests that the Commission direct a more formalized proceeding, which OPPD believes will lead to a timely resolution of the outstanding GFA issues.²²

15. On May 28, 2013, SPP filed an answer opposing OPPD's motion for appointment of a settlement judge. According to SPP, there are no material facts in dispute between the parties and, therefore the Commission can act summarily to resolve this controversy. SPP argues that the purpose of allocating ARR and TCRs is to protect service to loads from congestion costs. SPP contends that allocating ARR and/or TCRs to OPPD for partial transmission paths is contrary to the purpose of ARR and TCRs and would constitute a windfall to OPPD because OPPD does not flow energy under these agreements and does not serve load using a GFA.²³

16. Furthermore, SPP asserts that the market rules of other organized electricity markets approved by the Commission have not awarded financial rights for partial paths, and that awarding ARR to OPPD would curtail the availability of ARR to qualified market participants.²⁴ Finally, SPP repeats its arguments that NAESB standards require specific physical or contractual service locations that do not exist on OPPD's paths.

V. Commission Determination

17. In the October Order, the Commission directed SPP to negotiate the integration of all outstanding GFAs into the Integrated Marketplace. Despite communications between SPP and OPPD since the issuance of our October Order, SPP reports that it and OPPD are at an impasse regarding the treatment of OPPD's GFAs and that there are no ongoing negotiations between SPP and OPPD.²⁵ These issues must be resolved prior to the start

²² OPPD May 10, 2013 Motion at 4-5.

²³ SPP May 28, 2013 Answer at 5-7.

²⁴ *Id.* at 8-9.

²⁵ SPP March 2013 Status Report at 4; May 2013 Status Report at 3, n.8.

of the Integrated Marketplace initial ARR allocation and TCR process, scheduled to commence October 28, 2013.²⁶

18. We find that there are arguments raised by both parties in the proceeding that may affect the allocation of ARRs and TCRs, but that cannot be resolved on the basis of the record before us. Specifically, OPPD contends that SPP changed OPPD's firm transmission service reservations when OPPD originally joined SPP's EIS market and that the effect of these changes was to alter OPPD's firm transmission reservations' source, sink, point of receipt and point of delivery. SPP has not offered a response to these assertions and, instead, argues that, as OPPD's paths are currently configured, they do not qualify for an allocation of ARRs and TCRs. On a separate issue, SPP argues that allocating ARRs and/or TCRs to OPPD would be contrary to the purpose of ARRs and TCRs because OPPD does not flow energy under these agreements and does not serve load using a GFA.²⁷ OPPD has not offered a direct response to SPP's arguments; rather, OPPD argues that these are not "paths to nowhere" and that it continues to hold firm transmission rights on these paths.²⁸ Because we find that these issues are in dispute, we cannot summarily rule on them. For these reasons, we grant OPPD's motion for appointment of a settlement judge to provide a forum for SPP and OPPD to address the unresolved GFA issues prior to October 28, 2013.

19. The Commission rejects, however, SPP's assertion that establishing pseudo settlement locations for OPPD's GFAs is not an option for resolving this controversy because OPPD's GFAs do not comply with the NAESB standards for coordinating interchange transactions. We note that while the NAESB standards govern the procedures for scheduling and implementing interchange transactions, SPP has not demonstrated how those procedures affect or impair SPP's ability to model OPPD's transmission rights and establish ARRs, which are financial rights, for OPPD in the Integrated Marketplace. We also note that in MISO, when new load-serving entities joined the existing market, MISO allocated financial rights to hedge congestion by creating partial path reservations and establishing pseudo settlement locations, and

²⁶ See SPP March 25, 2012 Integrated Marketplace Readiness Metrics Informational Filing at 32.

²⁷ SPP May 28, 2013 Answer at 5-7.

²⁸ OPPD April 15, 2013 Answer at 3.

thereby was able to preserve the underlying transmission entitlements of the parties²⁹ Therefore, based upon the MISO example, we believe that the use of pseudo settlement locations can serve as a model for SPP and OPPD as they engage in settlement negotiations.

20. We direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedures.³⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³¹

21. If the parties are unable to resolve the issues involving OPPD GFAs by August 1, 2013, then settlement judge procedures are to cease and the settlement judge shall report to the Chief Judge and the Commission on or before August 6, 2013 that a settlement has not been achieved. Should this occur, SPP is directed to submit to the Commission by August 8, 2013 a proposal to address the unresolved OPPD GFA issues by proposing either a carve-out of the OPPD GFAs or a proposal for the integration of the OPPD GFAs into the Integrated Marketplace. In this submittal, SPP is to provide sufficient evidence and explanatory information to support its proposal, including a response that addresses the issues raised in the Commission's October Order, along with a copy of each OPPD GFA. Parties may submit responses to SPP's proposal on or before August 15, 2013. The Commission intends to issue an order thereafter.

The Commission orders:

(A) OPPD's motion for appointment of a settlement judge to resolve the outstanding GFA issues is hereby granted.

²⁹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,131 (2005).

³⁰ 18 C.F.R. § 385.603 (2012).

³¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within ten (10) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) If the parties have not settled this matter by August 1, 2013, settlement judge procedures shall cease and the settlement judge shall report to the Chief Judge and the Commission on or before August 6, 2013 that a settlement has not been achieved.

(D) In the event that settlement judge procedures are not successful by August 1, 2013, then by August 8, 2013, SPP is directed to submit to the Commission a proposal to address the unresolved OPPD GFA issues by proposing either a carve-out of the OPPD GFAs or a proposal for the integration of the OPPD GFAs into the Integrated Marketplace, as discussed in the body of this order. On or before August 15, 2013, parties may submit responses to SPP's proposal.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.