

125 FERC ¶ 61,239
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southwest Power Pool, Inc.

Docket No. ER08-1601-000

ORDER ACCEPTING FILING

(Issued November 26, 2008)

1. On September 30, 2008, Southwest Power Pool, Inc. (SPP) filed with the Commission, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions and amendments to SPP's Bylaws, Open Access Transmission Tariff (Tariff), and Membership Agreement, to facilitate the membership in SPP of Nebraska Public Power District (Nebraska Public Power), Omaha Public Power District (Omaha Public Power), and Lincoln Electric System (Lincoln) (collectively, Nebraska Entities). As discussed below, the Commission accepts SPP's filing, with an effective date of December 1, 2008, as requested.

I. Background

2. SPP has been authorized as a regional transmission organization since October 2004.² SPP's system currently includes part or all of seven states, serving over four million customers. SPP currently has 50 members, including twelve investor-owned utilities, eight municipally-owned systems, eleven cooperatives, and two state authorities.

II. SPP's Filing

3. On September 30, 2008, SPP filed proposed revisions to its Bylaws, Tariff, and Membership Agreement, to accommodate the membership in SPP of the Nebraska Entities. SPP states that the Nebraska Entities will transfer operational control of their transmission facilities to SPP and participate in the SPP Energy Imbalance Service Market beginning April 1, 2009.

¹ 16 U.S.C. § 824d (2006).

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

4. SPP states that the Nebraska Entities' membership in SPP will add over 75,000 square miles to SPP's region, a 30 percent increase. SPP states that this major addition to the SPP system will benefit all SPP Market Participants.
5. SPP states that none of the Nebraska Entities is subject to the Commission's jurisdiction as a "public utility" as defined by the FPA.³ SPP asserts that Nebraska Public Power and Omaha Public Power are political subdivisions of the state of Nebraska with popularly elected governing boards, while Lincoln is a municipally-owned utility with a governing board made up of appointed local citizens.
6. SPP states that the proposed revisions and amendments to SPP's Bylaws, Tariff, and Membership Agreement are needed to address the Nebraska Entities' non-FERC-jurisdictional status and their state and municipal law obligations. According to SPP, the proposed revisions and amendments were approved by the SPP Board of Directors on September 8, 2008.
7. Specifically, SPP seeks to revise its Bylaws to add to the SPP Members Committee an additional seat representing state and federal public power agencies.
8. SPP proposes amending section 1.14a of its Tariff to provide that the Nebraska Entities' existing contracts are grandfathered, and future contracts with any customer that has a right under state laws to obtain transmission or energy service are also grandfathered, if service under the SPP Tariff would fail to satisfy the requirements of state law. SPP proposes amending sections 1.44a and 38.2 of its Tariff to establish a five-year transition period for the Nebraska Entities to move their bundled retail load to service under the Tariff.⁴
9. SPP proposes to revise sections 5.1 and 5.2 of its Tariff, which applies to transmission owners that own facilities financed by local furnishing bonds, to include the types of bonds used by the Nebraska Entities to finance their facilities. SPP proposes to add a section 39a to its Tariff stating that in the event that one of the Nebraska Entities' governing boards sees a conflict between state law and the SPP Tariff, the entity can follow state law without jeopardizing its membership in SPP, though the governing board is required to file notice with the Commission, describing the conflict and the governing board's actions regarding the conflict.

³ 16 U.S.C. § 824(e) (2006).

⁴ During this transition period, the Nebraska Entities would be subject to the non-rate terms of conditions and some, but not all, of the rates in the Tariff for service to their bundled retail load. This is the same treatment accorded the existing transmission-owning members of SPP for a ten-year transition period that commenced when the Tariff became effective in 1999.

10. SPP proposes amending its Membership Agreement in various ways to allow the Nebraska Entities to become members of SPP while preserving their tax exempt status and the authority of their governing boards, fulfilling the obligations they have under state and municipal laws and regulations, and retaining their non-jurisdictional status.

11. SPP requests that the proposed revisions and amendments have an effective date of December 1, 2008.

III. Notice and Responsive Filings

12. Notice of SPP's filing was published in the *Federal Register*, 73 Fed. Reg. 59,619-20 (2008), with interventions and protests due on or before October 21, 2008. Nebraska Public Power filed a timely motion to intervene and comments in support of SPP's filing.

13. On October 22, 2008, one day out of time, Sunflower Electric Power Corporation (Sunflower) and Mid-Kansas Electric Company, LLC (Mid-Kansas) filed a joint motion to intervene out of time, and American Electric Power Service Corporation (AEP), on behalf of its affiliates, Southwest Electric Power Company and Public Service Company of Oklahoma, filed a motion to intervene out of time. No protests or adverse comments were filed.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), Nebraska Public Power's timely, unopposed motion to intervene serves to make it a party to this proceeding. We will grant the untimely motions to intervene of Sunflower, Mid-Kansas, and AEP because they were filed only one day out of time, and granting these interventions will neither delay the proceeding nor prejudice the existing parties.

B. Commission Determination

15. The Commission accepts for filing SPP's proposed revisions and amendments to its Bylaws, Tariff, and Membership Agreement. The proposed revisions and amendments are consistent with provisions that the Commission has previously accepted for the original members of SPP or with provisions that the Commission has previously accepted to accommodate the participation of state and federal public power entities in

other regional transmission organizations.⁵ The addition of the Nebraska Entities will increase the size and scope of SPP in terms of geography and increased energy market participation. We continue to believe that the successful development of regional transmission organizations must include public power, and we believe that the Nebraska Entities' participation will enhance the reliability and economic benefits of SPP.⁶

The Commission orders:

SPP's filing is hereby accepted for filing effective December 1, 2008.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ See, e.g., *TRANSLink Transmission Co., L.L.C., et al.*, 101 FERC ¶ 61,140, at P 26 (2002) (*TRANSLink*); *TRANSLink Development Co., LLC*, 104 FERC ¶ 61,148, at P 9 (2003); *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,010, at P 108 (2004).

⁶ See, e.g., *TRANSLink* at P 26.