

UNITED STATES OF AMERICA 85 FERC ¶ 61,031
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Southwest Power Pool, Inc.) Docket No. ER98-1163-001

ORDER GRANTING IN PART AND DENYING IN PART
REHEARING AND CLARIFYING PRIOR ORDER

(Issued October 5, 1998)

In this order, we grant in part and deny in part requests for rehearing and clarify the order issued on March 13, 1998 in this proceeding. Southwest Power Pool, Inc., 82 FERC ¶ 61,267 (1998) (March 13 Order), modified, 82 FERC ¶ 61,285 (1998) (March 23 Order)(granting deferral of effective date).

Background

A. The Proposed Regional Tariff

Southwest Power Pool, Inc. (SPP), a regional reliability council of the North American Electric Reliability Council (NERC) filed, on behalf of 13 of its 18 members, ¹ a proposed transmission tariff (Regional Tariff) to provide pool-wide, short-term firm and nonfirm point-to-point transmission services for periods of less than one year using distance-based pricing. ² The proposed services would replace certain services that the public utility members of SPP had previously provided under their individual open access transmission tariffs.

B. The March 13 and March 23 Orders

¹The 13 SPP members are identified in the March 13 Order, 82 FERC at 62,050 n.2.

²Id. at 62,049-50. Long-term point-to-point transmission services and network transmission services will continue to be provided by the SPP public utility members through their individual open access transmission tariffs. Id.

The March 13 Order required SPP to make various modifications and clarifications to the proposed Regional Tariff and accepted the proposed Regional Tariff for filing, as modified, and subject to refund, effective April 1, 1998.³ The March 23 Order granted SPP's motion for deferral of the effective date of the Regional Tariff until June 1, 1998 in order to afford SPP more time to make software changes and coordinate implementation of the ordered tariff modifications among SPP members.

C. Requests for Rehearing and Clarification

Timely requests for rehearing of the March 13 Order were filed by the Transmission Dependent Utilities (TDU Systems)⁴ and Enron Power Marketing, Inc. (Enron Power),⁵ and timely requests for

³SPP's compliance filing in Docket No. ER98-1163-002 is pending before the Commission.

⁴The TDU Systems consist of Arkansas Electric Cooperative Corporation, Golden Spread Electric Cooperative, Inc., and Kansas Electric Power Cooperative, Inc.

⁵Enron Power's request for rehearing was actually filed by the Coalition for a Competitive Electric Market (CCEM) on behalf of CCEM and each of CCEM's members, which consist of CNG Power Services Corp. (CNG), Enron Power, and Koch Energy Trading, Inc. (Koch Trading). However, we will permit the request for rehearing only on behalf of Enron Power.

Our rules require that a request for rehearing be filed by a party to the proceeding. 18 C.F.R. § 385.713 (1998). Enron Power is a party to this proceeding. 82 FERC at 62,051. However, CCEM, CNG, and Koch Trading are not parties to this proceeding, and they thus cannot seek rehearing of the March 13 Order. Moreover, although the rehearing request contains citations to the "CCEM Protest," those citations correlate to the pagination in Enron Power's protest, and we assume that Enron Power's protest is the pleading referred to. Accordingly, we will treat the request for rehearing filed by CCEM as a request for rehearing filed by Enron Power and accept it on that basis.

rehearing and clarification were filed by Electric Clearinghouse, Inc. (Clearinghouse) and the East Texas Cooperatives.⁶

⁶The East Texas Cooperatives consist of East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative, Inc.

Discussion1. MW-Mile Transmission Pricing Methodology

Enron Power, East Texas Cooperatives, and TDU Systems reiterate their opposition to the MW-mile pricing methodology and their request that the Commission either reject the MW-mile pricing methodology or set it for hearing. The parties contend that the March 13 Order did not respond to, or did not provide record evidence supporting its denial of, their arguments that the MW-mile pricing methodology is inconsistent with the principles of the Commission's Transmission Pricing Policy Statement,⁷ because it does not promote economic efficiency by sending price signals of congestion and scarcity to transmission system customers and owners, does not allocate costs according to cost causation, and it could lead to over-recovery of the transmission providers' costs.

Commission Response

We will deny rehearing and clarify the March 13 Order on this issue. The Transmission Pricing Policy Statement expressly permits the utilization of a MW-mile pricing methodology, provided that the proposal is adequately supported and is consistent with the principles of the Transmission Pricing Policy Statement.⁸ Therefore, we deny rehearing to the extent that the intervenors suggest that adoption of a MW-mile pricing methodology is inconsistent with the principles of the Transmission Pricing Policy Statement.

Intervenors also argue that the March 13 Order did not adequately respond to arguments that SPP's particular MW-mile pricing methodology has not been shown to be consistent with the principles of the Transmission Pricing Policy Statement. We deny rehearing on this issue as well. In the March 13 Order, the Commission held that, although the intervenors had raised valid concerns regarding SPP's particular MW-mile pricing methodology, that methodology, on balance,

⁷Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, FERC Stats. & Regs., Regs. Preambles 1991-96 ¶ 31,005 (1994), order on reconsideration and clarification, 71 FERC ¶ 61,195 (1995) (Transmission Pricing Policy Statement); see 18 C.F.R. § 2.22 (1998).

⁸Transmission Pricing Policy Statement at 31,136, 31,146.

nonetheless produced rates that were just and reasonable and not unduly discriminatory or preferential.⁹ The intervenors present no basis for reversing that determination. SPP's proposal is fundamentally an embedded cost pricing methodology that reflects a straightforward cost allocation on the basis of the ratio of the MW-mile impacts of the transaction to the total MW-miles on the transmission system. SPP's system-wide tariff eliminates pancaked transmission rates. This increases the economic transmission distance, thus greatly expanding the competitive alternatives of purchasers on the SPP system. Further, regarding the March 13 Order's statement that there is little risk of overrecovery because in general thermal capability will significantly exceed normal line loadings,¹⁰ it is common industry protocol to load lines well below their normal thermal ratings for purposes of allowing them to meet contingencies.

2. Transmission Service Request Charge

Clearinghouse asserts that the March 13 Order failed to address its contention that SPP's proposed Transmission Service Request Charge for each new firm point-to-point service request is contrary to Order No. 888.¹¹ Alternatively, if the Commission approves this charge on rehearing, Clearinghouse requests clarification that the fee should not be assessed if the requested service is denied.

Commission Response

We will deny rehearing, but clarify the March 13 Order on this issue. SPP's proposed Transmission Service Request Charge is not prohibited by Order No. 888, and, in fact, is consistent with Order No. 888. Order No. 888 does not prohibit such application fees

⁹82 FERC at 62,052.

¹⁰Id.

¹¹Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

(although it does prohibit charges to "change" schedules).¹² Rather, a fee intended to recover costs incurred to process requests for service is acceptable. The pro forma tariff itself contemplates that utilities may wish to charge, and may properly charge, such a fee in that the cost of processing an application will be deducted from the deposit that is refunded when an application is denied.¹³ Thus, under SPP's proposal, as under the pro forma tariff, costs of processing applications need not be refunded, even if the applications are denied.

3. Incorporation of NERC Policy and Criteria By Reference into the Regional Tariff

Clearinghouse argues that the March 13 Order failed to address its opposition to Sections 13.8 and 14.6 of the Regional Tariff, which provide that all scheduling practices must comply with applicable NERC policy and criteria. It contends that these provisions effectively bootstrap NERC's extra-tariff tagging and curtailment procedures into the Regional Tariff. It further contends that incorporation by reference of such a wide array of scheduling and curtailment criteria is contrary to the Commission's April 7, 1998 order in Coalition Against Private Tariffs.¹⁴ Clearinghouse requests that we require SPP to make a specific proposal to deviate from the pro forma tariff, including a showing that its deviations are consistent with, or superior to, the pro forma tariff.

Commission Response

We will deny rehearing on this issue. In Coalition Against Private Tariffs, the Commission held that the information requirements of NERC's tagging plan were consistent with the information requirements already found in the pro forma tariff. Therefore, the NERC tagging plan did not, in and of itself, require a change to the terms and conditions of a public utility's open access tariff. The Commission also held that a public utility, in implementing the NERC tagging plan, may not depart from the

¹²Allegheny Power System, Inc., et al., 80 FERC ¶ 61,143 at 61,542-43 (1997), reh'g pending.

¹³Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,522 (Pro Forma Tariff, Section 17.3).

¹⁴83 FERC ¶ 61,015, reh'g denied, 84 FERC ¶ 61,050 (1998).

curtailment terms and conditions of its open access tariff without a filing with the Commission changing its tariff.¹⁵

Consistent with Coalition Against Private Tariffs, SPP's adoption of the NERC tagging plan, in and of itself, does not require SPP to file with the Commission to change the Regional Tariff. Further, we reject Clearinghouse's argument that SPP effectively bootstraps certain of NERC's extra-tariff procedures into the Regional Tariff that require a filing with the Commission. Rather, SPP merely filed the information requirements of NERC's tagging plan. However, again consistent with Coalition Against Private Tariffs, we also emphasize that in implementing the NERC tagging plan, SPP may not depart from the curtailment terms and conditions of the Regional Tariff without a filing with the Commission changing the Regional Tariff.¹⁶

4. Electronic Submission of Schedules

Clearinghouse asserts that the March 13 Order did not address its argument that the electronic submission of schedules is not required by the pro forma tariff and that until the submission of schedules electronically is accepted as the standard in the industry, transmission customers should not be forced to submit schedules in this manner.

Commission Response

We will deny rehearing on this issue. We see no reason to hold back those parties that are prepared to implement electronic scheduling simply because some others may not be ready. As long as procedures are in place that permit Clearinghouse to submit its schedules electronically, and given that Clearinghouse does not represent that it is unable to do so, then it is not disadvantaged by

¹⁵83 FERC at 61,042.

¹⁶Id. We note that NERC has filed a petition for a declaratory order (Docket No. EL98-52-000), in which it asks the Commission to find that NERC's transmission loading relief (TLR) procedures for public utilities within the Eastern Interconnection are consistent with the pro forma tariff's curtailment provisions and can be implemented by public utility transmission providers without filings to incorporate them into the public utilities' transmission tariffs. NERC's petition is pending before the Commission.

SPP's adoption of electronic scheduling. Accordingly, it was unnecessary to delay implementation of electronic scheduling.

5. Requested Clarification to Avoid Double Recovery of Costs

Clearinghouse claims that the March 13 Order misinterpreted its protest by implying that Clearinghouse sought clarification that SPP's Tariff Administration Charge cannot include any costs incurred by SPP in its role as a reliability council. Rather, Clearinghouse explains, it expressed concern about the potential for transmission customers to be double-charged in that the costs of scheduling and related functions that SPP now seeks to recover through its Tariff Administration Charge may already be currently recovered by SPP's transmission-owning members to the extent their individual open access transmission tariffs roll-in the cost of such services. Thus, Clearinghouse seeks clarification that SPP's Tariff Administration Charge cannot duplicate any charge that is currently rolled-in in the individual tariffs of SPP's transmission-owning members.

Further, Clearinghouse argues, the Regional Tariff prohibits charges from being imposed under the tariff on SPP members that duplicate charges paid by those SPP members to Mid-Continent Area Power Pool (MAPP) for service over the same facilities. Clearinghouse contends that the March 13 Order did not respond to its argument that the Regional Tariff should explicitly provide non-SPP members with the same protection against such duplicate charges. It argues that such modification would provide assurance that SPP will provide non-discriminatory service for all transmission customers.

Commission Response

We will deny rehearing with respect to the Tariff Administration Charge. That charge is designed to permit SPP to recover actual expenses incurred in administering the tariff. Moreover, the charge and underlying expenses are subject to audit, at which time Clearinghouse will have an opportunity to contest any expense it deems to be a double recovery of costs.

We will grant rehearing with respect to the issue of providing protection against duplicate charges. We believe that Clearinghouse's proposal to eliminate duplicate charges for non-SPP members will help to ensure non-discriminatory and comparable transmission service by avoiding duplicate charges that, at present, may be imposed on only certain customers (non-SPP members). Accordingly, we will direct SPP to revise the Regional Tariff to

reflect this change. SPP should also provide refunds for any duplicate charges that it recovered under the Regional Tariff.

6. SPP's Summer Rate Matrix

Clearinghouse states that SPP's Initial Rate Matrix, conditionally accepted by the March 13 Order, appears to include only the rates applicable to the Winter 1997-98 period. It further notes that, under the MW-mile formula, the rates in the point-to-point matrix will change twice yearly -- on January 1 and June 1. It contends that, in view of the March 23 Order's deferral of the effective date of the Regional Tariff until June 1, 1998, SPP must clarify its intentions with regard to its June 1 rates. Specifically, it requests the Commission to direct SPP to file its 1998 proposed Summer Rate Matrix pursuant to the Federal Power act and the Commission's regulations, including the 60-day prior notice period required by section 205 of the Federal Power Act.

Commission Response

We will deny rehearing on this issue. There is no requirement that SPP update its rate matrix through a filing with the Commission. Rather, the Summer Rate Matrix will be posted on SPP's Open Access Same-Time Information System (OASIS). Accordingly, there is no basis for requiring SPP to file its Summer Rate Matrix.

7. Incremental Losses

East Texas Cooperatives request clarification regarding the treatment of losses. They cite the March 13 Order's determination that:

There is no basis for SPP to rely on an incremental approach to losses only when a transaction increases costs. We will direct SPP to eliminate this provision of its proposed tariff and substitute therefor the provisions of the pro forma transmission tariff. [17]

East Texas Cooperatives ask whether the March 13 Order intended that SPP eliminate the incremental loss provision altogether and replace it with the average cost loss approach utilized in the pro forma transmission tariff. Alternatively, if the intent of the March 13 Order was to uphold SPP's proposed regional incremental loss factors, so long as they are modified to calculate losses based upon both positive and negative flows, they seek rehearing. They argue that SPP's proposal grossly over-allocates losses to the last transaction on the system, since the losses increase in geometric proportion to the increase in system loading and that utilizing an average on-peak hourly load would be more accurate. EDU Systems also argue that the March 13 Order does not justify the underlying use of incremental losses rather than average system losses.

Commission Response

We will dismiss rehearing in part as moot and deny rehearing in part on this issue. As noted above, the Regional Tariff became effective on June 1, 1998. However, by order issued on September 18, 1998, in Docket No. ER98-3888-000, we conditionally accepted for filing, effective September 1, 1998, SPP's proposed modifications to

¹⁷82 FERC at 62,054.

the Regional Tariff.¹⁸ Among other things, SPP proposed to change from its existing incremental approach for determining losses to determining losses based on the average loss factor of each SPP transmission provider.¹⁹ The Revised Tariff Order accepts SPP's proposal, finding that:

Since SPP proposes to use average loss factors based on those in the SPP transmission providers' individual open access tariffs, we find that SPP's proposal is an acceptable means to ease the administration of its tariff. [²⁰]

Consequently, the requests for rehearing are moot with respect to the period beginning September 1, 1998.

The Revised Tariff Order does not reverse the March 13 Order with respect to the Regional Tariff's adoption of the incremental loss approach for the locked-in period between June 1, 1998 (the effective date of the Regional Tariff) and September 1, 1998 (the effective date of SPP's modifications to the Regional Tariff's provisions concerning losses). With respect to the locked-in period, we clarify that our intent, in the March 13 Order, was to accept SPP's incremental loss proposal, subject to the modifications ordered therein.

Further, we find no basis in the requests for rehearing for reversing the March 13 Order. A transaction-specific loss factor is compatible, in principle, with the MW-mile rate design which itself is based on transactional impacts.²¹

¹⁸Southwest Power Pool, Inc., 84 FERC ¶ 61,251 (1998) (Revised Tariff Order).

¹⁹In so doing, SPP cited technical difficulties in implementing its incremental loss method.

²⁰84 FERC at _____, slip op. at 4.

²¹The March 13 Order did direct SPP to make certain revisions to its proposed incremental loss provision. 82 FERC at 62,054. SPP included a revised incremental loss provision in its compliance filing, which we will address at the compliance stage in Docket No. ER98-1168-002.

8. TDU Systems' Request for a Hold Harmless Condition

TDU Systems argue that the March 13 Order appears to reject, without explanation, the TDU Systems' proposal for a hold harmless condition. That is, they request that the Commission require that the Regional Tariff charge no more than traditional contract-path pricing for a transaction in order to reduce the alleged anticompetitive effect of pure distance-sensitive transmission rates.

Commission Response

We will deny rehearing on this issue. As TDU Systems acknowledge, ²² the March 13 Order noted that TDU Systems, among other intervenors, alleged that the MW-mile pricing methodology could result in over-recovery of costs. However, the March 13 Order also determined that SPP's use of the MW-mile pricing methodology produces rates that are just and reasonable and not unduly discriminatory or preferential. In particular, the March 13 Order found that, notwithstanding the concerns raised by the intervenors, there is little risk that the MW-mile pricing methodology will, in fact, result in an over-recovery. ²³ Having found little risk of over-recovery, there was, and is, no reason for the Commission to address TDU Systems' proposed hold harmless condition.

9. Whether There Should Be a Discount for Using Secondary Receipt and Delivery Points

Enron Power and TDU Systems reiterate their arguments that the Regional Tariff should be amended to provide for reduced charges for using secondary receipt and delivery points that improve flows. In rejecting the intervenors' argument for discounts for using secondary receipt and delivery points, the March 13 Order had stated:

While the intervenors' argument seems intuitively correct, it overlooks the fact that the customer's originally designated receipt and delivery points reflect that customer's reservation of transmission capacity, which applies throughout the contract period. SPP's

²²TDU Systems Rehearing at 9.

²³82 FERC at 62,052.

tariff is no different than the pro forma transmission tariff in this regard. [²⁴]

Enron Power argues that it is irrelevant that the pro forma transmission tariff does not require discounts for using secondary points, because it does not prohibit such discounts either. It further contends that not providing such discounts is inconsistent with the concept of strict distance-based pricing.

TDU Systems argue that the March 13 Order's explanation appears to contradict the rationale underlying that order's acceptance of the Regional Tariff provision, that service from multiple generating units in a single control area will be scheduled as service from a single receipt point. ²⁵

Commission Response

The pro forma tariff does not require discounts for using secondary delivery points, and so the March 13 Order properly found that the Regional Tariff (which does not provide for such discounts) is consistent with the pro forma tariff. Further, there is no relationship between the multiple generating units issue and the secondary receipt and delivery points issue. No matter how the single delivery point is defined, the firm customer retains the right to return to that reservation, and it is reasonable that the customer continue to pay no less than the reservation charge to return to that receipt or delivery point. However, when the customer switches from its original receipt or delivery points to new, secondary points (however defined), it should pay the higher rate.

10. TDU Systems' Motion to Respond to SPP's Answer

The March 13 Order noted that SPP filed an answer to the protests and that TDU Systems filed a motion to reject SPP's answer or, in the alternative, permit them to respond to SPP's answer. The March 13 Order stated that the Commission's regulations generally prohibit answers to answers. ²⁶ Thus, TDU Systems' motion to respond to SPP's answer was denied. We also found that SPP's answer aided us

²⁴82 FERC at 62,056.

²⁵Id. at 62,055.

²⁶See 18 C.F.R. § 385.213(a)(2) (1998).

in understanding the positions of the parties, and we, therefore, accepted it.²⁷

TDU Systems argue that, since the Commission permitted SPP to file an answer to protests, the Commission should also consider the arguments in TDU Systems' response to SPP's answer or explain why SPP's answer was permitted while TDU Systems' response was not permitted.

Commission Response

We reaffirm our denial of TDU Systems' motion to respond to SPP's answer, i.e., to allow an otherwise prohibited answer to an answer. Our denial of TDU Systems' motion to respond reflects our belief that further responsive pleadings were unnecessary for us to understand the positions of the parties. Accordingly, we will deny rehearing on this issue.

The Commission orders:

(A) The requests for rehearing of the March 13 Order are hereby dismissed in part, denied in part, and granted in part, as discussed in the body of this order.

(B) The March 13 Order is hereby clarified, as discussed in the body of this order.

(C) SPP is hereby directed to submit a compliance filing as discussed in the body of this order within 30 days of the date of this order.

(D) SPP is hereby directed to make refunds, with interest pursuant to 18 C.F.R. § 35.19a (1998), within 30 days of the date of this order, as discussed in the body of this order. SPP is directed to file a refund report within 30 days thereafter.

By the Commission.

(S E A L)

David P. Boergers,

²⁷82 FERC at 62,051.

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Secretary.