

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Oklahoma Gas and Electric Company and
NRG McClain LLC

Docket Nos. EC03-131-003
EC03-131-004

ORDER ON COMPLIANCE

(Issued June 20, 2006)

1. This order addresses the mitigation the Commission relied upon in authorizing, under section 203 of the Federal Power Act,¹ Oklahoma Gas and Electric Company's (OG&E) acquisition of 400 megawatts (MWs) of the McClain generating facility (McClain Facility) from NRG McClain (the Transaction). In this Order, we find that OG&E has met its obligation to create at least 400 MWs of available transfer capability (ATC) into the OG&E control area by constructing certain transmission upgrades, as required in the Commission's order conditionally accepting OG&E's Offer of Settlement (Settlement Order).²

I. Background

A. Commission Order Authorizing Disposition of Facilities

2. On December 18, 2003, the Commission issued an order (Hearing Order) finding that the Transaction (without further mitigation) could harm competition in OG&E's

¹ 16 U.S.C. § 824b (2000), amended by Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-93 (2005).

² *Oklahoma Gas and Electric Co.*, 108 FERC ¶ 61,004, *reh'g denied*, 111 FERC ¶ 61,075 (2005) (Settlement Order).

market due to increases in OG&E's horizontal and vertical market power³ and thus, was not consistent with the public interest.⁴ The Commission found that was insufficient evidence in the record to determine the mitigation measures it should impose as conditions to permit approval of the Transaction. Accordingly, the Commission set the application for hearing to address those issues.

3. On April 8, 2004, OG&E filed an Offer of Settlement intended to resolve the issues, offering the following permanent and interim mitigation measures. First, as a permanent mitigation measure, OG&E proposed to construct a 600 MW "bridge" (600 MW Bridge) between the Redbud Energy Project (Redbud Facility)⁵ and OG&E's control area.⁶ Redbud would be eligible to obtain that additional ATC, as would other suppliers,

³ Horizontal market power is exercised when in order to increase profits, a firm drives up prices through its control of a single activity, such as electricity generation, and it controls a significant share of the total capacity available in that market. Vertical market power is exercised when a firm involved in two related activities, such as electricity generation and transmission, uses its dominance in one area to raise prices and increase profits for the overall enterprise.

⁴ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,111 (2000) (Order No. 642), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001). The Merger Policy Statement and Order No. 642 provide that the Commission will generally take account of three factors in its section 203 analysis: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.

⁵ The Redbud Facility is a 1,200 MW combined cycle generating facility in Luther, Oklahoma.

⁶ According to OG&E, the 600 MW Bridge would consist primarily of an upgrade to OG&E's Draper Substation. OG&E stated that it would begin construction of the 600 MW Bridge as soon as the Commission approved the Transaction, and estimated that the 600 MW Bridge could be completed within eleven months.

under OG&E's Open Access Transmission Tariff (OATT).⁷ Second, as a permanent mitigation measure, OG&E would construct a transmission upgrade at OG&E's Ft. Smith interconnection with Entergy Corporation's transmission system. Third, as an interim mitigation measure to apply during the period between the Commission's approval of the Transaction and the completion of the 600 MW Bridge, OG&E would redispatch (at no cost to Redbud) OG&E's generating units to enable the Redbud Facility to sell power (not to exceed 600 MWs in the aggregate and subject to reliability constraints) to any wholesale customer in the OG&E control area. Fourth, as an interim mitigation measure, OG&E would establish an Independent Market Monitor to address vertical market power concerns until Southwest Power Pool's (SPP) Regional Transmission Organization (RTO) starts calculating and posting ATC. Finally, OG&E proposed that the Independent Market Monitor would oversee OG&E's calculation of ATC and total transmission capacity, and provide that data to the SPP, until the SPP was approved by the Commission as an RTO.⁸

4. In support of its Offer of Settlement and proposed upgrades, OG&E provided the results from several First Contingency Incremental Transfer Capability studies (First Contingency Transfer Studies). These studies modeled a hypothetical 1,200 MW transaction from Redbud to OG&E's control area under a first contingency analysis using the SPP 2004 base cases for the summer and winter peak and assuming the McClain unit was not running. The studies identified the Draper substation and Memorial-Skyline 138kV line as limiting elements for the transaction, and indicated that the transfer capability from Redbud to OG&E might be increased to 649 MWs (summer) and 1,035 MWs (winter) if these limitations were removed.

5. In its initial testimony on OG&E's Offer of Settlement, Trial Staff relied on the SPP System Impact Study dated April 6, 2004 (SPP-2003-271-1) to support the OG&E

⁷ OG&E explained that its offer to upgrade its system to create 600 MWs of ATC did not mean that Redbud (or any other supplier) would be guaranteed 600 MWs of ATC, or that Redbud would have guaranteed firm transmission service under the OATT to sell to customers, because those customers and any wholesale seller that sells power to them were not guaranteed either ATC or firm transmission service from OG&E's McClain facility at that time.

⁸ Commission Trial Staff (Trial Staff) proposed eight modifications to the OG&E market monitoring plan in ¶ 36 of its Reply to OG&E's Offer of Settlement. On April 6, 2004, OG&E agreed to all of these modifications (Exhibit OGE-Sett-2 at ¶ 25).

proposed upgrades. That SPP system impact study was performed at the request of Redbud and modeled a transaction from Redbud to OG&E's control area for the period May 1, 2004 to May 1, 2007. The SPP study identified the Draper substation, the Memorial-Skyline 138kV line, and the Morgan-Mustang line as limiting elements for a Redbud-to-OG&E 1,200-MW transfer. Trial Staff also performed an independent analysis that demonstrated that adding a third transformer at the Draper Substation resulted in it no longer being the limiting facility for a 400-MW transfer from Redbud to OG&E's control area.

6. In its affidavits supporting OG&E's Offer of Settlement, Trial Staff performed additional studies, and concluded that the Draper Substation upgrade would allow for up to 600 MWs of ATC from Redbud to OG&E's control area with or without the McClain facility running.

7. The Commission accepted the Offer of Settlement, subject to modification, because the mitigation would prevent harm to competition in OG&E's market from the Transaction. The Commission found that the Offer of Settlement, as modified, would resolve the concerns about increases in OG&E's horizontal and vertical market power from the Transaction and would not unduly burden OG&E or harm the reliability of OG&E's system. Accordingly, the Commission approved the Transaction, as modified, as consistent with the public interest.

8. In May 2005, OG&E performed another First Contingency Transfer study with the upgrades modeled to confirm that the upgrades had their intended effect. This study again modeled a hypothetical 1,200 MW transaction from Redbud to OG&E's control area under a first contingency analysis using an updated SPP 2005 base case and assuming that the McClain Facility was not running. The results of this study indicate that the upgraded facilities were no longer limiting facilities and that the resulting ATC is greater than 600 MWs.

9. On May 31, 2005, OG&E filed a letter informing the Commission that all of the facilities that OG&E had committed to construct were in commercial operation. As a result, OG&E concluded that its interim obligation to redispatch on its system was terminated; in other words, it said that the permanent mitigation should replace the interim mitigation.

B. Subsequent Requests for Service by Redbud

10. In response to Redbud's request for service for 1,200 MWs of firm transmission service from Redbud to OG&E's control area for the period May 1, 2004, through May 1, 2007, SPP performed a system impact study. It was a long-term planning study using

SPP 2004 base cases. The initial study (SPP-2003-271-1) was dated April 6, 2004, with a revised version (SPP-2003-271-2) dated August 2, 2004. The study was modeled based on the assumption that OG&E's proposed upgrades were in place as of June 1, 2005, with the McClain facility running. Based on this study, SPP was able to offer 600 MWs of ATC to Redbud through May 1, 2007.

11. In June 2005, the Oklahoma Corporation Commission required OG&E to issue a Request for Proposals for 440 MWs of firm power for the period June 28, 2005, to September 2, 2005. Redbud notified Commission Staff that, while it was the winning bidder, when it sought to acquire the ATC needed to provide the firm power to OG&E, SPP informed Redbud that there was no ATC available.

12. In response to the Redbud request for service for 440 MWs of ATC from Redbud to OG&E's control area for the period of June 30, 2005, to September 2, 2005, SPP performed a study using operational and planning models for the period. That study also was modeled based on the assumption that OG&E's upgrades were in place with the McClain facility running. This study indicated that the facilities upgraded by OG&E were no longer limiting facilities and, instead, Redbud-Arcadia and Silver Lake-Division were constraining flowgates. As a result, SPP did not approve Redbud's request for service.

C. Data Requests and Responses

13. In September 2005, Staff issued a letter to OG&E and SPP requesting OG&E to demonstrate that the 600 MW Bridge provided 600 MWs of ATC. Staff requested OG&E and SPP to provide information regarding: (1) the additional level of ATC for import into OG&E's control area from the transmission upgrades; (2) the level of ATC for the OG&E control area posted on SPP's OASIS beginning May 19, 2005, up to the present; (3) any transmission service requests (and refusals) for all or some of the additional ATC from the date that OG&E filed its Offer of Settlement; and (4) the processes for determining ATC for the OG&E control area.

14. In its October 3, 2005, response, OG&E states that it had completed the upgrades that it committed to build, but that system conditions must have changed between early 2004, when OG&E had estimated the amount of additional ATC that the upgrades would create, and June 2005, when Redbud made its transmission service request. OG&E points out that Redbud could have secured the firm transmission earlier. It points out, further, that Commission Trial Staff had verified OG&E's 2004 First Contingency Incremental Transfer Capability studies (First Contingency Studies) that showed an additional 600 MWs of ATC and a separate SPP system impact study performed in August 2004, both showing at least 600 MWs of ATC into the OG&E control area.

15. In its October 3, 2005, response, SPP acknowledges that its estimate of zero firm ATC was incorrect and that it needed to update the method for forecasting Redbud's output in order to more accurately represent the amount of available ATC at the Redbud-to-Arcadia flowgate. SPP explains that, based on its subsequent analysis, between 300 and 400 MWs of ATC were actually available during the period of June 30, 2005, to September 2, 2005. SPP also states that it did not conduct any study that quantified the additional ATC created by the upgrades in OG&E's Offer of Settlement.

16. OG&E's Independent Market Monitor, Potomac Economics, questioned whether OG&E's Offer of Settlement committed it to create incremental ATC over the amount created when OG&E's McClain facility was running.⁹ According to OG&E's Independent Market Monitor, the Offer of Settlement was not clear on this issue. OG&E's Independent Market Monitor reported that the upgrades provided 600 MWs of incremental firm ATC without OG&E's McClain facility running and approximately 200 MWs of incremental firm ATC with OG&E's McClain Facility running. He explained that simply running the McClain Facility provides approximately 400 MWs of ATC by creating counterflows, and the combination of the upgrades and the counterflows create approximately 600 MWs of ATC, so the incremental ATC provided by the upgrades could be considered to be only 200 MWs, depending on whether running the McClain Facility should be included in the base case of the transmission model. He stated that because the issue was not clearly resolved in the Settlement Offer, it is outside the scope of the market monitoring plan.¹⁰

17. SPP's Independent Market Monitor, Boston Pacific, reviewed SPP's denial of Redbud's June 2005 request for short-term firm service. SPP's Independent Market Monitor determined that it was not clear that 600 MWs of ATC was available on OG&E's system. It concluded that: (1) an additional 303 MWs of ATC was available at the Redbud-to-Arcadia flowgate and 920 MWs at the Silver Lake-Division flowgate, over and above Redbud's existing firm transmission reservations during July 2005; and (2) the Redbud-to-Arcadia flowgate was the limiting factor for transmission service for Redbud into OG&E's control area.

18. In its October 25, 2005, response, Redbud argued that OG&E committed to upgrades that would provide an additional 600 MWs of ATC, regardless of whether or

⁹ See OG&E's October 18, 2005, Quarterly Market Monitoring Report.

¹⁰ *Id* at 33-34.

not OG&E was running the McClain facility. It criticized OG&E's explanation that system conditions must have changed between the time OG&E estimated the amount of additional ATC that the upgrades would create and the time when Redbud made its transmission service request (which was denied by SPP), Redbud concluded that OG&E had not fulfilled its commitment. Therefore, Redbud requested the Commission to direct SPP to treat OG&E as if it were a transmission owner requesting the firm service from Redbud into its control area and to direct SPP to perform a forward-looking study identifying the additional upgrades needed to provide 600 MWs of ATC. Redbud argued that OG&E should be required to pay for this study.

D. Technical Conference and Subsequent Comments

19. Commission Staff convened a technical conference on December 1, 2005. Participants discussed whether the upgrades completed by OG&E had created an additional 600 MWs of ATC, as required in the Settlement Order. Following the technical conference, Staff requested additional information and comments from the technical conference participants.

20. In its initial comments, OG&E states that it constructed the upgrades to offset the effects on the market of its acquisition of a portion of the McClain Facility. According to OG&E, the Commission said that the market effect of the Transaction was a result of OG&E removing 400 MWs of ATC from the OG&E control area. OG&E says the record shows that, after construction of the mitigation facilities, there would be 600 MWs of ATC from Redbud to OG&E's control area when the McClain facility was running.

21. OG&E explains that the upgrades were selected to achieve a particular result using the SPP planning model, comparing "before" and "after" facility addition scenarios in First Contingency Studies.¹¹ It emphasizes that its planning model studies differed from the operational studies that SPP performed to analyze Redbud's transmission service request in June 2005 for short-term firm service. According to OG&E, such operational studies are based on the seven calendar days immediately preceding commencement of the requested service. Moreover, OG&E says that its commitment to install the mitigation facilities did not mean that such facilities would add 600 MWs of ATC "on top of" the ATC created by running the McClain Facility; rather, the upgrades were

¹¹ OG&E stated that it used SPP's long-range planning models in its base case analyses.

intended to ensure up to 600 MWs of ATC even if the McClain Facility was running. OG&E declares that SPP erred in modeling Redbud's non-firm output and that this partly caused its denial of Redbud's June 2005 request for service.

22. In its initial comments, Redbud contends that OG&E's base case analyses were flawed because they did not reflect realistic system conditions after the acquisition of the McClain Facility. Redbud states, further, that the availability of 650 MWs of ATC identified in SPP's 2004 system impact study, does not mean that OG&E met its commitment to provide 600 MWs of additional ATC, especially since Redbud's June 2005 request for service was denied. Moreover, Redbud argues that, when SPP fixed its modeling error in SPP's subsequent June 2005 system impact study, the study showed that only 200 MWs of additional ATC were created. According to Redbud, neither OG&E nor SPP identified specific firm reservations that reduced the available ATC for Redbud to OG&E's control area. Moreover, Redbud states that its studies indicate that prior firm reservations did not account for the disappearance of approximately 450 MWs of ATC between the time SPP studied Redbud's 2004 request for service and Redbud's June 2005 request for service.¹²

23. In its initial comments, as clarified in its supplement filed on February 15, 2006, SPP explains that its operational models, which incorporate forecasts of generation commitments, generation dispatch patterns, load patterns, generation outages, transmission outages, transmission upgrades, and reservations in study, accepted, or confirmed states. In both its operational and planning models (extending 15 months beyond the operational model period of 31 days), SPP determines hourly available flowgate capacity for 139 flowgates. SPP explains that its August 2004 system impact study was based on the McClain facility running to serve Oklahoma Municipal Power Authority's and OG&E's load and prior firm reservations. According to SPP, it analyzed which reservations requested after the July 8 Order and before the June 24, 2005, Redbud service request affected load on the Redbud-to-Arcadia and Silver Lake-Division

¹² Redbud states that, according to its estimates, existing firm reservations reduced firm ATC by approximately 180-280 MWs on June 24, 2005.

flowgates to determine the effect on ATC for Redbud to OG&E's control area.¹³ For that period, SPP concludes that there was slightly more than 800 MWs of ATC available, with reservations approved during the period for 400-500 MWs, leaving approximately 300-400 MWs of available ATC for Redbud to OG&E's control area.

24. In response to OG&E's and SPP's initial comments, Redbud requests that the Commission reject OG&E's *post hoc* rationalization of its Offer of Settlement and enforce the plain meaning of that offer. Redbud says that the settlement was intended to create 600 MWs of additional ATC for Redbud to the OG&E control area, using a base case that reflects system conditions assumed by SPP when studying actual transmission service requests, *i.e.*, based on operational studies rather than planning studies. According to Redbud, the Commission did not approve the installation of particular facilities to fulfill OG&E's commitment to provide 600 MWs of additional ATC.

25. In response, OG&E contends that Redbud ignores what the Commission directed in the Settlement Order. OG&E points out that the Commission accepted OG&E's Offer of Settlement as modified in response to Trial Staff's comments on the settlement. It explains that Trial Staff requested it to clarify the Offer of Settlement to identify the particular upgrades that OG&E was proposing to construct. OG&E states, further, that the Settlement Order approved the Offer of Settlement as clarified and modified by Trial Staff's comments.

II. Commission Determination

26. The issue here is the proper base case to use in determining whether OG&E created the additional 600 MWs of ATC directed in the Settlement Order. As discussed below, we conclude that OG&E has complied with the Settlement Order. OG&E's Offer of Settlement stated that, as a permanent mitigation measure, it would construct the 600 MW Bridge, consisting primarily of an upgrade to OG&E's Draper Substation, which would provide an additional 600 MWs of ATC, whether or not the McClain Facility was running. The record shows that OG&E completed the upgrades and that the 600 MWs of additional ATC were created.

¹³ SPP states two reservations were renewals of annual transmission service impacting the Redbud-Arcadia flowgate firm AFC and seven reservations were approvals of redirected paths for previously-approved reservations having some net impact on firm AFC for one or both of the Redbud-Arcadia and Silver Lake-Division flowgates.

27. Redbud argues that the modifying clause “whether or not the McClain Facility was running” means that the upgrades should result in an increase of 600 MWs of ATC above both a base case where the McClain facility is not running and a base case where the McClain facility is running. The latter scenario would result in a total of approximately 1,200 MWs of ATC.¹⁴ OG&E argues that its commitment to install the upgrades did not mean that such facilities would add 600 MWs of ATC “on top of” the ATC created when the McClain Facility was running; rather, the mitigation facilities were intended to ensure up to 600 MWs of ATC even if the McClain Facility were running. We note that running the McClain Facility creates counterflow that increases ATC, but the total additional ATC from the upgrades and the additional ATC from running McClain is not the sum of the two, because systems conditions are different.¹⁵

28. We find that the purpose of the upgrades was to mitigate the harm to competition resulting from the acquisition of the McClain Facility acquisition by increasing ATC from the Redbud facility into OG&E’s control area. The record supports a finding that as a result of the upgrades, there were 600 MWs of ATC created from the Redbud facility into OG&E’s control area, under the planning studies used by SPP and OG&E.

29. We recognize that, in evaluating requests for transmission service, different modeling techniques can be used depending on the time frame or duration of the request. In general, for requests for long-term service, long-term planning models are used and for shorter-term requests, operational models are used. Planning models start with a base case that contains known system conditions at a given point of time. The model is then modified by incorporating changes that are known or anticipated over the period of time being studied, such as transmission upgrades, generation additions, outages, load growth, and firm transactions. Given the long-term nature of these studies, modeling is a “best guess” as to what the system will look like in the future. The studies are less accurate for time periods that are further out.

30. Operational models also are developed using a base case and incorporate changes that are known or anticipated over the time period being studied. However, since they are closer to real time and the study period is shorter, they model the system more accurately during that time frame. Factors such as generation and transmission forced outages, weather volatility, and short-term firm transactions are reflected in operational

¹⁴ See Redbud’s reply comments at 6 and OG&E’s reply comments at 5.

¹⁵ See October 18, 2005, Independent Market Monitoring Report at 35.

models. As a result, operational studies can produce different results than do planning studies that cover the same period, as indicated by SPP's 2004 and 2005 studies. In the short term, as the result of changing conditions, ATC values can differ from the values a longer-term planning study might have predicted.

31. In SPP's initial post-technical conference comments, it clarified that, based on subsequent analysis, between 300 and 400 MWs of ATC were actually available during the period of June 30, 2005, to September 2, 2005. We would not expect 600 MWs of short-term ATC to be available, at all times under all actual system conditions, with reservations approved during the period for 400-500 MWs. Based on the planning studies and SPP's corrected operational study, therefore, we conclude that OG&E fulfilled the conditions of its Offer of Settlement, because the upgrades created at least 600 MWs of ATC, whether or not the McClain facility was running.

32. Our analysis of the additional data provided by the SPP in response to the March 30, 2006 data request finds no evidence that OG&E Power Supply, a marketing affiliate of OG&E, reserved transmission capacity on the Redbud to O&GE path that would have otherwise been available for Redbud's transaction for 440 MWs of ATC requested from June 28, 2005 through September 3, 2005. There were three OG&E Power Supply confirmed monthly reservations, all requested between April 26, 2005 and June 22, 2005, each for 31 MWs of ATC. These were monthly transactions, executed one at a time during three consecutive months, beginning May 3, 2005 and ending August 1, 2005. That means that the capacity was reserved by OG&E Power Supply for only 31 MWs and only flowed during May, June, and July. Further, the 800 MWs¹⁶ of remaining firm ATC on the path between Redbud and OG&E after the Settlement Order mainly was consumed by: (1) Redbud (identified as the transaction's source) for confirmed transactions sinking into the Westar control area, and (2) various other users requesting redirects and

¹⁶ See Clarification to December 16, 2005, Initial Post-Technical Conference Comments of Southwest Power Pool, Inc., dated Feb. 15, 2006, at 4.

renewals.¹⁷ Moreover, our analysis of the use of the Redbud-to-Arcadia flowgate shows that, despite SPP's denial of service, there was, in fact, ATC into the OG&E service territory in the Summer 2005 time period that was used by competing suppliers, including Redbud.¹⁸ We conclude, therefore, that the actual transmission usage data do not indicate that OG&E or its marketing affiliate received any undue preference regarding access to the transmission capacity resulting from the upgrades.

In sum, the Commission finds that OG&E has fulfilled the conditions in the Commission's Settlement Order, as discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁷ Our analysis of transactions that flowed on two representative days --June 28, 2005, (the Redbud June 28, 2005, request start time), and August 14, 2005, (high loading conditions) -- shows similar results to those reported by SPP. For June 28, 2005, Redbud reservations consumed 344 MWs of firm ATC, while redirects and renewals consumed 247 MWs of ATC. The new requests (received between the Settlement Order, and Redbud's June 24, 2005, request) totaled 75 MWs of ATC. As result, only 134 MWs of firm ATC was available on June 28, 2005. For August 14, 2005, Redbud reservations consumed 229 MWs of ATC, while redirects and renewals consumed 182 MWs of ATC. The new requests (received between the Settlement Order, and June 24, 2005, Redbud request submission) totaled 26 MWs of ATC. As a result, only 363 MWs of firm ATC was available on August 14, 2005, (data from Supplemental Comments of Southwest Power Pool, Inc., dated May 1, 2006, at 3).

¹⁸ See note 17, confirming that, when Redbud requested 440 MWs of ATC, there was a lack of sufficient firm ATC to approve the request because some of the ATC had been reserved by competing suppliers and OG&E Power Supply.