

112 FERC ¶ 61,319
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER05-652-001
ER05-652-002
RT04-1-012
RT04-1-013
ER04-48-012
ER04-48-013
ER05-109-001
ER05-109-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued September 20, 2005)

1. This order addresses requests for rehearing of the Commission's order issued in this proceeding on April 22, 2005,¹ in which the Commission conditionally accepted tariff revisions proposed by Southwest Power Pool (SPP), in order to implement a regional transmission cost allocation plan with regard to new transmission upgrades (cost allocation plan). This order also addresses SPP's compliance filing to that order. As discussed below, we will grant in part and deny in part the rehearing requests, conditionally accept SPP's compliance filing, and direct a further compliance filing.

Background

2. SPP has been authorized as a regional transmission organization (RTO) since October 1, 2004.² In the Commission's initial order addressing SPP's RTO application,

¹ *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 (2005) (April 22 Order).

² *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004) (October 1 Order), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

we directed SPP to develop and file a transmission cost allocation plan by the end of 2004.³

3. On October 29, 2004, in Docket No. ER05-109-000, SPP submitted proposed tariff revisions in order to provide an aggregate transmission service study process to evaluate long-term transmission service requests and included as part of that filing limited cost allocation and cost recovery provisions. The proposed changes were set forth in Attachment Z (Aggregate Transmission Study Procedures) to SPP's Open Access Transmission Tariff (OATT). Noting concerns about the interrelationship between Attachment Z and the fully developed transmission cost allocation plan that SPP would soon file, the Commission accepted the proposed aggregate transmission study procedures to become effective February 1, 2005, but accepted and suspended SPP's proposed cost allocation and cost recovery provisions to become effective the earlier of five months from the requested effective date (July 1, 2005) or further Commission order, subject to refund.⁴

4. On February 28, 2005, SPP submitted its complete cost allocation plan, reflected in a new section V (Recovery of Costs for Base Plan Upgrades) to SPP's OATT and proposed revisions to Attachment J (Recovery of Costs Associated with New Facilities), Schedule 11 (Base Plan Charges) and Attachment Z. As noted above, the Commission conditionally accepted the cost allocation plan in the April 22 Order.

Requests For Rehearing

5. SPP, Southwest Industrial Customer Coalition (Southwest Industrial); East Texas Cooperatives⁵; Golden Spread Electric Cooperative, Inc. and Lyntegar Electric Cooperative, Inc. (collectively Golden Spread); Indicated Transmission Owners⁶; and the

³ *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004) (February 10 Order), *order on reh'g*, 109 FERC ¶ 61,010 (2005).

⁴ *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,028 (2005) (January 21 Order).

⁵ East Texas Cooperatives include: East Teas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

⁶ Indicated Transmission Owners include: Kansas City Power & Light Company; Midwest Energy, Inc.; Oklahoma Gas and Electric Company; Southwestern Electric Power Company and Public Service Company of Oklahoma; Xcel Energy Services Inc., on behalf of Southwestern Public Service Company; the Empire District Electric Company; and Westar Energy, Inc.

TDU Intervenors⁷ timely sought rehearing of the April 22 Order. East Texas Cooperatives and the Arkansas Public Service Commission (Arkansas Commission) each filed an answer in support of SPP's rehearing request. The requests for rehearing are discussed by issue below.

Procedural Matters

6. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2005), prohibits answers to requests for rehearing. Accordingly, we will reject East Texas Cooperatives' and Arkansas Commission's answers to SPP's request for rehearing. Nevertheless, we note that their concerns are addressed, to the extent that the answers reiterate SPP's arguments discussed below.

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Attachment Z's Crediting Mechanism and "And" Pricing

April 22 Order

24. The Commission conditionally accepted SPP's Attachment Z cost allocation and crediting proposal, rejecting arguments that the potential for direct assignment of network upgrades constitutes prohibited "and" pricing.⁸ The Commission noted that it has permitted similar pricing where the transmission provider was independent or as part of

⁷ TDU Intervenors include: the Missouri Joint Municipal Electric Utility Commission; Oklahoma Municipal Power Authority; and West Texas Municipal Power Agency.

⁸ For economic and requested upgrades not included in the Base Plan, Attachment Z provides different cost-recovery methods for point-to-point and network transmission customers. Point-to-point customers would pay the higher of the total monthly base transmission rate charge or the monthly revenue requirement associated with the facility upgrades. Network customers would pay the applicable network transmission service rate and a direct assignment charge based upon the monthly revenue requirement associated with the facility upgrades to the extent they did not qualify as Base Plan Upgrades. SPP proposed that any charges in excess of the base transmission rate would be credited back to the transmission customer from future point-to-point transmission service revenues for service in direction of the initial load until the customer has been fully compensated, but the Commission required that the credits also be funded by network service customers that use the expanded capacity offered by the economic or requested upgrades.

an experimental program that did not include credits for network upgrade costs.⁹ Noting, in addition, that the direct assignment of network upgrades to network customers would only occur if the facility is not a Base Plan Upgrade, and the network customer receives a credit to offset the cost of the direct assignment, the Commission found the provision reasonable and sufficient to justify the distinction between the cost allocation treatment for point-to-point customers and network customers.¹⁰

25. The Commission further found, however, that the crediting provisions in Attachment Z were too restrictive in that they were limited to point-to-point service in the direction of the initial overload. The Commission found that it is appropriate to grant credits for subsequent network transmission service as well as point-to-point requests that use the capacity created by a requested or economic upgrade. The Commission disagreed with arguments that the credits should be extended to service in the opposite direction of the original overload (except for controllable equipment, as noted below), since any transmission service requests could have been granted in the opposite direction to relieve the original overload. Additionally, the Commission directed SPP to include crediting provisions for controllable transmission equipment, such as DC (direct current) ties and regulating phase shifting transformers, in its footprint, since the proposal lacked any discussion of these facilities. The Commission stated that the crediting provisions should include credits for service in both directions over such facilities, since service over these transmission elements is different, i.e., specifically scheduled and controllable.¹¹

Rehearing Requests

26. TDU Intervenors charge that the Commission failed to address whether “and” pricing is applied to only network customers, and instead focused on whether it is

⁹ April 22 Order P 71 (citing Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. P 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A at P 587, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. P 31,160 (2004) (Order No. 2003-A), order on reh'g, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. P 31,171 (2005) (Order No. 2003-B), reh'g pending; Entergy Services, Inc., 110 FERC ¶ 61,295 (2005)).

¹⁰ *Id.* The Commission further found that point-to-point customers, by contrast, were in a better position than they were previous to Attachment Z because they would qualify for credits for subsequent transmission usage.

¹¹ April 22 Order at P 72.

permissible or even exists in this case. TDU Intervenors fault the Commission for concluding that it is acceptable to apply “and” pricing to network customers, without SPP filing a cost-benefit analysis for innovative rate treatment pursuant to Commission regulations.¹² TDU Intervenors state that credits applied under the “and” pricing mechanism probably will not be sufficient to offset all, or even a substantial portion of, the costs directly assigned to network customers. TDU Intervenors state that the proposal is discriminatory because point-to-point customers will pay only the higher of the embedded costs or the directly assigned costs while network customers will pay both.¹³ They request that the Commission require SPP to apply “higher of” pricing to both network and point-to-point customers whose upgrades are not accorded Base Plan treatment.

27. East Texas Cooperatives take issue with the Commission’s reference to *Order No. 2003* in accepting Attachment Z’s pricing scheme. East Texas Cooperatives claim that *Order No. 2003-A* makes clear that “and” pricing is unacceptable even for independent transmission providers. East Texas Cooperatives state that for the direct assignment of network upgrades to be reasonable under Commission policy, the transmission customer must receive “well defined” rights in return for bearing the direct assignment costs.¹⁴ East Texas Cooperatives argue that SPP is not proposing well-defined rights, such as congestion rights. They assert that the crediting mechanism is not a well-defined right because the customer has no certainty as to when, or if, the customer can recover its directly-assigned costs. East Texas Cooperatives state that, in order to create a well-defined right, the Commission should direct SPP to: (1) apply crediting to all new transmission service (including transmission service taken by the party paying for the upgrade), not just new service by third parties¹⁵; (2) clarify that revenues by

¹² They cite 18 C.F.R. § 35.34(e) (2005). Golden Spread asserts that the Commission has instructed SPP that SPP’s proposals combining average and incremental pricing must comport with the Commission’s filing requirements. Golden Spread cites *Southwest Power Pool, Inc.*, 98 FERC ¶ 61,038 at 61,105 (2002).

¹³ Golden Spread states that the Commission has instructed SPP that the Commission would not consider proposals that combine incremental and average cost rates unless all customers pay the same rate. Golden Spread cites *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at p. 61,889 (1999) (*SPP I*).

¹⁴ East Texas Cooperatives cite *Order No. 2003-A* at P 587.

¹⁵ TDU Intervenors also ask clarification as to what constitutes “subsequent network transmission service” for the purpose of funding the credit for upgrades paid by network customers. TDU Intervenors state that few parties take network service under the SPP OATT. Many more take service under the non-rate terms and conditions of the

transmission owners that have opted not to take network service under the SPP tariff must be applied as credits when network upgrades directly assigned to a customer under Attachment Z are later used by transmission owners to serve their retail loads¹⁶; and (3) establish a firm deadline (e.g., five years after service over the new facility commences) for repayment of credits.

28. Golden Spread states that transmission owners have failed to maintain and expand the system to avoid projected overloads and that, if that failure continues, SPP could use “and” pricing to alleviate previously overloaded facilities by charging customers who seek service over facilities that have been overloaded for years.

Commission Determination

29. As explained in the April 22 Order, the Commission is not persuaded that the cost allocation proposal constitutes a prohibited form of “and” pricing.¹⁷ The Commission explained its policy regarding direct assignment of network upgrades in *Order No. 2003-A*, stating that where the transmission provider is independent of market participants, exceptions to the prohibition on direct assignment of network upgrades can be made, because the independent transmission provider has no incentive to use the pricing to the advantage of its own generation.¹⁸ The Commission stated that this independence allows for a more creative and flexible approach to competitive energy

OATT but it is not clear whether these parties constitute network transmission service customer who must also fund the credit for upgrades paid by network customers.

¹⁶ TDU Intervenors are concerned that SPP will apply its cost allocation rules in such a way that a direct assignment of network upgrade costs would not apply to upgrades within a host zone. TDU Intervenors state that cost-allocation provisions are supposed to apply to all uses of the transmission system, including use by transmission owners to supply bundled retail and grandfathered loads under the non-rate terms and conditions. TDU Intervenors seek Commission clarification that acceptance is conditioned on applicability to all transmission users.

¹⁷ Prohibited “and” pricing results from the assessment of an embedded cost transmission rate and a direct assignment of network upgrades that is not offset by the granting of well-defined transmission rights.

¹⁸ We note that the phrase “direct assignment” as used in this case is somewhat different from the way the term has been used in other contexts. In generator interconnection cases involving non-independent transmission providers, for instance, when the generator pays costs that are “directly assigned,” the generator will not recover those costs from the transmission provider. Here, SPP asserts that the customer has an opportunity to recover some or all of that money through credits.

markets. Further, under the transmission pricing policies that the Commission has permitted an RTO or independent system operator (ISO), in which the interconnection customer bears the cost of all facilities and upgrades that would not be needed “but for” the interconnection of the new generating facility, the interconnection customer receives transmission and congestion rights in return, as well as access to the network. For these reasons, the Commission views SPP’s proposal for participant funding for network upgrades as a creative and flexible approach to competitive energy markets that does not constitute prohibited “and” pricing.

30. With respect to East Texas Cooperatives’ argument that the Commission should direct SPP to apply crediting to all new transmission service, not just new service by third parties, we provide the following limited clarification. New transmission service excludes the transmission service request that causes the upgrade to be built, but it must include any increases to the initial request for transmission service by the transmission customer requesting the upgrade. We disagree with East Texas Cooperatives that a customer’s initial transmission service request should also serve as a source of funds for credits.

31. The Commission further clarifies that the reference in the April 22 Order to “subsequent network transmission service” included increases in an existing network resource designation (or a new network resource designation) and any new network transmission service to accommodate new network load designations, including service taken by transmission owners under the non-rate terms and conditions of the SPP OATT. By treating new network transmission service over the directly assigned network upgrades including new network transmission service for retail loads as the source of funds for the credits, SPP should treat the users of the network upgrades similarly and will enhance the rights received by transmission customers in lieu of receiving FTRs.

32. The Commission will not require SPP to guarantee full and complete repayment of construction costs by a certain deadline (e.g., five years) as recommended by East Texas Cooperatives because it is not necessary to create well-defined rights. The Commission notes that FTRs do not provide a guarantee of full and complete repayment of construction costs and even if a party were to recover its construction costs through the receipt of congestion rents, there is no deadline for full and complete recovery. Moreover, if an upgrade alleviates congestion, then FTRs associated with the upgrade may provide less compensation compared to SPP’s proposal which offers the opportunity for full and complete recovery albeit without a deadline. Accordingly, we find that requiring a deadline for full and complete recovery is not necessary to create well-defined rights.

33. The Commission also will not require that point-to-point and network customers be treated the same in terms of assigning network upgrade costs because the differences in

treatment do not constitute undue discrimination. The Commission has long recognized the differences between network service and point-to-point service. For example, in the *Order No. 888 NOPR*,¹⁹ the Commission envisioned that network service would be used to integrate many resources with many loads while the point-to-point transmission service would be used for power flows into, out of, within or through the control area. These differences in the services are also reflected in the pricing of the services. Network service customers pay an adjusted load ratio share while point-to-point customers pay a reservation charge. As transmission owners increasingly seek to depart from their historical practice of rolling-in network upgrades, the Commission is increasingly aware that “higher of” pricing may introduce additional complexity for the pricing of incremental network upgrades for network customers than it would for point-to-point customers. For example, under “higher of” pricing for network upgrades, the transmission provider compares the monthly revenue requirement from the upgrade to the monthly revenue requirement from the embedded transmission rate.

34. While determining the monthly revenue requirement for the network upgrade would be similar for point-to-point transmission customers and network customers, determining the appropriate monthly revenue requirement for the embedded transmission rate may be more difficult for network customers. A network customer’s load ratio share automatically changes from month to month and determining the appropriate amount to include, if any, for a “higher of” test may, in some cases, be difficult. This added complexity for applying the “higher of” test for network customers requesting a network upgrade demonstrates that different cost allocation methodologies for point-to-point and network customers would not be undue discrimination.

35. Further, the Commission expects SPP to apply the cost allocations rules pertaining to network customers equally to all network transmission customers, including Transmission Owners taking service under the non-rate terms and conditions of the SPP OATT to avoid discrimination against one group of network service customers. This is consistent with the Commission’s determination in *SPP I*, which states that comparability dictates that a transmission provider treat itself in the same manner as a customer that is taking the same service.²⁰ This would also apply to customers whether

¹⁹ Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, 60 Fed. Reg. 17,662 (April 7, 1995), FERC Stats. and Regs. ¶ 32,514 (1995) (Order No. 888 NOPR).

²⁰ Contrary to Golden Spread’s contention, *SPP I* does not require all customers to be charged the same rates. Rather, it provides that comparability requires the transmission owner and all customers to be charged the same rates for the same service. Therefore, transmission owners taking network service would be charged the same rates

their transmission service requests result in inter- or intra-zonal network upgrade costs. TDU Intervenors' concern was answered in the April 22 Order based on the fact that the tariff language makes no intra/inter zonal distinction and SPP so clarified in its answer in Docket No. ER05-652-000.²¹

36. Since, as explained above, SPP's proposal does not constitute a prohibited form of "and" pricing, TDU Intervenors are incorrect that SPP was required to file a cost-benefit analysis under the Commission's regulations.

as network service customers and transmission owners taking point-to-point service would be charged the same rates as other point-to-point customers.

²¹ See April 22 Order at P 86 and SPP April 14 answer at 14.