

141 FERC ¶ 61,216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Southwest Power Pool, Inc.

Docket No. ER13-178-000

ORDER ACCEPTING AND SUSPENDING
TARIFF REVISIONS

(Issued December 20, 2012)

1. On October 24, 2012, Southwest Power Pool, Inc. (SPP) filed revisions to Appendix 1 of Attachment M (Loss Compensation Procedure)¹ of its Open Access Transmission Tariff (OATT or Tariff) pursuant to section 205 of the Federal Power Act (FPA) to incorporate an updated transmission line loss factor for Westar Energy, Inc. (Westar). In its filing, SPP also requested waiver of section 35.11 of the Commission's regulations. In this order, the Commission accepts and suspends SPP's filing, to be effective September 1, 2012, as requested, subject to refund, and the outcome of the hearing and settlement judge proceedings established in Docket No. ER12-909-000.²

I. Background

2. In the March 30 Order in Docket No. ER12-909-000, the Commission accepted Westar's updated loss factor for filing, suspended it for five months, to become effective September 1, 2012, subject to refund, and set the matter for hearing and settlement judge procedures.³ In the instant filing, SPP states that Westar recently requested that SPP make a filing to incorporate the updated loss factor into Attachment M of the SPP Tariff.

¹ The relevant tariff provisions were accepted by the Commission on March 30, 2012 in *Westar Energy, Inc.*, 138 FERC ¶ 61,237 (2012) (March 30 Order).

² Southwest Power Pool, Inc., FERC FPA Electric Tariff, Open Access Transmission Tariff, Sixth Revised Volume No. 1, [Attachment M Appendix 1, 3.0.0](#).

³ March 30 Order, 138 FERC ¶ 61,237 at P 29.

II. SPP's Filing

3. On October 24, 2012, SPP submitted revisions to Appendix 1 to Attachment M of its Tariff incorporating Westar's updated loss factor.⁴ SPP states that it is not independently supporting or justifying Westar's proposed rate changes. Instead, SPP states that it is merely modifying its Tariff to accommodate Westar's updated loss factor. SPP requests an effective date of September 1, 2012, for the updated loss factor, subject to refund and the outcome of the hearing and settlement judge proceedings in Docket No. ER12-909-000 (consistent with Westar's request).

4. SPP also requests waiver of the Commission's 60-day notice requirement, pursuant to section 35.11 of the Commission's regulations⁵ to allow the requested effective date of September 1, 2012. SPP asserts that a waiver is appropriate because it would allow SPP to modify its Tariff to implement Westar's updated loss factor on the date the Commission's March 30 Order accepted the rate to become effective, subject to refund and the outcome of the hearing and settlement judge proceedings in Docket No. ER12-909-000.

III. Notice of Filing

5. Notice of SPP's filing was published in the *Federal Register*, 77 Fed. Reg. 65,872 (2012), with interventions, comments and protests due on or before November 14, 2012. On October 25, 2012, Westar submitted a timely motion to intervene. On November 14, 2012, Doniphan Electric Cooperative, Kaw Valley Electric Cooperative, and Nemaha-Marshall Electric Cooperative (together, Cooperatives) jointly submitted a timely motion to intervene and protest. On November 14, 2012, Kansas Electric Power Cooperative, Inc. (KEPCo) submitted a timely motion to intervene. On November 28, 2012, Westar submitted an answer.

IV. Discussion

A. Procedural Issues

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, C.F.R. § 385.214 (2012), the timely unopposed motions to intervene filed by the Cooperatives, Westar and KEPCo serve to make them parties to this proceeding.

⁴ Appendix 1 to Attachment M of the SPP Tariff specifies the average loss factor for each SPP pricing zone.

⁵ See 18 C.F.R. § 35.11 (2012) and 18 C.F.R. § 35.3 (2012).

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18.C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Westar's answer because it provides information that assisted us in our decision-making process.

B. Cooperatives' Protest

8. Cooperatives assert that the SPP filing is flawed for several reasons and should be rejected. First, they state that the final Commission-approved loss factors from Docket No ER12-909-000 are not known at this point in time and it is inappropriate to incorporate rates or loss factors into the SPP OATT that are currently unknown (i.e., the loss factors are not final, Commission-approved loss factors).⁶ Cooperatives also assert that the filing should be rejected because SPP does not provide support for it.⁷ Furthermore, Cooperatives argue that it is unreasonable to incorporate rates that the Commission accepted for filing but found preliminarily to be unjust, unreasonable, and substantially excessive.⁸ Finally, Cooperatives urge the Commission to reject SPP's request for waiver of the Commission's 60-day notice requirement for failure to show good cause supporting the waiver. Cooperatives contend that it is inappropriate to charge such non-final, preliminarily excessive rates retroactively to September 1, 2012.⁹

C. Westar's Answer

9. Westar notes that the Commission frequently allows SPP to collect non-final rates on behalf of the transmission owners. In fact, Westar states that SPP's OATT explicitly recognizes this possibility when it provides that SPP can file to update its OATT with a transmission owner's revenue requirement that has either been approved or accepted by the Commission. Westar states that the OATT also allows SPP to make a simultaneous filing at the time the transmission owner makes its filing to incorporate the new revenue requirement proposed by the transmission owner.¹⁰ As SPP explained in its transmittal letter in the above-captioned docket, "[t]he transmission owner controls the filing of rate changes for its zone, with SPP's sole role being one of administering changes to its Tariff

⁶ Cooperatives Protest at 8-9.

⁷ *Id.* at 9-10.

⁸ *Id.* at 10-11.

⁹ *Id.* at 11-15.

¹⁰ Westar Answer at 2-3 (citing Southwest Power Pool, FERC FPA Electric Tariff, Open Access Transmission Tariff, Sixth Revised Volume No. 1, Attachment H, Section I (4)).

to reflect any such rate changes accepted by the Commission.” Westar argues that in the March 30 Order, the Commission accepted Westar’s filing, subject to refund, making it permissible for SPP to update its OATT and incorporate the accepted changes.¹¹

10. Westar disputes the Cooperatives’ suggestion that allowing SPP to update its OATT to incorporate Westar’s transmission loss factor effective September 1, 2012, would be retroactive ratemaking. Westar argues that, when the Commission is changing rates pursuant to section 205 of the FPA, it can increase rates beginning on the date that purchasers had sufficient notice that the rate increase would occur without violating the prohibition against retroactive ratemaking.¹² According to Westar, when the Commission issued its March 30 Order, the Cooperatives and other transmission customers taking service under the SPP OATT had clear notice that the Commission was accepting a change to Westar’s transmission loss factor effective September 1, 2012, subject to refund. As a result, Westar asserts that allowing SPP to implement the new loss factors in the SPP OATT effective September 1, 2012, is not a violation of the prohibition against retroactive ratemaking.¹³

D. Commission Determination

11. The Commission accepts and suspends SPP’s filing, to be effective September 1, 2012, subject to refund and the outcome of the hearing and settlement judge procedures in ER12-909-000. In order for Westar to implement the new transmission loss factor which the Commission made effective as of September 1, 2012, the loss factor must be incorporated into the SPP OATT. The Commission has accepted SPP filings that track rate changes (and the effective dates) in transmission owner tariffs that have been accepted by the Commission, even when the final rates are subject to hearing and settlement judge proceedings.¹⁴ We find that SPP is simply asking that the Commission give meaning to its March 30 Order by allowing SPP to update its OATT and incorporate

¹¹ *Id.* at 2-3.

¹² *Id.* at 3 (citing *City of Anaheim*, 558 F.3d at 524-525). *See also Columbia Gas Transmission Corp.*, 831 F.2d at 1140.

¹³ *Id.* at 3.

¹⁴ *See Southwest Power Pool, Inc.*, 140 FERC ¶ 61,204, at P 10 (2012) (accepting SPP revisions to its Tariff tracking changes to Empire District Electric Company’s formula rate, subject to the outcome of the hearing and settlement proceedings in Docket No. ER12-1813-000 and accepting the filing effective on the same date the Commission originally granted in its order establishing hearing and settlement procedures in Docket No. ER12-1813-000).

the accepted loss factors. We agree also with Westar that accepting the September 1, 2012 effective date does not constitute retroactive ratemaking, because the March 30 Order gave customers clear notice that the Commission was accepting a change to Westar's transmission loss factor, effective September 1, 2012.

The Commission orders:

SPP's proposed revisions updating Westar's loss factor are hereby accepted and suspended, to be effective September 1, 2012, subject to refund, and subject to the outcome of the hearing and settlement judge proceedings established in Docket No. ER12-909-000, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.