

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southwest Power Pool, Inc.

Docket Nos. ER04-1232-004
ER04-1232-005

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued February 6, 2007)

1. In this order, the Commission addresses Southwestern Public Service Company's (SPS) request for rehearing of the Commission's September 1, 2006 Order.¹ In that order, the Commission accepted in part and rejected in part Southwest Power Pool, Inc.'s (SPP) tariff revisions to adopt an annual transmission revenue requirement (ATRR) for the SPS pricing zone. Subsequently, SPP proposed revisions to its Open Access Transmission Tariff (OATT) submitted in a compliance filing. As discussed below, the Commission grants SPS' request for rehearing and accepts SPP's compliance filing, as modified, and directs a further compliance filing.

I. Background

2. On September 2, 2004, as amended on October 13 and 20, 2004, Xcel Energy Services, Inc. (Xcel) filed a rate change on behalf of its affiliates, SPS and Public Service Company of Colorado (PSCo), in Docket No. ER04-1174-000. Xcel proposed changes in rates and charges for transmission service provided on the transmission systems of SPS and PSCo as well as changes in rates for ancillary services associated with such transmission services.² Specifically, Xcel proposed that rates and charges for network and point-to-point (PTP) transmission services be determined annually using a formula

¹ *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,214 (2006) (September 1 Order).

² *Xcel Energy Services, Inc.*, 109 FERC ¶ 61,284 (2004).

modeled after the formula the Commission approved for use by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) in 2002.³ On September 17, 2004, SPP submitted proposed tariff revisions, in Docket No. ER04-1232-000, to reflect SPS' rate changes to implement the revised rates for transmission services provided in the SPS pricing zone (Zone 11) under the SPP OATT.⁴ The Commission accepted and suspended both filings, made them effective subject to refund, and established hearing and settlement judge procedures.⁵

3. After settlement negotiations, the parties finalized a Settlement with “black box” rates to reflect a \$65.5 million ATRR for network integration transmission service, and stated rates for PTP transmission service.⁶ The Commission approved the Settlement and required SPP to incorporate into the SPP OATT the Settlement rates, to be effective June 1, 2005.⁷

4. On May 16, 2006, SPP submitted proposed revisions to its OATT to incorporate the Settlement rates approved in the April 5 Order. SPP submitted changes to Attachments H and T of its OATT to reflect ATRR for network integration transmission service and stated PTP transmission service rates for the SPS pricing zone. However, SPP's proposed revisions included an ATRR of \$74,529,472, rather than the Settlement ATRR of \$65.5 million.⁸ SPP explained that an adjustment of the network integration transmission service rates was necessary because SPS' ATRR approved in the April 5 Order already included a revenue credit for firm PTP transmission revenue allocated to SPS by SPP for the test year. Thus, to prevent a double revenue credit, SPP proposed a higher value ATRR for the SPS zone.⁹ Subsequently, in the September 1 Order, the Commission found that nothing in the Settlement allowed SPP to alter the settled-upon

³ *Id.* P 7.

⁴ *Id.* P 2, P 8. SPS is a transmission-owning member of SPP.

⁵ *Id.* P 1-3.

⁶ *Xcel Energy Services, Inc.*, 115 FERC ¶ 61,011 (2006) (April 5 Order); Explanation of Offer of Settlement at 5.

⁷ April 5 Order, 115 FERC ¶ 61,011 at P 4.

⁸ September 1 Order, 116 FERC ¶ 61,214 at P 2.

⁹ *Id.* P 4. SPP's filing prompted protests from transmission customers who were parties to the Settlement. They asserted that they had agreed to an ATRR of \$65.5 million, and not to the higher amount filed by SPP at SPS' urging. *Id.* P 6-7.

and Commission-approved \$65.5 million ATRR.¹⁰ Therefore, the Commission rejected SPP's proposed network integration transmission service rates and directed SPP to file revised OATT with rates that track the Settlement rate.

II. Rehearing Request

A. SPS' Rehearing Request

5. SPS seeks rehearing of the September 1 Order and asks the Commission to clarify that the Settlement rate, based on a stated ATRR of \$65.5 million, should not be further reduced by the prior year's PTP revenues earned by SPS, as required under section 34.1 of the SPP OATT.¹¹ SPS states that if SPP were to file a revised Attachment H that replaces the originally filed Zone 11 ATRR with \$65.5 million, and the SPP OATT were then applied in accordance with section 34.1 of the SPP OATT to calculate the network service charges due from network customers served from the SPS transmission system, SPS would fall 10-15 percent short of the Settlement rate that the parties to the Settlement indicated would constitute fair and reasonable compensation for their use of the SPS transmission system.¹²

6. Moreover, SPS asserts that a further reduction of the ATRR would create a variation between the charges under the SPP OATT and the Xcel Energy OATT when no one intended such variations in the Settlement.¹³ For example, if SPP applied its OATT

¹⁰ *Id.* P 13.

¹¹ Section 34.1 of SPP OATT states:

. . . . the Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times on twelfth (1/12) of the difference between Existing Zonal Annual Transmission Revenue Requirement specified in Attachment H minus the previous calendar's total firm Point-to-Point transmission revenue allocated to the Zone under Attachment L for each Zone in which the Network Customer's Network Load is physically located. . . .

¹² SPS Rehearing Request at 8.

¹³ SPS states that the Settlement makes clear the settling parties' intention that the charges for transmission service on the SPS transmission system be the same under both tariffs. *Id.* The Settlement states:

to SPS' ATRR Settlement rate, Golden Spread Electric Cooperative, Inc., which is served under the network service provisions of the Xcel Energy OATT under a grandfathered network service agreement, would pay for service on the basis of its load ratio share of \$65.5 million, but Lyntegar Electric Cooperative, which would be served under the SPP OATT, would pay for similar service on the basis of its load ratio share of SPS' ATRR Settlement rate, \$65.5 million, reduced by the PTP revenues for the previous calendar year.

7. Therefore, SPS argues that, if the Commission does not address the problem that results from the fact that, under the SPP OATT, the ATRR for a Transmission Owner is not the value stated in Attachment H, but instead the Attachment H value for a particular zone reduced by the PTP revenues allocated to the Transmission Owner in that zone, the unintended consequence will be undeniable undue rate discrimination.¹⁴

8. SPS proposes that a solution to this problem would be to add a footnote, as SPP previously suggested, to Attachment H of the SPP OATT that specifies that the revenue crediting mechanisms of section 34.1 of the SPP OATT will not apply to network charges for Zone 11. Alternatively, SPS asks the Commission to require SPP to modify section 34.1 of the SPP OATT to make clear that charges for network service in Zone 11 will be based on the Attachment H ATRR value.¹⁵

9. On October 16, 2006, West Texas Municipal Power Agency (West Texas) filed an answer to SPS' request for rehearing.

It is an integral part of the settlement between SPS and its Active Customers that the Commission will approve or accept the SPP filing with the result that, effective as of June 1, 2005, the settlement ATRR, transmission service and ancillary service rates for the SPS pricing zone under the SPP OATT would be the same as the ATRR, transmission service rates and ancillary service rates for the SPS rate zone stated in the Xcel Energy OATT, except SPP would bill customers taking service under the SPP OATT directly for the SPP Administrative Fee and the FERC Annual Charge fee.

Explanation of Offer of Settlement at 7; *see also* SPS Term Sheet at n.1.

¹⁴ SPS Rehearing Request at 8-9.

¹⁵ *Id.* at 9.

B. Discussion**1. Procedural Matter**

10. Rule 713(d) of the Commission's Rules of Practice and Procedure¹⁶ prohibits an answer to a request for rehearing. Therefore, we will deny West Texas' answer.

2. Commission Determination

11. In the September 1 Order, the Commission found that SPP's compliance filing of the ATRR was inconsistent with the Settlement and the directives of the April 5 Order. The Commission stated that SPS is bound by the Settlement rate, and that SPP cannot submit a higher ATRR than the settled-upon and Commission-approved \$65.5 million ATRR. We affirm that finding here, but grant rehearing to implement just and reasonable rates as discussed below.

12. SPS notes that the settling parties never intended for the ATRR of \$65.5 million to be further reduced, as it would be under the SPP OATT. Such an intention is not stated in the Settlement. The Settlement is clear that SPS agreed to an ATRR of \$65.5 million and that the Settlement rate are black box rates.

13. However, SPS also asserts that the Settlement provided that the SPP OATT and Xcel Energy OATT should have the same transmission rates.¹⁷ We agree, and on this basis we will grant rehearing. We find that if SPP implements the Settlement ATRR through section 34.1 of its OATT, the ATRR of \$65.5 million would be reduced by the PTP revenue, resulting in a different rate than the rate under the Xcel Energy OATT. Therefore, the Commission grants rehearing and directs SPP to modify its OATT to indicate that the ATRR for the SPS pricing zone, Zone 11, would not be further reduced by PTP revenue, as discussed in the compliance filing below.¹⁸

¹⁶ 18 C.F.R. § 385.713(d) (2006).

¹⁷ *See supra* note 13.

¹⁸ We also note that SPS is not precluded from filing a rate change under section 205 of the Federal Power Act to readjust the ATRR rate.

III. Compliance Filing

A. SPP's Compliance Filing

14. On October 2, 2006, as amended December 4, 2006, SPP submitted revised pages to its OATT intended to implement a rate change for SPS pursuant to the September 1 Order. Specifically, SPP submitted a revised Attachment H to its OATT to reflect the SPS ATRR approved in the April 5 Order (Sheet No. 161). SPP requests an effective date of June 1, 2005, consistent with the effective date originally granted in the April 5 Order. In its compliance filing, SPP lists the ATRR for SPS as the settlement rate of \$65.5 million.

15. Notice of SPP's October 2, 2006 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 60,503 (2006), with comments, protests, and interventions due on or before October 23, 2006. Notice of SPP's December 4, 2006 amended filing was published in the *Federal Register*, 71 Fed. Reg. 75,530 (2006), with comments, protests, and interventions due on or before December 26, 2006. On October 23, 2006, supplemented on November 15, 2006, SPS filed a protest to SPP's compliance filing. On December 21, 2006, SPS filed comments on SPP's amended filing.

B. Discussion

1. SPS' Protests/Comments

16. SPS states that it agrees that the *September 1 Order* requires the ATRR for Zone 11 to be stated as \$65.5 million. However, SPS protests that SPP's compliance filing is inconsistent with the provisions of the Settlement. Specifically it asserts that the revised OATT does not include additional changes necessary to fully effectuate the Settlement approved in the April 5 Order.¹⁹ SPS states that the intent of the settling parties was that the network transmission rates under both the Xcel Energy OATT and the SPP OATT for the SPS rate zone would be the same.²⁰ However, if SPP applies section 34.1 of the SPP OATT to calculate the Zone 11 network transmission service rate and includes the PTP revenue reduction, the network transmission rates under the two OATTs would not be the

¹⁹ SPS Protest at 2.

²⁰ SPS states that footnote 1 of the Term Sheet made clear the intention of the parties that the transmission and ancillary service rates provided for in the term sheet would also be adopted for use in the SPP OATT pursuant to further filing to be made by SPP.

same, and SPS would fall 10-15 percent short of realizing the network transmission service revenues the parties to the Settlement indicated would constitute fair and reasonable compensation for their use of the SPS transmission system.²¹ Additionally, varying rates under the two OATTs would result in discrimination as some customers would pay a higher price for substantially identical service.²² Therefore, SPS claims that additional language is necessary to prevent the charges for network transmission service under the SPP OATT from being lower than the charges for network transmission service under the Xcel Energy OATT.

17. SPS argues that the Commission should reject SPP's filing or alternatively, the Commission should require the SPP to submit further revisions to Sheet 161A similar to those suggested in its Attachment 1, to be effective as of June 1, 2005.²³ SPS asserts that including this additional language would ensure full compliance with both the April 5 Order and the September 1 Order because the full intent of the Settlement would be given effect.²⁴

²¹ SPS Protest at 12.

²² *Id.*

²³ SPS suggests the following:

Pursuant to the Offer of Settlement approved by the Federal Energy Regulatory Commission in *Xcel Energy Services Inc.*, 115 FERC ¶ 61,011, the Annual Transmission Revenue Requirement for the Southwestern Public Service Company (SPS) rate zone (Zone 11) stated on Sheet 161 shall not be subject to adjustment pursuant to section 34.1 for the previous calendar year's total firm Point-to-Point transmission revenue allocated to SPS under Attachment L when determining the monthly zonal Demand Charge for Zone 11.

SPP Compliance filing, Attachment 1.

²⁴ SPS Protest at 14. SPS also states that the Commission recently accepted a similar resolution when it approved a SPP compliance filing made to give effect to a network and PTP transmission service rate change filed by Westar Energy, Inc. *See Westar Energy, Inc.*, Docket No. ER06-1373-000 (October 3, 2006) (unpublished letter order).

18. Further, in its supplemental protest, SPS submits a stipulation by the New Mexico Cooperatives²⁵ stating their understanding of the Settlement. According to the New Mexico Cooperatives, their expectation and intention was that “monthly charges for such network service would be determined as a load ratio share of a net [ATRR] for SPS of \$65.5 million, and that no reduction in such amount would be made to credit [PTP] revenues, notwithstanding the provisions of [s]ection 34.1 of the SPP OATT.”²⁶ They also note that they would have no objection to modification of the SPP OATT to make this intention explicit.

2. Commission Determination

19. As discussed below, we find that SPP’s revised OATT does not fully comply with the Settlement approved in the April 5 Order. Therefore, the Commission will accept the proposed revisions, as modified, effective June 1, 2005, and direct a further compliance filing.

20. As noted above, the April 5 Order approved a Settlement ATRR of \$65.5 million. The September 1 Order affirmed the Settlement rate and determined that SPP cannot unilaterally alter this settled-upon and Commission-approved \$65.5 ATRR. We find that SPP’s revised tariff incorporates the rate approved and affirmed in these orders.

21. However, the Settlement also specifies that network rates under both the Xcel Energy OATT and the SPP OATT for Zone 11 must be the same. In this regard, reducing the latter rate by the prior year’s PTP revenue will result in SPS facing a shortfall of 10-15 percent compared to the network service revenue that would result from the Settlement. Further, varying rates may also result in unduly discriminatory rates for same service as customers under Xcel Energy OATT will be charged on the basis of their load ratio share of \$65.5 million while customers under the SPP OATT will be charged on the basis of their load ratio share of \$65.5 million minus the PTP revenues. For these reasons, the Commission directs SPP to further modify its OATT to provide that the rate will not be further reduced by the PTP revenues of the prior calendar year, within 30 days of the date of this order.

²⁵ New Mexico Cooperatives are four of the network transmission service customers that take service under the SPP OATT: Central Valley Electric Cooperatives, Inc., Farmers’ Electric Cooperatives, Inc., Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc.

²⁶ SPP Supplemental Protest, Exhibit A at 1.

The Commission orders:

(A) SPS' request for rehearing is hereby granted.

(B) SPP's compliance filing is hereby accepted, with modifications, effective June 1, 2005, as discussed in the body of this order.

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

By the Commission

(S E A L)

Magalie R. Salas,
Secretary.