

restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation of the Board's Legacy Report to the Community.
2. Statements of Appreciation to the Board.
3. Vote to Close Board Operations.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966-7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: <http://www.rfcab.org/Minutes.HTML>.

Issued at Washington, DC on May 18, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL06-61-000, EL06-71-000]

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Associated Electric Cooperative, Inc., Complainant v. Southwest Power Pool, Inc., Respondent; Order Denying Complaint and Instituting Section 206 Proceeding

Issued May 19, 2006.

1. Associated Electric Cooperative, Inc. (Associated Electric) filed a

complaint against Southwest Power Pool, Inc. (SPP), arguing that SPP violated its Open Access Transmission Tariff (OATT) in granting a rollover request by American Electric Power Service Corporation, as agent for the subsidiaries of the American Electric Power Company, Inc. d/b/a AEP (collectively, AEP) for 250 megawatts (MW) of long-term firm point-to-point transmission service from the Union Electric Company d/b/a Ameren UE (Ameren UE) transmission system to the Central and South West Services, Inc. (CSW) transmission system. In this order, the Commission denies Associated Electric's complaint. In this order, the Commission also institutes a proceeding pursuant to section 206 of the Federal Power Act (FPA)¹ to determine whether certain language in section 2.2 of SPP's existing OATT may be unjust, unreasonable, or unduly discriminatory or preferential. SPP is directed to file comments on this matter within 30 days of the issuance date of this order.

Associated Electric's Complaint

2. Associated Electric contends that it is not possible for SPP to grant AEP's rollover request for 250 MW of long-term firm service to begin on June 1, 2005, because SPP no longer has the rights to the underlying contract path needed to provide such service. Associated Electric states that the preceding AEP service arrangements to be rolled over relied on a contract path provided by an Interchange Agreement dated September 22, 1971, as amended December 31, 1996, among Associated Electric, Kansas Gas and Electric Company, Public Service Company of Oklahoma, and Union Electric Company for the Missouri-Kansas-Oklahoma 345kV interconnection (MoKanOk Line), which agreement was terminated effective June 1, 2005,² the same day AEP's requested service was to begin.

3. Associated Electric states that without the MoKanOk Line available to SPP to support AEP's rollover request, SPP should not have granted AEP's request without first determining if sufficient Available Flowgate Capacity (AFC) existed to continue to provide the service.³ Associated Electric further states that, alternatively, SPP should

¹ 16 U.S.C. 824e (2000).

² See *Union Electric Co.*, 112 FERC ¶ 61,089, order denying clarification, 113 FERC ¶ 61,320 (2005).

³ Associated Electric argues that the initial 1998 Transmission Agreements for the 250 MW of service and subsequent service requests plainly indicate that SPP's grant of AEP's requested rollover is dependent upon the MoKanOk Line. Complaint at 13-17.

have considered AEP's request for a new transmission service request and processed it pursuant to the procedures for handling new service requests under SPP's OATT.

4. Associated Electric states that SPP was obliged under section 15.2 (Determination of Available Transmission Capability), section 19.1 (Additional Study Procedures for Firm Point-to-Point Transmission Service Requests—Notice of Need for System Impact Study), and Attachment D (Methodology for Completing a System Impact Study) of SPP's OATT, to perform a study to determine whether sufficient transmission capability existed to accommodate AEP's service request. Associated Electric contends that by rolling over AEP's service without first determining the sufficiency of AFC, SPP has adversely affected the reliability of Associated Electric's system and neighboring systems. Associated Electric, however, is unable to quantify the financial impact of SPP's action.⁴

5. Associated Electric alleges that SPP's reliance on section 2.2 (Reservation Priority for Existing Firm Service Customers) of its OATT was misplaced because the cost of Associated Electric's portion of the MoKanOk Line was not included as part of the SPP firm transmission service rates that AEP had been paying.

6. Associated Electric requests that the Commission (1) determine it was inappropriate for SPP to grant AEP's rollover request without studying the AFC in the region; (2) order SPP to conduct a study of the AFC on SPP and neighboring transmission systems, including Associated Electric, to determine if there is sufficient AFC to support AEP's request; (3) order SPP to rescind AEP's service and treat it as a new request, if SPP is unable to demonstrate sufficient AFC; and (4) order SPP to coordinate with the neighboring transmission system owners with respect to all future awards of transmission capacity under its OATT that may effect neighboring systems.

Notice of Filing and Responsive Pleadings

7. Notice of the complaint was published in the **Federal Register**, 71 FR 16,137 (2006), with comments, interventions, and protests due on or before April 10, 2006. Lafayette Utilities System, Ameren Services Company, Western Farmers Electric Cooperative, and AEP filed timely motions to intervene. Xcel Energy Service Inc.

⁴ Complaint at 39.

(Xcel) filed an out-of-time motion to intervene. SPP filed an answer in opposition to the complaint.

SPP's Answer

8. SPP requests that the Commission dismiss the complaint and deny Associated Electric's claim for relief. SPP states that it was required to allow the rollover of existing firm service requested by AEP. It explains that section 2.2 of its OATT obliges it to allow all existing firm service to roll over service, subject only to allocations of capacity if there are competing reservation requests, which SPP states was not the case here. With respect to Associated Electric's contention that SPP's reliance on section 2.2 was misplaced, SPP maintains that Associated Electric misinterprets section 2.2.

9. This reservation priority only applies to the facilities of the Transmission Owner(s) where such facility costs have been included as part of the firm service rates that the firm service customer has been paying.

10. SPP states that this language is only applicable if there are competing requests for service which prevent SPP from allowing the full rollover. It explains that the language only limits the amount of capacity that a customer may obtain if there are competing requests, according to SPP.

11. SPP further states that section 2.2 does not require a study, and, in fact, the Commission has expressly told the transmission provider that it should not be performing studies to determine if it can accommodate the rollover.⁵ With respect to section 15.2, SPP states that it is only required to perform individual system impact studies if it determines that there is insufficient transmission capacity. SPP contends that it is given discretion as to whether or not to conduct such a study elsewhere in its OATT.⁶ SPP states that, in this particular case, SPP previously had concluded that there was sufficient transmission capacity to fulfill AEP's service request. SPP states that it based its decision to use its transmission system on its ongoing plans and models, which indicated adequate capacity to support the request. SPP further states that it has seen no evidence of any adverse effect on Associated Electric's reliability, nor does it have any

knowledge that service to Associated Electric's loads is in jeopardy.

12. SPP avers that Associated Electric assumes the service to AEP is tied to a specific path involving the 345 kV MoKanOk Line. However, SPP explains that it is providing the service with a contract path using only SPP transmission facilities which interconnect directly with AmerenUE's transmission facilities, thereby allowing the service without the MoKanOk Line.⁷ Indeed, SPP explains that "[c]urrently, including the AEP transaction, SPP has 680 MWs of transactions flowing from AmerenUE or the Midwest ISO into SPP's region. This includes 105 MW of Aquila-MPS service that was not SPP's responsibility at the time it accepted the AEP reservation. Therefore, SPP has the ability to satisfy the entire AEP rollover request over a contract path involving SPP facilities, thus rendering service over the MoKanOk Line unnecessary."⁸ The sole issue, according to SPP, is whether SPP could provide the rollover service under its OATT to allow imports directly from the AmerenUE system. SPP maintains that its grant of transmission service to AEP was not contingent on the use of the MoKanOk Line. Therefore, SPP concludes that Associated Electric's arguments concerning the MoKanOk Line provide interesting historical perspective, but are not particularly relevant.

Discussion

Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Xcel's motion to intervene out-of-time, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

Commission Determination

14. We will deny Associated Electric's complaint. Contrary to Associated Electric's arguments, SPP properly applied section 2.2 of its OATT in granting AEP's rollover request.⁹ The

⁷ SPP states that it had interconnections with AmerenUE, involving 1018 MW of contract path capacity, at the time of SPP's acceptance of the AEP reservation. SPP states that subsequently the SPP interconnection with AmerenUE has increased to 1688 MW of contract path capacity. Answer at 12-13.

⁸ SPP Answer at 13.

⁹ In relevant part, section 2.2 of SPP's OATT provides that "[e]xisting firm service customers (wholesale requirements and transmission-only,

Commission has consistently held that under section 2.2 all firm service customers (requirements and transmission-only with contract terms of one year or more) have the right to continue to take transmission service from their existing transmission providers when their contracts expire, roll over, or are renewed.¹⁰ SPP correctly implemented section 2.2 of its OATT and granted AEP's rollover request.

15. As we explained in a prior SPP order, "[u]nder Section 2.2, SPP is obligated to maintain available transmission capacity for its existing long-term transmission customers with rollover rights * * * until the time expires for those customers to exercise their rollover rights."¹¹ In explaining SPP's obligation to maintain available transmission capacity to provide the rollover right, the Commission rejected SPP arguments that it could not provide the requested rollover service "due to changes to existing firm uses on its system including native load growth, changes in external trading patterns, generation dispatch modeling assumptions, and loop flow changes."¹² In this proceeding, SPP, consistent with Commission precedent, maintained available transmission capacity to provide AEP's requested rollover, and Associated Electric's unsupported

with a contract term of one-year or more, and retail) of the Transmission Owner(s) or Transmission Provider have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed."

¹⁰ The right to rollover applies regardless of whether there is a competing request for transmission service. If there is a competing request, the existing transmission customer must agree to accept a contract term at least as long as that offered by the potential customer and to pay the current just and reasonable rate, as approved by the Commission, for such service. Here, there were no competing requests for transmission service. In this regard, we reject Associated Electric's argument that SPP also violated section 2.2 "because reservation priority pursuant to Section 2.2 is only to be awarded with respect to the transmission owner's transmission facilities where the cost of those facilities has been included as part of the firm service rates that the customer has been paying." Complaint at 41. That portion of section 2.2 applies only in the event of competing requests, of which there are none in this proceeding, and thus is irrelevant to the issue raised in this proceeding.

¹¹ Exelon Generation Co., 99 FERC ¶ 61,235 at P 26 (2002).

¹² *Id.* SPP, as the Commission has consistently held, could restrict a transmission customer's rollover rights only in certain limited circumstances. Absent the limited circumstances that the Commission has identified for a transmission provider to restrict a transmission customer's rollover, and Associated Electric does not argue that those circumstances exist, SPP had no basis to deny AEP's rollover request.

⁵ Answer at 10 (citing *Constellation Power Source, Inc. v. Am. Elec. Power Serv. Corp.*, 102 FERC ¶ 61,142 (2003); *Tenaska Power Servs. Co. v. Sw. Power Pool, Inc.*, 102 FERC ¶ 61,140 (2003); *Exelon Generation Co., LLC v. Sw. Power Pool, Inc.*, 101 FERC ¶ 61,226 (2002)).

⁶ Answer at 11 (citing to OATT §§ 17.5, 19.1).

allegations to the contrary are unavailing.¹³

16. Moreover, contrary to Associated Electric's complaint, section 2.2 contains no requirement that SPP perform any studies before granting a rollover request.¹⁴ As explained above, SPP has an ongoing obligation to plan its system and maintain available transmission capacity to provide existing transmission customers' rollover requests. To impose a study obligation on transmission providers, as Associated Electric argues, would provide transmission providers the opportunity to stall rollover requests and undermine the purpose of section 2.2 of ensuring that transmission customers may continue to receive transmission service.

17. Finally, we reject Associated Electric's arguments with respect to loop flow. SPP is obligated under its OATT to offer to provide transmission service on its system if there is available transmission capacity. SPP has complied with the requirements of section 2.2 and provided rollover service to AEP. To the extent that Associated Electric faces loop flows on its system as a result of this transaction or any other transaction, the Commission's policy is that owners and controllers of the transmission facilities must attempt to resolve the matter on a consensual, regional basis.¹⁵ The possibility that Associated Electric may face loop flows as a result of the AEP rollover transaction is no basis for SPP to deny AEP's request. In this regard, we note that Associated Electric, to date, has chosen not to join the SPP Regional Transmission Organization or any other regional entities that would provide solutions for loop flow problems.

18. Accordingly, we will deny Associate Electric's complaint.

19. In addition, pursuant to section 206 of the FPA, we find that the

¹³ SPP also could not deny AEP's rollover request on a claim that there was insufficient capacity on a third-party's transmission system. See Commonwealth Edison Co., 95 FERC ¶ 61,252 at 61,875 (2001) ("A transmission provider may not condition a transmission customer's rights to roll over transmission service on the transmission provider's system at the end of an existing service agreement based on whether there is enough transmission capacity available on a third-party's transmission system.")

¹⁴ AEP's rollover request is subject to section 2.2 of SPP's OATT and is not a request for new transmission service. AEP is requesting that it continue to receive the same service that it previously received. In any event, as SPP points out, even if it were treated as a new transmission request, studies would only be needed if the transmission provider determined that sufficient capacity did not exist to provide the service. See SPP Answer at 11. That is not the case here.

¹⁵ See, e.g., *Southern California Edison Co.*, 70 FERC ¶ 61,087 at 61,241-42 (1995).

language in the last three sentences of section 2.2 of SPP's existing OATT may not be just and reasonable,¹⁶ and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, because the language may place limitations on customers' rollover rights that are contrary to Commission policy. Once a transmission provider evaluates the impact on its system of serving a customer, Commission policy requires the transmission provider to plan and operate its transmission system with the expectation that it will continue to provide service to the customer should the customer request rollover.¹⁷ The Commission has explained that a transmission provider can deny a customer the ability to roll over its long-term firm service contract only if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term.¹⁸ The Commission also has explained that a transmission provider may limit the terms under which a new long-term agreement may be rolled over if it has a pre-existing contract obligation that commences in the future.¹⁹ If the transmission system becomes constrained (for reasons other than reasonably forecasted native load growth or pre-existing contract obligations that commence in the future) such that the transmission provider cannot satisfy all existing long-term customers, then the obligation is on the transmission provider either to curtail service to all affected customers (not just the later-accepted firm customers) pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.²⁰

20. The limitations included in section 2.2 of SPP's existing OATT (the last three sentences) appear to go beyond those allowed by the Commission. Consequently, we will

¹⁶ These sentences provide:

This reservation priority only applies to the facilities of the Transmission Owner(s) where such facility costs have been included as part of the firm service rates that the firm service customer has been paying. If competing existing firm service requirements customers apply for service that cannot be fully provided, the priority rights will be ranked in accordance with first-come, first-served principles. If firm service customers tie, then the capacity for which they receive priority rights under this tariff shall be apportioned on a pro rata basis.

¹⁷ See, e.g., *Southern Company Services, Inc.*, 103 FERC ¶ 61,117 at P 5 (2003).

¹⁸ See, e.g., *Southern Company Services, Inc.*, 110 FERC ¶ 61,379 (2005).

¹⁹ *Id.*

²⁰ *Id.*

institute an investigation, under section 206 of the FPA, in Docket No. EL06-71-000, into the justness and reasonableness of this language, and direct SPP to file comments on this matter within 30 days of the issuance date of this order.

21. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the **Federal Register**, and no later than five months subsequent to that date. In order to give maximum protection to customers, and consistent with our precedent,²¹ we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of our investigation in Docket No. EL06-71-000 is published in the **Federal Register**.

The Commission orders:

(A) Associated Electric's complaint is hereby denied, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred by the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), an investigation is hereby instituted, in Docket No. EL06-71-000, concerning the justness and reasonableness of the last three sentences of section 2.2 of SPP's existing OATT.

(C) The Secretary shall promptly publish in the **Federal Register** a notice of the Commission's initiation of the proceeding ordered in Ordering Paragraph (B) above, under section 206 of the Federal Power Act, in Docket No. EL06-71-000.

(D) The refund effective date in Docket No. EL06-71-000, established pursuant to section 206(b) of the Federal Power Act, shall be the date of publication in the **Federal Register** of the notice in Ordering Paragraph (C) above.

By the Commission.

Magalie R. Salas,
Secretary.

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²¹ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).