

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Transmission ) Docket No. TS04-\_\_ - \_\_  
Cooperative, Inc. )

SOUTHWEST TRANSMISSION COOPERATIVE, INC.  
ORDER NO. 2004 COMPLIANCE PLAN INFORMATIONAL FILING

Pursuant to Standards of Conduct for Transmission Providers, FERC Stats. & Regs. Vol. III, Regulation Preambles ¶ 31,155 (2003), Order No. 2004, 68 FR 69,134 (Dec. 11, 2003) (pending rehearing) (“Order No. 2004”), and the Guidance on Information Filings and Implementation Procedures for Standards of Conduct Under Order No. 2004, 106 FERC ¶ 61,017 (2004), Southwest Transmission Cooperative, Inc. (“SWTransco”), hereby submits the following information regarding its plan for complying with Order No. 2004.

SWTransco is a RUS-financed,<sup>1</sup> and thus, under Dairyland Power Cooperative, 37 F.P.C. 12, 15 (1967), non-FERC-jurisdictional, nonprofit rural electric generation and transmission cooperative that operates largely in Arizona.<sup>2</sup> Notwithstanding its non-jurisdictional status, SWTransco made an Order No. 888 and Order No. 889 “safe harbor” filing on March 30, 2001. SWTransco’s standards of

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<sup>1</sup>The RUS is the Rural Utilities Service, successor to the Rural Electrification Administration, of the Department of Agriculture, under the Rural Electrification Act of 1936 (the “RE Act”).

<sup>2</sup>Nothing in this filing should be construed as a consent to the Commission’s exercise of jurisdiction over SWTransco or Arizona Electric Power Cooperative, Inc. (“AEPCO”).

conduct (denominated as Separation of Functions) were conditionally accepted in Docket No. NJ01-5-000, Southwest Transmission Cooperative, Inc., 95 FERC ¶ 61,454 (2001), and accepted outright in Docket No. NJ01-5-001, Southwest Transmission Cooperative, Inc., 97 FERC ¶ 61,036 (2001).<sup>3</sup>

SWTransco believes that it currently is generally in compliance with the increased Order No. 2004 substantive requirements for Standards of Conducts, although SWTransco notes that it will need to post additional, more-detailed information on its OASIS, provide more formalized training, codify existing standards and practices to prevent support personnel from serving as conduits for conveying protected information, and maintain increased documentation regarding its policies, training, and compliance activities.

In light of the expanded scope of sales and marketing encompassed by Order No. 2004, SWTransco notes that Sierra Southwest Cooperative Services, Inc. (“SSW”), a sister nonprofit rural electric generation and transmission cooperative (albeit one that is FERC-jurisdictional public utility because it has no RUS financing) that might be deemed an “affiliate” under Order No. 2004,<sup>4</sup> is engaged in gas marketing activities,

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<sup>3</sup>SWTransco notes that the Commission’s “acceptance” of its Standards of Conduct was a finding that SWTransco was in compliance with the Order No. 889 Standards of Conduct, not that SWTransco was a public utility subject to the Commission’s jurisdiction.

<sup>4</sup>The same six nonprofit rural electric distribution cooperatives are the primary members of SWTransco, SSW, and AEPCO (the “Cooperatives”). Each member distribution cooperative has a derivative voting interest in each of the three Cooperatives that exceeds 10%, which creates a presumption under the standards of Order No. 2004 that the Cooperatives entities are affiliates (notwithstanding the fact that Order No. 2004,

almost exclusively at the retail level, which commenced following SWTransco's adoption of its Separation of Functions. The SSW individuals engaged in such gas marketing activities (like its individuals that assist AEPCO in general power marketing activities) do not have preferential access to SWTransco transmission information.<sup>5</sup> SWTransco intends to amend its Standards of Conduct to reflect the treatment of SSW's gas marketing activities in light of the expanded definition of marketing, sales, or brokering in 18 C.F.R. § 385.1(e).

SWTransco's submitted its earlier Separation of Functions to the Commission in conjunction with AEPCO's restructuring. Until August 1, 2001, AEPCO was an integrated (both generation and transmission), RUS-financed, and thus non-jurisdictional, rural electric generation and transmission cooperative. Under the restructuring, AEPCO retained the generation assets and activities, SWTransco received the transmission assets and activities, and SSW received various support functions as a

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like Order No. 2003, provides that the members themselves are not affiliates of the Cooperatives).

SWTransco, AEPCO, and SSW serve the six member distribution cooperatives under what are cost pass-through arrangements. SWTransco and AEPCO are currently subject to regulation by the Arizona Corporation Commission ("ACC"), although SWTransco is seeking a determination from the ACC that it is not subject to the agency's jurisdiction. Five of the six member distribution cooperatives have "all-requirements" contracts with AEPCO. The sixth (Mohave Electric Cooperative, Inc., or "Mohave"), as a result of the restructuring, became a "partial requirements" member, with the right to procure independently power to meet its incremental growth in load beyond a predetermined level.

<sup>5</sup> Such access would not be of any value given the differences in the markets served by SWTransco and SSW's gas marketing activities.

cooperative service provider and also became a jurisdictional power marketer (albeit one that has made no power sales). As part of the restructuring, SWTransco made a “safe harbor” OATT filing, and SSW qualified as a power marketer, which entailed mitigation of SWTransco’s putative transmission market power through its OATT and Separation of Functions. Sierra Southwest Cooperative Services, Inc., 95 FERC ¶ 61,310 (2001).<sup>6</sup>

The safe harbor filing contained an extended discussion of the need for SWTransco and AEPCO, with SSW’s assistance, together with the six member rural electric distribution cooperatives, to engage in integrated planning, operation, and expansion of generating and transmission facilities to meet the members’ loads and fulfill the regulatory obligations imposed by the RUS. In particular, the Cooperatives explained that the member distribution cooperatives’ load was the functional equivalent of the native load of SWTransco and AEPCO, and that the RUS required that SWTransco, AEPCO, and SSW, together with the member distribution cooperatives address system planning, operation, and expansion on an integrated basis in order to fulfill the universal service policy of the RE Act to provide electric service to, and thus foster economic development in, rural areas on a least-cost basis.

SWTransco believes that Order No. 2004 does not reflect any effect, purpose, or intent to prevent AEPCO, SWTransco, SSW, and the member distribution cooperatives from continuing to carry out their RUS responsibilities under the various

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<sup>6</sup>Later revisions to SWTransco’s OATT were found to meet the safe harbor standards by a letter order, NJ02-5-000, Southwest Transmission Cooperative, Inc. (Dec. 23, 2002).

agreements that were submitted to the Commission as part of AEPCO's restructuring filing. To the contrary, Order No. 2004 reflects an express intent to maintain the non-affiliate treatment between generation and transmission cooperatives and their member distribution cooperatives (see ¶ 28 of Order No. 2004). Moreover, 18 C.F.R. § 358.3(e) excludes from the definition of "marketing, sales, or brokering" a unit that "engages solely in bundled retail sales."

SWTransco strongly believes that it should not be subject to a more stringent level of review with respect to compliance with the Standards of Conduct because AEPCO has now been structured into three entities (SWTransco, AEPCO, and SSW) rather than a single integrated generation and transmission cooperative (like the pre-restructuring AEPCO). Were AEPCO an integrated entity, ¶ 28 of Order No. 2004 would clearly allow the generation and transmission cooperative to integrate its activities with those of its federated member distribution cooperatives without running afoul of the separations requirements. The fact that AEPCO has restructured itself to place transmission and generation in two separate cooperatives (SWTransco and AEPCO, respectively), that, along with SSW as a cooperative services provider, have separate Boards of Directors and separate employees and officers (with only a few exceptions<sup>7</sup>), as opposed to mere "functional unbundling," is, if anything, a reason for subjecting them to less stringent, and not more stringent, standards for separation of functions.

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<sup>7</sup>The exceptions involving high level employees (Chief Executive, Financial and Legal Officers, as well as the Chief Auditor), none of whom has any operational transmission role or access to protected transmission information.

SWTransco does note that personnel at AEPCO and SSW are engaged in power and gas marketing activities to non-cooperative members and non-members. As the safe harbor filing made clear, SWTransco views these personnel and activities as being subject to the Standards of Conduct, and that will remain the case under Order No. 2004 (and that coverage will extend to the gas marketing activities). The individuals engaged in these marketing activities and functions do not have physical or computer access to transmission functions and do not have any preferential access to information and personnel associated with day-to-day duties and responsibilities for planning, directing, organizing, or carrying out transmission-related operations.

From time to time, some of the individuals engaged in these marketing activities and functions do provide support to SWTransco in terms of implementing commercial arrangements for accommodating the load of member distribution cooperatives while enabling SWTransco to recover its transmission revenue requirements in fulfillment of RUS obligations. These marketing personnel, in the context of performing such activities, do not gain access to transmission information that is protected under the Standards of Conduct, nor do they gain or achieve any influence, much less control, over transmission operations. SWTransco notes that it, AEPCO, and SSW are relatively small cooperatives and that the Cooperatives' personnel do not have fungible skills, experience, and expertise. Allowing the marketing individuals to provide assistance with SWTransco's relationship to its member distribution cooperatives (an activity that does not involve "affiliate" relationships under ¶ 28 of Order No. 2004) enables SWTransco and AEPCO to fulfill their contractual and RUS regulatory

obligations in a cost-effective manner. SWTransco reiterates that the marketing individuals and activities do not gain any advantage over marketing efforts by third parties by virtue of the assistance that they provide to SWTransco.

As noted supra, one of the member distribution cooperatives, Mohave, has become a “partial requirements” customer of AEPCO. Mohave has recently commenced selling excess purchased power at wholesale.<sup>8</sup> Mohave personnel engaged in such marketing activities do not enjoy preferential access to protected SWTransco transmission information. Nonetheless, SWTransco intends to require that Mohave personnel engaged in such wholesale resale activities comply with SWTransco’s Standards of Conduct, and SWTransco will also post information regarding Mohave’s marketing activities and associated personnel (who will be required to sign statements of compliance with SWTransco’s Standards of Conduct) on SWTransco’s OASIS site.

SWTransco does not believe that the Commission’s prior safe harbor acceptance of its Separation of Functions entailed any sort of waiver from Order No. 889, and SWTransco, on that basis, does not believe that its contemplated activities will entail the need for any waiver from Order No. 2004. However, SWTransco’s beliefs in this regard are premised on its understanding that its activities in fulfillment of its RUS obligations are not in tension with either the Order No. 889 or Order No. 2004 Standards of Conduct. To the extent that the Commission perceives such a tension or any contradiction, it will likely become necessary for SWTransco to seek a waiver. In that

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<sup>8</sup>Mohave is RUS-financed, and thus its resale activities are not FERC-jurisdictional.

context, SWTransco respectfully seeks guidance from the Commission as to whether the activities described above in this informational filing necessitate the submission of any waiver request.

SWTransco further notes that it, AEPCO, and SSW have individually or collectively exceeded the 4 million MWH threshold that typically applies for obtaining a “small utility” waiver under Order No 888 and Order No. 889 only once, in 2000, when the pre-restructuring AEPCO slightly exceeded the threshold due to an increase in off-system sales to California during the Western power crisis. Nonetheless, due to an increase in member load, SWTransco and AEPCO would expect to begin exceeding the threshold on a regular basis in the near future, but only by a relatively modest amount. Moreover, only a relatively small portion of SWTransco’s and AEPCO’s total sales will likely go to non-members. Specifically, in order to remain tax-exempt from federal income taxes, SWTransco and AEPCO must, among other things, receive no more than 15% of their income (gross or net) from non-members. Accordingly, SWTransco’s third-party transmission activities are apt to be limited, as are AEPCO’s third-party power sales.

The Commission’s January 16, 2004 guidance also requests information on “all projected compliance costs broken down for each element of compliance.”

SWTransco’s ability to respond is impaired by potential uncertainty over exactly what compliance entails. If compliance does not entail any waiver requests, costs will be at one level. If a waiver request is required, the compliance cost will vary according to the difficulty of preparing the waiver request. If the waiver request is required but is then

denied, then the compliance cost could entail disruption of SWTransco's existing or planned manner of operation. On the other hand, SWTransco might possibly choose to end its efforts to achieve safe harbor status, the consequences of which are also uncertain.

For present purposes, SWTransco will assume that no waiver request will be required and that compliance will largely entail additional OASIS posting, additional training, and additional documentation. As a very rough, first order approximation, SWTransco would anticipate that updating the existing OASIS site postings (e.g., preparing additional organizational charts and expanded descriptions) to conform to the Order No. 2004 standards would entail 100 hours; training and educating the Chief Compliance Officer and those involved in assisting that individual would entail another 50 hours, preparing training materials (handouts, powerpoints, etc.) would entail another 50 hours, preparation for training sessions would entail another 50 hours (different training would be appropriate for different groups of employees); and general training would entail an average of at least one hour per employee (or a total of 250 hours for approximately 250 employees), plus an average of an additional two hours per employee will be required for about 80 employees who are involved in transmission, marketing, and/or support functions (a total of 160 hours). SWTransco would also expect to spend at least another 100 hours monitoring subsequent rehearing or clarification orders and filings, as well as monitoring industry developments. Accordingly, SWTransco estimates that compliance will entail about 760 in-house hours, or about \$31,684 at an average cost of \$41.69 per employee hour. This estimate does not include any time for outside

counsel, most costs accrued to date, or recurring costs (maintaining the additional information on the OASIS, training new employees, refresher courses, etc.)

Given the small size of SWTransco, AEPCO, and SSW, and especially the limited extent of AEPCO's and SSW's non-member sales, and the irrelevance of SWTransco's transmission operations for SSW's gas marketing activities, SWTransco naturally has serious doubts about whether its compliance with Order No. 2004 can be justified on a cost-benefit basis. Nonetheless, SWTransco is committed to continuing to maintain its safe harbor status to the extent it is practicable to do so.

Respectfully submitted,

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