

170 FERC ¶ 61,104
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. ER20-657-000

ORDER ACCEPTING AGREEMENT

(Issued February 18, 2020)

1. On December 20, 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) a revised, unexecuted Network Integration Transmission Service Agreement (NITSA) between SPP as transmission provider and Western Farmers Electric Cooperative (Western Farmers) as network customer; and (2) an executed Network Operating Agreement among SPP as transmission provider, Western Farmers as network customer, and Western Farmers, Oklahoma Gas and Electric Company, and American Electric Power Service Corporation (AEP) as host transmission owners (together, the Western Farmers Agreement).³ In this order, we accept the Western Farmers Agreement, effective December 1, 2019, as requested.

I. Background

2. Western Farmers is a generation and transmission cooperative financed by the Rural Utilities Service, located in Anadarko, Oklahoma. Western Farmers owns, operates, and maintains transmission lines located principally in Oklahoma. Western Farmers is a member of SPP, and its transmission facilities are administered through SPP's Open Access Transmission Tariff (SPP Tariff). Western Farmers is a market participant in the market administered by SPP.

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. § 35.13 (2019).

³ The Western Farmers Agreement modifies and supersedes the Western Farmers NITSA and Network Operating Agreement that the Commission previously accepted in Docket No. ER19-2627-000. *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,057 (2019).

II. Filing

3. SPP states that the Western Farmers Agreement contains revisions to section 4.0 of the NITSA, as well as to sections 8.10 (Network Upgrades Charges) and 8.12 (Other Charges) in Attachment 1 and to appendices 1 (Western Farmers Network Resources) and 2 (Western Farmers Delivery Points) of the NITSA.⁴ SPP also states that the revisions delete the redispatch requirements listed in Attachment A (Redispatch Requirements) of the NITSA.⁵

4. SPP states that the Western Farmers Agreement retains provisions that the Commission accepted in Docket No. ER19-2627-000 that do not conform to the *pro forma* NITSA in the SPP Tariff.⁶ Specifically, SPP states that non-conforming language in sections 8.3 (Direct Assignment Facilities Charge), 8.8 (Redispatch Charge), 8.9 (Wholesale Distribution Service Charge), and 8.12 (Other Charges) in Attachment 1 of the NITSA and Appendix 4 (Interconnection and Local Delivery Service Agreement between AEP and Western Farmers) of the NITSA remains unchanged.⁷

5. SPP requests waiver of the Commission's 60 day prior notice requirement to permit a December 1, 2019, effective date.⁸ SPP states that waiver is appropriate because it filed the Western Farmers Agreement within 30 days of the commencement of service.

III. Notice and Responsive Pleadings

6. Notice of SPP's filing was published in the *Federal Register*, 84 Fed. Reg. 71,915 (2019), with interventions and protests due on or before January 10, 2020. Western Farmers filed a timely motion to intervene and comments.

A. Western Farmers Comments

7. Western Farmers states that it did not execute the NITSA due to a complaint pending before the Commission, in which it raised an issue regarding terms in the

⁴ Filing at 1-2.

⁵ SPP indicates that the Network Operating Agreement conforms to the *pro forma* Network Operating Agreement in the SPP Tariff. *Id.* at 2 n.4.

⁶ *Id.*

⁷ *See* Ex. SPP-1 (highlighted pages of non-conforming terms and conditions in the Western Farmers Agreement).

⁸ Filing at 2 (citing *Prior Notice and Filing Requirements*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993); 18 C.F.R. § 35.3(a)(2) (2019)).

NITSA.⁹ Western Farmers explains that, under the NITSA, it is obligated to make payments to ITC Great Plains to pay for the monthly revenue requirements associated with the Hugo-Valiant Projects, and Western Farmers asserts that it is entitled to receive revenue credits pursuant to Attachment Z2 for other transmission customers' use of the facilities. Western Farmers explains that, in the Complaint, it requests that the Commission require SPP to revise the NITSA because the payment term in the NITSA related to the Hugo-Valiant Projects is not just and reasonable because: (1) the payment term is indefinite; (2) the monthly payment amounts are excessive; and (3) the payment term conflicts with Attachment Z1¹⁰ of the SPP Tariff.¹¹ Western Farmers states that, in the Complaint, it requests that section 8.10.A.1.a (Network Upgrade Charges) in Attachment 1 of the NITSA be revised to provide a specified term and a stated monthly payment obligation.¹² Western Farmers requests that the Commission accept the Western Farmers Agreement subject to the outcome of the Complaint proceeding.¹³

⁹ Western Farmers Comments at 1 (citing Western Farmers Complaint, Docket No. EL19-93-000 (filed Aug. 22, 2019) (Complaint)). Western Farmers filed a complaint against SPP regarding SPP's unwinding of the revenue credit payments to Western Farmers, pursuant to Attachment Z2 in the SPP Tariff, as a result of the Commission's February 28, 2019 order in Docket No. ER16-1341-003. *See Sw. Power Pool, Inc.*, 166 FERC ¶ 61,160 (2019). In the Complaint, Western Farmers asserts that SPP's proposed unwinding would violate the terms of Western Farmers' NITSA and Attachment Z2 of the SPP Tariff, which entitles Western Farmers to credit payments for other transmission customers' use of certain transmission upgrades referred to as the Hugo-Valiant Projects. Complaint at 5. Western Farmers also requests in its Complaint that the Commission require SPP to revise the NITSA so that it provides for a specified, finite term and a stated monthly payment obligation to ensure that Western Farmers is fully compensated for the Hugo-Valiant Projects. *Id.* at 28-31.

¹⁰ Attachment Z1 contains SPP's Aggregate Transmission Service Study procedures and describes the process for the allocation and recovery of service upgrade costs.

¹¹ Western Farmers Comments at 3-5.

¹² *Id.* at 4.

¹³ *Id.* at 6.

IV. Discussion**A. Procedural Matters**

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

B. Substantive Matters

9. We accept the Western Farmers Agreement, as discussed below. We find that the proposed revisions to the Western Farmers Agreement conform to SPP's *pro forma* NITSA and that the non-conforming terms and conditions previously accepted by the Commission were not directly challenged by Western Farmers.¹⁴ We also find that the issues raised in Western Farmers' comments are the subject of the pending Complaint proceeding in Docket No. EL19-93-000, and the Commission will consider those issues in that proceeding.

10. Because SPP filed the Western Farmers 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 Western Farmers Agreement to become effective on December 1, 2019, as requested.¹⁵

The Commission orders:

SPP's filing is hereby accepted, effective December 1, 2019, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,057; *Sw. Power Pool, Inc.*, Docket No. ER19-2098-000 (Aug. 6, 2019) (delegated order).

¹⁵ *Prior Notice and Filing Requirements*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081.