

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Southwest Power Pool, Inc.

Docket No. ER19-477-000

ORDER DENYING WAIVER REQUEST

(Issued March 18, 2021)

1. On December 4, 2018, pursuant to Rule 207(a)(5) of the Commission’s Rules of Practice and Procedure,¹ Southwest Power Pool, Inc. (SPP) requested waiver of the 365-day limitation period for modification to Settlement Statements² in the SPP Open Access Transmission Tariff (Tariff) to ensure the accuracy of Market-to-Market (M2M) settlements between SPP and Midcontinent Independent System Operator, Inc. (MISO). As discussed below, we deny SPP’s waiver request.

I. Background

2. SPP states that M2M payments that SPP is required to pay to, and M2M revenues that SPP receives from, MISO are reflected in SPP’s Integrated Marketplace settlements. SPP states that Attachment AE (Integrated Marketplace), section 10.1(3) of the Tariff provides, in relevant part, that: “[s]ettlements associated with a specific Operating Day shall be considered final at the end of the three hundred sixty-fifth (365) calendar day following the applicable Operating Day.”³

3. SPP and MISO maintain an M2M coordination process for managing congestion across the SPP/MISO seam. The procedures governing the M2M coordination process are memorialized in the Interregional Coordination Process (ICP) as an attachment to the SPP-MISO Joint Operating Agreement (JOA).⁴ The ICP includes explanations of

¹ 18 C.F.R. § 385.207(a)(5) (2020).

² Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Tariff.

³ SPP Tariff, Attach. AE, § 10.1(3).

⁴ Waiver Request at 2.

coordination for market pricing at the regional boundaries between SPP and MISO, a description of real-time and day-ahead coordination methodologies, and associated settlements processes. Relevant to the instant proceeding, ICP section 8.1.2 sets forth the conditions under which SPP and MISO may revise M2M settlements and provides that, upon reaching mutual agreement, SPP and MISO will revise M2M settlements to minimize financial harm to each other that results from an error in initiating, implementing, terminating, or settling M2M coordination. SPP also explains that MISO and SPP negotiated a Memorandum of Understanding (MOU) to outline their understanding and agreement regarding certain M2M operating and settlement practices regarding the terms of the JOA and ICP, including the resettlements proposed in the waiver request.

II. Waiver Request

4. SPP states that following commencement of the ICP but prior to finalizing the MOU, SPP and MISO discovered four instances between March 2015 and December 2016 where issues with flowgate use, classification, or reporting during M2M events resulted in incorrect M2M settlement calculations. SPP states that consistent with the JOA and the requirements of section 8.1.2 of the ICP, SPP and MISO sought to revise M2M settlements to correct these four instances to ensure that market participants in both markets are appropriately charged and compensated as required under the JOA. According to SPP, because it and MISO did not reach final agreement on the M2M resettlement process in general and the specific M2M events discussed in the instant proceeding specifically until October 12, 2018, SPP was unable to make the necessary Integrated Marketplace credit and charge adjustments within the 365-day period set forth in Attachment AE, section 10.1(3).

5. SPP seeks waiver of Attachment AE, section 10.1(3) of the Tariff in order to permit SPP to adjust Integrated Marketplace Settlement Statements for certain Operating Days beyond the 365-day period allowed for settlement modification. SPP states that it and MISO have agreed that the net result of the resettlements is a payment of approximately \$1.75 million from SPP to MISO. SPP asserts that, absent the requested waiver of Attachment AE, section 10.1(3) of the Tariff, SPP is unable to adjust the Settlement Statements for the relevant Operating Days that are final because they are beyond the 365-day period allowed for settlement modification. Accordingly, SPP requests waiver of section Attachment AE, section 10.1(3) of the Tariff to adjust Integrated Marketplace Settlement Statements for the identified Operating Days in order to effectuate agreed upon M2M resettlements.

6. SPP argues that the waiver request satisfies the Commission's waiver criteria. First, SPP contends that its and MISO's underlying errors were made in good faith. SPP states that the issues occurred as the result of operational decisions made during M2M events and modeling errors or were otherwise based upon differences in interpretation of

the JOA and ICP between SPP and MISO. SPP asserts that the parties rectified these issues by negotiating and executing the MOU. According to SPP, the issues in the instant filing occurred before SPP and MISO had agreed on the procedures necessary to revise the M2M settlements and correct the payments and charges affected by the identified M2M issues. SPP states that it and MISO worked diligently to finalize their congestion management processes, develop procedures to govern M2M resettlement, and determine the dollar impacts associated with each of the issues described above that require resettlement.⁵

7. Second, SPP argues that the requested waiver is limited in scope. SPP states that it is requesting a one-time waiver of Attachment AE, section 10.1(3) of the Tariff to allow SPP to adjust Settlement Statements for the identified Operating Days to allow SPP's net payment to MISO under agreed-upon M2M resettlements. SPP notes that it is requesting waiver only to address these four specific instances to ensure that M2M settlements are correct and market participants in both SPP and MISO are correctly compensated and charged in accordance with the filed rate. SPP states that it and MISO have now, via the MOU, agreed on procedures to allow timely correction of M2M issues going forward. SPP contends that no further waivers are anticipated to address similar events that occurred prior to the execution of the MOU. Further SPP, asserts that with the MOU resettlement procedures now in place, SPP does not anticipate that future waivers of the 365-day resettlement provision in the Tariff will be necessary for M2M resettlements when such issues arise.⁶

8. Third, SPP argues that the waiver would solve a concrete problem because, without the waiver, settlements would remain inaccurate for the Operating Days it identified and market participants in SPP and MISO would be permanently impacted by the inaccurate settlements. SPP argues that correcting the market settlements will ensure that market participants in SPP and MISO are properly compensated and charged in accordance with the Commission-accepted JOA.⁷

9. Fourth, SPP argues that no third party can claim to be harmed by SPP's requested waiver because the correction of Settlement Statements would allow SPP to comply with the filed rate. SPP contends that market participants in SPP and MISO will benefit from the corrections to erroneous M2M settlements that would be facilitated by granting the waiver. SPP states that it apprised its stakeholders of the issues that resulted in incorrect M2M settlements and its plan for adjusting affected Settlement Statements to reflect the correct rate and compensation. SPP alleges that stakeholders have been on notice, had an

⁵ *Id.* at 9-10.

⁶ *Id.* at 10.

⁷ *Id.* at 10-11.

opportunity to express any concerns about the planned billing adjustments, and now expect that their past Settlement Statements may be adjusted as necessary to correct the issues identified in the instant filing.⁸

III. Notice and Responsive Pleadings

10. Notice of SPP's waiver request was published in the *Federal Register*, 83 Fed. Reg. 63,852 (Dec. 12, 2018), with interventions and protests due on or before December 26, 2018. Kansas Electric Power Cooperative, Inc. (KEPCo) filed a timely motion to intervene and MISO filed a timely motion to intervene and comments.

11. MISO states that it supports SPP's waiver request.⁹ MISO asserts that the MOU at issue was extensively negotiated between the SPP and MISO.¹⁰ MISO states that the MOU addresses an agreement regarding four incorrect M2M settlement calculations that occurred in 2015 and 2016. MISO contends that, on a net basis, MISO loads will receive a repayment of \$1,748,280.25.¹¹ Thus, MISO states that granting the waiver will provide MISO the repayment negotiated under the MOU, ensure that M2M settlements that occurred in 2015 and 2016 are correct, and ensure market participants in both markets are correctly charged and compensated. MISO notes that the Commission previously authorized a waiver from Attachment AE, section 10.1(3) of the Tariff to correct settlement errors.¹²

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), KEPCo's and MISO's timely, unopposed motions to intervene serve to make them parties to this proceeding.

⁸ *Id.* at 11-12.

⁹ MISO Comments at 1.

¹⁰ *Id.* at 3 (citing Waiver Request at 2, 3).

¹¹ *Id.* (citing Waiver Request at 7).

¹² *Id.* at 3-4 (citing *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,194 (2016); Waiver Request nn.18, 20).

B. Substantive Matters

13. We find that the relief sought by SPP, under the circumstances here, is prohibited by the filed rate doctrine and the rule against retroactive ratemaking. Accordingly, we deny the waiver request, as discussed below.

14. The filed rate doctrine “forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority.”¹³ The related rule against retroactive ratemaking also “prohibits the Commission from adjusting current rates to make up for a utility’s over- or under-collection in prior periods.”¹⁴ When evaluating whether granting the requested relief would violate either the filed rate doctrine or the rule against retroactive ratemaking, the Commission considers whether the ratepayers had sufficient notice that the approved rate was subject to change.¹⁵ In this case, we find that ratepayers did not have sufficient notice that the M2M settlements for 2015 and 2016 were subject to change after the deadline specified in the Tariff had passed.

15. Specifically, Attachment AE, section 10.1(3) of the Tariff requires that “[s]ettlements associated with a specific Operating Day shall be considered final at the end of the three hundred sixty-fifth (365) calendar day following the applicable Operating

¹³ *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981).

¹⁴ *Towns of Concord v. FERC*, 955 F.2d 67, 71 & n.2 (D.C. Cir. 1992).

¹⁵ See *Pub. Utils. Comm’n of Cal. v. FERC*, 988 F.2d 154, 164 (D.C. Cir. 1993); see also *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 46 (2014) (“The waiver is effective prospectively, as of the date of this order, and therefore does not retroactively change the rules Further, the instant filing puts market participants on notice regarding a possible rule change.”); *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 794-97 (D.C. Cir. 1990) (“The same principle obtains when the Commission itself places parties on notice . . . that the rates they will be paying are subject to retroactive adjustment at a later date Notice does *not* relieve the Commission from the prohibition against retroactive ratemaking. Instead, it changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision.”); *Consol. Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 968-70 (D.C. Cir. 2003) (applying same concepts in waiver context); *Old Dominion Elec. Coop. Inc. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (“The filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.”).

Day.”¹⁶ Therefore, the plain language of this provision, which is part of the filed rate, limits the time for correcting the M2M settlements here to 365 days and did not include any exceptions to that general tariff provision at the time of SPP’s filing.¹⁷ No party disputes the requirements of this provision. As a result, we find that Attachment AE, section 10.1(3) of the Tariff cannot be waived, under the circumstances here, without violating the filed rate doctrine and rule against retroactive ratemaking.

16. Because we are denying the waiver request on the basis that, at the outset, the relief SPP seeks would violate the filed rate doctrine and the rule against retroactive ratemaking, we need not address whether SPP’s request otherwise would satisfy the four criteria used by the Commission to evaluate waiver requests.

The Commission orders:

SPP’s waiver request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ SPP Tariff, Attach. AE, § 10.1(3).

¹⁷ Section 10.1(3)(a) of the currently effective Tariff provides, in relevant part: “Resettlements for a given Operating Day will be considered by the Transmission Provider for the following reasons: . . . (3) Per FERC or court order (a) The Transmission Provider will resettle Operating Days as required by FERC or court order.” *Id.* § 10.1.1.3(a). Section 10.1.1(3)(a) became effective February 5, 2020 and, therefore, was not in effect at the time of SPP’s December 4, 2018 Filing in this proceeding.