

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. RT04-1-006  
ER04-48-006

ORDER ON COMPLIANCE FILING

(Issued January 24, 2005)

1. By order issued October 1, 2004 (October 1 Order),<sup>1</sup> the Commission granted SPP status as a regional transmission organization (RTO), subject to a further compliance filing. SPP submitted that filing on November 1, 2004 (Compliance Filing). As discussed below, we find that the Compliance Filing satisfies the October 1 Order and will accept it, effective October 27, 2004, as requested.
2. Our action here benefits customers by ensuring the non-discriminatory operation of the transmission grid, maximizing efficient operation of the grid, easing market entry, and reducing wholesale transaction costs.

**Background**

3. By order issued February 10, 2004 (February 10 Order),<sup>2</sup> the Commission conditionally granted SPP's application for recognition as an RTO. Pursuant to Order Nos. 2000 and 2000-A,<sup>3</sup> we directed SPP to make additional tariff, organizational

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<sup>1</sup> *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004).

<sup>2</sup> *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh'g*, 109 FERC ¶ 61,010 (2004).

<sup>3</sup> *Regional Transmission Organizations, Order No. 2000*, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 31,226-27 (1999), *order on reh'g, Order No. 2000-A*, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 & 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

and other changes prior to our granting SPP RTO status. These changes primarily related to SPP's scope and configuration,<sup>4</sup> independence and governance, operational authority, grandfathered agreements and bundled retail load, available transmission capability (ATC) calculations, market monitoring unit, and transmission planning and expansion responsibilities.

4. The Commission addressed SPP's compliance filing to the February 10 Order on July 2, 2004 (July 2 Order).<sup>5</sup> In the July 2 Order, we recognized that SPP had made significant progress toward satisfying the prerequisites for RTO status.<sup>6</sup> However, we directed SPP to make further filings in order to be fully compliant with the February 10 Order and achieve recognition as an RTO.

### **October 1 Order**

5. In the October 1 Order, the Commission addressed SPP's compliance filing to the July 2 Order. We granted SPP RTO status, subject to fulfillment of certain requirements. Relevant findings and directed revisions are noted below.

6. First, the Commission directed SPP to revise its Bylaws to define and distinguish large and small retail customers, for the purpose of designating such representatives on SPP's Membership Committee and Corporate Governance Committee.<sup>7</sup> We further stated that the definition of large and small retail customers should be consistent with our decision in *WestConnect*.<sup>8</sup>

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<sup>4</sup> In response to concerns regarding the adequacy of SPP's scope and configuration as an RTO, we directed SPP to file a seams agreement with the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). That agreement is addressed in Docket No. ER04-1096-000.

<sup>5</sup> *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004).

<sup>6</sup> July 2 Order at P 3.

<sup>7</sup> October 1 Order at P 19 and 22.

<sup>8</sup> See October 1 Order at P 19 (citing *Arizona Public Service Co.*, 101 FERC ¶ 61,033 (2002) (*Westconnect*)). We further noted that *WestConnect*'s tariff defines large retail customers as non-residential end-use customers with individual or aggregated loads of 1-MW or more, and small retail customers as residential customers and other customers with individual or aggregated loads of less than 1-MW. *WestConnect*, FERC Elec. Tariff, Orig. Vol. 1, Att. 1: Master Definitions List.

7. Second, we found that SPP's proposed Operational Authority Reference Document set forth SPP's clear and sufficient authority to exercise day-to-day control over the appropriate transmission facilities within its footprint, as required by the February 10 and July 2 Orders, but that it must be included as part of the Membership Agreement in order to be binding. Accordingly, we required SPP to revise its Membership Agreement to expressly include the Operational Authority Reference Document or incorporate it by reference. We further directed SPP to confirm by affidavit that no agreement referred to in the Operational Authority Reference Document will constrain SPP's ability to direct revisions to transmission maintenance plans or generation maintenance plans (where a generator maintenance plan affects SPP's ability to assure reliable operation of transmission facilities under its functional control).<sup>9</sup>

8. Third, we noted that the February 10 Order required transmission owners (TOs), on behalf of their entire load, including grandfathered wholesale and bundled retail loads, to take service under the non-rate terms and conditions in the SPP Open Access Transmission Tariff (OATT). We found that SPP met this requirement, subject to SPP removing from section 39, and any other relevant tariff provisions, any exceptions to the requirement that all TO load be made subject to the non-rate terms and conditions of the SPP OATT.

9. Fourth, the Commission recounted its directive (set forth in the July 2 Order) that SPP submit examples detailing how ATC is derived under its OATT with regard to Attachments C<sup>10</sup> and O,<sup>11</sup> and how relevant data is collected.<sup>12</sup> We found that SPP satisfied this requirement, subject to SPP clarifying in Attachment C when ATC is reduced by a "margin," detailing the nature of that margin, and explaining whether it is Capacity Benefit Margin (CBM) or Transmission Reliability Margin (TRM). We stated that such clarification should resolve protestors' concerns that Attachment C allows for set-asides beyond CBM or TRM.

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<sup>9</sup> October 1 Order at P 33.

<sup>10</sup> Attachment C sets forth SPP's Methodology to Assess Short-Term Available Transmission Capability.

<sup>11</sup> Attachment O sets forth SPP's Coordinated Planning Criteria and is used to assess ATC to sustain long-term and firm point-to-point transmission service.

<sup>12</sup> October 1 Order at P 58; July 2 Order at P 91.

10. Lastly, we reiterated concerns regarding the independence and possible conflicts of interest of SPP's chosen Independent Market Monitor (IMM), i.e., Boston Pacific Company, Inc. (Boston Pacific). We found that SPP's IMM Agreement with Boston Pacific sufficiently addressed one condition set forth in the July 2 Order, namely, that the IMM may not directly represent market participants within SPP's region in proceedings before state regulators or this Commission. We further, found, however, that the IMM Agreement did not prohibit the IMM from working for clients with SPP-related business interests or for clients that have business interests inextricably connected to SPP, as also required by the July 2 Order. At the same time, we found appropriate SPP's proposed approach of having the Board of Directors review engagements that could raise conflict of interest concerns (or result in a material appearance of conflict). Accordingly, we directed SPP to revise section 4.2 of the IMM Agreement to state the following:

Before the Boston Pacific Team accepts any engagement that involves clients with SPP-related business interests or clients with business interests in markets inextricably connected to SPP, it must inform the SPP Board of Directors of such potential engagement and obtain the Board's determination that such engagement would not present a conflict of interest or result in the material appearance of conflict before accepting such engagement.

We also directed SPP to delete section 4.3 (Non-Prohibited Engagements) and other language in the IMM Agreement, which is inconsistent with the required revision.<sup>13</sup>

### **Compliance Filing**

11. SPP submitted the Compliance Filing, its third in this proceeding, pursuant to the October 1 Order. SPP requests the effective date indicated on the proposed tariff sheets, October 27, 2004.

12. In the Compliance Filing, proposed section 5.1.1.1 of SPP's Bylaws defines large retail customer members as "non-residential end-use customers with individual or aggregated loads of 1-MW or more." Small retail customer members are there defined as "residential customers and other customers with individual or aggregated load of less than 1-MW."

13. Proposed revisions to the Membership Agreement specifically refer to and include as Appendix A the Operational Authority Reference Document. SPP also submits the affidavit of Mr. Carl A. Monroe, Senior Vice-President and Chief Operating Officer of

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<sup>13</sup> October 1 Order at P 85.

Southwest Power Pool, Inc., in which Mr. Monroe confirms that “no agreement referred to in the Operational Authority Reference Document will constrain SPP’s ability to direct revisions to transmission or generation maintenance plans, as described in and required by ordering paragraph 33 of the October 1 Order.”<sup>14</sup> Mr. Monroe also states that “the language in the Operational Authority Reference Document that describes SPP’s authority to direct such revisions ‘as required and as permitted by agreements’ is not intended, and will not operate, to limit SPP’s authority to ensure reliable operation of the transmission facilities under SPP’s functional control.”<sup>15</sup>

14. With regard to grandfathered agreements and bundled retail load, the Compliance Filing eliminates from section 39 the remaining exceptions to the requirement that all TO load be made subject to the non-rate terms and conditions of the SPP OATT.

15. With regard to ATC calculations, SPP submits proposed revisions to Attachment C of the SPP OATT, Methodology to Assess Short-Term Available Transmission Capability. In the revised text, SPP explains that, for constrained facilities within SPP, CBM is set at zero. SPP also states that, for constrained facilities within SPP, SPP does set aside capacity for TRM as necessary to ensure reliable short-term transmission operation during the loss of any generating unit within the SPP operating reserve sharing group. SPP further states that the capacity necessary to accommodate the greatest impact expected on each constrained facility is set aside as TRM. Moreover, for external constrained facilities monitored by SPP, SPP will use appropriate CBM and TRM values provided and justified by the owner of the external constrained facility. Capacity required for TRM is made available to transmission customers for non-firm transmission service.

16. Finally, with regard to Boston Pacific’s independence and potential conflicts of interest, SPP has revised section 4.2 of the IMM Agreement to read exactly as directed in the October 1 Order. Former section 4.3 (Non-Prohibited Engagements) has been deleted, and the remaining sections renumbered.

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<sup>14</sup> Monroe Affidavit at 2.

<sup>15</sup> *Id.*

### **Notice of the Filing and Responsive Pleadings**

17. Notice of the Compliance Filing was published in the *Federal Register*,<sup>16</sup> with interventions and protests due on or before November 22, 2004. Southwest Industrial Customer Coalition (Southwest Industrial) filed a timely motion to intervene and protest.

18. SPP amended its filing on November 4, 2004, and notice of the amendment was published in the *Federal Register*,<sup>17</sup> with interventions and protests due on or before December 16, 2004. None was filed.

19. On November 8, 2004, SPP further supplemented its filing with above-referenced affidavit of Mr. Monroe.<sup>18</sup>

20. In its protest, Southwest Industrial asserts that SPP's proposed amendments are intended to comply with the October 1 Order, but that the October 1 Order did not fully address Southwest Industrial's concerns. Specifically, Southwest Industrial argues that the Commission did not prohibit aggregation in determining whether a single customer's load is greater than or less than 1-MW. While Southwest Industrial supports the use of a 1-MW threshold to distinguish between large and small retail customer representatives on SPP's Members Committee, it objects to SPP's proposal to permit load aggregation for purposes of satisfying the 1-MW threshold. Southwest Industrial argues that small storefronts could combine their consumption to total 1-MW or more, and thereby qualify as a large retail customer, without necessarily reflecting the same customer interests in SPP as "true" large retail customers, such as oil refineries or chemical companies. Southwest Industrial is concerned that load aggregation could ultimately result in the large retail customer's interests being unrepresented during Member Committee deliberations.

### **Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), Southwest Industrial's timely, unopposed motion to intervene serves to make it a party to this proceeding.

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<sup>16</sup> 69 Fed. Reg. 67,343 (2004).

<sup>17</sup> 69 Fed. Reg. 74,517 (2004).

<sup>18</sup> Reference to SPP's Compliance Filing includes the November 4, 2004 amendment and November 8, 2004 affidavit.

**Discussion**

22. We find that SPP has fully satisfied the requirements of the October 1 Order, and we will accept the Compliance Filing for filing, effective October 27, 2004, as requested.

23. Southwest Industrial's protest concerning load aggregation is, essentially, a request for rehearing and beyond the scope of this proceeding. We note that Southwest Industrial has raised the same issue in a request for rehearing of the October 1 Order, and we will address that request in a separate order.

**The Commission orders:**

SPP's Compliance Filing is hereby accepted for filing, effective October 27, 2004, as discussed in the body of this order.

By the Commission. Commissioner Brownell concurring in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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Southwest Power Pool, Inc.

Docket Nos. RT04-1-006  
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(Issued January 24, 2005)

BROWNELL, Commissioner, concurring in part:

In our July 2 Order, we established three very clear prohibitions in order to assure the independence of the market monitor (IMM). We required that the contract with the IMM reflect that the IMM may not: (1) directly represent market participants within SPP's region in proceedings before state regulators or this Commission; (2) work for clients with SPP-related business interests; or (3) work for clients that have business interests in markets inextricably connected to SPP (such as Midwest ISO).

In our October 1 Order, the majority found that the IMM may engage in all the previously enumerated prohibited business activities as long as the IMM receives Board approval. I dissented because I believe Board approval is an insufficient safeguard to assure the IMM's independence. On this issue, I remain convinced that engaging in these types of business activities compromises the IMM's independence. However, I agree that SPP has complied with the Commission directive in the October 1 Order.

Consequently, I respectfully concur in part.

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Nora Mead Brownell  
Commissioner