

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Southwestern Public Service Company,)	
v.)	Docket No. EL13-15-000
Southwest Power Pool, Inc.,)	
)	
Southwestern Public Service Company,)	
v.)	Docket No. EL13-35-000
Southwest Power Pool, Inc.,)	(Not Consolidated)

**COMMENTS OF SOUTHWEST POWER POOL, INC.
REGARDING CONSOLIDATION**

**To: Honorable Curtis L. Wagner, Jr.
Chief Administrative Law Judge**

Southwest Power Pool, Inc. (“SPP”) submits these comments pursuant to the Order of Chief Judge Establishing Deadline for Parties to Notify the Chief Judge Whether Proceedings Should Be Consolidated, issued in the above-captioned dockets on February 28, 2013.¹ For the reasons provided below, SPP respectfully requests that the Chief Judge consolidate the complaint proceedings in Docket Nos. EL13-15-000 and EL13-35-000 with the proceedings in Docket Nos. ER12-959-000 *et al.* (the “ER12-959 Rate Proceedings”).

I. STANDARD FOR CONSOLIDATION

Rule 503 of the Federal Energy Regulatory Commission’s (“Commission”) regulations, 18 C.F.R. § 385.503, provides that “[t]he Chief Administrative Law Judge

¹ *Sw. Pub. Serv. Co. v. Sw. Power Pool, Inc.*, Order of Chief Judge Establishing Deadline for Parties to Notify the Chief Judge Whether Proceedings Should Be Consolidated, Docket Nos. EL13-15-000 and EL13-35-000 (Feb. 28, 2013).

may, on motion or otherwise, order proceedings pending under this subpart consolidated for hearing on, or settlement of, any or all matters in issue in the proceedings” Your Honor has found that, where the issues are the same in two dockets, consolidation “will result in administrative efficiencies by avoiding duplicative discovery, hearings and potentially inconsistent evidentiary records.”² Your Honor explained that “settlement of [the] issues on one proceeding would be fruitless if the same issues were to remain open in another proceeding.”³ Because the issues are the same in the complaint proceedings in Docket Nos. EL13-15-000 and EL13-35-000 and the ER12-959 Rate Proceedings, SPP requests that these dockets be consolidated. Additionally, consolidation of these dockets will not unduly delay resolution of the issues.

II. THE CHIEF JUDGE SHOULD CONSOLIDATE THE COMPLAINT PROCEEDINGS WITH THE ER12-959 RATE PROCEEDINGS BECAUSE THE ISSUES ARE THE SAME

The Chief Judge should consolidate the complaint proceedings in Docket Nos. EL13-15-000 and EL13-35-000 with the ER12-959 Rate Proceedings because the ultimate issues are the same. In an order issued on August 22, 2012, the Chief Judge bifurcated the ER12-959 Rate Proceedings into two phases: in Docket No. ER12-959-003, Phase I (Facilities Classification) addresses the appropriate classification of the facilities that form the basis for the annual revenue requirements (“ATRR”) proposed by Tri-County Electric Cooperative, Inc. (“Tri-County”); and in Docket No. ER12-959-004,

² *Potomac-Appalachian Transmission Highline, LLC*, Order of Chief Judge Consolidating Proceedings, Terminating Dockets, Designating Settlement Judge, And Scheduling Settlement Conference, Docket Nos. ER09-1256-000 *et al.* at P 6 (Dec. 13, 2012).

³ *Id.*

Phase II (Formula Rate) addresses Tri-County's proposed formula rate and protocols and related issues.

A. Facilities Classification Issues

Phase I of the ER12-959 Rate Proceedings addresses classification of the Tri-County facilities. In the Joint Statement of Issues for Phase I, the parties agreed to address the issue of whether Tri-County has carried its burden to prove that Tri-County's facilities are "Transmission Facilities" under Attachment AI of the SPP Tariff eligible to be rolled into the SPP's Zone 11 ATRR.⁴

In the complaint in Docket No. EL13-15-000 SPS asserts that SPP violated its tariff by impermissibly including Tri-County's facilities as "Transmission Facilities" as that term is defined in Attachment AI to the SPP Tariff in the rate for SPP Zone 11.⁵ According to SPS, SPP's alleged failure to comply with its obligations under Attachment AI resulted in SPP charging to SPS an unjust and unreasonable rate in SPP Zone 11.⁶ Thus, the ultimate issue in the Docket No. EL13-15-000 complaint, like Phase I of the ER12-959 Rate Proceedings is whether Tri-County's facilities should have been included as "Transmission Facilities" in the rate for SPP Zone 11.

SPS acknowledged as much in the Docket No. EL13-15-000 complaint, noting that "issues concerning which of Tri-County's facilities may be included in SPP's [Tariff] rates are pending in Docket No. ER12-959-003" and "request[ing] that the Commission

⁴ See Southwest Power Pool, Inc., Joint Statement of Issues (Phase I), Docket Nos. ER12-959-000 *et al.* (Nov. 21, 2012).

⁵ See, e.g., Southwestern Public Service Company v. Southwest Power Pool, Inc., Complaint, Docket No. EL13-15-000 at 1-3, 11-12 ("EL13-15 Complaint").

⁶ *Id.*

consolidate any proceedings concerning this Complaint with the ongoing proceedings in Docket No. ER12-959-003.”⁷ Because the issues in both proceedings are the same, the proceedings should be consolidated, rather than the parties re-litigating the same issues in the Docket No. EL13-15-000 complaint proceeding.

B. Formula Rate and Protocols Issues

Phase II of the ER12-959 Rate Proceedings addresses the justness and reasonableness of Tri-County’s proposed formula rate and protocols. Phase II is currently suspended to allow the parties to continue negotiations toward a settlement of the formula rate issues, which includes issues related to the protocols.⁸

In the complaint in Docket No. EL13-35-000, SPS asserts that SPP violated its tariff by implementing the annual update of Tri-County’s ATRR because Tri-County’s protocols are unjust and unreasonable.⁹ Therefore, the issue to be resolved in the Docket No. EL13-35-000 complaint is whether Tri-County’s formula rate and protocols are just and reasonable.

Thus, the ultimate issue in both Phase II of the ER12-959 Rate Proceedings and in the Docket No. EL13-35-000 complaint is the same: whether Tri-County’s formula rate and protocols are just and reasonable. SPS again admitted as much, noting in the Docket No. EL13-35-000 complaint that “the proposed protocols are pending in Docket No. ER12-959-003” and “request[ing] that the Commission consolidate any proceedings

⁷ EL13-15 Complaint at 23, 24.

⁸ See *Southwest Power Pool, Inc.*, Order of Chief Judge Continuing Suspension of Phase II Proceedings, Docket No. ER12-959-004 (Feb. 22, 2012).

⁹ See, e.g., *Southwestern Public Service Company v. Southwest Power Pool, Inc.*, Complaint, Docket No. EL13-15-000 at 1, 8-11 (“EL13-35 Complaint”).

concerning this Complaint with the ongoing proceedings in Docket No. ER12-959-003.”¹⁰ Therefore, because the issues in both proceedings are the same, the proceedings should be consolidated.

III. CONSOLIDATING THE COMPLAINT PROCEEDINGS WITH THE ER12-959 RATE PROCEEDINGS WILL NOT RESULT IN UNDUE DELAY

Consolidation will not result in undue delay. While the hearing on the classification of Tri-County’s facilities in Phase I of the ER12-959 Rate Proceedings already has concluded, there is no need for additional, separate litigation in the complaint proceeding in Docket No. EL13-15-000 because the issues are the same. Simply put, the Initial Decision in Docket No. ER12-959-003 will resolve the issues in Docket No. EL13-15-000. Therefore, no delay will occur as a result of consolidating the complaint proceeding in Docket No. EL13-15-000 with the ER12-959 Rate Proceedings.

Phase II of the ER12-959 Rate Proceedings is currently suspended to allow the parties to continue negotiations toward a settlement of all formula rate and protocols issues. Therefore, consolidating the complaint proceeding in Docket No. EL13-35-000 with the proceeding in Docket No. ER12-959-004 will not delay resolution of those issues.

¹⁰ EL13-35 Complaint at 12, 13.

IV. CONCLUSION

For the reasons stated in these comments, SPP requests that the Chief Administrative Law Judge consolidate the complaint proceedings in Docket Nos. EL13-15-000 and EL13-35-000 with the ER12-959 Rate Proceedings.

Respectfully submitted,

Matthew Harward
Attorney
Southwest Power Pool, Inc.
415 North McKinley, Suite 140,
Plaza West
Little Rock, AR 72205
Telephone: (501) 614-3560
Fax: (501) 664-9553
mharward@spp.org

/s/ Barry S. Spector
Barry S. Spector
Carrie L. Bumgarner
Patrick L. Morand
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 393-1200 (phone)
(202) 393-1240 (fax)
spector@wrightlaw.com
bumgarner@wrightlaw.com
morand@wrightlaw.com

**Attorneys for
Southwest Power Pool, Inc.**

Nicole Wagner
Manager, Regulatory Policy
Southwest Power Pool, Inc.
415 North McKinley, Suite 140,
Plaza West
Little Rock, AR 72205
Telephone: (501) 614-3380
Fax: (501) 664-9553
jwagner@spp.org

March 7, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing pleading on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Dated at Washington, D.C. this 7th day of March, 2013.

/s/ Patrick L. Morand
Patrick L. Morand

Document Content(s)

SPP Comments on Consolidation (final).PDF.....1-7