

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

The Empire District Electric Company,	)	
Lincoln Electric System, Nebraska Public	)	
Power District, Omaha Public Power	)	
District, and City Utilities of Springfield,	)	
Missouri	)	
	)	
<i>Petitioners,</i>	)	
	)	
v.	)	Case No. 11-3715
	)	
Federal Energy Regulatory Commission,	)	
	)	
<i>Respondent.</i>	)	

**PETITIONERS' FIRST STATUS REPORT**

Pursuant to the Court's order issued on December 16, 2011 in this matter, The Empire District Electric Company, Lincoln Electric System, Nebraska Public Power District, Omaha Public Power District, and City of Springfield, Missouri, dba City Utilities of Springfield, Missouri ("Petitioners") hereby submit their first Status Report to the Court.

**BACKGROUND**

1. On December 13, 2011, Petitioners filed a Petition for Review of certain orders issued by the Federal Energy Regulatory Commission ("FERC"), namely, *Southwest Power Pool, Inc.*, Order Accepting Tariff Revisions, FERC Docket No. ER10-1069-000, 131 FERC ¶ 61,252 (June 17, 2010), and *Southwest*

*Power Pool, Inc.*, Order on Rehearing, FERC Docket No. ER10-1069-001, 137 FERC ¶ 61,075 (October 20, 2011). On the same day, the Court adopted a schedule for further proceedings in the case, including a date (January 23, 2012) for submission of the Certified List, the administrative record, the Joint Appendix and Petitioners' Initial Brief.

2. On December 16, 2011, Petitioners filed their "Unopposed Motion for Suspension of Procedural Schedule and to Hold Further Proceedings in Abeyance" (hereinafter, "Suspension Motion"). Petitioners there recited that the Southwest Power Pool ("SPP") was in the process of conducting a stakeholder process to consider and implement tariff provisions aimed at periodically evaluating the reasonableness of the "Highway/Byway" electric transmission cost allocation method that Petitioners sought to oppose through their Petition for Review. Petitioners noted that SPP had established a stakeholder task force (the Regional Allocation Review Task Force, or "RARTF") for the purpose of defining the analytical methods to be used to review the reasonableness of Highway/Byway cost allocation, and that the RARTF was engaged in a process to develop those methods. Suspension Motion at ¶¶ 4-5. Petitioners further stated:

Petitioners believe that, if the SPP stakeholder process results in the adoption of satisfactory methods for analyzing the reasonableness of the Highway/Byway cost allocation approach and the approval of an effective remediation process for imbalanced cost allocations, that outcome could sufficiently ameliorate the aggrievement

Petitioners suffer as a result of FERC's orders that review of the orders by this Court would be unnecessary.

Id. at ¶ 6.

3. On December 16, 2011, the Court issued an order granting the Suspension Motion and directing Petitioners to provide regular status reports to the Court, with the first such report to be filed on or before April 1, 2012. This report is being filed in compliance with the Court's directive.<sup>1</sup>

### **STATUS REPORT**

4. Subsequent to the events described above, the RARTF continued its deliberations through the end of 2011 and into early 2012. The RARTF members and the SPP staff and management representatives who participated in the RARTF's deliberations worked in good faith toward the goal of developing the policy, methodologies, action items and recommendations, including a near future review of needed business practices and tariff provisions, that would be satisfactory to all affected parties, including those SPP stakeholders (such as Petitioners) who had expressed genuine concerns about the Highway/Byway cost allocation method.

5. The RARTF's work resulted in a 23-page Final Report that was unanimously adopted by the RARTF on January 3, 2012. The Report

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<sup>1</sup> Inasmuch as April 1, 2012 fell on a Sunday, Petitioners are filing this status report on the first day thereafter that is not a Saturday, Sunday or a legal holiday. *See* F.R.A.P. Rule 26(a).

recommended to the full membership of the SPP Markets and Operations Policy Committee, the SPP Regional State Committee, and the SPP Board of Directors, among other things, the following: (i) a set of principles to guide the Regional Cost Allocation Review process, (ii) a specification of the transmission projects that would be subject to the review process; (iii) basic elements of the economic evaluation that would be the heart of the review process; (iv) specification of a Benefit-to-Cost threshold that would be the basis for SPP staff and stakeholders to evaluate remedies for any SPP transmission zone that falls below the threshold, and a non-exclusive list of potential remedies; and (iv) a proposed timeline for conducting the review process. The RARTF's Final Report also identified a set of "next steps" that must be completed over the coming months in order that the Regional Cost Allocation Review process, as described in the Report, can be finalized and implemented.

6. SPP's Markets and Operations Policy Committee unanimously approved the RARTF Final Report at its January 17-18, 2012 meeting. The SPP Regional State Committee unanimously approved the RARTF Final Report on January 30, 2012. The SPP Members Committee unanimously approved the RARTF Final Report at its January 31, 2012 meeting. The SPP Board of Directors, at a meeting also held on January 31, 2012, approved the RARTF Final Report and directed SPP staff to implement the recommendations and review

SPP's Highway/Byway cost allocation methodology in accordance with the SPP Open Access Transmission Tariff.

7. Although there are steps yet to be taken to implement the RARTF recommendations, including SPP Open Access Transmission Tariff filings with the FERC, Petitioners believe that withdrawal of their Petition for Review nevertheless is warranted at this time. Therefore, based upon the foregoing, Petitioners expect to file with the Court shortly (in all likelihood, during the week of April 1) a motion for voluntary dismissal of their Petition for Review in this docket. Assuming the Court grants that motion, no further status reports will be necessary.

Respectfully submitted,

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Dated: April 2, 2012

## CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of April, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

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