

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Oklahoma Municipal Power Authority

Docket No. EL05-38-000

v.

American Electric Power Service Corp.

ORDER GRANTING COMPLAINT

(Issued March 4, 2005)

1. On December 6, 2004, Oklahoma Municipal Power Authority (OMPA) filed a complaint against American Electric Power Service Corp. (AEP) requesting that the Commission direct AEP to file an unexecuted service agreement for the network transmission service OMPA requested as necessary to facilitate OMPA's contracted-for acquisition of an increased ownership in a generating station called Oklaunion Unit No. 1 (Oklaunion). As discussed below, this order grants OMPA's complaint and finds that AEP was required under its Open Access Transmission Tariff (OATT) to file the unexecuted service agreement. This order benefits customers by enforcing our requirement that a transmission provider file an unexecuted service agreement at the request of a transmission customer.

**Background**

2. OMPA is a member of the Southwest Power Pool (SPP) and serves as a wholesale power supplier to 35 municipalities in the State of Oklahoma. Oklaunion is jointly owned by several entities including OMPA and affiliates of AEP. It is a 690 MW coal-fired generating station located in Wilbarger County, Texas, which operates under the Electric Reliability Council of Texas (ERCOT). Oklaunion lies adjacent to an existing 220 MW high voltage direct current (HVDC) interconnection, commonly known as the North Tie. The North Tie is one of two HVDC interconnections that interconnect the

transmission network operated in the ERCOT and the transmission network operated under SPP. The North Tie was constructed under the terms of a settlement resulting from a Commission order requiring interconnection and wheeling.<sup>1</sup>

3. Under a settlement agreement between OMPA and AEP, OMPA is to begin to take network transmission service under the SPP OATT on January 1, 2005.<sup>2</sup> Prior to January 1, 2005, OMPA was a network transmission customer under AEP's OATT.<sup>3</sup>

### **OMPA's Complaint**

4. OMPA states that it submitted two separate requests to AEP for transmission of 54 or 29 MW<sup>4</sup> over existing tie capacity or, if no tie capacity was available, OMPA's funding, with appropriate credits, of additional tie capacity. OMPA proposes to transmit 29 or 54 MW from the Oklaunion facility to serve its load in SPP. OMPA states that one request was made pursuant to AEP's OATT, under which it was taking transmission service at the time, and the other in response to an AEP solicitation under section 5 of the AEP OATT.<sup>5</sup>

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<sup>1</sup> *Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981), *order on reh'g*, 18 FERC ¶ 61,100 (1982).

<sup>2</sup> OMPA's service agreement with SPP is currently pending before the Commission in Docket No. ER05-526-000.

<sup>3</sup> On January 31, 2005, AEP filed a notice of cancellation of OMPA's network service agreement in Docket No. ER05-286-000.

<sup>4</sup> OMPA states that the reason why it sought transmission service for either 54 or 29 MW is because another joint owner of Oklaunion exercised its right of first refusal with respect to the interest OMPA seeks to acquire. It states that under the Oklaunion Construction, Ownership, and Operating Agreement, the exercising owners receive *pro rata* shares of the interest being sold. OMPA's *pro rata* share of the 54 MW is 29 MW. OMPA further explains that its acquisition of an increased ownership interest in Oklaunion is the subject of litigation in Texas state court.

<sup>5</sup> Section 5 provides:

Whenever planning is undertaken by AEP to increase the capacity of the HVDC Facilities, but at intervals of no more than every three years after June 30, 1989, with respect to the North Interconnection, and after June 30, 1989, with respect to the East Interconnection, until in either case June 30,

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5. In response to OMPA's requests, AEP performed a System Impact Study. OMPA states that the study indicates that it will be necessary to upgrade the North Tie facilities in order to provide OMPA either 29 or 54 MW of transmission service and asserts the necessity to advance construction of an AEP transmission line elsewhere in the system. OMPA states that subsequently, AEP performed a Facility Study to estimate OMPA's share of the cost of any required network upgrades. OMPA points out that both AEP and OMPA executed agreements in order for AEP to perform both studies.

6. Based on the results of AEP's studies, OMPA argues that it makes no sense to construct a new tie limited to 29 MW because on a cost per unit transmission basis it is far more efficient to construct a larger upgrade such as 200 MW.<sup>6</sup> OMPA states that it has informed AEP that in order to facilitate its request for its new Oklaunion transmission service it is prepared to fund and own a 100 or 200 MW upgrade, so long as it is able to submit the facility for control to the transmission provider and to obtain credits under section 30.9 of the AEP OATT since the new facilities would be integrated with those of AEP. OMPA states that it requested AEP to file an unexecuted service agreement on November 9, 2004, but that AEP declined its request. OMPA states that although AEP has not asked for security, it has posted almost twice as much security as it will need to close the purchase on its additional interest in Oklaunion (\$42.75 million).

7. OMPA argues that AEP is required to file an unexecuted service agreement because in an order issued on May 28, 2004,<sup>7</sup> the Commission stated that AEP must

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2004, electric utilities in ERCOT and the SPP will be given opportunity to participate in the planning of increases in the capacity of the HVDC Facilities and of participating in the ownership of any incremental capacity added, provided that each party that wishes to participate pays its *pro rata* share of all costs of constructing the HVDC Facilities in which it wishes to participate and undertakes to pay its *pro rata* share of the costs of operating and maintaining such HVDC Facilities and agrees further to be bound by the terms and conditions of the agreement between owners of such HVDC Facilities.

<sup>6</sup> OMPA states that under the Facility Study, the cost of building a 29 MW upgrade is \$23.7 million and the cost of building a 200 MW upgrade is \$57 million, indicating that the cost of a 200 MW facility is only 2.4 times the cost of a 29 MW facility although the size is nearly seven times larger.

<sup>7</sup> See *American Electric Power Service Corp.*, 107 FERC ¶ 61,209 at P 18 (2004) (May 28 Order).

exercise due diligence in expanding or modifying AEP's transmission system to meet OMPA's legitimate needs for transmission service.<sup>8</sup> OMPA also argues that section 32.4 of AEP's OATT requires AEP, at OMPA's request, to "fil[e] . . . an unexecuted Service Agreement," following the completion of the system facilities study. OMPA states that because it was a transmission service customer of AEP until January 1, 2005, it can demand that AEP file an unexecuted service agreement under section 32.4 at any time prior to January 1, 2005. In any event, OMPA argues that it became an AEP transmission customer when it submitted its request for AEP to file an unexecuted service agreement pursuant to section 1.69 of AEP's OATT. Further, OMPA argues that there is no counterpart to section 5 of AEP's OATT under SPP's OATT and that it is entitled to have AEP file an unexecuted service agreement in order to most fully protect and preserve its section 5 rights with respect to the requested North Tie expansion and transmission service, and to resolve disputes about financial consequences.

### **Notice of Filing**

8. Notice of OMPA's complaint was published in the *Federal Register*, 69 Fed. Reg. 75,530 (2004), with the answer to the complaint and all comments, interventions or protests due on or before January 27, 2005. AEP filed a timely answer to the complaint. OMPA filed an answer to AEP's answer. AEP filed an answer to OMPA's answer.

### **AEP's Answer**

9. AEP requests that OMPA's complaint be denied. AEP argues that because the North Tie expansion that will be necessary to enable OMPA to access additional Oklaunion capacity, if OMPA is successful in acquiring it, will not be completed before 2007 at the earliest, it should have made its request to change the nature of the network service it plans to take in the future to SPP, who is now OMPA's network service provider. AEP claims that it is SPP's OATT that will govern the pricing of the new upgrade, not AEP's OATT.

10. AEP also argues that OMPA's request that AEP file an unexecuted service agreement did not make OMPA a transmission customer under section 1.69 of AEP's OATT. AEP states that section 1.69 defines the term "transmission customer" to include

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<sup>8</sup> OMPA states that while AEP has not refused to engage in the process for planning and building the new facilities, it has refused to discuss arrangements for crediting OMPA with the contribution to the AEP grid which will result, or to discuss what rights OMPA and AEP would respectively hold when or if the control over those new facilities goes to AEP or SPP.

persons that have made a valid request that AEP, as transmission provider, file an unexecuted service agreement for point-to-point service requested under Part II of AEP's OATT. AEP points out, however, that OMPA's initial request for service under AEP's OATT was to serve network loads, and that therefore, OMPA's request did not make it a transmission customer under AEP's OATT.

11. Further, AEP argues that OMPA's request that AEP file an unexecuted service agreement under section 32.4 of AEP's OATT was not valid. AEP states that section 32.4 requires that the entity requesting the service provide AEP a letter of credit or other form of commercially reasonable security equal to the estimated costs of the required upgrades within 30 days after receipt of the results of a facility study or the request for service shall be deemed terminated and withdrawn. AEP states that OMPA did not post the required security within 30 days after its receipt of the facility study results. Therefore, AEP argues that even if OMPA's request for service under AEP's OATT had ever been valid, the request ceased to have any validity after OMPA failed to make a timely posting of the required security.

12. Finally, AEP argues that OMPA's demand that AEP construct a 100 or 200 MW expansion of the North Tie is invalid. AEP states that OMPA's initial request was to add 29 or 54 MW to its Oklahoma network resource. AEP states that the studies that followed showed that only a 29 or 54 MW expansion would be required to provide the requested service. AEP argues that if OMPA wishes to move additional power from SPP to ERCOT or vice versa, then it must make a new request for the desired transmission service. AEP states that neither AEP's OATT nor SPP's OATT permit an entity requesting transmission service to double or treble the amount of service required, let alone the direction flow, without returning to the end of the line. AEP argues that because OMPA is now a transmission customer of SPP, any further request for service must be addressed to SPP. Moreover, AEP states that OMPA has neither stated that it needs a larger North Tie upgrade to serve its SPP loads nor has it indicated to what use a larger North Tie expansion would be put.

13. AEP concludes stating that to date, AEP has coordinated with SPP the performance of studies related to the 29 and 54 MW expansions originally requested by OMPA, and that those studies have been conducted in accordance with and within the time schedules required by the Commission.<sup>9</sup> AEP states that OMPA has yet to make a

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<sup>9</sup> In fact, SPP conducts the studies related to transmission service requests as a result of the merger between AEP and Central and South West Corporation (CSW). In Opinion No. 442, the Commission conditioned its approval of the merger on, among other things, the merged companies' contracting out their OASIS responsibilities to an independent entity. In compliance with Opinion No. 442, AEP and CSW entered into an

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proper request to study a North Tie expansion greater than 54 MW, but if it does, OMPA should direct that request to SPP, which is now OMPA's transmission provider. AEP suggests that if OMPA wishes to proceed with the upgrade needed to enable the transmission of energy associated with additional Oklahoma capacity that OMPA hopes to acquire, OMPA should put up the necessary letter of credit or other financial security with SPP. AEP states that the cost responsibility for any such upgrade should be governed by the rules SPP plans to file in the future.

## **Discussion**

### **Procedural Matters**

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept OMPA's answer to AEP or AEP's answer to OMPA and will, therefore, reject them.

### **Service Agreement**

15. We will grant OMPA's complaint and require AEP to file with the Commission an unexecuted service agreement for network transmission service upon OMPA's request.

16. Section 32.4 of AEP's OATT states that once a Facilities Study is completed, [t]he Eligible Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

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agreement with SPP pursuant to which SPP would, among other things, independently calculate and post Available Transmission Capacity ATC and perform the OASIS function of processing transmission service requests for customers seeking service over the AEP transmission system. *See American Electric Power Company and Central and South West Corporation*, Opinion No. 442, 90 FERC 61,242 at 61,788-89, *order on reh'g*, 91 FERC 61,129 (2000), *aff'd sub nom. Wabash Valley Power Ass'n v. FERC*, 268 F.3d 1105 (D.C. Cir. 2001); *order on compliance*, 91 FERC 61,208 at 61,747-48 (2000); *order on compliance*, 93 FERC 62,065 (2000).

17. As both parties acknowledge, OMPA requested network transmission service under AEP's OATT and, in response, AEP performed a System Impact Study and subsequently, a Facility Study. Once AEP informed OMPA of the results of the Facility Study, i.e., the estimated costs of the necessary upgrades for OMPA's requested network transmission service, OMPA requested that AEP file an unexecuted service agreement. As OMPA points out, however, AEP refused to file the unexecuted service agreement.

18. AEP does not argue that it did not have to file the unexecuted service agreement, as requested by OMPA, but instead, argues that OMPA is incorrect in stating that it is a transmission customer under section 1.69 of AEP's OATT because that section concerns point-to-point service and not network transmission service, which is at issue in this proceeding. Although we agree with AEP's technical argument, we find that OMPA was indeed a transmission customer at the time of its request under section 29.1 of AEP's OATT, which concerns network transmission service.<sup>10</sup> It appears likely that OMPA simply cited the wrong section, and AEP should not have denied OMPA's request on that basis. AEP knew what service OMPA was requesting and pursuant to section 29.1 of its own OATT it was required to file the agreement on an unexecuted basis upon OMPA's request.

19. AEP also argues that because the upgrades to the North Tie will be completed no earlier than 2007, OMPA should have made its request for network transmission service to SPP, who is now OMPA's network service provider. We disagree. The fact that the service will be under SPP's OATT has no bearing on whether AEP should have filed an unexecuted service agreement at the time of OMPA's request.

20. Further, AEP argues that OMPA's request that AEP file an unexecuted service agreement was not valid in any event because, as required under section 32.4 of AEP's OATT, OMPA did not post the required security within 30 days after its receipt of the facility study results. We find this argument to be unavailing. AEP refused to file the unexecuted service agreement on other grounds and, indeed, never requested OMPA to post any security. In any event, OMPA has indicated that it is ready to provide any necessary security given the fact that it has posted almost twice as much security as it needs to close the purchase on its additional interest in Oklaunion (\$42.75 million).

21. AEP then argues that OMPA's request for a 100 MW or 200 MW upgrade is invalid. We find this argument unavailing as well. Whether the size or the cost of the

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<sup>10</sup> Section 29.1 requires AEP to "provide Network Integration Transmission Service to any eligible Customer . . . that . . . requests in writing that the Transmission provider file a proposed unexecuted Service Agreement with the Commission."

upgrade is appropriate or not is not a compelling reason for AEP to refuse to file an unexecuted agreement at OMPA's request. The purpose of requiring transmission providers to file unexecuted service agreements at the customer's request is to prevent the delay in service while disputed issues are resolved either by the parties or the Commission. The issue raised by AEP would more appropriately be addressed by the Commission at the time of its review of the unexecuted agreement.

22. As discussed above, we find that AEP violated its OATT by refusing to file the unexecuted service agreement upon OMPA's request. Moreover, we find that AEP acted contrary to the Commission's directive in the May 28 Order that AEP must exercise due diligence in expanding or modifying AEP's transmission system to meet OMPA's legitimate needs for transmission service. Therefore, we will require AEP to file with the Commission an unexecuted service agreement within 30 days of the date of this order.

23. Any other issues regarding OMPA's request for network transmission service may be raised in response to AEP's filing of the unexecuted service agreement.

The Commission orders:

(A) OMPA's complaint is hereby granted.

(B) AEP is required to file an unexecuted service agreement with the Commission within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.