

171 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Southwest Power Pool, Inc.

Docket No. ER20-1145-000

ORDER ACCEPTING AGREEMENT

(Issued May 1, 2020)

1. On March 2, 2020, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and section 35.13 of the Commission's regulations:<sup>2</sup> (1) a revised, unexecuted Network Integration Transmission Service Agreement (NITSA) between SPP as transmission provider and American Electric Power Service Corporation (AEP), as agent for Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO), as network customer; and (2) an executed Network Operating Agreement among SPP as transmission provider, AEP, as agent for PSO and SWEPCO, as both network customer and host transmission owner, and Western Farmers Electric Cooperative (Western Farmers) as host transmission owner (together, the AEP Agreement).<sup>3</sup> In this order, we accept the AEP Agreement, effective February 1, 2020, as requested, subject to the outcome of the pending rehearing proceeding in Docket No. ER18-1702-002.

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. § 35.13 (2019).

<sup>3</sup> The AEP Agreement is designated as Twenty-Seventh Revised Service Agreement No. 1148 under SPP's Service Agreements Tariff. *See* Southwest Power Pool, Inc., FERC FPA Electric Tariff, Service Agreements Tariff, 1148 AEP NITSA NOA, 1148 American Electric Power NITSA and NOA, 13.0. The AEP Agreement modifies and supersedes the AEP NITSA and Network Operating Agreement that the Commission previously accepted in Docket No. ER19-2700-000. *See Sw. Power Pool, Inc.*, 169 FERC ¶ 61,072 (2019).

## I. Background

2. On May 31, 2018, in Docket No. ER18-1702-000, SPP filed the Twenty-Fourth Revised Service Agreement No. 1148 under its Service Agreements Tariff (Twenty-Fourth Revised Service Agreement). AEP protested this filing, objecting to SPP's inclusion of certain Creditable Upgrade<sup>4</sup> information within section 8.13 of Attachment 1 in the NITSA. On October 26, 2018, the Commission accepted the Twenty-Fourth Revised Service Agreement, finding that SPP had revised and submitted it pursuant to the requirements of section I.A of Attachment Z2 in the Tariff.<sup>5</sup> On November 26, 2018, in Docket No. ER18-1702-002, AEP requested rehearing of the October 2018 Order. The rehearing request is pending before the Commission.

3. On April 25, 2019, in Docket No. ER19-1672-000, SPP filed the Twenty-Fifth Revised Service Agreement No. 1148 under its Service Agreements Tariff (Twenty-Fifth Revised Service Agreement). AEP filed a protest to the filing due to the inclusion and revision of Creditable Upgrade information within section 8.13 of Attachment 1 in the NITSA. On July 8, 2019, SPP submitted a substitute Twenty-Fifth Revised Service Agreement that superseded the Twenty-Fifth Revised Service Agreement filed on April 25, 2019. This substitute Twenty-Fifth Revised Service Agreement restored the Creditable Upgrade information in section 8.13 of Attachment 1 in the NITSA to the version contained in the Twenty-Fourth Revised Service Agreement accepted by the Commission in the October 2018 Order. AEP did not protest the July 8, 2019 filing. On September 6, 2019, the Commission accepted the substitute Twenty-Fifth Revised Service Agreement, subject to the outcome of the pending rehearing in Docket No. ER18-1702-002.<sup>6</sup>

4. On August 29, 2019, in Docket No. ER19-2700-000, SPP filed the Twenty-Sixth Revised Service Agreement No. 1148 under its Service Agreements Tariff (Twenty-Sixth Revised Service Agreement). AEP filed a protest to the filing due to the inclusion and revision of Creditable Upgrade information within section 8.13 of Attachment 1 in the NITSA. On October 28, 2019, the Commission accepted the Twenty-Sixth Revised

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<sup>4</sup> Under Attachment Z2 of the SPP Open Access Transmission Tariff (Tariff), a Creditable Upgrade is “[a] Network Upgrade which was paid for, in whole or part, through revenues collected from a Transmission Customer, Network Customer, or Generation Interconnection Customer through Directly Assigned Upgrade Costs . . . .” SPP Tariff, Attachment Z2, section I.A.

<sup>5</sup> *Sw. Power Pool, Inc.*, 165 FERC ¶ 61,048 (2018) (October 2018 Order).

<sup>6</sup> *Sw. Power Pool, Inc.*, 168 FERC ¶ 61,145 (2019).

Service Agreement, subject to the outcome of the pending rehearing in Docket No. ER18-1702-002.<sup>7</sup>

## II. Filing

5. SPP states that the AEP NITSA contains revisions to section 4.0 and section 6.0 of the NITSA, as well as to appendices 1 (Network Resources) and 3 (Delivery Points on AEP System) of the NITSA, that conform to SPP's *pro forma* NITSA.<sup>8</sup> SPP also states that the AEP Agreement retains provisions that the Commission accepted in Docket No. ER19-2700-000 that do not conform to SPP's *pro forma* NITSA.<sup>9</sup> Specifically, SPP states that non-conforming language in sections 2.0 (Network Loads), 3.0 (Affected Zone and Intervening Systems Providing Transmission Service), 5.0 (Electrical Location of the Ultimate Loads), 8.1 (Transmission Charge), 8.3 (Direct Assignment Facilities Charge), and 8.11 (Delivery Point Facilities) of the NITSA remains unchanged.<sup>10</sup> SPP states that AEP did not execute the AEP Agreements because it was unable to complete its review of the AEP Agreements prior to the date SPP was required to file the AEP Agreements with the Commission.

6. SPP requests waiver of the Commission's 60-day prior notice requirement to permit a February 1, 2020, effective date.<sup>11</sup> SPP states that waiver is appropriate because it filed the AEP Agreement within 30 days of the commencement of service.

## III. Notice and Responsive Pleadings

7. Notice of SPP's filing was published in the *Federal Register*, 85 Fed. Reg. 13,156 (2020), with interventions and protests due on or before March 23, 2020. AEP filed a timely motion to intervene and protest.

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<sup>7</sup> *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,072.

<sup>8</sup> Filing at 2.

<sup>9</sup> *Id.*

<sup>10</sup> See Ex. SPP-1 (highlighted pages of non-conforming terms and conditions in the AEP Agreement).

<sup>11</sup> Filing at 2-3 (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993); 18 C.F.R. § 35.3(a)(2) (2019)).

### **AEP Protest**

8. AEP states that it did not execute the NITSA because the NITSA contains terms and charges related to Directly Assigned Upgrade Costs associated with Attachment Z2 of the SPP Tariff that AEP disputes. AEP states that the Commission accepted these terms pending the outcome of the rehearing request in Docket No. ER18-1702-002. AEP states that it continues to object to these provisions for the reasons stated in its previous protests in Docket Nos. ER16-1341, ER18-1702, ER19-1672, and ER19-2700. AEP argues that in the event the Commission accepts the instant SPP filing, the Commission must make clear that such acceptance is subject to the outcome of the rehearing in Docket No. ER18-1702-002.<sup>12</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), AEP's timely, unopposed motion to intervene serves to make it a party to this proceeding.

##### **B. Substantive Matters**

10. We accept the AEP Agreement, effective February 1, 2020, as requested, subject to the outcome of the pending rehearing proceeding in Docket No. ER18-1702-002. We find that the proposed revisions to the AEP Agreement either conform to SPP's *pro forma* NITSA or represent non-conforming terms and conditions that were previously accepted by the Commission.<sup>13</sup>

11. Because SPP filed the AEP Agreement within 30 days of the commencement of service, we grant SPP's request for waiver of the Commission's prior notice requirement to permit the AEP Agreement to become effective on February 1, 2020, as requested.<sup>14</sup>

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<sup>12</sup> Protest at 1-2.

<sup>13</sup> See *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,072; *Sw. Power Pool, Inc.*, Docket No. ER18-753-000 (Mar. 27, 2018) (delegated order).

<sup>14</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081; 18 C.F.R. § 35.3(a)(2).

The Commission orders:

The AEP Agreement is hereby accepted, effective February 1, 2020, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket No. ER20-1145-000

(Issued May 1, 2020)

DANLY, Commissioner, *concurring*:

Today, the Commission accepted Southwest Power Pool, Inc.'s (SPP) filing of its Network Integration Transmission Service Agreement and Network Operating Agreement. I concur with the decision to give these agreements an effective date prior to the date they were filed insofar as SPP relied on the Commission's *Prior Notice Order* and more recent precedent.<sup>1</sup> However, it appears to me that the Commission's practice of allowing rate schedules to go into effect before they are filed runs afoul of the rule against retroactive ratemaking. I therefore urge the Commission to reexamine its practice.

For these reasons, I respectfully concur.

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James P. Danly  
Commissioner

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<sup>1</sup> See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (finding that the Commission may waive prior notice for service agreements under an umbrella tariff if such service agreements are filed within 30 days after service commences); *see, e.g., Sw. Power Pool, Inc.*, 169 FERC ¶ 61,072, at PP 1, 12 (2019) (granting a waiver with an effective date prior to SPP's filing date because the agreements were filed within 30 days of commencement of service); *Sw. Power Pool, Inc.*, 155 FERC ¶ 61,202, at PP 1, 17 (2016) (same); *Sw. Power Pool, Inc.*, 155 FERC ¶ 61,002, at PP 1, 18 (2016) (same).