

113 FERC ¶ 61,160
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 17, 2005

In Reply Refer To: Oklahoma Municipal
Power Authority v. American Electric
Power Service Corporation
Docket No. EL05-38-003

Clark Evans Downs, Esq.
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Dear Mr. Downs:

1. On August 24, 2005, as amended September 21, 2005, American Electric Power Service Corporation (AEP) filed an unexecuted Network Integration Transmission Service Agreement (NITSA) in compliance with the Commission's Order Denying Rehearing and Conditionally Accepting Compliance Filing, Instituting Investigation, and Establishing Refund Effective Date and Hearing and Settlement Judge Procedures issued July 25, 2005 (July 25 Order).¹ We will accept the NITSA, as discussed below.

Background

2. On December 6, 2004, Oklahoma Municipal Power Authority (OMPA) filed a complaint against AEP requesting that the Commission direct AEP to file an unexecuted service agreement for additional network transmission service that OMPA requested to facilitate OMPA's contracted-for acquisition of an increased ownership in a generating station called Oklaunion Unit No. 1.

3. In a Commission order issued March 4, 2005,² the Commission granted OMPA's complaint, finding that AEP violated its OATT by refusing to file the service agreement,

¹ *Oklahoma Municipal Power Authority v. American Electric Power Service Corp.*, 112 FERC ¶ 61,107 (2005).

² *Oklahoma Municipal Power Authority v. American Electric Power Service Corp.*, 110 FERC ¶ 61,228 (2005).

and directed AEP to file an unexecuted NITSA for the service OMPA requested. On April 25, 2005, AEP filed an unexecuted NITSA to comply with the March 4 Order.

4. The July 25 Order accepted AEP's NITSA filed on April 25, 2005, subject to, *inter alia*, AEP filing a revised NITSA with the Commission within 30 days of the issue date of the order. In that order, the Commission clarified that, as of January 1, 2005, Southwest Power Pool (SPP) is OMPA's transmission provider; therefore, AEP's NITSA should govern only the first phase of the service request, which is OMPA's right, under section 5 of AEP's OATT, to construct and own the upgrade to the North HVDC Interconnection, which interconnects the Electric Reliability Council of Texas and SPP, in order for OMPA to receive its requested additional service. The Commission further determined that (1) AEP is entitled to a letter of credit if AEP constructs the upgrade requested by OMPA; (2) AEP's provision allowing it to assign the NITSA is unjust and unreasonable and must be deleted; and (3) AEP must revise the effective date to be the day AEP should have filed the agreement with the Commission – December 9, 2004. With regard to additional concerns raised by OMPA, the Commission instituted an investigation and established hearing procedures.

5. On August 24, 2005, AEP filed the revised NITSA to comply with the July 25 Order. In response to being informed by Commission staff that the NITSA did not conform with Order No. 614,³ AEP submitted an amended filing on September 21, 2005.

Notice of Filing and Protest

6. Notice of the August 24 filing was published in the *Federal Register*, 70 Fed. Reg. 53,789 (2005), with interventions and protests due on or before September 23, 2005. Notice of the September 21 filing was published in the *Federal Register*, 70 Fed. Reg. 57,582 (2005), with interventions and protests due on or before October 21, 2005. No interventions were filed, but OMPA filed conditional protests in response to both filings.

7. OMPA states that AEP and OMPA have agreed in principle to seek dismissal of this proceeding without prejudice, because the matters at issue in the proceeding relate to pending appellate litigation in Texas State court concerning OMPA's contractual right-of-first-refusal with respect to the Oklaunion facility, and because it appears that significant issues in this docket are or will soon be mooted. In the conditional protest filed on October 21, 2005, OMPA states that AEP and OMPA continue to discuss "wordsmithing" acceptable to both parties to seek dismissal of the proceeding, and remain committed to moving jointly to dismiss the proceeding. OMPA adds that in the unlikely event that this case is not dismissed, and in order to protect its rights fully,

³ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

OMPA protests AEP's compliance filing to the extent it does not comply with the July 25 Order.

Discussion

8. Our review of AEP's revised NITSA filed on September 21 indicates that it fully complies with our requirements in the July 25 Order and Order No. 614. Accordingly, we accept AEP's NITSA to be effective December 9, 2004. Moreover, as a result of our determination that the NITSA complies with the July 25 Order, we find that OMPA's conditional protests are moot.

By direction of the Commission.

Magalie R. Salas,
Secretary.