

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

American Electric Power  
Service Corporation

Docket Nos. ER05-286-000  
ER05-286-001

ORDER ACCEPTING NOTICE OF CANCELLATION  
WITHOUT HEARING OR SUSPENSION

(Issued May 9, 2005)

1. On December 2, 2004, as amended on March 15, 2005, American Electric Power Service Corporation (AEP) filed a notice of cancellation of the Oklahoma Municipal Power Authority's (OMPA) network service and network operating agreements (the AEP-OMPA Agreements) under AEP's open access transmission tariff (OATT). In this order, the Commission accepts the notice of cancellation for filing without hearing or suspension. In so doing, we also state that acceptance of the notice of cancellation is without prejudice to a determination of other issues concerning OMPA's transition to Southwest Power Pool, Inc. (SPP) in certain other proceedings before the Commission. This action benefits customers by providing clarification regarding OMPA's transition to network service provided by SPP.

**Background**

2. OMPA, a governmental agency of the State of Oklahoma, is a member of SPP and serves as a wholesale power supplier to 35 municipalities in Oklahoma. Prior to January 1, 2005, OMPA was a network transmission customer under AEP's OATT. In a settlement agreement between AEP and OMPA in the proceeding involving the merger between AEP and Central and South West Corporation (CSW) (Merger Settlement), OMPA agreed to join SPP. OMPA began to take network transmission service under SPP's OATT on January 1, 2005, pursuant to an unexecuted service agreement for network integration transmission service (NITSA) and an unexecuted network operating agreement (NOA) filed by SPP in Docket No. ER05-526-000.<sup>1</sup> In that SPP proceeding, the parties disagreed concerning the amount of transmission service that OMPA is

---

<sup>1</sup> *Southwest Power Pool*, 110 FERC ¶ 61,304 (2005) (SPP).

eligible to roll over (rollover rights) under SPP's OATT, and the Commission accepted for filing and suspended the NITSA and NOA and set the matter for hearing and established settlement judge procedures, which are pending.

3. On December 2, 2004, in this proceeding, AEP filed a notice of cancellation of the AEP-OMPA Agreements in order to facilitate OMPA's transition to SPP. AEP requests a waiver of the Commission's 60-day prior notice requirement to allow a January 1, 2005 effective date.

4. Notice of AEP's December 2, 2004 filing was published in the *Federal Register*,<sup>2</sup> with interventions and protests due on or before December 23, 2004. OMPA filed a timely motion to intervene and a conditional protest. OMPA states that it does not object to AEP's proposed cancellation of the AEP-OMPA Agreements, effective January 1, 2005, so long as: (1) the cancellation would not prejudice the outcome of OMPA's complaint against AEP in Docket No. EL05-38-000, in which OMPA asks the Commission to order AEP to file an unexecuted service agreement with regard to new service requested by OMPA for its additional 29-54 MW ownership interest in the Oklaunion Unit No. 1 generating station; (2) SPP files a NITSA and NOA to allow OMPA to smoothly transition its load on the AEP system to SPP on January 1, 2005; and (3) OMPA's rollover rights arising under the settlement agreement pertaining to the AEP-CSW merger proceeding and existing grandfathered agreements would be fully preserved. OMPA requests that the Commission suspend or condition the cancellation of the AEP-OMPA Agreements in order to preserve OMPA's rights under these agreements.

5. On January 19, 2005, the Commission staff, pursuant to delegated authority, issued a deficiency letter asking AEP to address a concern regarding a rate schedule designation. The letter asked that AEP provide the service agreement number that it wished to be terminated.

6. On March 15, 2005, AEP filed a response to the staff's deficiency letter providing clarification regarding the rate schedule designations. AEP also states that OMPA commenced taking transmission service under the SPP OATT on January 1, 2005. According to AEP, the AEP-OMPA Agreements still need to be terminated to finalize OMPA's transition to the SPP OATT.

---

<sup>2</sup> 69 Fed. Reg. 75,527 (2004)

7. Notice of AEP's March 15, 2005 filing was published in the *Federal Register*,<sup>3</sup> with interventions and protests due on or before April 5, 2005. On April 5, 2005, OMPA filed a renewed intervention and supplemental protest and request for consolidation of Docket Nos. ER05-286-000 and ER05-286-001 (the instant notice of cancellation) with Docket No. ER05-526-000 (the proceeding concerning the unexecuted NITSA and NOA filed by SPP). OMPA asserts a need to suspend the filing and to set it for hearing and settlement judge procedures. OMPA cites AEP's answer to its complaint in Docket No. EL05-38-000 in which AEP asserted that OMPA's transition to SPP service on January 1, 2005 will absolve AEP of any further responsibility towards OMPA for transmission for 29-54 MW of additional Oklaunion capacity. Although the Commission granted OMPA's complaint and directed AEP to file an unexecuted service agreement,<sup>4</sup> OMPA expresses concern that AEP will continue to attempt to use the instant cancellation as grounds for avoiding its obligations to provide OMPA with transmission service.

8. Furthermore, OMPA contends that AEP has repeatedly tried to avoid its obligations to OMPA under other grandfathered contracts and under the Merger Settlement. As described in the December 23 intervention, the January 1, 2005 transition date is derived from section C.1 of the Merger Settlement. However, AEP has resisted compliance with section C.2 of the Merger Settlement, another provision that provides OMPA with continuing rights to delivery of its ownership shares of AEP's Oklaunion, Pirkey and Dolet Hills generating stations to OMPA's load.<sup>5</sup> OMPA asserts that these

---

<sup>3</sup> 70 Fed. Reg. 16,264 (2005).

<sup>4</sup> See *Oklahoma Municipal Power Authority v. American Electric Power Service Corp.*, 110 FERC ¶ 61,228 (2005) (Complaint Order), *reh'g pending*.

<sup>5</sup> Section C.2 of the Merger Settlement Agreement provides, in pertinent part:

In the event that OMPA so elects to begin network integration service under the OATT, OMPA and the CSW Operating Companies will negotiate in good faith a new interconnection agreement that, among other things, contains provisions that assure that OMPA will have continuing access through transmission facilities owned or operated by the CSW Operating Companies or their successors in interest, to capacity associated with and energy produced from OMPA's current ownership shares of Oklaunion Unit No. 1, Henry W. Pirkey Unit No. 1 and Dolet Hills Unit No. 1 adequate to assure that OMPA will be able to deliver such capacity and energy to OMPA loads served in the SPP area as currently configured.

According to OMPA, AEP apparently lost interest in such a new interconnection agreement and one was never proposed to OMPA.

actions have greatly hindered its transition to SPP. OMPA states that SPP has refused OMPA's network resource designation for its OGE loads based on AEP's failure to confirm its obligations under the Merger Settlement and other grandfathered agreements. OMPA states that any acceptance of the cancellation should preserve OMPA's rights under the various settlements and agreements.

9. Further, according to OMPA, the Commission has suspended and set for hearing and settlement judge procedures the unexecuted SPP NITSA and NOA for OMPA's AEP load, finding that they have not been deemed just and reasonable.<sup>6</sup> OMPA urges consolidation of AEP's notice of cancellation with the *SPP* proceeding in order to provide a forum to enable prompt resolution of disputes between OMPA, SPP and/or AEP.

10. OMPA adds, as it did in its December 23 intervention, that it does not see how the instant notice of cancellation could be claimed to prejudice its rights. However, given its inability to reach agreement with AEP regarding the effect of the Merger Settlement, OMPA seeks the relief requested here out of a sense of caution.

## **Discussion**

### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), OMPA's timely, unopposed motion to intervene serves to make it a party to this proceeding.

### **B. Substantive Matters**

12. OMPA commenced taking network transmission service under the SPP OATT on January 1, 2005, and OMPA does not oppose cancellation of the AEP-OMPA Agreements per se. We agree that cancellation of the AEP-OMPA Agreements, effective January 1, 2005,<sup>7</sup> is appropriate.

13. We will deny OMPA's request that we suspend the cancellation of the AEP-OMPA Agreements, set them for hearing and consolidate them with the pending hearing in the *SPP* proceeding, Docket No. ER05-526-000. The instant notice of cancellation serves a simple purpose: to reflect OMPA's transition from taking service under the

---

<sup>6</sup> See *SPP*, 110 FERC ¶ 61,304 at P 13-14.

<sup>7</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

AEP-OMPA Agreements to taking service under the SPP OATT, effective January 1, 2005. Any disputes between OMPA and AEP or OMPA and SPP concerning OMPA's rights under the Merger Settlement, the SPP OATT (at issue in the *SPP* proceeding, Docket No. ER05-526-000) or the anticipated AEP filing required by the Complaint Order are beyond the scope of this proceeding. Further, OMPA's concern that AEP will continue to avoid its obligation to provide transmission service to OMPA is speculative at this juncture and does not as yet warrant a hearing.

14. Accordingly, we will accept the instant notice of cancellation for filing, without hearing or suspension, to become effective on January 1, 2005, as requested. Since we are not suspending and setting this matter for hearing, consolidation is not warranted.<sup>8</sup> With regard to OMPA's alternative request that we state that acceptance of the notice of cancellation is without prejudice to a determination of issues related to its transition to SPP in other proceedings, we agree with OMPA that cancellation would not prejudice OMPA's rights in those other proceedings. Thus, our acceptance of the instant notice of cancellation is without prejudice to any dispositions concerning OMPA's rights, including its rollover rights, in the *SPP* proceeding, Docket No. ER05-526-000, or the Complaint Order proceeding.

The Commission orders:

(A) AEP's notice of cancellation is hereby accepted for filing, without hearing or suspension, to become effective on January 1, 2005.

(B) AEP's request for waiver of the Commission's 60-day prior notice requirement is hereby granted.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

---

<sup>8</sup> See, e.g., *City of Holland, Michigan v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,076 at P 18, n.22 (2005).