

151 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Southwest Power Pool, Inc.

Docket No. ER15-990-000

ORDER GRANTING WAIVER REQUEST

(Issued May 14, 2015)

1. On February 4, 2015, Southwest Power Pool, Inc. (SPP) submitted a petition for waiver of certain provisions of its Open Access Transmission Tariff (Tariff) (Waiver Petition) under Rule 207 of the Commission's Rules of Practice and Procedure.¹ SPP requests a limited waiver of certain provisions in Attachment AE of the SPP Tariff to recognize the establishment of certain resource hubs in SPP's Integrated Marketplace.² In this order, we grant SPP's request for waiver.

I. Background

2. As part of its initial Integrated Marketplace filing,³ SPP proposed Tariff provisions, contained in section 3.1.1 of Attachment AE in its Tariff, providing for the establishment and modification of market hubs.⁴ In addition to outlining criteria for the establishment of a market hub, proposed section 3.1.1 provided that the SPP Board of Directors (Board) must approve the creation, modification, or deletion of a market hub and that SPP must post this approval at least six months prior to the market hub's

¹ 18 C.F.R. § 385.207 (2014).

² As part of its Integrated Marketplace reforms, SPP implemented day-ahead and real-time energy markets and an operating reserve market. The Integrated Marketplace commenced on March 1, 2014.

³ SPP submitted its initial Integrated Marketplace filing on February 29, 2012 in Docket No. ER12-1179-000.

⁴ SPP defines a market hub as a settlement location consisting of an aggregation of price nodes. SPP Tariff, Attachment AE, section 1.1—Definitions M.

effective date. The Commission conditionally accepted proposed section 3.1.1 of Attachment AE, subject to SPP making a minor modification, in an October 18, 2012 order.⁵

3. On March 28, 2013, in Docket No. ER13-1173-000, SPP submitted an additional Integrated Marketplace filing (March 2013 Filing). As part of this filing, SPP proposed revisions to section 3.1.1 of Attachment AE in its Tariff permitting the creation, without Board approval, of a settlement location comprised of an aggregation of price nodes associated with multiple resources, subject to a 45-day advance posting requirement. In a September 20, 2013 order, the Commission rejected the proposed changes to section 3.1.1 of Attachment AE due to lack of support, noting that the rejection was without prejudice to SPP re-submitting Tariff language with adequate support.⁶

II. Filing

4. In the Waiver Petition, SPP states that it intended the Tariff revisions proposed in the March 2013 Filing to conform to provisions it had developed in its Market Protocols, which included detailed procedures for the establishment of market hubs.⁷ SPP states that the detailed procedures it developed for market hubs in its Market Protocols described two subclasses of market hubs—resource hubs and trading hubs—with different implementation procedures applicable to each subclass.⁸ SPP explains that resource hubs serve as an administrative convenience for market participants by allowing commonly-owned or controlled assets to be aggregated for purposes of facilitating sales and purchases and are typically backed by transmission service.⁹ SPP states that, in contrast, a trading hub is an aggregation of points used to facilitate liquidity in the market and thus require more rigorous scrutiny.¹⁰ SPP states that its proposed Tariff revisions to section 3.1.1 in the March 2013 Filing did not include language describing these subclasses of market hubs. SPP indicates that the Tariff language it proposed in the March 2013 Filing (i.e., no Board approval required, 45-day advance notice) was meant

⁵ *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 197 (2012), *order on reh'g*, 142 FERC ¶ 61,205, *order on compliance and tariff revisions*, 144 FERC ¶ 61,224 (2013) (September 2013 Order), *order on compliance*, 146 FERC ¶ 61,050 (2014).

⁶ September 2013 Order, 144 FERC ¶ 61,224 at P 406.

⁷ Waiver Petition at 4 (citing March 2013 Filing at 10).

⁸ *Id.*

⁹ *Id.* at 8.

¹⁰ *Id.* at 3-5.

to apply to resource hubs, while the more stringent requirements already contained in section 3.1.1 of Attachment AE (i.e., Board approval required, six-month advance notice) were meant to apply to trading hubs. SPP admits that, in hindsight, it could have better explained its proposed revisions to section 3.1.1 in the March 2013 Filing, as well as proposed Tariff language distinguishing each market hub subclass in that filing.¹¹

5. In the Waiver Petition, SPP states that it recently discovered that, following rejection of the revisions to section 3.1.1 of Attachment AE in the September 2013 Order, it failed to make corresponding changes within its Market Protocols and continued with the development of the commercial model for the new marketplace. SPP states that it developed six resource hubs under the unchanged Market Protocols prior to the commencement of the Integrated Marketplace (pre-market resource hubs). Further, SPP states that, per the procedures in the unchanged Market Protocols, Xcel Energy Services, Inc. (Xcel) requested the creation of a resource hub no later than June 1, 2015, which is outside of the six-month notice requirement currently specified in section 3.1.1 of Attachment AE.¹²

6. Accordingly, SPP requests waiver of Tariff provisions in section 3.1.1 of Attachment AE to make various market hub requirements inapplicable to the pre-market resource hubs and the proposed Xcel resource hub (i.e., provisions requiring Board approval, six month notice, and the various application and review criteria SPP asserts are meant for trading hubs). SPP states that the Commission has found a waiver of tariff provisions to be appropriate where there is good cause for a waiver of limited scope, a concrete problem in need of remedy, and no undesirable consequences.¹³ In support of its waiver request, SPP asserts, first, that its waiver request is of limited scope because it applies to a single section of its Tariff—section 3.1.1 of Attachment AE—and would continue the recognition of the pre-market resource hubs and the timely establishment of the Xcel resource hub in the commercial model for the Integrated Marketplace. Second, SPP states that granting its waiver request will remedy a concrete problem and remove regulatory uncertainty concerning prior period transactions. SPP explains that it is unclear whether a practical way exists to “unwind” the pre-market resource hubs and/or re-run the market in such a way that disaggregates the resources represented by those hubs. Further, SPP states that such “unwinding” would only result in a post-hoc health benefits packet. health benefits packet. re-papering of transactions and that market settlements would remain unchanged. In the case of the Xcel resource hub, SPP states that granting the waiver request would allow Xcel to transact business in accordance with

¹¹ *Id.* at n.11.

¹² *Id.* at 6-7.

¹³ *Id.* at 9 (citing, e.g., *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,162, at P 8 (2009); *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,316, at PP 9-10 (2008)).

contractual arrangements that Xcel has previously filed with the Commission. SPP also asserts that granting waiver to allow the establishment of the Xcel resource hub ensures comparable treatment with the pre-market resource hubs. Finally, SPP states that its requested waiver poses no threat of adverse market impacts. SPP asserts that the pre-market resource hubs were established for administrative convenience and offer a practical tool for transacting power sales in the Integrated Marketplace.¹⁴

7. SPP notes that it has revised its Market Protocols and is now processing all market hub requests under the section 3.1.1 procedures. In addition to promptly submitting a Tariff waiver request and self-reporting the error to the Commission's Office of Enforcement, SPP asserts that it is developing language to incorporate the distinction between resource and trading hubs within its Tariff. SPP requests action on its Waiver Petition prior to June 1, 2015, to accommodate Xcel's resource hub request.¹⁵

III. Notice and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 7,583 (2015), with interventions and protests due on or before February 25, 2015. Timely motions to intervene were filed by: South Central MCN, LLC; Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC; and Xcel, on behalf of its utility operating affiliate Southwestern Public Service Company (SPS), and Golden Spread Electric Cooperative, Inc. (Golden Spread). Xcel and Golden Spread jointly filed comments in support of SPP's Waiver Petition.

9. Xcel and Golden Spread explain that, on November 30, 2007, Golden Spread and SPS entered into a Replacement Power Sales Agreement, which sets forth the terms and conditions under which SPS delivers firm partial requirements service to Golden Spread over a seven year contract term (April 2012 to April 2019). Xcel and Golden Spread state that the Replacement Power Sales Agreement was submitted as part of a settlement agreement, which the Commission accepted in an April 21, 2008 order.¹⁶ Xcel and Golden Spread indicate that, under the Replacement Power Sales Agreement, Golden Spread is obligated to purchase certain levels of partial requirements service from SPS for each contract year (firm power commitment). Xcel and Golden Spread state that, to allow Golden Spread to have a settlement procedure for the firm power commitment in the Integrated Marketplace, SPS negotiated an operating procedure with Golden Spread,

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 7-10.

¹⁶ Xcel and Golden Spread Comments at 4-5 (citing *Golden Spread Electric Cooperative, Inc., et al. v. Southwestern Public Service Company*, 123 FERC ¶ 61,054 (2008)).

which established bilateral transactions related to the firm power commitment to be used at a resource hub.¹⁷ As relevant to the Waiver Petition, Xcel and Golden Spread indicate that the operating procedure requires the creation of an Xcel resource hub for the contracted firm power commitment and at separate commitment levels.¹⁸

10. Xcel and Golden Spread support SPP's Waiver Petition, as it pertains to the Xcel resource hub, and assert that good cause exists to grant waiver. Xcel and Golden Spread state that the waiver is of limited scope and will allow the Commission-approved operating procedure to operate as intended by Golden Spread and SPS. Xcel and Golden Spread also assert that granting waiver will remedy a concrete problem, as establishment of the Xcel resource hub will allow SPS to accurately define the pricing for the Replacement Power Sales Agreement firm power commitment. Further, Xcel and Golden Spread state that granting waiver will have no undesirable consequences, such as harming third parties. Xcel and Golden Spread assert that the Xcel resource hub is needed to allow Golden Spread and SPS to transact a bilateral transaction in relation to the Replacement Power Sales Agreement, and failure to grant waiver would create an undesirable consequence.¹⁹

IV. Commission Determination

A. Procedural Issues

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Issues

12. We find good cause to grant SPP's requested waiver. The Commission has previously granted one-time waivers of tariff provisions in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied;

¹⁷ The Commission accepted the operating procedure in an unpublished letter order. *See Southwestern Public Service Co.*, Docket No. ER13-2479-000 (Nov. 27, 2013) (unpublished letter order).

¹⁸ Xcel and Golden Spread Comments at 4-6. Xcel and Golden Spread note that the Replacement Power Sales Agreement firm power commitment declines in steps over time, hence the separate commitment levels.

¹⁹ *Id.* at 6-8.

and (3) the waiver did not have undesirable consequences, such as harming third parties.²⁰

13. We find that SPP's requested waiver satisfies the aforementioned conditions. SPP's requested waiver is of limited scope and will continue the recognition of the pre-market resource hubs in the commercial model for the Integrated Marketplace. Further, waiver will allow timely establishment of the Xcel resource hub, pursuant to the operating procedure submitted in Docket No. ER13-2479-000. SPP's requested waiver also addresses a concrete problem that needs to be remedied. We agree with SPP that, in the case of the pre-market resource hubs, granting the requested waiver will remove regulatory uncertainty concerning prior period transactions. In the case of the Xcel resource hub, timely establishment of such hub will allow SPS and Golden Spread to conduct business based on previous contractual obligations. We also find that the requested waiver will not have undesirable consequences. Granting waiver avoids the need to reconfigure system models and will result in accurate pricing of the Replacement Power Sales Agreement firm power commitment. We note SPP's representations that it is making efforts to correct discrepancies between the Market Protocols and Tariff and report problems to the Commission.

The Commission orders:

SPP's request for a waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁰ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,184, at P 18 (2014); *Southwest Power Pool, Inc.*, 148 FERC ¶ 61,013, at P 13 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014).