

168 FERC ¶ 61,071
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 31, 2019

In Reply Refer To:
Grand River Dam Authority
Docket No. ER19-1990-000

Grand River Dam Authority
9933 E. 16th Street
Tulsa, OK 74128

Attention: Ash Mayfield

Dear Mr. Mayfield:

1. On May 24, 2019, Grand River Dam Authority (GRDA) filed a request for a limited waiver of the one-year rollover notice requirement in section 2.2 of the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (Tariff)¹ to allow GRDA to rollover its existing long-term firm transmission reservation. As discussed below, we grant GRDA's waiver request.

2. Under section 2.2 of the Tariff, an entity that holds a long-term firm transmission service reservation is required to notify SPP of its intent to renew or rollover such reservation at least one year prior to the expiration of the reservation. GRDA holds such a long-term firm transmission service reservation in accordance with the terms of the Fourteenth Revised Network Integration Transmission Service Agreement, which was entered into between GRDA and SPP on November 8, 2018 (14th Service Agreement).²

3. GRDA states that it unintentionally failed to notify SPP at least one year prior to expiration of the firm transmission service reservation for five of its network resources listed in the 14th Service Agreement (the Five Network Resources) that it intended to

¹ SPP, Tariff, pt. I, § 2.2 Reservation Priority For Existing Firm Service Customers (1.0.0).

² Waiver Request at 3.

renew that firm transmission service reservation, as required by the Tariff, and instead provided notice approximately 11 months prior to expiration of such service.³ GRDA asserts that this failure was due to a mistaken belief that the Five Network Resources had firm transmission service reservations that extended for their useful lives.⁴

4. GRDA states that, beginning with the previous version of its network integration transmission service agreement (13th Service Agreement), SPP added a term of service for the Five Network Resources for the first time.⁵ GRDA claims that it did not understand that these revisions to the 13th Service Agreement (which were carried over into the 14th Service Agreement) represented substantive changes to the term of GRDA's transmission service rights for the Five Network Resources.⁶ GRDA requests that the Commission grant its request for waiver of section 2.2 of the Tariff to allow GRDA to rollover its existing long-term firm service reservation and avoid the risk of incurring substantial costs associated with a new transmission service request.⁷

5. GRDA states that the Commission has granted similar requests for waiver. GRDA states that the Commission granted waivers of a one-year notice of renewal requirement contained in PJM Interconnection, L.L.C.'s tariff to allow Southeastern Power Administration⁸ and Old Dominion Electric Cooperative to renew their firm transmission services.⁹

6. GRDA asserts that the Commission has granted waivers of tariff provisions where: (1) the waiver applicant has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by

³ *Id.* at 5.

⁴ *Id.* at 3.

⁵ *Id.* at 6. GRDA explains that “instead of having a Location that simply defined the geographical location of the GRDA Network Resources (‘Mayes Co. Oklahoma’) as had been the case in the previous service agreements, Appendix 1 to the 13th Service Agreement now included terms for the [Five Network Resources].” *Id.*

⁶ *Id.* at 7-8.

⁷ *Id.* at 5.

⁸ *Id.* at 11 (citing *Se. Power Admin.*, 143 FERC ¶ 61,120 (2013)).

⁹ *Id.* at 11-12 (citing *Old Dominion Elec. Coop.*, 153 FERC ¶ 61,351 (2015)).

granting the requested waiver; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁰

7. GRDA argues that its waiver request fully satisfies all four criteria.¹¹ First, GRDA states that it acted in good faith because the mistake was an inadvertent administrative error that resulted from a misunderstanding of certain changes made by SPP to the 13th and 14th Service Agreements.¹² Furthermore, GRDA states that it historically has complied with applicable Tariff provisions, intends to do so in the future, and notified SPP about the issue immediately upon discovery.

8. Second, GRDA asserts that the waiver is of limited scope because it is a one-time request for waiver that only applies to a single, highly-specific situation that is highly unlikely to reoccur.¹³ In support of this assertion, GRDA states that the system it uses to remind its staff of approaching deadlines for renewing transmission service previously did not include the Five Network Resources, but it has now included the Five Network Resources within the scope of this reminder system, which will prevent a recurrence of the present factual situation.

9. Third, GRDA contends that waiver of section 2.2 of the Tariff would solve a concrete problem because rolling over its existing long-term firm transmission service would allow GRDA to maintain its grandfathered transmission paths and preserve the continued availability of the Five Network Resources for GRDA customers.¹⁴

10. Fourth, GRDA states that granting the requested waiver does not create undesirable outcomes, such as harming third parties, because GRDA is only seeking to undo an administrative error, which will allow the *status quo* to be preserved.¹⁵ Specifically, GRDA states that granting the requested waiver will not result in any improper Aggregate Transmission Service Study (ATSS) upgrade expenses or

¹⁰ *Id.* at 10.

¹¹ *Id.* at 12-13.

¹² *Id.* at 13.

¹³ *Id.*

¹⁴ *Id.* at 13-14.

¹⁵ *Id.* at 14.

Attachment Z2 allocations being assigned to any other parties, because it will merely continue to reflect the current state of transmission service reservations.¹⁶

11. GRDA states that to ensure that it maintains access to transmission service if the Commission denies its requested waiver it will apply for new long-term firm transmission service via the SPP ATSS prior to the end of the current open season.¹⁷

12. Notice of GRDA's filing was published in the *Federal Register*, 84 Fed. Reg. 26,102 (2019), with interventions and protests due on or before June 7, 2019. SPP filed a timely motion to intervene and comments.

13. SPP states that GRDA has applied for new long-term firm transmission service for the Five Network Resources, which SPP is currently studying as part of the 2019-AG1 ATSS.¹⁸ SPP explains that the first iteration of the study results will be released on or about August 2, 2019. SPP indicates that, as long as the Commission issues an order prior to SPP posting the first iteration of these study results, SPP is unaware of any harm that granting the waiver would cause third parties.¹⁹ SPP states that, if the Commission were to issue an order granting the waiver after SPP posts the study results, SPP would need to conduct a re-study of 2019-AG1, which may or may not affect third parties.

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), SPP's timely, unopposed motion to intervene serves to make it a party to this proceeding.

15. We grant GRDA's waiver request. The Commission has previously granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.²⁰

16. We find that the circumstances of GRDA's waiver request satisfy these criteria. First, we find that GRDA's error was made in good faith. GRDA's failure to comply

¹⁶ *Id.* at 14-15.

¹⁷ *Id.* at 15.

¹⁸ SPP Comments at 5.

¹⁹ *Id.* at 6.

²⁰ *See, e.g., New Brunswick Energy Marketing Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

with the current one-year notice requirement appears to have been an inadvertent error, and GRDA states that it notified SPP immediately upon discovering the error, providing SPP with notice approximately 11 months prior to expiration of its service. Second, we find that the waiver request is limited in scope because it is a one-time waiver of the procedural deadline in section 2.2 of SPP's Tariff. In addition, GRDA states that it has taken steps to ensure that the administrative error giving rise to the waiver request will not occur again.²¹ Third, we find that granting GRDA's waiver request addresses a concrete problem by allowing GRDA to maintain its existing long-term firm service, thereby preserving the grandfathered status of the Five Network Resources and ensuring that GRDA is able to continue to serve its native load with the Five Network Resources. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties, because granting the waiver will preserve the *status quo*. We note that SPP has stated that it is not aware of any harm granting the waiver will cause to any third parties, provided the waiver is granted prior to the release of the study results on August 2, 2019.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

²¹ Waiver Request at 13.