

114 FERC 61,028  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Southwest Power Pool, Inc.

Docket No. ER99-4392-005

ORDER DENYING REHEARING

(Issued January 17, 2006)

1. In this order, the Commission denies the request for rehearing filed by East Texas Electric Cooperative, Inc. (East Texas), Northeast Texas Electric Cooperative, Inc. (Northeast Texas), and Tex-La Electric Cooperative of Texas, Inc. (Tex-La Electric) (collectively, Cooperatives) of the Commission's July 28, 2004 Order on remand.<sup>1</sup> directed by the United States Court of Appeals for the District of Columbia Circuit, *East Texas Electric Cooperative, Inc., et al. v. FERC*, 331 F.3d 131 (D.C. Cir 2003) (*East Texas*).

**Background**

2. In an order issued December 17, 1999, the Commission accepted for filing, as modified, amendments proposed by the Southwest Power Pool, Inc. (SPP) to its open access transmission tariff (OATT). The Commission also accepted for filing SPP's new Membership Agreement, providing for SPP's administration of transmission service as agent for the transmission owners.<sup>2</sup> In that order, the Commission addressed, among other things, the designation of "host" or license plate pricing zones and provisions governing the allocation of the transmission revenues that SPP receives for service provided under its OATT.<sup>3</sup>

3. The Cooperatives opposed SPP's proposed allocation of network transmission revenues on the basis that, under the proposal, the Cooperatives would not share in the

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<sup>1</sup> *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,078 at P 16 (2004) (Order on Remand).

<sup>2</sup> *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 (1999) (December 17 Order).

<sup>3</sup> *Id.* at 61,890-91.

revenues. The Cooperatives stated that, while each owns transmission facilities integrated with SPP (through Central and South West Corporation (CSW)),<sup>4</sup> the Cooperatives were not designated as a “host” or license plate pricing zone, and thus were not entitled to share in the revenues, as were other larger transmission owners. Moreover, the Cooperatives complained that the only way each could receive any revenues was to seek credits for customer-owned transmission facilities through section 30.9 of SPP’s OATT. The Cooperatives complained that section 30.9 is an inadequate remedy for small transmission-owning members of SPP. The Cooperatives argued that other large transmission owners receive revenue directly from SPP operations without having to meet the section 30.9 requirements, while small transmission owners are forced to meet the section 30.9 requirements. The Cooperatives suggested that SPP should be required to suballocate revenues between multiple transmission owners in a zone. In the alternative, the Cooperatives suggested that each transmission owner be designated as a license plate pricing zone.

4. SPP responded that the Cooperatives’ concerns were addressed during the development of the SPP OATT and that SPP would not include transmission facilities under the SPP OATT without a demonstration that the facilities were integrated into the grid, consistent with section 30.9 of SPP’s OATT. SPP also noted that the issue of whether East Texas’ facilities are, in fact, integrated with CSW was then being litigated in Docket No. EL98-66-000.

5. In the December 17 Order, the Commission accepted for filing SPP’s proposed allocation of revenues, subject to the outcome of the ongoing litigation in Docket No. EL98-66-000.

6. On rehearing, the Cooperatives requested that the Commission require SPP to place the Cooperatives’ transmission facilities under the SPP OATT and designate them as a separate license plate pricing zone. The Cooperatives also objected to the Commission making this proceeding subject to the outcome of Docket No. EL98-66-000. The Cooperatives further argued that SPP does not require other SPP-member transmission owners, such as CSW, to make a showing of integration under section 30.9 of the OATT before being treated as license plate pricing zones. The Cooperatives also maintained that the Commission’s reliance on Docket No. EL98-66-000 was misplaced, since only one of the Cooperatives’ facilities is at issue in that proceeding, and the question being addressed is whether those facilities are integrated with CSW, not SPP.

7. The Commission agreed with the Cooperatives that the dispute in Docket No. EL98-66-000 was not sufficiently connected with the dispute in the instant docket to subject the outcome of the instant proceeding to the outcome in Docket No.

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<sup>4</sup> As noted below, SPP does not concede this point.

EL98-66-000.<sup>5</sup> The Commission still concluded, however, that the Cooperatives had not adequately demonstrated that: (1) their facilities are integrated with the facilities of other SPP transmission providers, and are used other than solely to distribute power to their distribution members; (2) provide any benefits to SPP in terms of additional capability or reliability; and (3) are relied upon for coordinated operation of the grid. The Commission concluded that the Cooperatives did not meet the criteria for inclusion of their transmission facilities under the SPP OATT (and were thus not treated as a transmission pricing zone eligible to share in network transmission revenues), and reaffirmed its acceptance of SPP's proposed license plate pricing zones and revenue allocation.<sup>6</sup>

### **Remand Proceedings**

8. The Cooperatives sought judicial review of the Commission's decisions. In *East Texas*, while the Court affirmed the Commission's approval of the standard SPP used to designate members as "host" or license plate pricing zones, but the court remanded the case to the Commission for further factual findings.

9. The Court acknowledged that neither the SPP OATT nor SPP's Membership Agreement indicated how an entity, upon joining SPP as a transmission-owning member, becomes a license plate pricing zone or otherwise eligible to share in SPP's revenues. The Court nevertheless stated that the purpose of license plate pricing zones is to compensate utilities for the services they provide to SPP so that SPP, in turn, could provide service under its OATT, and that the identification of a license plate pricing zone can only follow from a determination that a utility is providing transmission service that benefits the SPP system as a whole. The Court concluded that, in this context, the standard for transmission-owning members to qualify as a host zone could reasonably require the Cooperatives to show that their transmission facilities "would contribute to the overall functioning of the SPP system, *i.e.* the integration standard."<sup>7</sup>

10. The Court continued that the Commission, although it referenced "earlier findings" in its January 17 Order, never, in fact, made findings in this proceeding that the Cooperatives' facilities were not integrated with the SPP system. The Court therefore remanded the case to the Commission to determine if the Cooperatives' facilities were integrated, or not, with the SPP system.

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<sup>5</sup> *Southwest Power Pool, Inc.*, 98 FERC ¶ 61,038 at 61,108-10 (2002) (January 17 Order).

<sup>6</sup> *Id.* at 61,109-10.

<sup>7</sup> *East Texas*, 331 F.3d 131, 137.

11. In its Order on Remand, the Commission reaffirmed that SPP properly used the integration standard in section 30.9 of its OATT to determine whether an entity should be designated as a license plate pricing zone and thus be eligible to share in SPP's network transmission revenues.<sup>8</sup> The Commission also decided, based on the findings in Docket No. EL98-66-000,<sup>9</sup> that the Cooperatives' transmission facilities are not integrated with SPP and thus the Cooperatives should not receive revenue allocations under the SPP OATT.<sup>10</sup>

### **Request for Rehearing**

12. On August 27, 2004, the Cooperatives submitted a request for rehearing of the Order on Remand. The Cooperatives state that there is no evidence in the record that SPP has used the integration standard of section 30.9 to determine who among its transmission-owning members could be license plate pricing zones; the Cooperatives claim that SPP has never applied this integration test to other SPP transmission owners,<sup>11</sup> that the SPP OATT provides for no such test, and that SPP has never claimed to use the integration test when defining license plate pricing zones. In this regard, they add that SPP was clear in its intention to apply the integration test only to transmission customers and not transmission owners.<sup>12</sup>

13. The Cooperatives next state that there is no basis for the Commission's reliance on Opinion No. 475 in finding that the Cooperatives' facilities are not integrated with the SPP grid. They state that, in the January 17 Order, the Commission found that Docket No. EL98-66-000 was not sufficiently connected with the instant proceeding; however, in the Order on Remand, the Commission, without explanation, reversed this earlier finding by relying on the Complaint Order in determining that the Cooperatives should not receive revenue allocations.

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<sup>8</sup> Order on Remand at P 16.

<sup>9</sup> *East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc.*, Opinion No. 475,108 FERC ¶ 61,077 (2004), *reh'g denied*, Opinion No. 475-A, 114 FERC ¶ 61,027, (2006). The Commission issued this order concurrently with the Order on Remand, affirming an initial decision finding that the facilities of East Texas are not integrated with the facilities of CSW.

<sup>10</sup> Order on Remand at P 22.

<sup>11</sup> Beyond their bare assertion, we cannot help but note that the Cooperatives identify no evidence that this test was not used.

<sup>12</sup> In fact, the quotation referenced by the Cooperatives, *see* Cooperatives Request for Rehearing at 4, only indicates that SPP's members would not allow transmission customers to include their facilities without a showing that their facilities were integrated. The quotation says nothing about transmission owners' facilities.

14. The Cooperatives explain that Opinion No. 475 concerns only East Texas while the Cooperatives include East Texas, Northeast Texas, and Tex-La. The Cooperatives state that the Commission is wrong when it states that the Cooperatives' claim for an allocation of revenues under the SPP OATT rests on East Texas's facilities being integrated with CSW's facilities. The Cooperatives argue that the Commission has never made a factual, on-the-record determination as to whether Northeast Texas's or Tex-La's transmission facilities are integrated with the SPP system and that the record lacks any factual basis for the Commission to decide if the Northeast Texas or Tex-La facilities are integrated with SPP. As to East Texas' facilities, the Cooperatives state that the Commission erred in relying on the findings in Opinion No. 475. They state that, as demonstrated by the request for rehearing of Opinion No. 475 filed by East Texas, the Commission's decision in the Complaint Order is itself in error.

15. The Cooperatives note, finally, that the Order on Remand only speaks to the requirements of the SPP OATT prior to SPP becoming a regional transmission organization (RTO). They state that the Order on Remand speaks only to the SPP OATT at issue in this proceeding. They argue that the Order on Remand should not in any way require SPP to use the integration test to define the transmission facilities that will be included in the SPP RTO tariff or otherwise limit the stakeholder proceedings now underway to develop the SPP RTO.<sup>13</sup> The Cooperatives state that the Commission should clarify that the issues decided in this proceeding in no way prejudice the SPP RTO proceedings now underway.

### **Discussion**

16. We will deny the Cooperatives' request for rehearing of the Order on Remand.

17. In *East Texas*, the Court found that the Commission could reasonably conclude that, for SPP to be able to coordinate and control a large transmission system, being a license plate pricing zone of SPP entails providing services that benefit SPP as a whole. The Court also found that the Commission could reasonably conclude that SPP's OATT requires the Cooperatives' to show that their transmission facilities would provide service that contributes to the overall functioning of the SPP system, *i.e.*, an integration standard. Thus, the Court ultimately found that the Commission did not act arbitrarily when it applied an integration standard.

18. The Court further affirmed as reasonable and not discriminatory the Commission's conclusion that the existing transmission-owning members of SPP currently provide grid

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<sup>13</sup> On February 10, 2004, the Commission conditionally approved SPP's proposal for RTO status. *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh'g*, 109 FERC ¶ 61,010 (2004).

transmission service and therefore meet the integration standard. The limited issue that the Court remanded was the basis for the Commission's finding that the Cooperatives' facilities are not integrated with the existing SPP grid. Thus, the Cooperatives' claim that application of the integration standard to the Cooperatives' facilities but not to others' facilities is unduly discriminatory has already been litigated before, and rejected by, the Commission and the Court; the Commission and the Court have already found and affirmed that the existing transmission owners' facilities provide service that contributes to the overall functioning of the SPP system and meet the integration standard, and hence there is no undue discrimination.

19. In their request for rehearing, the Cooperatives state that the Commission's finding that all three of the Cooperatives are not integrated with the SPP grid is wrong. In *East Texas*, the Court stated that the Commission could rely upon the record and findings in Docket No. EL98-66-000 to determine if the Cooperatives' facilities are integrated with the SPP system and that the Commission need not conduct a hearing. The Cooperatives are correct that in Opinion No. 475 and the Order on Remand, the Commission focused only on whether or not East Texas' facilities are integrated with CSW's facilities. However, as the Commission stated in the Order on Remand, the Cooperatives' claim for an allocation of transmission revenues rests on East Texas' facilities being integrated with CSW's facilities. If East Texas' facilities are not integrated with CSW's facilities in the first instance, none of the Cooperatives' facilities are integrated with SPP's facilities. That is, the Commission did not address the North Texas or Tex-La facilities to determine if they are integrated with the SPP grid; the Cooperatives did not present evidence in any of these proceedings that the North Texas and Tex-La facilities meet the integration standard.<sup>14</sup>

20. Finally, the Cooperatives ask that the Commission clarify that the rulings in this proceeding in no way apply to the RTO proceeding currently underway. On February 10, 2004, the Commission conditionally granted SPP's application for recognition as an RTO.<sup>15</sup> Pursuant to Order Nos. 2000 and 2000-A,<sup>16</sup> the Commission directed SPP to make additional tariff, organizational and other changes prior to granting SPP RTO

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<sup>14</sup> Order on Remand, 108 FERC ¶ 61,068 at P 22; Opinion No. 475, 108 FERC ¶ 61,077 at P 2, 4-6, 24-34.

<sup>15</sup> See *supra* note 13.

<sup>16</sup> *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington, et al. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

status. Among other things, the Commission required SPP to resolve issues concerning the compensation for transmission facilities and to include its timetable for resolving these issues in a compliance filing to the Commission.

21. Subsequent to the filing of the request for rehearing, on October 1, 2004, the Commission addressed SPP's second RTO compliance filing.<sup>17</sup> In that second compliance filing, SPP stated that a task force was examining compensation for transmission facilities of new transmission-owning members and planned to submit a proposed solution to the SPP Board of Directors in early 2005, with final action by July 31, 2005.<sup>18</sup> The Commission accepted SPP's proposed timetable for resolving these issues.<sup>19</sup>

22. On August 2, 2005, following a stakeholder process, SPP proposed amendments to the SPP OATT to provide a uniform basis for compensating new transmission-owning members for their facilities by refining the definition of transmission facilities and providing for the distribution of revenue among entities owning transmission facilities in a single license plate pricing zone. Many parties urged the Commission to accept these revisions,<sup>20</sup> and the Commission, in fact, accepted SPP's proposed amendments finding that they were just and reasonable and that the proposed revenue distribution procedures would equitably compensate transmission owners in a manner that attempts to match transmission use with costs.<sup>21</sup>

23. Given the Commission's actions in the ongoing SPP RTO proceedings, the Cooperatives' request for clarification has been overtaken by subsequent events and is hereby denied.

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<sup>17</sup> *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004).

<sup>18</sup> *Id.* at P 53.

<sup>19</sup> *Id.* at P 57.

<sup>20</sup> The Cooperatives, we note, supported this proposed distribution of revenue, provided the Commission make certain clarifications; SPP agreed to the clarifications requested by the Cooperatives. *See infra* note 21.

<sup>21</sup> *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,355 (2005).

The Commission orders:

The Cooperatives' request for rehearing is hereby denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.