

169 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Southwest Power Pool, Inc.

Docket No. ER19-2627-000

ORDER ACCEPTING AGREEMENT

(Issued October 18, 2019)

1. On August 19, 2019, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission's regulations:² (1) a revised executed Network Integration Transmission Service Agreement (NITSA) between SPP as transmission provider and Western Farmers Electric Cooperative (Western Farmers) as network customer; and (2) an executed Network Operating Agreement among SPP as transmission provider, Western Farmers as network customer and Western Farmers, Oklahoma Gas and Electric Company and American Electric Power Service Corporation (AEP) as host transmission owners (together, the Western Farmers Agreement).³ In this order, we accept the Western Farmers Agreement, effective August 1, 2019, as requested.

I. Background

2. Western Farmers is a generation and transmission cooperative financed by the Rural Utilities Service, located in Anadarko, Oklahoma. Western Farmers owns, operates, and maintains transmission lines located principally in Oklahoma. Western Farmers is a member of SPP, and its transmission facilities are administered through SPP's Open Access Transmission Tariff (SPP Tariff). Western Farmers is a market participant in the market administered by SPP.

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. § 35.13 (2019).

³ The Western Farmers Agreement modifies and supersedes the Western Farmers NITSA and Network Operating Agreement that were previously accepted in Docket No. ER19-2098-000. *See Sw. Power Pool, Inc.*, Docket No. ER19-2098-000 (Aug. 6, 2019) (delegated order).

II. Filing

3. SPP states that the Western Farmers Agreement contains revisions to section 8.10 (Network Upgrades Charges) of Attachment 1 and Appendix 3 (Western Farmers Delivery Points) of the NITSA.⁴ Specifically, the proposed revisions in section 8.10 and Appendix 3 delete notes identifying reliability upgrades necessary to provide service and revise the list of delivery points, respectively. SPP states that the proposed revisions conform to the *pro forma* NITSA.⁵

4. SPP explains that it is filing the Western Farmers Agreement because the NITSA includes provisions that do not conform to the *pro forma* NITSA in the SPP Tariff.⁶ SPP states that the non-conforming provisions are the same non-conforming provisions accepted in Docket No. ER19-2098-000. Specifically, non-conforming language in section 8.3 (Direct Assignment Facilities Charge), section 8.8 (Redispatch Charge), section 8.9 (Wholesale Distribution Service Charge), section 8.12 (Other Charges) of Attachment 1 and Appendix 4 (Interconnection and Local Delivery Service Agreement between AEP and Western Farmers) of the NITSA remains unchanged.⁷

5. SPP requests waiver of the Commission's 60-day prior notice requirement to permit an August 1, 2019, effective date.⁸ SPP states that waiver is appropriate because the Western Farmers Agreement is being filed within 30 days of the commencement of service.

III. Notice and Responsive Pleadings

6. Notice of SPP's filing was published in the *Federal Register*, 84 Fed. Reg. 44,611 (2019), with interventions and protests due on or before September 9, 2019. Western Farmers filed a timely motion to intervene and comments. On September 24, 2019, SPP filed a motion for leave to answer and answer. On September 27, 2019, ITC Great

⁴ August 19 Filing at 1.

⁵ SPP does not identify any changes to the Network Operating Agreement and states that it conforms to the *pro forma* Network Operating Agreement. *Id.* at 2 n.4.

⁶ *Id.* at 1-2.

⁷ See Ex. SPP-1 (highlighted pages of non-conforming terms and conditions in the Western Farmers Agreement).

⁸ August 19 Filing at 2 (citing *Prior Notice and Filing Requirements*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081 (1993); 18 C.F.R. § 35.3(a)(2) (2019)).

Plains, LLC (ITC Great Plains) filed a motion to intervene out of time and answer. On October 9, 2019, Western Farmers filed a motion for leave to answer and answer.

A. Western Farmers Comments

7. Western Farmers states that although it executed the Western Farmers Agreement, it recently filed a complaint that raised an issue regarding terms in the NITSA.⁹ Under the NITSA, Western Farmers is obligated to make payments to ITC Great Plains to pay for the monthly revenue requirements associated with the Hugo-Valiant Projects and is entitled to receive revenue credits pursuant to Attachment Z2 for other transmission customers' use of the facilities. Western Farmers explains that, in the Complaint, it requests that the Commission require SPP to revise the NITSA because the payment term in the NITSA related to the Hugo-Valiant Projects is not just and reasonable because: (1) the payment term is indefinite; (2) the monthly payment amounts are excessive; and (3) the payment term conflicts with Attachment Z1¹⁰ of the SPP Tariff.¹¹ Western Farmers states that, in the Complaint, it requests that the Network Upgrade Charges (section 8.10.A.1.a) provision of the NITSA be revised to provide a specified term and a stated monthly payment obligation.¹²

⁹ Western Farmers Comments at 1 (citing Complaint, Docket No. EL19-93-000 (filed Aug. 22, 2019) (Complaint)). Western Farmers filed a complaint against SPP regarding SPP's unwinding of the revenue credit payments to Western Farmers, under Attachment Z2 in the SPP Tariff, as a result of the Commission's February 28, 2019 order in Docket No. ER16-1341-003. *Sw. Power Pool, Inc.*, 166 FERC ¶ 61,160 (2019). Western Farmers asserts that SPP's proposed unwinding would violate the terms of Western Farmers' NITSA and Attachment Z2 of the SPP Tariff, which entitles Western Farmers to such credit payments for other transmission customers' use of certain transmission upgrades referred to as the Hugo-Valiant Projects. Complaint at 5. Western Farmers also requests that the Commission require SPP to revise the NITSA so that it provides for a specified, finite term and a stated monthly payment obligation to ensure that Western Farmers is fully compensated for the Hugo-Valiant Projects. *Id.* at 28-31.

¹⁰ Attachment Z1 describes the process for SPP's Aggregate Transmission Service Study procedures and cost allocation and recovery for service upgrades.

¹¹ Western Farmers Comments at 3-4.

¹² *Id.* at 4.

B. SPP Answer

8. SPP states that Western Farmers' comments largely paraphrase arguments from the Complaint proceeding and that Western Farmers does not request any specific relief in the instant proceeding.¹³ SPP asserts that Western Farmers' comments do not protest SPP's filing or request that the Commission reject the Western Farmers Agreement.¹⁴ SPP maintains that Western Farmers executed the Western Farmers Agreement on August 12, 2019, ten days prior to filing the Complaint, and that Western Farmers points to no material circumstances that have changed since then that would render the Western Farmers Agreement unjust and unreasonable.¹⁵ SPP argues that Western Farmers' comments provide no basis for rejection of the Western Farmers Agreement and that the Commission should accept the Western Farmers Agreement.¹⁶

C. ITC Great Plains Answer

9. ITC Great Plains states that because the Western Farmers Agreement was executed by all parties to the agreement and is uncontested, the Commission should accept SPP's filing by letter order. Additionally, ITC Great Plains argues that the NITSA is subject to the *Mobile-Sierra*¹⁷ presumption of justness and reasonableness.¹⁸

D. Western Farmers Answer

10. Western Farmers asserts that, because it has filed adverse comments in this proceeding, the Commission cannot accept the Western Farmers Agreement by delegated letter order.¹⁹ In response to SPP's statement that Western Farmers executed the Western Farmers Agreement ten days before filing the Complaint, Western Farmers states that it should not be penalized for continuing to operate in the normal course of business while

¹³ SPP Answer at 1-2.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 10.

¹⁷ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

¹⁸ ITC Great Plains Answer at 2-3.

¹⁹ Western Farmers Answer at 2-3.

it determines the best course of action regarding its issues with the terms of the NITSA.²⁰ Additionally, Western Farmers disagrees with ITC Great Plains' assertion that the *Mobile-Sierra* presumption applies to the NITSA.²¹

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Western Farmers' timely, unopposed motion to intervene serves to make it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant ITC Great Plains' late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept SPP's, ITC Great Plains', and Western Farmers' answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

13. We accept the Western Farmers Agreement, as discussed below. We find that the proposed revisions to the Western Farmers Agreement conform to SPP's *pro forma* NITSA and that the non-conforming terms and conditions were previously accepted and are not directly challenged by Western Farmers.²² We also find that the issues raised in Western Farmers' comments are the subject of the pending Complaint proceeding in Docket No. EL19-93-000, and the Commission will consider those issues in that proceeding.

14. Because the Western Farmers Agreement was filed within 30 days of the commencement of service, we grant SPP's request for waiver of the Commission's

²⁰ *Id.* at 3.

²¹ *Id.* at 4-5.

²² *Sw. Power Pool, Inc.*, Docket No. ER19-2098-000 (Aug. 6, 2019) (delegated order).

prior notice requirement to permit the Western Farmers Agreement to become effective on August 1, 2019, as requested.²³

The Commission orders:

SPP's filing is hereby accepted, effective August 1, 2019, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²³ *Prior Notice and Filing Requirements*, 64 FERC ¶ 61,139, *reh'g denied*, 65 FERC ¶ 61,081.