

169 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER19-2700-000

ORDER ACCEPTING AGREEMENT

(Issued October 28, 2019)

1. On August 29, 2019, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations:² (1) an 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, AEP Agreement).³ As discussed below, we accept the AEP Agreement, effective August 1, 2019, as requested, subject to the outcome of the pending rehearing in Docket No. ER18-1702-002.

I. Background

2. On May 31, 2018, in Docket No. ER18-1702-000, SPP filed 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

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. § 35.13 (2019).

³ The AEP Agreement is designated as Twenty-Sixth 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, 12.0.0](#).

inclusion of certain Creditable Upgrade⁴ 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.⁵ On November 26, 2018, in Docket No. ER18-1702-002, AEP requested rehearing of the October 2018 Order. The rehearing request is currently pending before the Commission.

3. On April 25, 2019, in Docket No. ER19-1672-000, SPP filed 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. ER18-1702-002.⁶

II. SPP Filing

4. On August 29, 2019, SPP submitted the AEP Agreement, which includes the revised, unexecuted NITSA and the executed Network Operating Agreement.⁷ SPP asserts that its proposed revisions to the AEP Agreement make a minor correction in section 4.0 of the NITSA and add a single delivery point in Appendix 3 of the NITSA. SPP states that the proposed revisions maintain conformity with SPP's *pro forma* NITSA.

⁴ 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.

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

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

⁷ SPP states that the Network Operating Agreement in the AEP Agreement conforms to the *pro forma* Network Operating Agreement contained in Attachment G of the SPP Tariff. SPP Transmittal at n.4.

SPP states that Attachment 1 of the NITSA retains non-conforming terms and conditions in sections 2.0, 3.0, 5.0, 8.1, 8.3, and 8.11 as contained in the Twenty-Fifth Revised Service Agreement. SPP states that AEP declined to execute the AEP Agreement due to the pending issues in Docket Nos. ER19-1672-002 and ER18-1702-002.⁸

5. SPP requests waiver of the Commission's 60-day notice requirement⁹ to allow an effective date of August 1, 2019 for the AEP Agreement. SPP contends that waiver is appropriate because it filed the AEP Agreement within 30 days of the commencement of service.¹⁰

A. Notice of Filing and Responsive Pleadings

6. Notice of SPP's August 29, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 46,722 (2019), with interventions and protests due on or before September 19, 2019. The Louisiana Public Service Commission filed a notice of intervention. AEP and Western Farmers filed timely motions to intervene. On September 19, 2019, AEP filed a protest. On October 4, 2019, SPP filed an answer in response to AEP's protest.

1. AEP Protest

7. AEP alleges that the NITSA within the AEP Agreement continues to include terms and charges to which it did not agree and for which SPP did not provide adequate notice. AEP states that it has protested these same directly assigned Creditable Upgrade charges in numerous forums, including in Docket Nos. ER16-1341,¹¹ ER18-1702, and ER19-

⁸ *Id.* at 1-3.

⁹ 18 C.F.R. § 35.3(a)(2).

¹⁰ SPP Transmittal at 3.

¹¹ In April 2016, in Docket No. ER16-1341-000, SPP sought, and the Commission granted, waiver of certain provisions in the Tariff to allow SPP to implement the revenue crediting process for Creditable Upgrades, pursuant to Attachment Z2 in the Tariff, from 2008 to 2016. *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,020 (2016). Several parties filed requests for rehearing of the Commission's acceptance of SPP's waiver request, which the Commission denied. *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,144 (2017). On January 5, 2018, Xcel Energy Services Inc. filed a petition for review with the D.C. Circuit. *Xcel Energy Serv. Inc. v. FERC*, D.C. Cir. No. 18-1005. The Commission sought voluntary remand of the SPP Attachment Z2 waiver proceeding in Docket No. ER16-1341, and the D.C. Circuit remanded the proceeding on July 31, 2018. On February 28, 2019, the Commission issued an order on remand, reversing its decision and

1672.¹² AEP asserts that because SPP does not request that acceptance of the AEP Agreement be made subject to the outcome of Docket Nos. ER18-1702 and ER16-1341, AEP is compelled to reiterate its concerns with section 8.13 of Attachment 1 of the NITSA here.¹³ Therefore, AEP requests that in conjunction with Docket Nos. ER16-1341 and ER18-1702, the Commission instruct SPP to remove the charges from section 8.13 of Attachment 1 in the NITSA as contrary to the filed rate doctrine and the rule against retroactive ratemaking.¹⁴

8. In particular, AEP claims that section 8.13 of Attachment 1 in the NITSA contains charges associated with revenue credits for specific Creditable Upgrades, even though the construction of these upgrades began years ago and, in some cases, were not mentioned at the time of AEP's transmission service requests.¹⁵ AEP contends that this is a violation of the filed rate doctrine, the transmission service request study rules pursuant to Attachment Z1 in the Tariff, and the revenue crediting rules in Attachment Z2 that apply a "but for" test to directly assign network upgrade costs.¹⁶ AEP argues that SPP has thereby deprived AEP of transparency and rate certainty and that AEP may have made different decisions with respect to certain transmission arrangements if SPP had provided it the appropriate cost estimates.¹⁷

9. In addition, AEP asserts that SPP continues to propose charges in section 8.13 of Attachment 1 in the NITSA that conflict with some of the Aggregate Facilities Study Completion Agreements associated with AEP's transmission service requests, which AEP argues is contrary to the procedures SPP uses to conduct its aggregate transmission

denying waiver, and requiring SPP to submit a filing regarding refunds. *Sw. Power Pool, Inc.*, 166 FERC ¶ 61,160 (2019). Rehearing requests to the order on remand, and SPP's refund plan, are pending before the Commission.

¹² AEP Protest at 1-2.

¹³ *Id.* at 2, 5.

¹⁴ *Id.* at 1-3, 12.

¹⁵ AEP claims that SPP did not identify Creditable Upgrade charges for transmission service requests included in previous versions of the NITSA with effective dates ranging from June 2010 through January 2018. *Id.* at n.16.

¹⁶ *Id.* at 3-5.

¹⁷ *Id.* at 8, 10-11.

service study process.¹⁸ Specifically, AEP claims that the Aggregate Facilities Study Completion Agreements serve as the mechanism for SPP to charge customers for the cost of the aggregate facilities studies and for customers to provide key parameters to SPP, such as the level of directly assigned upgrade costs that the customer would be willing to pay in order to obtain service. AEP contends that under the Aggregate Facilities Study Completion Agreement, if a transmission service customer's service could be provided within the parameters specified by the customer, then the customer was required to enter into an agreement to take service or pay a make whole payment to SPP. However, AEP cites, as examples, three transmission service requests submitted in SPP's Aggregate Facilities Study 2013-AG3 in which AEP states that it indicated an unwillingness to assume any directly assigned upgrade costs; AEP states that it entered "\$0" as the maximum cost it would assume in these agreements.¹⁹ AEP alleges that in the Twenty-Fourth Revised Service Agreement, SPP attempted to retroactively incorporate directly assigned upgrade charges associated with these transmission service requests into section 8.13, in direct conflict with the \$0 as the maximum AEP specified in the Aggregate Facilities Study Completion Agreement for these transmission service requests. AEP argues that the continued inclusion of these charges in section 8.13 violates the filed rate doctrine and the rule against retroactive ratemaking.²⁰

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the

¹⁸ Though not defined in the Tariff, under section III.A of Attachment Z1, the Aggregate Facilities Study Completion Agreement is submitted prior to the close of the open season by eligible transmission customers who submitted a completed application for transmission service during the open season. SPP Tariff, Attachment Z1, section III.A. For consistency, we refer to the agreement throughout the order as the "Aggregate Facilities Study Completion Agreement," although the Tariff refers to the agreement as the "Aggregate Facilities Study Agreement."

¹⁹ The cited transmission service requests have OASIS Numbers 78775996, 78776033, and 78776041. AEP Protest at 11.

²⁰ *Id.* at 9-12.

decisional authority. We are not persuaded to accept SPP's answer and will, therefore, reject it.

B. Substantive Matters

12. We accept the AEP Agreement, effective August 1, 2019, as requested, subject to the outcome of the pending rehearing in Docket No. ER18-1702-002. We find that SPP's 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.²¹ Because the AEP Agreement was originally filed within 30 days of the commencement of service, we grant SPP's request for waiver of prior notice to permit the AEP Agreement to become effective on August 1, 2019, as requested.²²

13. Although AEP protests SPP's inclusion of Creditable Upgrade information within section 8.13 of Attachment 1 in the NITSA, we find that SPP does not propose to revise that information in this version of the AEP Agreement. Therefore, section 8.13 of Attachment 1 in the NITSA contains the currently-effective language, which the Commission accepted in the October 2018 Order.²³ We note, however, that our approval of the AEP Agreement is subject to the outcome of the pending rehearing in Docket No. ER18-1702-002, which involves issues relating to Creditable Upgrade information in section 8.13 of Attachment 1 in the AEP NITSA.

14. Finally, insofar as AEP raises concerns regarding SPP's administration of its Attachment Z2 revenue crediting process during the period between 2008-2016, we note that the issue in the instant proceeding is whether SPP has appropriately included certain information in its service agreements pursuant to its Tariff, not SPP's administration of its Attachment Z2 revenue crediting process during a prior period. That latter issue is pending in several proceedings that are before the Commission, including requests for rehearing in Docket Nos. EL17-21-001, EL18-9-001, and ER16-1341-004 and a refund proceeding following the Commission's order on voluntary remand in Docket No. ER16-1341-003. The Commission will consider issues pertaining to SPP's administration of the Attachment Z2 revenue crediting process during the 2008-2016 period in those proceedings.

²¹ See *Sw. Power Pool, Inc.*, Docket No. ER18-753-000 (Mar. 27, 2018) (delegated order).

²² *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).

²³ See October 2018 Order, 165 FERC ¶ 61,048.

The Commission orders:

The AEP Agreement is hereby accepted, effective August 1, 2019, subject to the outcome of the pending rehearing in Docket No. ER18-1702-002, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.