

152 FERC ¶ 61,106
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Southwest Power Pool, Inc.

Docket No. ER13-366-006

ORDER ON COMPLIANCE FILING

(Issued August 3, 2015)

1. On April 16, 2015, the Commission issued an order¹ conditionally accepting Southwest Power Pool, Inc.'s (SPP) third filing to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000² and the Commission's Second Compliance Order.³ The Commission accepted SPP's third compliance filing, effective March 30, 2014, subject to a further compliance filing.⁴ The Commission also denied the request for rehearing of the Second Compliance Order filed by LS Power Transmission, LLC and LSP Transmission Holdings, LLC (together, LS Power).

2. On May 18, 2015, in Docket No. ER13-366-006, SPP submitted revisions to Attachment Y of the SPP Open Access Transmission Tariff (Tariff) to comply with the Third Compliance Order (Fourth Compliance Filing). SPP requests that the Commission accept the proposed revisions effective March 30, 2014.

¹ *Sw. Power Pool, Inc.*, 151 FERC ¶ 61,045 (2015) (Third Compliance Order).

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

³ *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,048 (2014) (Second Compliance Order).

⁴ Third Compliance Order, 151 FERC ¶ 61,045 at PP 36, 54.

3. As discussed below, we accept SPP's compliance filing.

I. Notice of Filing and Responsive Pleadings

4. Notice of SPP's May 18, 2015 Fourth Compliance Filing was published in the *Federal Register*, 80 Fed. Reg. 29,697 (2015), with interventions and protests due on or before June 8, 2015. On June 8, 2015, LS Power filed a timely protest and comment to SPP's Fourth Compliance Filing. On June 25, 2015, SPP filed an answer.

II. Discussion

A. Procedural Matters

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept SPP's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

6. As discussed below, we find that SPP's Fourth Compliance Filing complies with the directives in the Third Compliance Order. We thus accept SPP's proposed revisions to the Tariff, to be effective, as requested.⁵

1. Rights-of-Way

a. Third Compliance Order

7. In the Third Compliance Order, the Commission found that SPP's specific provision providing that SPP will hold a competitive bidding process for a transmission facility selected in the regional transmission plan for purposes of cost allocation only if the transmission facility "do[es] not use rights-of-way where facilities exist" is vague and

⁵ SPP requests that the Commission accept the revisions proposed in this filing effective March 30, 2014. However, in its third compliance filing, SPP revised Attachment Y sections I and III to address the Commission's decision to grant rehearing related to Service Upgrades, effective January 1, 2015. Thus, SPP submits in this filing a version of sections I and III effective January 1, 2015. Finally, on November 26, 2014, in Docket No. ER15-509-000, SPP submitted revisions to Attachment Y section III, which the Commission conditionally accepted effective January 26, 2015. Accordingly, SPP submits a version of Attachment Y section III effective January 26, 2015.

not consistent with Order No. 1000.⁶ The Commission noted that Order No. 1000 stated that “the retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way.”⁷ The Commission found that SPP’s proposed provision did not refer to the relevant laws or regulations granting the rights-of-way or to the retention, modification or transfer of the rights-of-way. The Commission directed SPP to submit a further compliance filing to revise the provision in its Tariff that refers to “rights-of-way where facilities exist” to make it consistent with the Commission’s finding that retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way.⁸

b. Fourth Compliance Filing

8. SPP proposes to revise the Tariff so that SPP will hold a competitive bidding process for a transmission facility selected in the regional transmission plan for purposes of cost allocation only if the transmission facility “do[es] not alter a Transmission Owner’s use and control of its existing right of way under relevant laws or regulations.”⁹ SPP states that the proposed language is consistent with tariff language the Commission accepted for PJM Interconnection L.L.C. (PJM)¹⁰ and South Carolina Electric and Gas Company (SCE&G).¹¹

c. Protest

9. LS Power argues that SPP’s proposed provision ignores the operative language of Order No. 1000 that the Commission referenced in the Third Compliance Order and fails to describe how SPP will apply the term “alter” to determine whether a particular

⁶ Third Compliance Order, 151 FERC ¶ 61, 045 at P 36 (citing SPP, OATT, Sixth Revised Volume No. 1, Attachment Y, § I.1.c).

⁷ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319).

⁸ *Id.*

⁹ SPP, OATT, Sixth Revised Volume No. 1, Attachment Y, § I.1.d.

¹⁰ SPP Transmittal at 5-6 (citing *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,038, at P 70 (2015)).

¹¹ SPP Transmittal at 6 (citing *S.C. Gas & Elec. Co.*, 150 FERC ¶ 61,036, at P 55 (2015))

transmission project would “alter a Transmission Owner’s use and control of its existing right of way under relevant laws or regulations.”¹² LS Power states that the SPP regional transmission planning process determines the transmission projects that are needed and then solicits bids for those projects, but does not determine the exact route of the proposed transmission facilities. LS Power avers that, because SPP does not mandate a particular route, SPP cannot make a determination, as a preliminary matter, that a transmission project would impermissibly “alter a Transmission Owner’s use and control of its existing right of way under relevant laws or regulations.”¹³

10. Further, LS Power contends that the proposed language does not appear to restrict itself to instances where the “relevant law or regulations granting the rights-of-way” would prohibit the proposed modification or transfer of the retained right-of-way by an existing right-of-way owner. LS Power argues that the proposed language instead appears to allow SPP to remove from competition any transmission project that would “alter” use and control of rights-of-way under “relevant laws or regulations” whether that alteration was prohibited by those laws or regulations or not.¹⁴ According to LS Power, in order to be consistent with the Commission’s directive in the Third Compliance Order, SPP should revise its Tariff to exclude a transmission project from competition only if two factors are both present: (1) the only feasible route of a transmission facility would alter a transmission owner’s use and control of its existing rights-of-way; and (2) relevant law or regulation creating those rights-of-way prohibits the required alteration, modification, or transfer. LS Power avers that, without both determinations, the existence of rights-of-way should not stand as a barrier to competition.¹⁵

11. LS Power avers that SPP’s reliance on similar language being incorporated by PJM and the SCE&G transmission planning regions is unavailing because these regions rely on a sponsorship model rather than the competitive bidding model employed by SPP. LS Power asserts that PJM’s language relates to the post-competition designation of a transmission owner as a designated entity based on submitted project proposals.¹⁶

¹² LS Power Protest at 2-3.

¹³ *Id.* at 3-4.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5 (citing PJM OATT, Operating Agreement, Schedule 6, § 1.5.8(I)).

d. Answer

12. SPP contends that LS Power's protest is a collateral attack on the SPP Compliance Orders¹⁷ and Order No. 1000 and that the Commission should reject it. Further, SPP asserts that its compliance filing complies with the Commission's directive in the Third Compliance Order and that LS Power has failed to demonstrate otherwise. SPP asserts that its proposed language is substantially similar to the language used by the Commission in Order No. 1000. Further, SPP avers that LS Power seeks to impose requirements on SPP not found in Order No. 1000 and not required by the Commission in the SPP Compliance Orders or in other Order No. 1000 transmission planning regions.

13. SPP asserts that LS Power's request for additional tariff language is unsupported and should be rejected. SPP states that, in Order No. 1000, the Commission emphasized that its "reforms are not intended to . . . alter an incumbent transmission provider's use and control of its existing rights-of-way."¹⁸ SPP asserts that, while LS Power alleges that Order No. 1000 proscribes only "impermissible" alterations of an incumbent transmission provider's use and control of an existing right-of-way, LS Power does not and cannot point to a provision of Order No. 1000 or the SPP Compliance Orders that would require adoption of language as LS Power provides or of an "impermissibility" threshold because no such provision exists.¹⁹

14. SPP argues that LS Power's criticism that SPP modeled its tariff language on language adopted in regions with different competitive processes is of no significance because such language was taken directly from Order No. 1000. According to SPP, LS Power ignores that the Commission has accepted other right-of-way provisions in regions with competitive solicitation models similar to SPP's without imposing any two-part "prohibited" and "only feasible route" tests.²⁰ SPP avers that LS Power fails to show how SPP's adoption of language taken directly from Order No. 1000 fails to comply with the Third Compliance Order and fails to show why LS Power's two-part test should be

¹⁷ SPP Answer at 2-4 (citing *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059 (2013), *order on reh'g & compliance*, 149 FERC ¶ 61,048 (2014), *order on reh'g & compliance*, 151 FERC ¶ 61,045 (2015) (collectively, SPP Compliance Orders)).

¹⁸ *Id.* at 4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319).

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 6-7 (citing Midcontinent Indep. Sys. Operator, Inc., OATT, Attachment FF, § VIII.A(1)).

adopted.²¹ Further, SPP argues that LS Power's request for additional limitations on SPP's consideration of rights-of-way, such as the proposed two-part test, is beyond the scope of this compliance proceeding, Order No. 1000, and the SPP Compliance Orders, and therefore constitutes a collateral attack on those orders.²²

e. Commission Determination

15. We find that SPP has complied with the directive to revise the provision in its Tariff that referred to "rights-of-way where facilities exist" to make it consistent with the Commission's finding in Order No. 1000 that the retention, modification, or transfer of rights-of-way remain subject to the relevant laws or regulations granting the rights-of-way. As the Commission stated in the Third Compliance Order, we anticipate that SPP will work closely with the states throughout the transmission planning process and that SPP's procedures will provide transparency regarding any state or local laws or regulations SPP uses in its decision-making process,²³ including state or local laws or regulations granting rights-of-way. Such a decision-making process must include transparency regarding any determination SPP makes on whether a particular transmission facility qualifies for the SPP competitive bidding process described in Section III of Attachment Y. We understand SPP's language to mean that one of the seven criteria used to determine whether a transmission facility is eligible for the SPP competitive solicitation process is that the transmission facility does not alter a Transmission Owner's use and control of its existing right-of-way under relevant laws or regulations granting the right-of-way. Accordingly, we find that SPP's proposed language is consistent with the Commission's finding in Order No. 1000 that "the reforms are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way under state law."²⁴ We find that the revised provision is also consistent with the Commission's finding that it is appropriate for SPP to recognize state or local laws or regulations as a threshold matter in the regional transmission planning process.²⁵

²¹ *Id.* at 7.

²² *Id.* at 8-11.

²³ Third Compliance Order, 151 FERC ¶ 61,045 at P 35.

²⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 427.

²⁵ Third Compliance Order, 151 FERC ¶ 61, 045 at P 29.

16. We disagree with LS Power that SPP's competitive bidding process necessitates language different than language the Commission has previously accepted in transmission planning regions that adopted a sponsorship model. The requirements of Order No. 1000 do not change based on what type of model a transmission planning region chooses to adopt. In Order No. 1000, the Commission declined to mandate a competitive bidding process and stated that it would allow public utility transmission providers within each region to determine for themselves, in consultation with stakeholders, what mechanisms are most appropriate to evaluate and select potential transmission solutions to regional transmission needs.²⁶ We also disagree with LS Power's claim that, because SPP does not mandate a particular route for a transmission project, SPP cannot make a determination as a threshold matter that a proposed transmission project would alter a Transmission Owner's use and control of its existing rights-of-way under relevant laws or regulations. As discussed above, we reiterate that we anticipate SPP's procedures and close work with the states will provide transparency regarding any state or local laws or regulations SPP uses in its decision-making process.

2. Evaluation Process

a. Third Compliance Order

17. In the Third Compliance Order, the Commission directed SPP to submit a further compliance filing to revise its Tariff to include "rights-of-way ownership, control, or acquisition" under the rate analysis evaluation criterion rather than "rights-of-way approval."²⁷

b. Fourth Compliance Filing

18. SPP proposes to revise the rate analysis evaluation criterion to include "rights-of-way ownership, control, or acquisition" rather than "rights-of-way approval."²⁸

c. Commission Determination

19. We find that SPP's proposal complies with the Commission's directive in the Third Compliance Order.

²⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at n.302.

²⁷ *Id.* P 54.

²⁸ SPP, OATT, Sixth Revised Volume No. 1, Attachment Y, § III.2.f.iii.4.g.

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The Commission orders:

SPP's compliance filing is hereby accepted, effective, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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