

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

Southwest Power Pool, Inc.

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Docket No. ER16-209-000

**ANSWER OF THE JOINT STATE COMMISSIONS IN OPPOSITION TO
MOTION TO SEVER AND SET ISSUE FOR HEARING**

**To: The Honorable Carmen A. Cintron
Acting Chief Administrative Law Judge**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission (“FERC”),¹ the Minnesota Public Utilities Commission (“MPUC”), the North Dakota Public Service Commission (“NDPSC”), and the South Dakota Public Utilities Commission (“SDPUC”) (collectively “Joint State Commissions”) submit this Answer in Opposition to the Motion to Sever the Otter Tail Issue and Set it for Hearing (“Motion to Sever”) filed by Southwest Power Pool, Inc. (“SPP”) in the captioned docket on July 21, 2016 (“Motion to Sever”).² The Joint State Commissions respectfully request that Your Honor deny SPP’s Motion to Sever. Given that the parties have not yet reached a settlement regarding the “Rate Issues,” it is premature to sever the “Otter Tail Issue” and set it for hearing. Moreover, until the issuance of FERC’s June 16, 2016 order granting clarification in this proceeding (“June 16 Order”),³ both the scope of issues set for Settlement Judge procedures and the parties included in those procedures remained uncertain. In light of the clarifications provided in the June 16 Order, the Joint State

¹ 18 C.F.R. § 385.213 (2015).

² Motion of Southwest Power Pool, Inc. to Sever the Otter Tail Issue and Set it for Hearing, Docket No. ER16-209-000 (filed Jul. 21, 2016).

³ *Sw. Power Pool, Inc.*, 155 FERC ¶ 61,259, at P 15 (2016) (“June 16 Order”).

Commissions believe there is new reason for the parties to engage in additional settlement discussions. Accordingly, your honor should deny SPP's Motion to Sever.

I. BACKGROUND

On October 30, 2015, SPP, on behalf of Central Power Electric Cooperative, Inc. ("Central Power"), filed revisions to its Open Access Transmission Tariff ("Tariff") to permit recovery of Central Power's annual transmission revenue requirement ("ATRR") by adding a formula rate and protocols for transmission service using Central Power's facilities.⁴ In response, Otter Tail Power Company ("Otter Tail") filed a protest arguing that SPP had not provided sufficient information to demonstrate that the inclusion of Central Power's ATRR would not cause SPP's rates to be unjust and unreasonable.⁵ The MPUC, NDPSC, and SDPUC individually filed comments in support of Otter Tail's protest, and expressed their concern that Otter Tail's customers—ratepayers in Minnesota, North Dakota and South Dakota—would suffer negative rate impacts as a result of Otter Tail being forced to take transmission service from SPP at pancaked rates.⁶

On December 30, 2015, FERC issued an order ("December 30 Order") finding that, with the exception of the 50 basis point adder, SPP's proposed Tariff revisions "have not been shown to be just and reasonable and may be unjust,

⁴ Submission of Revenue Requirement, Formula Rate Template and Formula Rate Protocols for Central Power Electric Cooperative, Inc., Docket No. ER16-209-000 (filed Oct. 30, 2015).

⁵ Motion to Intervene and Protest of Otter Tail Power Company, Docket No. ER16-209-000 (filed Nov. 20, 2015).

⁶ Motion to File Comments Out-of-Time and Comments of the Minnesota Public Utilities Commission, Docket No. ER16-209-000 (filed Dec. 9, 2015); Motion to File Comments Out-of-Time and Comments of the North Dakota Public Service Commission, Docket No. ER16-209-000 (filed Dec. 17, 2015); Motion to Intervene and File Comments Out-Of-Time and Comments of the South Dakota Public Utilities Commission, Docket No. ER16-209-000 (filed Dec. 15, 2015).

unreasonable, unduly discriminatory or preferential, or otherwise unlawful.”⁷ FERC found that “Otter Tail may address in the hearing and settlement judge procedures whether any provision is needed in its service agreement with SPP” to address duplicative or pancaked rates on the Integrated Transmission System (“ITS”) resulting from Central Power’s integration into SPP.⁸

Because the MPUC, NDPSC, and SDPUC also raised concerns regarding duplicative and pancaked rates for service on Otter Tail’s system, the Joint State Commissions asked FERC to clarify that by stating that Otter Tail could raise these issues in hearing and Settlement Judge procedures, it did not intend to exclude other parties that raised these concerns from addressing these issues in the hearing and Settlement Judge procedures.⁹ Otter Tail also requested that FERC clarify the scope of the issues included in hearing and Settlement Judge procedures to avoid the potential argument that Otter Tail’s issues were not included in the hearing and Settlement Judge procedures.¹⁰

In the June 16 Order, FERC granted Otter Tail and the Joint State Commissions’ requests for clarification, finding that “the Joint State Commissions, Otter Tail, and the other parties to this proceeding may address” the issues.¹¹

⁷ *Sw. Power Pool, Inc.*, 153 FERC ¶ 61,367, at P 45 (2015) (“December 30 Order”).

⁸ *Id.*

⁹ Request for Clarification and Rehearing of the Joint State Commissions, Docket No. ER16-209-001 (filed Jan. 28, 2016).

¹⁰ Motion for Clarification and Request for Rehearing of Otter Tail Power Company, Docket No. ER16-209-001 (filed Jan. 29, 2016).

¹¹ June 16 Order at PP 15, 17.

II. ARGUMENT

SPP's Motion to Sever should be denied. SPP claims that resolution of the Rate Issues is "impending," but the Joint State Commissions are parties to this proceeding and have not seen any draft settlement agreement or other document detailing an agreed-upon resolution of the Rate Issues. Moreover, the Otter Tail Issue turns on the rates Otter Tail's customers will pay for use of Central Power facilities, and this issue *cannot* be litigated separate from resolution of the Rate Issues. Also, until FERC issued the June 16 Order, certain parties disputed whether the Otter Tail Issue, which is of particular importance to the Joint State Commissions because of their obligation to protect ratepayer interests, was set for Settlement Judge procedures. There have been no settlement conferences or discussions addressing what SPP calls the "Otter Tail Issue" since the issuance of the June 16 Order. It is therefore premature to declare that the parties are at an impasse.

SPP is wrong when it asserts that the Rate Issues and Otter Tail Issue are "distinctly different issues" with different "evidentiary proof."¹² In the June 16 Order, FERC clarified that the hearing and settlement judge procedures in this proceeding should address: (1) "whether any service agreement provisions are needed to mitigate the impact of duplicative or pancaked rates on the [ITS];"¹³ and (2) "whether provisions to address the historic arrangement [between Otter Tail and Central Power] are needed in Otter Tail's service agreement with SPP in order to ensure just and reasonable rates."¹⁴

¹² Motion to Sever at 5.

¹³ June 16 Order at P 15.

¹⁴ *Id.* at P 26.

The rates that will be charged for service on Central Power facilities (what SPP calls “the Rate Issues”) will directly affect the rates that Otter Tail’s customers will pay for use of Central Power facilities in the ITS. It is unclear how the Joint State Commissions can litigate whether the rates Otter Tail’s customers will pay for use of the ITS are “duplicative” or “just and reasonable” when the rates to be charged for use of Central Power’s facilities—including those facilities in the ITS—remain unknown.

Furthermore, until FERC issued the June 16 Order, certain parties to this proceeding took the position that Otter Tail’s issues were not included in the hearing and Settlement Judge procedures.¹⁵ It also was unclear prior to issuance of the June 16 Order the extent of the Joint State Commissions’ rights to participate in settlement discussions. Now that FERC has clarified both the scope of issues to be discussed in Settlement Judge procedures and identified the parties to be included in those discussions, the Joint State Commissions believe there is new reason for the parties to engage in additional settlement discussions. In light of the parties’ previous positions and the clarifications granted in the June 16 Order, it is certainly premature to declare that further negotiations will be “fruitless”¹⁶ before the parties meet even once more to attempt to resolve these issues.

III. CONCLUSION

For the foregoing reasons, the Joint State Commissions respectfully request that SPP’s Motion to Sever be denied.

¹⁵ See Answer to Motion and Motion for Leave to Answer to Rehearing Requests of Southwest Power Pool, Inc., Docket Nos. ER16-209-000 *et al.* (filed Feb. 16, 2016).

¹⁶ Motion to Sever at 4.

Respectfully submitted,

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Dated: August 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Bismarck, ND this 5th day of August, 2016.

/s/ John M. Schuh
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Subject: Filing with receipt
Attachments: State PUCs Response to Motion to Sever.pdf

Submission ID 694229

Submission Description Answer of State Public Utility Commissions to Motion to sever under ER16-209-000.

Submission Date 8/5/2016 3:54:58 PM

Filed Date 8/5/2016 3:54:58 PM

Current Status Pending

Dockets

Docket	Description	Applicant/Filer
ER16-209-000	Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Central Power Electric Cooperative Formula Rate submitted on 10/30/2015 3:28:29 PM, Filing Type code: 10	Southwest Power Pool, Inc.

Files

Security Level	Filename
Public	State PUCs Response to Motion to Sever.pdf

Filing Party/Contacts

Filing Party	Signer (Representative)	Other Contacts (Principal)
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