

106 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. RT04-1-000
ER04-48-000

ORDER GRANTING RTO STATUS SUBJECT TO
FULFILLMENT OF REQUIREMENTS

(Issued February 10, 2004)

1. Southwest Power Pool, Inc.'s (SPP) proposal for recognition as a Regional Transmission Organization (RTO) is a significant step toward satisfying all of the conditions and requirements for qualification as an RTO pursuant to Order Nos. 2000 and 2000-A.¹ SPP has identified the next steps to add the necessary details to its proposal. As discussed below, we will grant SPP RTO status upon successful completion of these additional steps. This order furthers the Commission's goals of establishing efficient, reliable markets throughout the region, and preventing undue discrimination in the provision of electric transmission services. SPP's RTO proposal is the result of a broad collaborative process that would bring 11 transmission systems (of which five are non-jurisdictional), six municipal systems and eight generation and transmission cooperatives under independent, regional control.

2. In this order, we rule on numerous provisions, and further, are directing SPP to (1) implement its independent Board and modify its governance structure, (2) expand the coverage of SPP's tariff to assure that SPP is the sole transmission provider, (3) obtain

¹ 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, et al. v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint; (4) have an independent market monitor in place to monitor the competitiveness and efficiency of the market, (5) obtain clear and precise authority to independently and solely determine which projects to include in the regional transmission plan and to prioritize those projects, as discussed herein, and (6) have on file with the Commission a seams agreement with the Midwest Independent Operator, Inc. (Midwest ISO), prior to receiving RTO authorization. SPP must have on file its revised Bylaws and revised Membership Agreement, with changes as required in this order, pursuant to Section 205 of the Federal Power Act (FPA). SPP RTO status will be achieved once these actions are taken.² Upon completing these steps, SPP is directed to make a compliance filing demonstrating these outstanding issues were completed. SPP must also file its operating budget, for informational purposes, within ninety (90) days of the date that SPP obtains operational authority over transmission facilities within its footprint.

3. Additionally, once SPP has achieved RTO status, SPP must subsequently address the Commission's remaining requirements identified in this order. In this regard, SPP must fulfill its commitment to: (1) complete its proposed plan for congestion management and an energy imbalance market, (2) participate in the Joint and Common Market with Midwest ISO and PJM Interconnection, LLC (PJM), and (3) develop and file a transmission cost allocation plan.

4. By meeting these key requirements and the other conditions identified in the order, SPP can enhance the reliability of the regional transmission grid and also provide non-discriminatory transmission service. As an independent entity, SPP can also assure that the transmission planning process best addresses the reliability and economic needs of the region, and assures comparability of interconnection service. These are important elements of efficient market development and operations. With a seams agreement in place with Midwest ISO and with SPP's participation in the Joint and Common Market, the action initiated in this order supporting SPP's efforts to become an RTO will significantly benefit the public interest.

² Given our actions in this order, we will not convene an evidentiary hearing on SPP's proposal at this time, as requested by the Kansas Corporation Commission. We will consider further the need for hearing procedures at the time SPP makes further filings related to its RTO-formation efforts.

Background

A. Description of SPP

5. SPP is an Arkansas non-profit corporation, with its primary place of business in Little Rock, Arkansas. SPP currently has 50 members, serving more than 4 million customers in a 250,000 square mile area, covering all or part of the States of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas.³ SPP's membership includes 14 investor-owned utilities, six municipal systems, eight generation and transmission cooperatives, three State authorities, one Federal power marketing agency, two independent power producers, and 16 power marketers.⁴

6. SPP became a regional reliability council in 1968 and has administered a regional open-access transmission service tariff (OATT) for its member Transmission Owners (TOs) since 1998. Pursuant to its OATT, SPP provides firm and non-firm point-to-point transmission service and network transmission service.

³ Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) and Attachment C (SPP Regional Map).

⁴ Id. SPP existing members are: American Electric Power Company-Public Service Company of Oklahoma and Southwestern Electric Power Company; Aquila, Inc. - Missouri Public Service Company, St. Joseph Light & Power Company, and WestPlains Energy; Cleco Power LLC; Entergy Services, Inc.; Exelon Power Team; Kansas City Power & Light Company; Oklahoma Gas and Electric Services; Southwestern Public Service Company; The Empire District Electric Company; Westar Energy-Western Resources, Inc. and Kansas Gas & Electric Company; Arkansas Electric Cooperative Corporation; East Texas Electric Cooperative, Inc.; Kansas Electric Power Cooperative, Inc.; Midwest Energy, Inc.; Northeast Texas Electric Cooperative; Sunflower Electric Power Corporation; Tex-La Cooperative of Texas, Inc.; Western Farmers Electric Cooperative; City of Clarksdale, Mississippi; City of Lafayette, Louisiana; City Power & Light, Independence, Missouri; City Utilities, Springfield, Missouri; Public Service Commission of Yazoo City, Mississippi; The Board of Public Utilities, Kansas City, Kansas; Grand River Dam Authority; Louisiana Energy & Power Authority; Oklahoma Municipal Power Authority; Southwestern Power Administration; Calpine Energy Services, L.P.; InterGen Services, Inc.; Tenaska Power Services Company; Aquila Power - Aquila, Inc.; Cargill-Alliant, LLC; Cinergy Corporation; Constellation Power Source; Coral Power LLC; Duke Energy Trading & Marketing; Dynegy Marketing & Trade; Edison Mission Marketing & Trading, Inc.; El Paso Merchant Energy, L.P.; Mirant Americas Energy Marketing, L.P.; NRG Power Marketing, Inc.; TXU Energy Trading Company; and Williams Energy Marketing & Trading Company.

The Instant Proposal

7. In the October 15, 2003 filing, SPP seeks recognition as an RTO. SPP states that it has satisfied all of the conditions and requirements for qualification as an RTO, pursuant to Order Nos. 2000 and 2000-A, in addition to the guidance provided in the Commission's White Paper on Wholesale Power Market Platform.⁵

8. SPP states that its proposed organizational and operational structure will fully comply with all applicable regulatory requirements.⁶

9. SPP contends that the requested recognition and authorizations are just and reasonable and consistent with the public interest. Moreover, SPP claims that, because its proposal is the result of a broad collaborative process, it has confirmed and can show that its Members strongly desire RTO recognition by the Commission.⁷ SPP argues that by approving the RTO proposal, the Commission will bring an additional 11 transmission systems, including five non-jurisdictional systems, under independent regional control, but will also incorporate more than a dozen non-jurisdictional entities, including six municipal systems and eight generation and transmission cooperatives, under the SPP RTO structure.⁸

10. SPP further contends that Commission approval of its requests will not interrupt its ongoing efforts to develop a larger regional market with the Midwest ISO and PJM.⁹

11. SPP asks that, if the Commission determines that SPP does not satisfy all the RTO requirements but, instead, finds that SPP satisfies all Independent Transmission System Operator (ISO) requirements, the Commission recognize SPP as an ISO.¹⁰

⁵ Application at 2, referencing Order No. 2000 and White Paper on Wholesale Power Market Platform, Docket No. RM01-12-000, April 28, 2003 (White Paper).

⁶ Application at 2 and 22.

⁷ Id. at 7.

⁸ Id. at 7-8.

⁹ Id. at 8.

¹⁰ Id. at 2 and 66-67.

12. SPP states that its current proposal does not contemplate any Section 203 filing by Member TOs for the transfer of operational control, pursuant to the Commission's recent Guidance on RTO and ISO filing requirements.¹¹

13. SPP requests that the Commission issue an order by December 31, 2003. SPP also requests that, since the Commission action regarding this proposal will occur before November 2004 (the expected implementation date for SPP's real-time balancing market), the Commission grant limited waiver of 18 C.F.R. § 35.34(k)(4)(iii) to allow the establishment of a real-time balancing market after the effective date of the RTO.¹²

Notice of Filing, Interventions, Protests and Answers

14. Notice of Applicants' filing was published in the Federal Register, 68 Fed. Reg. 61,803 (2003), with comments, protests, and interventions due on or before November 5, 2003. Entities that filed motions to intervene are listed and defined in Attachment A to this order. In response to a joint request by the State Commissions of Arkansas, Kansas, Louisiana and Missouri for an extension of time to submit interventions and protests and a separate similar request by the Oklahoma Corporation Commission, the Commission extended the comment period to November 26, 2003. On December 12, 2003, Dominion Virginia Power filed a late intervention.

15. On December 8, 2003, Applicants submitted an answer to the interventions, comments, and protests. On December 12, 2003, Midwest Energy filed an answer to comments filed by certain intervenors. On December 22, 2003, TDU Intervenors filed an answer to SPP's answer.

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹³ given its interest in

¹¹ Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements Under the Federal Power Act, 104 FERC ¶ 61,248 (2003).

¹² Application at 67.

¹³ 18 C.F.R. § 385.214(d) (2003).

this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant Dominion Virginia Power's untimely, unopposed motion to intervene.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept SPP's, Midwest Energy's and TDU Intervenors' answers because they have provided information that assisted us in our decision-making process.

B. RTO Characteristics

1. Independence

a. Applicants

i. SPP Governance Proposal

18. SPP seeks approval of its governance proposal, which is contained in its revised Bylaws and Membership Agreement. SPP currently has a hybrid Board of Directors, consisting of seven independent and non-stakeholder Directors (with one current vacancy), seven Directors representing TOs, and seven Directors representing transmission users (TUs). SPP proposes to revise this structure by establishing a seven member independent and non-stakeholder Board. The proposed Board will consist of the independent and non-stakeholder Board members currently serving on the SPP hybrid Board.¹⁴ Of the seven Directors, one Director will be the President¹⁵ of SPP and one will serve as the Chairman of the Board.

¹⁴ SPP states that its current Independent Board members were uniquely qualified to provide expert, objective leadership over the future affairs of SPP and were initially chosen after a rigorous search (conducted by an independent search firm) based upon their background, experience, and professional credentials. See Application at 27. SPP also maintains that it did not consider new Independent Board members under this new structure because its current independent Board Members directors were considered and retained, in anticipation of SPP potentially becoming a wholly independent Board. On October 30, 2003, SPP members elected three new independent Board members. See Exhibit No. SPP-22 (Testimony of David J. Christiano).

¹⁵ The President shall be excluded from voting on business related to the President or the incumbent of that office. See Exhibit No. SPP-3, Section 4.2.1 of the revised Bylaws.

19. Section 4.2.3 of SPP's Bylaws require that Board members not be a director, officer, or employee of, and shall have no direct business relationship, financial interest in, or other affiliation with, a Member or customers of services provided by SPP. SPP states that at the point that SPP develops and refines the market functions (such as balancing provisions) and other required functions that currently are not in place in the SPP region, the proposed Board of Directors favored by the Commission would be installed.¹⁶

ii. Board Selection Process

20. Section 4.3 of the revised Bylaws provides:

Except for the President, a director shall be elected at the meeting of Members to a three-year term commencing upon election and continuing until his/her duly elected successor takes office.¹⁷ Initial staggering of terms will be decided by lottery with two directors' terms to expire in the first year, two in the second year, and two in the third year. The election process shall be as follows:

- a. At least three months prior to the meeting of Members when election of new directors is required, the Corporate Governance Committee shall commence the process to nominate persons equal in number to the directors to be elected;
- b. At least one month prior to the meeting of Members, the Corporate Governance Committee shall notify the President in writing of the persons it nominates for election as directors, specifying the nominee for any vacancy to be filled. The President shall prepare the ballot accordingly, leaving space for additional names, and shall deliver same to Members at least two weeks prior to the meeting of Members;
- c. For purposes of electing or removing directors only, each group of Members with Affiliate Relationships shall be considered a single Member;

¹⁶ Application at 15-16.

¹⁷ Section 3.14 of the Bylaws provides: "The Chairman of the Board of Directors shall convene and preside over meetings of Members for the purpose of electing directors to positions becoming vacant in the ensuing year, and any other necessary business. The Membership shall meet at least once per calendar year." See Exhibit No. SPP-3 (SPP Bylaws).

- d. At the meeting of Members, any additional nominee or nominees may be added to the ballot if a motion is made and seconded by Members; and
- e. At the meeting of Members, the required number of directors shall be elected by written ballot. Each sector of the membership votes separately with the result for that sector being a percent of approving votes to the total number of Members voting. Each Member shall be entitled to cast a number of votes equal to the number of directors to be elected. A Member may not cumulate votes. The candidates receiving the highest percent of the average of approving vote ratios within each Membership sector will fill vacancies.

21. Section 4.6.1 of the revised Bylaws requires that the Board of Directors' meeting include the Members Committee and a representative from the Regional State Committee (RSC), for all meetings except when in executive session.¹⁸ In addition, Section 5.1.5 requires that the Members Committee meet only with the Board of Directors.

22. Section 4.6.3 of the revised Bylaws provides that five of the directors shall constitute a quorum of the Board, provided, that a lesser number may adjourn the meeting to a later time. Decisions of the Board will be by simple majority vote of the directors present and voting. There will be no votes by proxy and voting will be by secret ballot. In addition, Section 4.1 of the revised Bylaws requires the Board to solicit and consider a straw vote from the Members Committee as an indication of the level of consensus among Members in advance of taking any actions other than those occurring in executive session.

iii. SPP Responsibilities

23. Section 2.1.1 (Rights, Powers and Obligations of SPP) of the revised Membership Agreement provides:

- a. SPP shall schedule transactions and administer transmission service over Tariff Facilities as necessary to provide service in accordance with the SPP OATT.
- b. SPP shall function in accordance with Good Utility Practice and shall conform to applicable reliability criteria, policies, standards, rules regulations, guidelines and other requirements of SPP and North American Electric Reliability Council

¹⁸ The executive sessions are open only to directors and to parties invited by the Chair and are held as necessary upon agreement of the Board of Directors to safeguard confidentiality of sensitive information regarding employee, financial, or legal matters. See Exhibit No. SPP-3, Section 4.6.5 of the revised Bylaws.

(NERC), Transmission Owners' specific reliability requirements and operating guidelines (to the extent these are not inconsistent with other requirements specified in this paragraph), and all applicable requirements of Federal and State regulatory authorities.

- c. SPP shall maintain a publicly available registry of all facilities that are not classified as critical energy infrastructure information that constitute the Electric Transmission System.
- d. SPP shall review and approve, as appropriate, requests for service, schedule transmission transactions, and determine available transfer capability under the OATT, provided that SPP shall coordinate with the Transmission Owner when processing requests for service involving its Tariff Facilities.
- e. SPP shall be responsible for coordinating with neighboring regional organizations and non-member TOs or providers as appropriate.
- f. SPP shall not exercise its administration of transmission service over the Tariff Facilities in such a way as to interfere with contracts between Transmission Owner and any Transmission Customer that are in effect as of the Effective Date of this Agreement except as permitted by the OATT.
- g. SPP shall be responsible for documenting all transmission service requests, the disposition of such requests, and any supporting data required to support the decision with respect to such requests. SPP shall negotiate as appropriate to develop reciprocal service, equitable tariff application, compensation principles, and any related arrangements.
- h. SPP shall propose and file with [the Commission] pursuant to Section 205 of the Federal Power Act modifications to the OATT, including rate design, and make any other necessary filings subject to approval by the Board of Directors.
- i. SPP shall develop penalties and incentives, subject to [Commission] filings where appropriate.
- j. SPP shall direct Transmission Owner pursuant to the provisions of Section 3.3 to construct transmission facilities in accordance with coordinated planning criteria, or necessary under the OATT.

- k. SPP shall direct the operations of the Tariff Facilities in order to carry out its responsibilities as a Transmission Provider and Reliability Coordinator; provided, however, nothing in this [Membership] Agreement or the OATT shall be construed to require change in the physical control of any Tariff Facilities using a Party's existing facilities or equipment.
- l. SPP shall take any actions necessary for it to carry out its duties and responsibilities, subject to receiving any necessary regulatory approvals and any necessary approvals from the Board of Directors.
- m. SPP shall act as the Reliability Coordinator, will approve all planned maintenance of its transmission system and coordinate the maintenance of generating units as appropriate to the extent such generation maintenance directly affects the capacity or reliability of its transmission system.

iv. Members Committee

24. SPP proposes a new Members Committee which will consist of 14 stakeholder members: seven representatives of transmission-owning members (at least two of which must be representatives of non-investor owned utilities) and seven representatives of transmission-using members. The TU members will consist of two municipal members (including municipal joint action agencies), two cooperative members, and three marketers or independent power producers. The initial Members Committee will be comprised of the 14 stakeholder Board members from SPP's current Board of Directors.

25. Section 5.1 of SPP's revised Bylaws provides that the Members Committee work with the Board of Directors to manage and direct the general business of SPP. In addition, the Members Committee will: (a) provide individual and collective input to the Board of Directors, including but not limited to a straw vote from the Members Committee on all actions pending before the Board; and (b) serve on committees reporting to the Board of Directors as appointed by the Board.

26. The revised Bylaws also provide for several committees that will report directly to the Board. These committees are: the Markets and Operations Policy Committee; the Compliance Committee; the Finance Committee; the Human Resources Committee; the Strategic Planning Committee; and the Corporate Governance Committee.¹⁹ The

¹⁹ The Corporate Governance Committee will be responsible for nominations of Directors, and the overall governance structure of SPP. This includes performing an annual review of the committee and working group structures and scopes to assure that the organization is operating as efficiently as possible. The Corporate Governance Committee will consist of eight members (the President of SPP, who will serve as the Chair; the Chairman of the Board of Directors; three TO representatives and three TU

Markets and Operations Policy Committee will be represented by each SPP Member. The Compliance Committee shall be comprised of three Board of Directors members. All other committees will be comprised of Board of Directors members and representatives from the Members Committee.

b. Intervenor's Comments

27. OG&E supports the proposed Members Committee. OG&E states that the existence of this committee will not detract from the Board's independence, since the Members Committee will serve in an advisory role to the independent Board and will provide a vehicle by which the Board will have access to the specific industry and system knowledge of the Members Committee.²⁰

28. East Texas Cooperatives and Energetix, however, express concern regarding the impact the proposed Members Committee will have on the independence of the Board of Directors. East Texas Cooperatives contends that the independence of the proposed Board will be seriously compromised by the Members Committee, since the proposed Board of Directors will be dependent upon the Members Committee and will operate in a manner substantially similar to the present Board.²¹ ELCON claims that SPP's proposed stakeholder process does not resemble the model advanced by the Commission's Notice of Proposed Rulemaking on Remediating Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design (SMD NOPR) or in approved RTOs.²² ELCON argues that SPP's proposed Bylaws do not provide end-use customer representation on the Members Committee.²³ InterGen argues that although most of the nine proposed committees will have representation from the various stakeholders, the TOs will outweigh all other sectors.

representatives).

²⁰ OG&E at 4.

²¹ East Texas Cooperatives at 7; Energetix at 6.

²² ELCON notes that the Standard Market Design Notice of Proposed Rulemaking proposes a six-sector stakeholder model roughly split between supply-oriented and demand-oriented stakeholders. See SMD NOPR, 67 Fed. Reg. 55,452 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 at P 560-561 (2002).

²³ ELCON at 6-7.

29. Kansas Commission states that SPP's proposal creates a situation in which only select stakeholder blocks would have the ability to provide advice to the RTO governing structure. This, Kansas Commission argues, might substantially influence future development and operational decisions. Therefore, Kansas Commission requests that, at a minimum, the Commission should require that the SPP governance proposal be modified to reflect a more balanced advisory committee constituency.²⁴ Kansas Commission questions whether SPP's proposed governance structure is truly independent since it appears to allot an excessive degree of decision-making authority to the planned RSC.²⁵

30. Oklahoma Commission challenges SPP's independence and argues that as a member of the Board, the SPP President is not independent of market participants.²⁶ In fact, Oklahoma Commission contends that the proposal allows the market participants to set up the RTO in a manner that best suits their needs and then relinquish this purported RTO to an "independent" Board, hand picked by the market participants.

31. Oklahoma Renewable questions whether the public interest in the development of such renewable resources can be served by an RTO committee structure that is controlled by private interests.²⁷

32. East Texas Cooperatives questions why the Board must vote by secret ballot, contending that a secret ballot is inconsistent with basic notions of independence, corporate accountability, and transparency. East Texas Cooperatives requests that the Commission direct SPP to revise the proposed Bylaws to make clear that each Director's vote will be made open and public.²⁸

33. TDU Intervenors²⁹ state that they are concerned that moving to an independent non-stakeholder Board may come at the cost of eliminating mechanisms to ensure board accountability to stakeholders (e.g., runaway costs incurred by other RTOs and ISOs with

²⁴ Kansas Commission at 9.

²⁵ Id. at 1.

²⁶ Oklahoma Commission at 10.

²⁷ Oklahoma Renewable at 2-3.

²⁸ East Texas Cooperatives at 8.

²⁹ TDU Intervenors include Missouri Joint Municipal Electric Utility Commission, Oklahoma Municipal Power Agency, and West Texas Municipal Power Agency.

fully independent boards). TDU Intervenors contend that if stakeholders are excluded from the Board, then the Members Committee should be given voting rights with respect to a limited set of decisions to ensure that the Board will be accountable to stakeholders, at least on big dollar issues.³⁰

34. Southwestern Public Service asserts that SPP, acting through the Board, has taken existing corporate governance documents and bootstrapped them to give itself both independence and greater rights over its members' assets. Southwestern Public Service argues that SPP should be required to give equally expanded rights to members to protect their interests.³¹

c. SPP's Answer

35. SPP argues that the majority of the intervenors support SPP's proposed Board structure and acknowledge that it is in compliance with Order No. 2000.³² SPP argues that all stakeholder interests will be fairly represented on the Members Committee, with an equal split between TO and TU representatives.³³ Further, SPP maintains that the board structure it proposes is identical in all material respects to other board structures that the Commission has approved.³⁴

d. Commission's Response

36. The Commission recognizes the efforts made by SPP in the development of its proposal. However, we find that there are certain issues with SPP's proposal, as stated below, that must be resolved for SPP to meet the Commission's independence standard. Accordingly, we will require SPP to make the changes described below and file its revised Bylaws pursuant to FPA Section 205, as a prerequisite to obtaining RTO status from the Commission.

³⁰ TDU Intervenors at 22.

³¹ Southwestern Power Service at 19.

³² SPP's Answer at 1 and 4.

³³ Id. at 11.

³⁴ Id. at 10, citing Midwest ISO, 97 FERC ¶ 61,326 (2001) and PJM, 96 FERC ¶ 61,061 (2001), reh'g denied, 101 FERC ¶ 61,345 (2002).

37. First, with regard to SPP's transitioning to a new independent Board, we note that SPP proposes that the independent Board of Directors be in place on the first of the month, between 30 and 60 days after a final Commission order recognizing SPP as an RTO.³⁵ However, the procedure for effecting the transition to the independent board is unclear.³⁶ We also find that delaying implementation of its independent board until it develops and refines its market functions is not acceptable. Therefore, we will require that SPP install the independent Board as a prerequisite to obtaining RTO status from the Commission.

38. Second, we require that SPP provide for balanced stakeholder representation on the Members Committee. In Order No. 2000, the Commission determined that:

Where there are stakeholder committees that advise or share authority with a non-stakeholder board, it is important that there be balanced representation on the stakeholder committees so no one class dominates its recommendations or its decisions.³⁷

39. Under SPP's proposal, the Members Committee will be comprised of just two sectors, TOs and TUs. Of these sectors, up to five of the seven representatives in the TO sector can be investor-owned utilities. In contrast, the TU sector will include two representatives of municipal members (including municipal joint action agencies), two of cooperative members, and three of marketers or independent power producers.

40. In WestConnect,³⁸ the Commission required the applicants³⁹ to expand

³⁵ See Exhibit No. SPP-22 (Testimony of David J. Christiano) at 9 and Application at 27.

³⁶ For example, SPP's Application for RTO Status at 15, provides:

Following Commission approval of this application, SPP will develop and refine the market functions (such as balancing provisions) and other required functions that currently are not in place today in the SPP region. At that point, the Board structure favored by the Commission and proposed in this filing would be installed.

³⁷ Order No. 2000 at 31,074.

³⁸ See Arizona Public Service Company, et al., 101 FERC ¶ 61,033 at 61,113 (2002) (WestConnect).

WestConnect's stakeholder classes to ensure that all stakeholders are represented on the Stakeholder Advisory Committee.⁴⁰ The Commission determined that the expansion of the stakeholder classes would provide all interested parties with the ability to participate in the development of WestConnect. The Commission also ordered applicants to revise their governance proposal in order to preclude a voting advantage in the board selection process.⁴¹ The Commission required that two representatives from each of the stakeholder groups, including the participating TOs (PTOs), serve on the Board Selection Committee. The Commission stated that under WestConnect's proposal, PTOs would have a voting advantage because the proposal allows all PTOs to participate on the Board Selection Committee while only one representative from each of the seven remaining stakeholder groups could participate in the Board Selection Committee voting.

41. The Commission also directed applicants to develop a revised process for the selection of potential Board candidates to be elected based on a majority of the vote.⁴² The Commission determined that the proposals in GridFlorida and GridSouth that used a majority-of-stakeholders vote process, which was employed after the slate of Board candidates was selected by an independent search firm, was appropriate.⁴³ The

³⁹ WestConnect applicants include Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Tucson Electric Power Company; these companies are public utilities. Non-jurisdictional entities that participated included Salt River Project Agricultural Improvement and Power District, the Western Area Power Administration, and the Southwest Transmission Cooperative, Inc.

⁴⁰ We note that the Commission has accepted Midwest ISO's Members (Advisory) Committee structure which consists of fourteen (14) representatives from eight (8) different sectors. Of the eight (8) sectors, two representatives represent the TO sector. In addition, Midwest ISO's Board of Directors may revise or expand the stakeholder groups as circumstances and industry structures change. See Section 6.1 to Attachment F of Midwest ISO's Agreement of Transmission Facilities Owners To Organize the Midwest ISO.

⁴¹ WestConnect at 61,112.

⁴² Under WestConnect's proposal, the preemptory strikes would be divided up between the PTOs and the remaining stakeholders which would give 50 percent of the votes in the selection process to Applicants, who collectively represent only one of the eight stakeholder groups.

⁴³ The Commission cited GridFlorida LLC, 94 FERC ¶ 61,020 at 61,046 (2001); GridSouth, 94 FERC ¶ 61,273 at 61,988 (2001).

Commission stated that the use of a simple majority vote will ensure a collaborative decision-making process and eliminate the perception or the possibility that PTOs will have undue influence over the Board because of their disproportionate ability to choose its members.⁴⁴

42. Consistent with our determinations in WestConnect, we will require SPP to amend its governance structure for the Members Committee as a prerequisite to obtaining RTO status from the Commission. We believe that expanding the stakeholder classes will provide a better representation of market participants that have not been adequately represented in the past. Further, this revised structure should reflect a more balanced proportion of stakeholder representatives with no one sector having disproportionate control of the Members Committee.

43. Because the Corporate Governance Committee is responsible for nominating persons for election to the board, we require, as with the Members Committee, that the Corporate Governance Committee structure be revised to include representation of all stakeholders and a more equitable allocation of slots to the various sectors. Moreover, we will require SPP to codify and incorporate in its Bylaws, the process that will be used in determining how potential board nominees will be selected (e.g., acquiring the use of an independent search firm).⁴⁵

44. Third, we are concerned that the Board of Directors meetings must include the Members Committee and an RSC representative. In Order No. 2000, we reaffirmed the principle that an RTO needs to be independent in both reality and perception.⁴⁶ Sections 4.6.1 and 5.1.5 of the revised Bylaws create a perception of undue influence from the stakeholders over the Board since it appears that the Board cannot hold a meeting or make a decision without the presence of stakeholders. Such a requirement can be used as a veto action by the stakeholders to prevent the Board from meeting by refusing to attend.

Therefore, the restrictive language in Sections 4.6.1 and 5.1.5 must be removed. In addition, with regard to the East Texas Cooperatives concern with secret ballot voting, we will not require public voting.

⁴⁴ See, e.g., Entergy Services Inc., 88 FERC ¶ 61,149 at 61,501 (1999) (stating that the Commission finds it acceptable to use a stakeholder committee for board selection, assuming the committee is fair and balanced and does not allow any one type of customer to veto particular candidates).

⁴⁵ Exhibit No. SPP-3 (SPP Bylaws), Section 4.6.1.

⁴⁶ Order No. 2000 at 31,061.

45. With regard to the Board seeking a straw vote from the Members Committee prior to voting on an issue, we will not require SPP to amend this provision. In Order No. 2000, the Commission stated that “[W]here there is a non-stakeholder board, we believe that it is important that this board not become isolated.” Moreover, the Commission noted, “[B]oth formal and informal mechanisms must exist to ensure that stakeholders can convey their concerns to the non-stakeholder board.” The mechanism proposed here informs the Board where the stakeholders stand on a particular issue, which is consistent with Order No. 2000.

46. To allow the Commission to monitor costs expected to be incurred by SPP, we will require SPP to file its operating budget within ninety (90) days of the date that SPP obtains operational authority over transmission facilities within its footprint, for informational purposes, consistent with our determination in Ameren Services.⁴⁷

2. Scope and Configuration

a. Applicants

47. SPP maintains that it satisfies the scope and configuration requirements of Order No. 2000. SPP encompasses all of Oklahoma and parts of the States of Kansas, Missouri, New Mexico, Arkansas, Louisiana and Texas.⁴⁸ SPP serves more than 4 million customers over 33,000 miles of transmission lines in a geographic area of approximately 250,000 square miles, with a load of 35,100 megawatts (MW) and total generation capacity of 46,100 MW.⁴⁹ SPP states that it is a coherent and contiguous region that is sufficiently large to satisfy the scope and configuration requirements of Order No. 2000. It submits that, in terms of generation capacity, control area peak load, area of service and miles of transmission facilities, SPP compares favorably with that of other regional organizations, exceeding that of WestConnect, Grid South and Grid Florida.⁵⁰

48. SPP further states that its proposal addresses each of the Commission’s concerns regarding reliability, non-discriminatory transmission, uninhibited trading, deterring the

⁴⁷ See Ameren Services Co., et al., 103 FERC ¶ 61,178 (2003) (Ameren Services), clarification granted, 104 FERC ¶ 61,097 (2003), reh’g denied, 105 FERC ¶ 61018 (2003).

⁴⁸ See Exhibit No. SPP-10 (Testimony of Carl A. Monroe).

⁴⁹ Application at 37.

⁵⁰ Application at 35-38 and Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 2, 11-12.

exercise of market power, recognition of existing regional boundaries (NERC regions), and encompassing existing transmission entities.⁵¹ Regarding reliability, SPP points out that it has been the NERC reliability coordinator for the SPP region since 1997,⁵² and submits that it is of sufficient size to be an effective reliability coordinator.⁵³ SPP contends that its effective performance of reliability functions has prepared it to perform these functions as an RTO.⁵⁴

49. SPP maintains that it is also of sufficient scope and configuration to perform its other grid responsibilities of determining total transmission capability (TTC), available transmission capacity (ATC) and managing congestion. SPP states that most of the power flows that could affect ATC are internal to SPP, and that transmission in other areas, such as the Midwest ISO and Mid-Continent Area Power Pool (MAPP), does not significantly affect the power flows within SPP. Similarly, SPP contends that it can effectively alleviate congestion management because the major constraints affecting SPP transactions are within the SPP region.⁵⁵

50. SPP provides testimony to establish that it is of sufficient size to promote market sales of electric energy.⁵⁶ SPP also submits data showing an upward trend of through-and-out activity on SPP.⁵⁷

51. SPP submits that it will be a viable transmission business. SPP states that, except for grandfathered agreements and some bundled retail load, all transmission within,

⁵¹ See Order No. 2000 at 31,083-85; see, also, Application at 36-38.

⁵² Application at 38.

⁵³ Id.; Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 12-13.

⁵⁴ Application at 8.

⁵⁵ Application at 39; Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 13.

⁵⁶ Exhibit No. SPP-32 (Testimony of Trudy Harper) at 2-3; SPP Exhibit No. 1 (Testimony of Nicholas A. Brown) at 14.

⁵⁷ SPP Exhibit No. 9 (SPP Revenue by Type).

through, and out of SPP must occur under the SPP tariff.⁵⁸ SPP expects that, as retail access evolves, significant retail load will come under the regional tariff, resulting in increased transmission revenues.⁵⁹

52. SPP states that it has been working and will continue to work with adjoining transmission providers to resolve seams issues. SPP further states that it has worked hard to coordinate business practices with neighboring transmission providers, most notably Midwest ISO, MAPP, and PJM. SPP notes that it has assumed regional operational responsibilities over Automated Operating Reserve Sharing, Regional Reliability Coordination, Regional Transmission Tariff provision and Regional Scheduling to facilitate the resolution of inter-utility seams issues.⁶⁰

53. SPP explains that it has developed a Pro Forma Seams Agreement designed to make inter-region trades more efficient.⁶¹ SPP also states that it has procedures and reciprocal agreements with the Electric Reliability Council of Texas, Inc. (ERCOT), Entergy, MAPP, Mid-America Interconnected Network, Inc. (MAIN), Associated Electric Cooperative Inc. (AECI) and others to minimize service distinctions and to facilitate more effective transactions. SPP contends that its work with adjoining transmission providers is similar to, and, in some instances, even exceeds the work of other entities that satisfy the RTO requirements.⁶² SPP commits to developing a seams agreement with the Midwest ISO.

b. Intervenor's Comments

54. While Intervenor's largely agree that the RTO would be of sufficient geographic scope if all current SPP members join, they are concerned that the RTO tariff may not encompass enough loads within the footprint to meet RTO requirements if the loads of the Grandfathered Agreements (GFAs) are exempt from SPP's OATT.⁶³ Kansas Commission, TDU Intervenor's and East Texas Cooperatives are concerned that

⁵⁸ Application at 40; SPP Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 14.

⁵⁹ Id.

⁶⁰ Application at 40; Exhibit No. SPP-10 (Testimony of Carl A. Monroe) at 10-17.

⁶¹ Exhibit No. SPP-7 (Pro Forma Seams Agreement).

⁶² Application at 40-41, citing PJM RTO Order, 96 FERC at 61,241-42 (2001); WestConnect at P 3.

⁶³ Springfield at 1; Empire at 1; and East Texas Cooperatives at 16-19.

exempting such agreements would result in an RTO that is inadequate in scope and configuration.⁶⁴ Intervenors state that there are as many as 417 grandfathered agreements in the SPP region, many of them with evergreen provisions.⁶⁵

55. ELCON and Golden Spread state that SPP is even smaller now, without Entergy, than it was the last time that the Commission rejected SPP's RTO application.⁶⁶ They argue that seams agreements are no substitute for adequate scope and configuration.⁶⁷ KEPCo notes that the proposed Membership Agreement allows members to leave the RTO on one year's notice, subject to Commission approval in the case of jurisdictional members. KEPCo is concerned that, depending on the way in which the Commission interprets this provision, it may be so easy for members to leave the RTO that there would soon be no effective organization.⁶⁸

56. Some intervenors are concerned that, should a significant number of SPP members not sign the revised Membership Agreement, there could be large gaps in SPP's scope and configuration.⁶⁹ Lafayette argues that the withdrawal provision in the revised Membership Agreement seriously undermines SPP's stability. Lafayette sees this as an

impediment to gaining new members in SPP, as prospective members may be reluctant to structure their transmission arrangements around an entity that may be short-lived. Lafayette also argues that broad withdrawal rights jeopardize independence, because the

⁶⁴ Kansas Commission at 18-19; TDU Intervenors at 25-28; East Texas Cooperatives at 17-19.

⁶⁵ TDU Intervenors note that the proposed tariff's definition of GFAs or Transactions includes "agreements providing long term firm transmission service executed prior to April 1, 1999 and Network Integration Transmission Service executed prior to February 1, 2000."

⁶⁶ ELCON at 11. Golden Spread notes that, without Entergy, SPP is approximately forty percent smaller than it was when the Commission last considered its application to become an RTO. Golden Spread at 8-9 (citing Southwest Power Pool, Inc., et al., 94 FERC ¶ 61,359 at 62,296).

⁶⁷ ELCON at 11. ELCON maintains that the Commission should insist on an RTO that includes both SPP and Midwest ISO. Id. at 11-15.

⁶⁸ KEPCo at 6-23.

⁶⁹ Entergetix at 3-5; East Texas Cooperatives at 16-22.

threat of withdrawal gives large TOs significant leverage over the RTO.⁷⁰

57. Southwestern Public Service is concerned about the provision in the revised Membership Agreement that would make existing members of SPP members of the SPP RTO without the prior approval of their state commissions. Southwestern Public Service argues that this may put such members in a tenuous financial position (since state commissions may not allow them to recover RTO costs in retail rates) and may subject them to contractual obligations that are contrary to State law. Southwestern Public Service, a current member, has given SPP notice of its intent to withdraw and is concerned that members of SPP will become members of the new RTO by default, rather than through their voluntary cooperation.⁷¹

58. Springfield is concerned that the nation may wind up with numerous RTOs that do not interconnect and that Springfield itself may wind up on the border of multiple, non-contiguous RTOs. Springfield urges the Commission to ensure that RTOs develop seamless markets through effective agreements and represent reasonably contiguous electrical and physical areas.

59. Kansas Commission argues that SPP is too small, in both area and volume of transmission, to fulfill the Commission's scope and configuration requirements. Kansas Commission is concerned that SPP's proposal would lead to balkanized transmission control and additional seams costs.⁷² Kansas Commission states that an SPP RTO would do nothing to relieve the reliability problems that Kansas Commission experiences because of its proximity to the Midwest ISO, and would only create a new seam obstructing the smooth flow of electric energy in and out of the State of Kansas.

c. SPP's Answer

60. SPP reiterates that it satisfies Order No. 2000 scope and configuration requirements. According to SPP, its service footprint, when compared to other Commission-approved RTOs, encompasses a sufficiently large contiguous region that amply satisfies the scope and configuration requirements.

61. In response to intervenors' concern that SPP did not include executed seams arrangements with neighboring RTOs, SPP explains that there has been tremendous

⁷⁰ Lafayette at 10-12 and n. 13.

⁷¹ Southwestern Public at 8-9.

⁷² Kansas Commission at Attachment B, p 3.

progress with neighboring transmission systems to address seams.⁷³ SPP argues that its newly-developed Pro Forma Seams Agreement illustrates its commitment and further advances seams solutions.⁷⁴

d. Commission's Response

62. We find that SPP, with its present membership, supplemented with the filed seams agreement with Midwest ISO and participation in the Joint and Common Market, will meet the requirements for scope. SPP serves a multi-state region of sufficient size to permit the SPP RTO to maintain reliability, effectively perform its required functions, and support efficient, non-discriminatory power markets.⁷⁵ We believe SPP's development of a seams agreement with Midwest ISO will ameliorate concerns about adequate scope.⁷⁶

63. We require SPP to have on file with the Commission a seams agreement with Midwest ISO and to participate in the Joint and Common Market with Midwest ISO and PJM.⁷⁷ With successful completion of these efforts, we expect intervenors' concerns will be adequately addressed. We further require SPP to provide a timeline to develop and file seams agreements with the other utilities with which its members interconnect, as part of its compliance filing discussed above.

64. Regarding intervenors' concerns about membership in SPP, the Commission, as requested by SPP, accepted SPP's current Membership Agreement for filing, without hearing or suspension, effective January 1, 2000. Thus, SPP's current Membership Agreement and the duties and obligations of its members are subject to our jurisdiction under Section 205. In the order accepting SPP's current Membership Agreement for filing, the Commission noted, among other things, that SPP would act at the direction of the SPP Board or pursuant to the provisions of this Membership Agreement, including

⁷³ SPP's Answer at 25.

⁷⁴ Id.

⁷⁵ See Order No. 2000 at 31,079; White Paper, Appendix A at 3.

⁷⁶ See Application at 3, 11; Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 17-18; SPP's Answer at 12-13. See, also, Southwest Power Pool, et al., 96 FERC at 61,248-49 and 61,252; 94 FERC at 62,291-92 and 62,295-96.

⁷⁷ See Application at 8, 34, and 57; Exhibit No. SPP-10 (Testimony of Carl A. Monroe) at 15.

collecting and distributing revenues.⁷⁸

65. Section 4.1.1 of both the currently-effective and proposed Membership Agreements provides that a TO may withdraw from SPP only upon providing twelve (12) months' notice pursuant to FPA Section 205 and "with regard to any withdrawal by a FERC public utility, the withdrawal shall not become effective until FERC has accepted the notice of withdrawal or otherwise allowed such withdrawal."⁷⁹ In addition, Section 8.12 of the currently-effective and proposed revised Membership Agreements binds SPP's members to the subject agreement "as it may be amended" provided that the member may challenge any amendments at the Commission and exercise any withdrawal rights if it is dissatisfied with the amendment.⁸⁰

66. We believe that the withdrawal requirements in the revised Membership Agreement are just and reasonable and in accordance with our guidance in this order. This agreement provides that no public utility may withdraw without an affirmative finding by this Commission and a finding that such withdrawal is just and reasonable. We strongly support continued membership in the SPP RTO, which we believe, with the conditions imposed herein, particularly the filing of a seams agreement with Midwest ISO and participation in the Joint and Common Market, will be a viable functioning RTO. As discussed above, we will require SPP to file its revised Membership Agreement, pursuant to Section 205.

67. The record indicates that both AEP and Southwestern Public Service have given notice of withdrawal from SPP, effective October 31, 2004.⁸¹ As discussed further, AEP, Southwestern Public Service or any other public utility member would have to provide notice to SPP and obtain Commission approval to withdraw from SPP. As part of any proposed withdrawal, the Commission will revisit the adequacy of SPP's scope and regional configuration.

68. We will address below intervenors' concern regarding whether SPP can meet RTO requirements if the loads of the GFAs are precluded from SPP's OATT. (See the

⁷⁸ Southwest Power Pool, Inc., 89 FERC ¶ 61,284 at 61,895 (1999).

⁷⁹ See Exhibit No. SPP-4 at 16-17.

⁸⁰ Id. at 26.

⁸¹ East Texas Cooperatives at 16-17; Golden Spread at 9.

Commission's Response to the Grandfathered Agreements section of RTO Functions below).

3. Operational Authority

a. Applicants

69. Applicants state that pursuant to Order No. 2000, and as detailed in its revised Membership Agreement, SPP will assume operational control of the transmission facilities within its footprint.⁸² SPP contends that pursuant to its revised Membership Agreement, Member TOs must relinquish functional control of their transmission facilities to SPP. SPP also notes that the revised Membership Agreement imposes a contractual obligation on SPP Members to abide by and carry out orders of the SPP security coordinator.⁸³ According to SPP, this control includes the authority to schedule transactions, to administer transmission services, and to generally direct the operation of the "Tariff Facilities," which are identified as the electric transmission system and the distribution facilities subject to SPP's tariff administration.⁸⁴ In addition, SPP states that it is the NERC-approved reliability coordinator of the electric transmission system for its region, with reliability monitoring and emergency responsibilities.⁸⁵

70. SPP contends that by performing the following functions, it will satisfy the operational control requirements mandated by Order No. 2000: SPP proposes to administer, among other things, transmission service, schedule transactions, calculate TTC and ATC, evaluate maintenance requests, as well as direct maintenance (thereby improving reliability) monitor market participants and TOs, monitor system loadings and voltages, and enforce action when necessary to preserve system reliability.⁸⁶ In addition,

SPP contends that it will have sole authority to evaluate and approve of all requests for transmission service, including requests for new interconnections, and will further have

⁸² Application at 41. See Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 18.

⁸³ Id.

⁸⁴ Application at 41. See Exhibit No. SPP-4, Sections 1.17, 2.1.1a, 2.1.1k, 3.0 and 3.6 (Revised SPP Membership Agreement) at 3.

⁸⁵ Id. at 42. See Exhibit No. SPP-4 (Revised SPP Membership Agreement), Section 2.1.2 at 5-6.

⁸⁶ Id.

the authority to direct the construction of transmission facilities.⁸⁷

71. Finally, SPP states that, in compliance with Order No. 2000, within two years of being recognized as an RTO, it will prepare and submit a report assessing the efficiency of its operational effectiveness.⁸⁸

b. Intervenor's Comments

72. Kansas Commission and TDU Intervenors argue that SPP proposes to operate “business as usual,” with very little change from the control it currently exercises as security coordinator.⁸⁹ While recognizing that having multiple control areas may be a necessary interim step for SPP, InterGen and Kansas Commission express concern that the maintenance of interchanges between multiple internal control areas on an indefinite basis will only serve to “impede the development of a regional wholesale market.”⁹⁰ However, some argue, if SPP is to perform the essential RTO functions of ensuring reliable and non-discriminatory service, its operational responsibility cannot be dispersed among some 18 control areas.⁹¹ TDU Intervenors argue that, the Commission has repeatedly expressed concerns regarding the “proposed sharing of functions between the ISO and the control area operators,” and has required stricter monitoring.⁹²

73. TDU Intervenors argue that the August 14, 2003 blackout vividly demonstrates that more centralized control is vital for an effective RTO.⁹³ According to TDU Intervenors, the November 2003 Interim Report on the August 14 Blackout confirms the need for the Commission to strongly re-evaluate what is necessary to ensure efficient operational authority and control over short-term reliability.⁹⁴ TDU Intervenors also argue that

⁸⁷ Id. at 43.

⁸⁸ Id.

⁸⁹ See Kansas Commission at 17. See, also, TDU Intervenors at 28.

⁹⁰ InterGen at 8; Kansas Commission at 17.

⁹¹ TDU Intervenors at 28.

⁹² Id. at 29, referencing SPP Application at 42 and Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,159-160 (1998). See, also, Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,145 at P 49-50 (2003) (Midwest ISO October 29 Order).

⁹³ Id. at 28.

⁹⁴ Id. at 30, citing The November 2003 Interim Report: Causes of the August 14th

having dispersed control areas responsibilities is not only bad for reliability, but that it also perpetuates undue discrimination – the very problem that RTOs were intended to eliminate. Further, TDU Intervenors argue, multiple control areas also undermine comparability and creates inefficiency, while artificially subdividing the market for regulation service and potentially spinning reserves.⁹⁵

74. Although it believes that the revised Membership Agreement is an improvement over what was presented in SPP's earlier filing, ELCON argues that SPP's proposal does not provide an updated list of the facilities that will be subject to SPP's operational control.⁹⁶ ELCON notes that the revised Membership Agreement provides for membership of entities that own or control tariff facilities, but which do not turn over functional control of these facilities to SPP.⁹⁷ ELCON contends it is impossible to assess the value of the change in SPP's role since they cannot determine which entities are TOs and which are not.⁹⁸

75. Kansas Commission enumerates benefits that the SPP region can achieve from the integration of the control areas.⁹⁹ According to Kansas Commission, by doing so, SPP can realize economic savings through the elimination of redundant operations in the 18 control areas and can achieve greater consistency regarding the operation of the control areas in wholesale energy markets, while increasing general efficiency and standardization of rules.

76. Kansas Commission and TDU Intervenors argue that the Commission, at the very

Blackout in the United States and Canada at 42, by the U.S.-Canada Power System Outage Task Force.

⁹⁵ TDU Intervenors state that the greater the number of and diversity among control areas, the more likely it is that more generators must operate on Automatic Generation Control to match load to generation in many small geographic areas than would not be necessary if control areas were consolidated. See TDU Intervenors at 31, n. 31.

⁹⁶ ELCON at 17.

⁹⁷ Id. Section 1.11 of the revised Membership Agreement provides that a non-transmission owner that owns or controls tariff facilities may change its status to a Transmission Owner by providing notice to SPP and execution of the Membership Agreement as a transmission owner.

⁹⁸ Id.

⁹⁹ Kansas Commission at 25-26.

least, require a commitment from SPP to integrate some of its multiple control areas or to require SPP to consolidate them to create a more efficient wholesale energy market.¹⁰⁰

c. SPP's Answer

77. In response to intervenors' comments arguing that SPP's proposal does not give SPP sufficient operational authority, SPP argues that it has satisfied Order No. 2000 in a number of ways.¹⁰¹ First, SPP contends that its revised Membership Agreement requires TO members to turn over control of their transmission facilities to SPP, including the authority to schedule transactions, to administer transmission services, and to otherwise direct the operation of transmission facilities within SPP.

78. Second, SPP contends consolidation of control areas, as some intervenors request, is "an unnecessary and inappropriate Day 1 requirement for RTO recognition." SPP disagrees with intervenors' contention that consolidating control areas would have prevented the August 14, 2003 blackout. In addition, SPP argues, consolidating control areas will result in significant increases in costs and significant delays associated with complex, legal, technical, liability, reliability and resource allocation issues. Instead, SPP argues good communication and clear lines of authority, as proposed in the NERC Functional Model and as SPP has proposed, are the essential keys in successfully implementing and maintaining separate control areas.¹⁰²

d. Commission's Response

79. For RTO status, SPP must have clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint, as required by Order No. 2000.¹⁰³ First, SPP must clearly identify the transmission facilities under its control.¹⁰⁴ Second, SPP must obtain the necessary authority to exercise day-to-

¹⁰⁰ Id. at 25 and TDU Intervenors at 29.

¹⁰¹ SPP's Answer at 15-17.

¹⁰² Id. at 16. The NERC Functional Model Functions and Relationships for Interconnected Systems Operation and Planning (February 28, 2001) identifies functions required for maintaining electric system reliability.

¹⁰³ See Order No. 2000 at 31,090-91. See, also, PJM Interconnection, L.L.C., et al., 96 FERC ¶ 61,061 at 61,232-33. We note that, as the Reliability Coordinator for its region, SPP has overriding authority in matters of coordination to ensure reliability throughout the region.

¹⁰⁴ Order No. 2000 at 31,090.

day operational control over these facilities under normal operating conditions and system emergencies to maintain system reliability. The application lacks sufficient detail to determine how the authority provided to SPP, pursuant to the Membership Agreement, will be exercised. We consider it essential that RTOs have hands-on involvement in the day-to-day operations. Thus, we direct SPP to provide a report to the Commission, as part of its compliance filing, on such authority and facilities that it will control as a prerequisite to obtaining RTO status from the Commission. The report should include a detailed description of the then-current and proposed allocation of responsibilities between SPP and the control areas and the status of the capabilities of each entity to perform its proposed responsibilities, consistent with the above discussion.

80. To aid SPP in compliance with this requirement, we direct SPP to adopt the recent NERC classification of service functions.¹⁰⁵ The categories are: Reliability Authority, Balancing Authority, Interchange Authority, Transmission Service Provider, Transmission Owner, Transmission Operator, Market Operator, and Planning Authority. In its report, SPP should state clearly the current responsibilities under each of these categories and the proposed changes in those responsibilities. SPP may also be guided by the Commission's discussion in regard to, and requirements imposed on, Midwest ISO,¹⁰⁶ as well as the ongoing proceeding in Docket No. AD02-7-000.

81. While we share many of the concerns intervenors identified, we will not, at this time, require SPP to have a single control area. We will, however, require SPP to study the feasibility of reducing its control areas and provide the Commission, within one year of the date of this order, the outcome of its study.

¹⁰⁵ See *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,145 (2003).

¹⁰⁶ See *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,196 (2003), reh'g denied, 103 FERC ¶ 61,210 (2003).

4. Short-Term Reliability

a. Applicants

82. SPP maintains that it satisfies all four of the reliability-related requirements under Order No. 2000 associated with the short-term reliability characteristic. First, SPP states that Section 2.1.1(d) of its revised Membership Agreement provides SPP with exclusive authority for reviewing and approving requests for service, scheduling transmission transactions, and determining available capacity.

83. Second, as the NERC reliability coordinator for its region, SPP states that it may order redispatch of generation if necessary for the reliable operation of the transmission system.

84. Third, under Section 2.1.3(b) of SPP's revised Membership Agreement, SPP has the authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that maintenance outages can be accommodated within established reliability standards. Moreover, the revised Membership Agreement provides that if a transmission maintenance outage can compromise the integrity or reliability of the transmission system, SPP has the right to require modifications or rescheduling of the planned maintenance. Otherwise, all planned maintenance of transmission facilities must be coordinated with SPP.

85. Fourth, SPP claims that as an RTO, it will continue as the regional reliability coordinator for the region. Therefore, SPP maintains that the requirement under Order No. 2000 that the regional organization report to the Commission if externally established reliability standards interfere with the organization's reliability obligations is inapplicable.

b. Intervenor's Comments

86. ELCON supports this aspect of SPP's proposal. ELCON states that this proposal goes a step further than SPP's current Membership Agreement does in that SPP approval is now required for all planned transmission maintenance, whereas before only coordination was necessary. With respect to generation maintenance, ELCON claims that it has in the past argued that it is inappropriate for RTOs to assert absolute control over the planned maintenance outages of generation (including qualifying facilities) or to mandate the redispatch of such facilities absent contractual arrangements to do otherwise. However, since the proposal has not changed SPP's limited role with respect to generation maintenance, ELCON finds this proposal appropriate.¹⁰⁷

¹⁰⁷ ELCON at 18.

87. NM Attorney General argues that SPP should not be both an RTO and a reliability organization. NM Attorney General claims that a reliability organization should be separate from a commercial interest organization.¹⁰⁸

c. SPP's Answer

88. SPP opposes the NM Attorney General's suggestion that SPP be relieved of its regional reliability function when it is recognized as an RTO. SPP argues that the fact that some other regions have successfully implemented operational separation between those that establish and monitor reliability and those that implement reliability standards does not mean that the need for functional separation is warranted within SPP.¹⁰⁹

d. Commission's Response

89. Order No. 2000 requires that an RTO must have exclusive authority for: (1) receiving, confirming, and implementing all interchange schedules; (2) ordering redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities; (3) when the RTO operates transmission facilities owned by other entities, approving and disapproving all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards; and (4) if reliability standards are established by another entity (e.g., a regional reliability council), reporting to the Commission its ability to provide reliable, non-discriminatory and efficiently-priced transmission service.¹¹⁰

90. We agree that SPP meets Order No. 2000 requirements for Short-Term Reliability. Our review of SPP's revised Bylaws, revised Membership Agreement, and OATT confirm that SPP will have exclusive authority for maintaining the short-term reliability of the grid that it operates.

91. With regard to NM Attorney General's concern regarding SPP serving as both the RTO and reliability organization, we will take this matter into consideration; however, we will not require a separation at this time.

¹⁰⁸ NM Attorney General at 2.

¹⁰⁹ SPP's Answer at 15.

¹¹⁰ See Order No. 2000 at 31,092.

C. RTO Functions**Tariff Administration and Design**

92. SPP states that it proposes to continue to administer its own tariff, to exercise sole authority to accept or deny transmission requests, to determine TTC and ATC and to coordinate procedures for customers seeking generation interconnections. SPP also asserts that there will be no pancaking of base transmission charges.

Section 205 Filing Rights**a. Applicants**

93. Section 4.1(n) of the SPP's revised Bylaws provides that the duties of the Board of Directors include authorizing filings with regulatory bodies.

94. Section 2.2.1 of SPP's revised Membership Agreement states that SPP:

.... on behalf of its Members may propose to FERC such transmission pricing for transmission service as is necessary to fulfill its obligations under this agreement, and may propose to FERC such changes in prices, pricing methods, terms, and conditions as are necessary to continue to fulfill such obligations. The Board of Directors must approve such filings.... Notwithstanding the foregoing, Transmission Owner possesses the right to revise certain rates as provided in Section 3.10 of this Agreement.

95. Section 3.10 of SPP's revised Membership Agreement states:

Transmission Owner shall possess the unilateral right to file with FERC pursuant to Section 205 of the Federal Power Act modifications to change the rates or rate structure for transmission service over its Tariff Facilities and to submit proposals or filings governing new construction with FERC; provided, however, Transmission Owner may not submit a proposal which results in a Transmission Customer paying two or more transmission charges for transmission for one transaction under the OATT (excluding Distribution Facilities for which an additional charge may be imposed, and Grandfathered Agreements as defined in the OATT). Transmission Owner shall notify SPP in advance of its intention to submit a filing to FERC and provide SPP with a copy of the filing. No approval from SPP is required for such filings.

b. Intervenor's Comments

96. TDU Intervenors argue that allowing the TOs to exercise such filing rights undermines SPP's independence and violates the Commission's requirement that only RTOs, not market participants TOs, may make incentive rate proposals. TDU Intervenors maintain that, although the TOs may control what they charge SPP for SPP's use of the TOs' facilities, only SPP may design and file the rates that customers will pay under the SPP OATT, including any innovative rate proposals.

97. TDU Intervenors also maintain that only SPP, as the transmission provider under the RTO tariff, should be permitted to exercise filing rights with respect to the rates, terms and conditions of that tariff, and to file any innovative rate proposals. TDU Intervenors further argue that the TOs' filing rights must be limited to their cost-based revenue requirements for their charges to the RTO for its use (or quasi-lease) of the TOs' facilities.¹¹¹

c. Commission's Response

98. Regarding the TDU Intervenors concerns, the Commission will not limit the TOs' Section 205 filing rights.¹¹² Our reading of the revised Membership Agreement is that SPP may make any Section 205 filing it deems appropriate while the TOs have specific Section 205 filing rights.¹¹³ While this proposal and this decision may produce some redundancy between filing rights of TOs and SPP, we prefer such redundancy over limitations on SPP's filing rights.

Grandfathered Agreements

a. Applicants

99. SPP proposes to maintain 417 GFAs and states that this is essential to maintain membership support for the RTO application. Among other categories, SPP's GFAs include: (1) agreements providing long-term firm transmission service executed prior to April 1, 1999 and Network Integration Transmission Service executed prior to February 1, 2000 and (2) bundled wholesale contracts (that reserve transmission as a part of the

¹¹¹ TDU Intervenors at 15-21.

¹¹² Atlantic City Elec. Co. v. FERC, 295 F.3d 1 (D.C. Cir. 2002) (Atlantic City I) and Atlantic City Elec. Co. v. FERC, 329 F.3d 856 (D.C. Cir. 2003) (Atlantic City II).

¹¹³ Revised Membership Agreement, Section 2.2.1.

contract).¹¹⁴ SPP asserts that this issue, among other issues, is considered to be a “Day Two” compliance matter and that Order No. 2000 specifically allows time beyond the initial start up to deal with these issues. SPP states that its Regional Tariff Working Group (RTWG) is considering, among other things, subjecting all native and grandfathered load to SPP’s Schedule 1 (Scheduling and Tariff Administration) fee.¹¹⁵

100. SPP notes that in the case of the Midwest ISO, the Commission did not require that all GFAs be placed under the Midwest ISO OATT. Moreover, it did not require that all existing transmission contracts be converted to WestConnect transmission service.¹¹⁶

b. Intervenor’s Comments

101. InterGen observes that SPP did not assess the impact of the proposed GFAs.¹¹⁷ The Kansas Commission estimates that under SPP’s proposal as little as 15 percent of the load in the SPP region may bear 100 percent of the congestion costs in the event that GFAs are exempt from market participation.¹¹⁸ The Electric Power Supply Association (EPSA) states that SPP risks going forward with a market structure that would eventually be undermined by the lack of transmission available to potential customers who are not parties to existing agreements and a system of pancaked rates.¹¹⁹ TDU Intervenor’s argue that only genuine pre-Order No. 888 transmission agreements and wholesale bundled service arrangements should be grandfathered and that Sections 37 and 38 of the tariff¹²⁰

¹¹⁴ SPP-33 (Tariff Revisions, First Revised Sheet No. 11).

¹¹⁵ Application at 45 and 46; see SPP-28 (Testimony of Ricky Bittle) at 7 and 8 and SPP-33 (Testimony of Bruce Rew).

¹¹⁶ Application at 46, citing Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001) (Midwest ISO Order) and WestConnect, 101 FERC ¶61,033 at P 107 (2002).

¹¹⁷ InterGen at 10.

¹¹⁸ Kansas Commission at 18, 19 and 45. Kansas Commission provides a rough estimate that loads under GFAs will comprise as much as 85 percent of all load within the proposed SPP region.

¹¹⁹ EPSA at 5-8.

¹²⁰ Sections 37 and 38 of the existing OATT pertain to treatment of retail and wholesale customers during and after the transition period. Because in this case there is no transition period, TDU Intervenor’s state, contracts will continue to term in accordance with the agreement unless the parties agree otherwise.

should be modified or deleted to ensure that the TOs begin taking SPP service for their retail loads as soon as SPP becomes an RTO.¹²¹ Kansas BPU urges the Commission to require SPP to adopt a transition process similar to that used in the Midwest ISO. Kansas BPU also identifies contracts that it believes were mistakenly omitted from the list of GFAs.¹²² ELCON believes that it is better to work toward a model that eliminates the need to grandfather existing long-term contracts by providing a market mechanism for converting contract rights to firm transmission rights.¹²³

102. Oklahoma Commission submits that substantial transmission is provided under grandfathered contracts, which limits ATC offered under the SPP OATT.¹²⁴ Texas Commission references its previous concerns regarding the SPP's filing in the SPP-Energy partnership, namely, that the cost of SPP's operations would increase as it assumed additional duties required by Order No. 2000 and that excluding significant levels of transmission service from paying the administrative fee did not make sense in the context of these expected increases in costs.¹²⁵

103. In contrast, the Louisiana, Arkansas and Missouri Commissions oppose making any aspect of bundled retail load subject to SPP's OATT.¹²⁶

104. In its answer to comments filed by some intervenors, Midwest Energy opposes contract abrogation to allow for all transmission service to be provided under the RTO's tariff, as some intervenors have requested.¹²⁷ Midwest Energy contends that honoring these grandfathered contracts is essential, since any contract abrogation will affect its long-term planning and its ability to provide firm reliable service without increased

¹²¹ TDU Intervenor at 34-37, citing Midwest Independent Transmission System Operator, 97 FERC at 61,170 (2001); order on remand, 102 FERC ¶ 61,192 at P 24 (2003); Citing, also, GridSouth Transco, LLC, 94 FERC ¶ 61,273 at 61,999 (2001).

¹²² Kansas BPU at 5 and 7.

¹²³ ELCON at 20.

¹²⁴ Oklahoma Commission at 24 (footnote omitted).

¹²⁵ Texas Commission at 6-7. Texas also indicated its expectation that the Board, with input from the RSC, could address these issues over time.

¹²⁶ Louisiana Commission at 17 and Arkansas and Missouri Commissions at 8-9.

¹²⁷ Midwest Energy's Answer at 2, citing, e.g., comments of EPSA at 7-8 and InterGen at 10-12.

costs.¹²⁸ Further, Midwest Energy argues, no party has demonstrated why, under the Mobile-Sierra public interest standards, these contracts should be abrogated or modified.¹²⁹

c. SPP's Answer

105. SPP states that at least for now, honoring the GFAs identified in SPP's filing is a matter of critical importance to many of SPP's members and that transition to RTO operations would, at a minimum, be enormously more complicated if SPP were forced to convert these agreements as a pre-condition to RTO operations. SPP states that one option under consideration would subject all grandfathered load to SPP's Schedule 1 fee. However, SPP states that its examination of this issue remains a "work-in-progress" that should not be rushed.¹³⁰

d. Commission's Response

106. In Order No. 2000, we stated that the treatment of existing transmission contracts would be reviewed on an RTO-by-RTO basis. The Commission emphasized that the goal in reviewing existing transmission contracts and contract transition plans is to balance respect for existing contractual arrangements against the need for uniform transmission pricing and the elimination of pancaked rates.¹³¹ In Order No. 2000-A, the Commission noted that the conversion of existing contracts was a crucial issue that had arisen in every RTO filing tendered to date. While continuing to allow each RTO the flexibility to design a transition plan, the Commission reaffirmed the need for such a plan.¹³²

107. We recognize that, for RTO tariff administration, treatment of grandfathered wholesale agreements and bundled retail load is a difficult issue with wide-ranging implications, including allocation of various RTO costs and availability of transmission capacity. This impacts an RTO's ability to administer its tariff and operate markets.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ SPP's Answer at 24-25.

¹³¹ Order No. 2000 at 31,205.

¹³² Order No. 2000-A at 31,391-92.

108. We encourage transmission customers with grandfathered contracts to convert to direct service under the SPP OATT. However, we are not requiring such conversion nor are we abrogating any contracts. Consistent with Order No. 2000 requirements,¹³³ we will require that TOs, on behalf of their entire load including grandfathered wholesale and bundled retail loads, take service under the non-rate terms and conditions in the SPP OATT as a prerequisite to obtaining RTO status from the Commission.

109. Consistent with our holding in Opinion No. 453 and related orders,¹³⁴ under a functioning SPP RTO, the SPP transmission owners will no longer be the transmission providers. SPP will become the sole provider of transmission service, as prescribed by Order No. 2000,¹³⁵ and the transmission owners must take all transmission services from SPP.¹³⁶ In implementing the requirement that all load be placed on the tariff, the Commission will be able to ensure that all service is provided on a non-discriminatory basis by the RTO transmission provider and, importantly, will also ensure that native load continues to receive adequate transmission to reliably meet its needs.

110. We will require SPP to submit in its compliance filing (1) disclosure of the magnitude of load that is proposed to be grandfathered wholesale as well as bundled retail load and to indicate what percentage of these loads will be to the total load served under SPP's tariff, and (2) a schedule for converting its GFAs to the SPP OATT, consistent with the guidance provided to the Midwest ISO, to facilitate market operations.¹³⁷ Prior to conversion, the rates, terms and conditions, of the GFAs will be honored.

¹³³ Order No. 2000 at 31,108; Order No. 2000-A at 31,375-76. See, also, Midwest Independent Transmission System Operator, Inc., et al., 97 FERC ¶ 61,033 at 61,169-70 (2001) (Opinion No. 453), order denying reh'g, 98 FERC ¶ 61,141 (2002) at 61,411 (Opinion No. 453-A), order on remand, 102 FERC ¶ 61,192 (Midwest ISO Remand Order), order denying reh'g, 104 FERC ¶ 61,012 (2003).

¹³⁴ See 102 FERC ¶ 61,192 at 61,532-33 (2003).

¹³⁵ See Order No. 2000 at 31,108; see, also, Order No. 2000-A at 31,375-76.

¹³⁶ The transmission rates for service re-sold to retail customers, in conjunction with bundled retail service, may be the same rates set by the states for the transmission component of bundled retail rates. The Commission will adopt the rates set by state commissions if consistent with the FPA.

¹³⁷ See 105 FERC ¶ 61,145 at P 60 (2003).

Compensation for Customer-Owned Transmission Facilities

a. Applicants

111. According to SPP, questions arose regarding the inclusion of more than one transmission owner's facilities under the tariff and SPP control in a single transmission-pricing zone as well as receipt and distribution of revenues collected by SPP to such owners. SPP states that "this [overall] issue has not been resolved in a way that will accommodate more than one transmission owner placing its facilities under the tariff and SPP control in a single zone." SPP also states that discussion of revenue distribution procedures similar to those accepted by the Commission for the Midwest ISO is underway. Finally, the procedures under discussion would require multiple owners located in a single zone to appoint one owner to receive the revenues allocated to the zone by SPP and to distribute those revenues pursuant to an agreement between the owners within the zone.¹³⁸

b. Intervenor's Comments

112. Lafayette seeks a more expansive approach to crediting of customer-owned transmission facilities of the SPP OATT, arguing that Section 30.9 uses an integration requirement that has proven to be susceptible to discriminatory application. Lafayette refers to an approach in a draft OATT by SeTrans that provides that network customers receive credits if those customers agree to make the associated transmission facilities subject to the transmission provider's functional responsibility. Thus, to eliminate such bias, Lafayette believes that SPP should be willing to amend its OATT to incorporate the SeTrans language.¹³⁹

113. Finally, Lafayette argues that a new SPP member should have the option of choosing between a facility credit or obtaining compensation through the designation of its facilities as a new pricing zone. That choice would be open to the new member, however, only if the OATT and the revised Membership Agreement set forth an affirmative commitment to add the new pricing zone, which Lafayette states, do not. By lacking this affirmative commitment, Lafayette contends, the proposal inhibits the entry of new members because they can not be assured of receiving the same pricing treatment as that accorded to the original members.¹⁴⁰

¹³⁸ Exhibit No. SPP-28 (Testimony of Ricky Bittle) at 7.

¹³⁹ Lafayette at 7-9.

¹⁴⁰ Lafayette at 9 and 10 (footnote omitted).

c. Commission's Response

114. Regarding Lafayette's general concerns that the integration test is susceptible to discriminatory application, we refer the parties to the discussion in the Initial Decision in Consumers that summarizes the elements that are properly part of such a test.¹⁴¹ Also, as contemplated in Florida Power & Light,¹⁴² SPP and its stakeholders may identify transmission facilities in its footprint that do not meet the integration test laid out in Order No. 888-A and in Consumers.¹⁴³

115. As an alternative, we refer parties to our recent decision in Wolverine.¹⁴⁴ In Wolverine, the Commission stated that participation of new TOs in RTOs would be accommodated by providing appropriate compensation for their transmission facilities, whether by establishing such entities as separate pricing zones or incorporating such entities into existing pricing zones.¹⁴⁵ We recognize that this approach will take time. We also believe SPP, guided by its independent board, should address this matter.¹⁴⁶ Thus, we require SPP to resolve the issues raised by Lafayette and to include this timetable in its compliance filing to the Commission.

2. Congestion Management

a. Applicants

116. SPP states that under its current OATT, it currently manages a market mechanism involving generation redispatch to manage congestion (Attachment K, Redispatch Procedures and Redispatch Costs). SPP claims that under these procedures it receives price quotes from generators that can relieve a constraint and chooses a variety of

¹⁴¹ Consumers Energy Co., 98 FERC ¶ 61,333 (2002), affirming Initial Decision, 86 FERC ¶ 63,004 at 65,015-17 (1999) (Consumers).

¹⁴² Florida Power & Light Company, 105 FERC ¶ 61,287 at P16 (2003) (Florida Power & Light).

¹⁴³ Order No. 888-A at 30,271; 98 FERC at 62,410.

¹⁴⁴ Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,004 (2002) (Wolverine), reh'g pending.

¹⁴⁵ Id. at 61,010.

¹⁴⁶ See, e.g. Appendix C, Section II to the Midwest ISO Agreement. Midwest ISO FERC Electric Tariff, First Revised Rate Schedule No. 1, Original Sheet Nos. 119-125.

economic alternatives to present to customers. SPP maintains that it regularly uses this mechanism along with line load relief procedures (the NERC Transmission Loading Relief (TLR) process) as well as discounting to encourage counterflows to relieve congestion.

117. SPP states that it has developed a timetable for phased implementation of a comprehensive strategic plan that includes market-based congestion management, in addition to a real-time energy balancing market and market monitoring. SPP reports that Phase 1 of the plan – Imbalance Market and Market Monitoring – will be implemented in three increments.¹⁴⁷

118. The first increment, scheduled for February 2004, will implement the systems (including a market settlements system and changes to SPP's scheduling system) required to enable SPP's central calculation of all imbalances in the SPP region, with more detail than is typically used in such calculations today by the control area operators. This increment also includes implementing processes for after-the-fact meter data submission by market participants or their meter agents. The systems installed in the first increment will provide all the data needed for after-the-fact settlement of imbalances, except the real-time pricing that will come when the market is implemented.

119. In the second increment, scheduled for April 2004, SPP states that it will implement a critical precursor to the real-time market, *i.e.*, enhanced reliability systems and procedures. Beginning with this increment, load-serving entities and parties meeting reserve and regulation requirements will use the new market system to supply SPP the data, such as unit commitment and resource plan information, needed to demonstrate that they can satisfy their next-day load, with adequate reserves and regulation capability. In addition, SPP will implement systems to supply data needed by control areas, including net scheduled interchange and regulation capability data, to operate reliably in conjunction with the real-time imbalance market.

120. In the third increment, scheduled for November 2004, SPP proposes to implement a real-time, offer-based energy market that will be used to calculate the price of imbalance energy. The real-time market will calculate nodal prices, based on the submitted resource offers. The implemented procedures will include central dispatch instructions to resources to supply the calculated imbalances. At that time, SPP claims that it will also integrate the real-time market with SPP's current congestion management

¹⁴⁷ SPP maintains that its risk-limiting implementation approach is compatible with the White Paper, where the Commission acknowledged the need for such “phased implementation and sequencing tailored to each region” and is similar to Midwest ISO's phased market implementation approach.

system, using TLR while providing alternative redispatch options. In addition to providing these functions and benefits, completion of the first phase will provide the foundation for further steps, as the future phases are built on both the systems and processes implemented for the first phase.

121. SPP reports that it will proceed towards Phase 2 with the addition of financial transmission rights for market-based congestion management, with a targeted implementation of November 2005. SPP states that it is working on both the detailed design for the first phase and what SPP calls a “high level design” for the next two phases. Once the high-level design for Phase 2 is established, SPP indicates that it will conduct a cost-benefit analysis. SPP maintains that if there are benefits that outweigh the costs, SPP and its participants will commit resources to the detailed design and implementation of the second phase.¹⁴⁸

122. In Phase 3, SPP proposes the implementation of regional ancillary service mechanisms. As with Phase 2, SPP proposes that it will develop a high-level design for ancillary service markets, building on the systems used for the prior phases, and then conduct a cost-benefit study of those ancillary service market proposals. Again, if found to be beneficial, SPP will proceed to detailed design and implementation, which it has targeted for Fall 2006.

123. SPP states that because these issues are still being developed, it is not including tariff language to implement the congestion method with its proposal.

b. Intervenor’s Comments

124. ELCON, Kansas Commission and InterGen argue that SPP’s congestion management plan is incomplete. ELCON contends that SPP’s incomplete congestion management plan is similar to Midwest ISO’s plan and therefore, the Commission should not approve another incomplete plan. Moreover, ELCON asserts that once the benefits of RTO status are conferred, the incentives later to fill gaps in the application are reduced and promises go unfulfilled.¹⁴⁹ Kansas Commission and InterGen argue that the Commission should not approve SPP’s proposal without conditioning such approval on a demonstration of definitive commitments to developing market-based congestion management tools and other energy market mechanisms by a date certain.¹⁵⁰

¹⁴⁸ SPP claims that such a cost-benefit analysis is appropriate and is recognized in the White Paper.

¹⁴⁹ ELCON at 24-25.

¹⁵⁰ Kansas Commission at 11-12 and InterGen at 14.

125. Kansas Commission notes that SPP's two-year phased implementation is inconsistent with Order No. 2000, which emphasizes that efficient and transparent congestion management is the key to developing robust, reliable and competitive power markets.¹⁵¹ Kansas Commission urges the Commission to require SPP to develop a legitimate spot energy market and not just a real-time energy market, with nodal pricing, for resolution of imbalance.¹⁵²

126. Exelon states that it does not oppose SPP's plan to phase in energy markets. However, Exelon contends that SPP must implement a day-ahead market in energy in conjunction with Financial Transmission Rights (FTRs). Exelon maintains that a day-ahead market with FTRs will be essential for managing congestion on the SPP controlled transmission system.¹⁵³

127. East Texas Cooperatives state that the market-based energy imbalance mechanism proposed by SPP is a key requirement of Order No. 2000 and therefore, the Commission should condition SPP's RTO approval on its implementation.¹⁵⁴

128. TDU Intervenors state that no matter what paths SPP and the Commission take to clear congestion, the congestion mechanism used must apply to the TOs' loads and resources. Moreover, TDU Intervenors maintain that this means that all transactions, including the TOs' scheduling of their generating resources for service to their retail loads, must be scheduled through SPP.¹⁵⁵ TDU Intervenors are concerned that if the TOs remain exempt from the SPP OATT congestion management provisions, they will be unharmed (or will be less affected) by constraints, and will have less incentive to undertake or support SPP's actions to relieve constraints.

129. Golden Spread supports SPP's proposal regarding performance of a cost/benefit analysis prior to implementation of a market-based congestion management mechanism. However, Golden Spread believes that results of such an analysis cannot by themselves justify a decision to implement such mechanism. Golden Spread argues that the SPP Independent Market Monitor must be able to recommend, and the Commission must find,

¹⁵¹ Kansas Commission cites to Order No. 2000 at 31,126-28.

¹⁵² Kansas Commission at 13-14.

¹⁵³ Exelon at 3.

¹⁵⁴ East Texas Cooperatives at 20.

¹⁵⁵ TDU Intervenors at 38.

that the SPP region has adequate transmission infrastructure and sufficiently competitive wholesale generation markets to permit the implementation of market-based congestion management.¹⁵⁶

130. Arkansas and Missouri Commissions agree with SPP's congestion management plan. Arkansas and Missouri Commissions state that to the extent that any SPP markets can involve State-regulated utility load, the implementation decisions will require State commission approval after a finding that the market mechanism will produce net economic benefits or no detriment for retail customers, in accordance with the respective State's laws.¹⁵⁷

c. SPP's Answer

131. SPP argues that its proposal fulfills the obligations of an RTO to develop the appropriate market mechanisms for managing transmission congestion.¹⁵⁸ SPP contends that it has satisfied all Day 1 congestion management obligations. Specifically, SPP argues, it manages congestion through generation redispatch and line loading relief procedures, as well as discounting to encourage counter-flows.¹⁵⁹ SPP also contends that it has proposed a plan and timetable for phased implementation of this plan that are consistent with the Commission's Day 2 requirements.¹⁶⁰ The plan calls for market-based congestion management and real-time balancing.

132. While some intervenors argue that SPP's plan to conduct cost-benefit analyses before proceeding to the next phase indicates a lack of commitment on SPP's part, SPP contends that this phased plan comports with Commission's requirements. SPP elaborates that the cost-benefits condition is in line with the Commission's recognition that costly commitments to market mechanisms should not be made in the absence of demonstrable benefits.¹⁶¹ Further SPP contends, the fact that its plan has not yet been filed as part of its tariff does not indicate non-compliance with Order No. 2000.¹⁶²

¹⁵⁶ Golden Spread at 14.

¹⁵⁷ Arkansas and Missouri Commissions Joint Comments at 31-32.

¹⁵⁸ SPP's Answer at 19.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Id. at 20, citing White Paper at 5.

¹⁶² Id. at 21.

d. Commission's Response

133. Order No. 2000 requires that an RTO must ensure the development and operation of market mechanisms to manage transmission congestion. The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions. The RTO must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant. The RTO must satisfy the market mechanism requirement no later than one year after it commences initial operation. However, it must have in place at the time of initial operation an effective protocol for managing congestion.¹⁶³

134. We will accept SPP's proposed congestion management methodology as a reasonable initial approach to managing congestion. Moreover, we will accept SPP's commitment for phased implementation of its Energy Imbalance Market, as discussed above. We find that it satisfies the requirements of Order No. 2000 for Day 1 operation of an RTO. While SPP has provided more detail regarding its phased-in congestion management proposal, we recognize that the plan is still a work in progress. SPP's Day 2 congestion management plan will be addressed when the completed proposal is filed under Section 205 of the FPA. Consistent with the requirements of Order No. 2000, once the new independent Board of Directors is in place, we strongly urge SPP to resolve issues raised by intervenors in their Members Committee process. Should substantial issues remain, we will institute procedures to resolve such differences.

3. Parallel Path Flow

a. Applicants

135. SPP states that it addresses parallel path flows within its region every day in its implementation of its OATT and in its role as regional security coordinator.¹⁶⁴ SPP notes that it determines ATC and schedules transmission only after taking into account actual flows, regardless of source, within SPP and outside of SPP.¹⁶⁵

¹⁶³ See Order No. 2000 at 31,126.

¹⁶⁴ See SPP OATT, Attachment C, Original Sheet No. 121.

¹⁶⁵ SPP notes that since implementing its OATT in 1998, it has independently calculated TTC and ATC. In addition, notes that it uses both automated and manual engineering calculations and maintains that it will continue to do so as an RTO.

136. SPP also maintains that it monitors facilities in neighboring areas and assesses the impact of affording transmission service on these facilities. SPP acknowledges that it is working on seams proposals, which it believes will allow better management of parallel flows between neighboring regions and individual companies.¹⁶⁶ SPP states that the work of Midwest ISO and PJM in resolving congestion management on their seams provides the basis for it to deal with parallel path flows between neighboring entities. Therefore, SPP intends to use these models to deal with parallel path flow and also to provide enhanced management of those flows.¹⁶⁷

137. SPP's proposed Pro Forma Seams Agreement with neighboring utility systems enhances both reliability of the transmission system that furthers SPP's efforts to manage seams.

138. To address parallel path flows on a daily basis, SPP notes that it conducts ATC studies to determine the availability of the transmission system to withstand, under transfer conditions, a severe but credible disturbance without experiencing cascading outages, voltage collapse, or widespread blackouts. SPP maintains that these actions lead to the development of the Open Access Same-Time Information System (OASIS) automation system which uses a flow based approach to automatically process requests for transmission service and determine ATC on constrained facilities. OASIS is integrated with the transmission provider's energy management system and uses real-time data to develop its power flow models.¹⁶⁸

139. SPP claims that it intends to build on and expand existing mechanisms to address external parallel path flows. To assess the impact of flows when scheduling transmission with neighboring Midwest ISO, SPP has negotiated an informal agreement to address parallel path flow issues. Since the Commission does not mandate that all out-of-region parallel flow problems be resolved at the time the RTO applicant submits its filing, SPP continues to seek solutions to address seams issues that will allow better management of external parallel flows.

¹⁶⁶ Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 23.

¹⁶⁷ Exhibit No. SPP-10 (Testimony of Carl Monroe) at 19.

¹⁶⁸ Exhibit No. SPP-5 (SPP Tariff) Attachment C.

b. Intervenor's Comments

140. ELCON states that although it is pleased with SPP's plans to continue in its efforts to resolve seams, informal agreements do not substitute for firm commitments. ELCON argues that the Commission should require something more than an "informal" agreement with SPP's neighbor, Midwest ISO, as well as with other neighboring entities.¹⁶⁹

141. TDU Intervenors are concerned that SPP cannot effectively manage parallel flows internal to SPP, if the TOs' retail loads and resources are excluded from service under the SPP OATT. Moreover, TDU Intervenors note that if TOs do not have to schedule through SPP to meet their own loads (that is, if the TOs are free to dispatch resources within their control areas in a manner that differs from SPP's model), it would not seem possible for SPP to track all parallel flows that occur within its transmission system.¹⁷⁰

c. Commission's Response

142. In Order No. 2000, the Commission determined that an "...RTO have measures in place to address parallel path flow issues in its region on the date of initial operation."¹⁷¹ The Commission also adopted three years as an adequate time period for the RTO to put in place measures to address parallel path flow issues between regions.¹⁷² We find that SPP's proposal satisfies Order No. 2000 requirements for addressing path flows within the transmission system it will operate.

143. We note that as the sole provider of transmission services over the facilities that it will control, SPP will be able to internalize most, if not all, the effect of parallel path flow problems within its footprint. In this order we are requiring SPP to develop and file with the Commission a seams agreement with the Midwest ISO which will address the concerns raised by ELCON.

144. Finally, we agree with TDU Intervenors' concern regarding SPP effectively managing parallel path flows if its OATT excludes TOs' bundled retail loads and certain resources. As discussed above, all loads must be served under the SPP OATT.

¹⁶⁹ ELCON at 24-25.

¹⁷⁰ TDU Intervenors at 40-41.

¹⁷¹ Order No. 2000 at 31,130.

¹⁷² Id.

4. Ancillary Services

a. Applicants

145. SPP states that its revised Membership Agreement requires it to be the provider of last resort of all ancillary services required by Order No. 888 and subsequent orders, a function that, as the regional transmission provider, it has already been fulfilling for the last several years.¹⁷³ SPP further states that its tariff allows market participants to self-supply ancillary services subject to the restrictions that Order No. 888 imposes.¹⁷⁴ That is, while market participants must pay Schedule 1 (Scheduling and Tariff Administration) and Schedule 2 (Reactive Supply and Voltage Control) charges, they are free to obtain other ancillary services elsewhere.¹⁷⁵

146. SPP also states that Sections 2.2.4 and 2.2.5(b) of the revised Membership Agreement provide it with the authority to decide the minimum required amounts of each ancillary service and the locations where market participants may obtain them.¹⁷⁶ SPP says that it will, over time, promote and establish competitive ancillary services markets “based on cost/benefit analysis and the experience of other regional organizations.”¹⁷⁷ SPP further claims that the Commission has found ancillary service provisions similar to SPP’s are sufficient for ISO and RTO recognition.¹⁷⁸

¹⁷³ Application at 5, 51; SPP Tariff, Section 3, Ancillary Services, Substitute Revised Sheet No. 20, et seq., Ancillary Service Schedules 1 and 2; Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 24 (referencing Section 2.2.4 of SPP’s Membership Agreement).

¹⁷⁴ See Order No. 2000 at 31,141. See, also, Application at 51. SPP states that its revised Membership Agreement, Section 2.2.4, and its Tariff, Section 3, provide for the provision of those ancillary services that FERC requires. Application at 51.

¹⁷⁵ Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 24.

¹⁷⁶ Id.

¹⁷⁷ Application at 52.

¹⁷⁸ Application at 5, citing PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 at 61,237 (2001), reh’g granted, 101 FERC ¶ 61,345 (2002); Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,236 at 62,515 (2001).

b. Intervenors' Comments

147. ELCON is concerned that, even if SPP successfully implements its plans for providing ancillary services within the SPP RTO footprint, this will do nothing to promote the uniformity of ancillary services across seams. Exelon asks the Commission to direct SPP to take over coordination of the ancillary services market as soon as possible. It argues that SPP should proceed with the development of ancillary services markets at the same time that it develops its real-time and day-ahead markets. Exelon submits that regulation, spinning, and non-spinning reserve markets are particularly suited for prompt, market-based implementation.

148. InterGen argues that the ancillary services provisions of SPP's application do not satisfy the Commission's requirements. It contends that SPP's real-time balancing market will not facilitate the development of a competitive wholesale market. It asks the Commission to require the SPP RTO to file, by a date certain, a proposal for a comprehensive real-time energy balancing market based on a security-constrained, least-cost, economic dispatch of all available units, regardless of ownership.

149. InterGen further argues that SPP's proposal to supply Schedule 2, Reactive Power and Voltage Control, is unduly discriminatory. InterGen states that because SPP has not committed to develop a market for reactive power and voltage control, TOs will be the only providers of these services and independent generators generally will not receive compensation for the amount of reactive power and voltage control that they provide to the system. InterGen asks the Commission to direct the SPP RTO to file by a date certain a proposed amendment to its tariff to incorporate procedures under which it will procure and pay for reactive power from all generators on its system on a non-discriminatory basis.

150. InterGen also asks the Commission to direct SPP to expand its proposed reserve sharing arrangements to afford independent generators the opportunity to be the least-cost provider of reserves.

151. TDU Intervenors note that SPP's currently effective Schedule 1 provides for the collection of two scheduling charges for transactions that source and sink in separate control areas. However, TDU Intervenors note that although such rate pancaking has been deemed acceptable by the Commission in a non-RTO context in the past, it is not permissible for an RTO.¹⁷⁹ TDU Intervenors ask the Commission to require SPP to file a

¹⁷⁹ TDU Intervenors at 41, citing Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,111 at P 12-13 (2003).

postage stamp scheduling rate (similar to that which Midwest ISO employs) to replace the pancaked scheduling charges under Schedule 1. TDU Intervenors also ask the Commission to require that SPP spread its administrative costs over all of the loads in the SPP system, including TO retail loads.

c. SPP's Answer

152. SPP argues that it has fully complied with the Commission's Day 1 ancillary services requirement and intervenors' challenges should be rejected. SPP contends that some intervenors argue that SPP should provide a more detailed plan, this, however, is not a requirement for Day 1 RTO operations.¹⁸⁰

153. With regard to reserve sharing, SPP argues that concerns regarding reserve sharing arrangements could potentially be discriminatory or economically inefficient or speculative and unsupported, and should therefore be dismissed.¹⁸¹ SPP explains that it manages its spinning and supplemental reserve services from generation within the affected control area, or alternatively, the transmission customer may seek these services on their own.¹⁸² SPP elaborates that where SPP acquires these services on behalf of the customer; it recovers the costs and remits payment on a strict "pass-through" basis.¹⁸³

d. Commission's Response

154. Intervenors ask the Commission to require, as a pre-condition to the formation of the SPP RTO, various changes in the way in which SPP approaches ancillary services. Among other things, intervenors request that we require SPP to file, by a date certain: (a) a proposal for a comprehensive, real-time energy balancing market based on a security-constrained, least cost economic dispatch of all available units, regardless of ownership; (b) a proposed amendment to its tariff to incorporate procedures under which it will procure and pay for reactive power from all generators on its system in a non-discriminatory manner; and (c) a postage stamp scheduling rate to replace the scheduling charges under Schedule 1.¹⁸⁴

¹⁸⁰ SPP's Answer at 26, citing PJM, 96 FERC at 61,237; Midwest ISO, 97 FERC at 62,514-15.

¹⁸¹ Id. at 27.

¹⁸² Id. at 26.

¹⁸³ Id.

¹⁸⁴ InterGen at 14-19; TDU Intervenors at 41.

155. We find that SPP's filing meets the minimum requirements for this RTO function. Under its proposed Membership Agreement, SPP is committed to facilitate the provision of all of the ancillary services that the Commission requires, and SPP has been doing so for a number of years as the regional transmission provider.¹⁸⁵ SPP's tariff allows market participants to self-supply ancillary services, subject to the restrictions found in Order No. 888. Also, SPP commits to develop the framework for a real-time energy balancing market, with a phased-in implementation, beginning in February 2004.¹⁸⁶ We have found ancillary services provisions similar to SPP's sufficient for RTO recognition.¹⁸⁷

156. Although establishment of a real-time energy balancing market is a priority, we do not find that it must be in place on Day 1.¹⁸⁸ We will allow SPP the time that it needs to develop the market through a process that will be acceptable to stakeholders.¹⁸⁹ We note that, with respect to the development of competitive markets for ancillary services, sellers (whether inside or outside the SPP RTO service area) who have authorization to sell energy and ancillary services at market-based rates can submit offers to sell into the SPP RTO energy market and ancillary services market.¹⁹⁰ We will direct that SPP address the issues regarding the purchase of reactive power and Schedule 1 rate pancaking, with intervenors regarding these issues, and file a report with us one year from the date of this order regarding the progress it has made in reaching accord with intervenors on these and the other ancillary services issues that intervenors have raised.

¹⁸⁵ Application at 5. See SPP Tariff, Section 3, Ancillary Services, Substitute Revised Sheet No. 20, et seq., Ancillary Service Schedules Nos. 1 and 2; revised Membership Agreement Section 2.2.4 (SPP shall facilitate the provision of such ancillary services as the Commission requires).

¹⁸⁶ See Application at 5, 51-53; SPP Exhibit No. 10 (Testimony of Carl A. Monroe) at 4-9.

¹⁸⁷ See Midwest Independent Transmission Operator, Inc., 97 FERC ¶ 61,326 at 62,514-15 (2001); PJM Interconnection, LLC, et al., 96 FERC ¶ 61,061 at 61,237 (2001).

¹⁸⁸ See Midwest Independent Transmission Operator, Inc., 97 FERC ¶ 61,326 at 62,515 (2001).

¹⁸⁹ Id.

¹⁹⁰ See PJM Interconnection, LLC, et al., 96 FERC ¶ 61,061 at 61,237 (2001); Atlantic City Electric Company, 88 FERC ¶ 61,248 (1999).

5. OASIS

a. Applicants

157. SPP states that it currently administers the OASIS for the SPP transmission system.¹⁹¹ SPP reassures the Commission that it will continue to be the single OASIS site administrator when approved as an RTO, as required by Order No. 2000. Further, SPP states that it will also continue to independently calculate Total Transfer Capability and ATC values (using both automated and manual engineering calculations), which it uses to access transmission service requests received under the SPP tariff.¹⁹² SPP, in Section 2.2.3 of the revised Membership Agreement, proposes that the OASIS, or any successor system, will conform to the requirements for such systems that the Commission determines.

b. Intervenor's Comments

158. TDU Intervenor contends that SPP has not demonstrated that it has met the OASIS and TTC/ATC standards delineated in Order No. 2000.¹⁹³ In particular, TDU Intervenor argues that SPP has not stated it will operate at Level 3 for ATC calculation, as required by Order No. 2000.¹⁹⁴ Further TDU Intervenor contends, that they have some concerns regarding the independence of SPP's calculation and questions the TO's level of involvement in the collection of the data. TDU Intervenor states that they are concerned that SPP's ATC calculations may affect capacity benefit margin (CBM) set-asides for TO's loads, and that SPP's long-term ATC calculations relies on TO-led transmission planning.¹⁹⁵ TDU Intervenor also argues that SPP does not address the difference in granularity between the model used to sell transmission service and the one used to implement TLRs.

¹⁹¹ Application at 53. See, also, Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) at 25.

¹⁹² Exhibit No. SPP-33 (Testimony of Bruce Rew) at 2-3.

¹⁹³ TDU Intervenor at 43.

¹⁹⁴ Order No. 2000 requires RTOs to operate at Level 3 for ATC/TTC calculations. Level 3 requires the RTO to calculate ATC values itself, based on data developed partially or in total by the RTO. See Order No. 2000 at 31,145.

¹⁹⁵ TDU Intervenor at 44.

159. ELCON, however, states that SPP's OASIS and ATC/TTC calculation proposal is "nominally in compliance" with Order No. 2000, but that this function would be significantly enhanced with a more realistic scope and configuration plan to merge the SPP-Midwest ISO footprint.¹⁹⁶

c. Commission's Response

160. Order No. 2000 concluded that an RTO must be the single OASIS site administrator for all transmission facilities under its control.¹⁹⁷ Further, Order No. 2000 requires that the RTO be responsible for the calculation of ATC and TTC values, based on data developed partially or wholly by the RTO.¹⁹⁸ Order No. 2000 also requires that an RTO OASIS site, including ATC calculations, must be fully operational at Level 3.

161. In this case, SPP has been operating as the single OASIS site for the SPP region. Further, SPP has pledged to perform ATC and TTC calculations based on information that it independently verifies, and will continue to post the results on its OASIS, as required by Order No. 2000. SPP has explained, in great detail, how it has and will continue to gather and develop data, using both automated and manual engineering calculations.¹⁹⁹ SPP has also stated that in the event of a dispute, its ATC calculations will control, pending resolution of the dispute. We find that this arrangement in conjunction with decisional authority of the independent SPP Board satisfies the Commission's requirements. While SPP did not explicitly specify its operating level, based on the details presented in its tariff, we conclude that SPP is operating and will continue to operate, at Level 3, as required under Order No. 2000.

162. With regard to TDU Intervenors' concern that SPP's ATC calculations are affected by CBM set-asides for TO loads, at this time, we will require that SPP clearly explain its process for arriving at its ATC numbers within sixty (60) days of the date of this order. This process will include SPP's oversight of data collection and calculation for all set-asides by the TOs including CBM and TRM (transmission reliability margin). Such oversight, for example, could include SPP or its agent conducting audits of the TOs in this area.

¹⁹⁶ ELCON at 26.

¹⁹⁷ Order No. 2000 at 31,145.

¹⁹⁸ Id.

¹⁹⁹ See Exhibit No. SPP-5 (SPP Tariff), Attachment C at Original Sheet 121. See, also, Exhibit No. SPP-33 (Testimony of Bruce Rew).

6. Market Monitoring

a. Applicants

163. SPP has proposed a framework for market monitoring that includes the appointment of an independent market monitor (IMM) of requisite experience and qualifications to oversee the safe and reliable operation of its transmission system. SPP states that the IMM shall be selected by SPP's independent and non-stakeholder Board members and will concurrently inform and report to the Board and to State regulatory agencies and the Commission.²⁰⁰

164. The revised Bylaws also provide that the IMM will be adequately funded, have access to pertinent information, and have the full cooperation of SPP's staff and organizational groups in order to ensure effective execution of all market monitoring functions. The functions of the IMM are defined in Section 3.17 of the revised Bylaws and proposed Attachment X (Market Monitoring Program).²⁰¹

165. SPP states that its organizational groups are developing a Request for Proposal (RFP) to obtain an IMM for its footprint. Following the RFP process, SPP states that its Board members will make the final selection of the independent entity that will serve as the IMM. SPP notes that its market monitoring plan continues to evolve with input from the market participants and State regulatory bodies within SPP. Moreover, following the selection of the IMM and the finalization of a comprehensive plan built on the current

²⁰⁰ Application at 54-55.

²⁰¹ The IMM duties and functions include:

Reporting on compliance and market power issues relating to transmission services (including compliance and market power issues involving congestion management and ancillary services and the potential of any market participant(s) exercising market power within the region by affecting available transmission capacity); Evaluation and recommendations of any required modifications to the OATT, standards or criteria; Ensuring that the monitoring program is conducted in an independent and objective manner; Developing reporting procedures to inform governmental agencies and others concerning market monitoring activities; Monitoring market behavior of market participants to determine whether there is any behavior that hinders the reliable, efficient and non-discriminatory provision of transmission service by SPP; Ensuring that SPP's involvement in markets does not discriminate in favor of any market participant or its own interest; And Developing plans for mitigating market power, subject to appropriate regulatory approval.

framework, SPP states that it will file the IMM plan with the Commission.²⁰²

b. Intervenor's Comments

166. Several parties criticized SPP's Market Monitoring Plan as skeletal and devoid of any particulars as to how SPP intends to mitigate market power. Specifically, ELCON and Oklahoma Commission comment that Attachment X of its Tariff Modifications area lists the same description found in the revised Bylaws of the proposed functions of the Market Monitor. Oklahoma Commission indicates that Attachment X does not lay out whether market monitoring functions will be carried out by SPP or the Independent Market Monitor (IMM).²⁰³ ELCON notes SPP's request that the Commission approve the principles SPP outlines in its applications and allow the specific market monitoring procedures to evolve at some later time since SPP has gained experience in its markets, as the Commission did in Midwest ISO and WestConnect.²⁰⁴ However, ELCON indicates that those similarities are why the Commission should resist approving another incomplete plan based merely on principles and promises to submit something concrete in the future.²⁰⁵

167. Moreover, SPP's proposal states that the President of SPP will ensure adequate funding, access to information and cooperation by staff and organizational groups. Both ELCON and Oklahoma Commission deem that this does not insure that the Market Monitor will be immunized from undue influence of the RTO, TOs, or other market participants.²⁰⁶ Furthermore, Oklahoma Commission and TDU Intervenors assert that

SPP and its less-than-independent Board would judge which regulatory authorities were "appropriate" to receive information and the information to be received, compromising the flow of information to the IMM, the Commission, and the State.²⁰⁷

168. Oklahoma Commission insists that SPP submit a supplemental filing of the market-

²⁰² Exhibit No. SPP-10 (Testimony of Carl A. Monroe) at 9-10.

²⁰³ Oklahoma Commission at 16.

²⁰⁴ ELCON at 28.

²⁰⁵ Id.

²⁰⁶ Oklahoma Commission at 15; ELCON at 28.

²⁰⁷ TDU Intervenors at 45-47; Oklahoma Commission at 15.

monitoring plan detailing all aspects of the Independent Market Monitor.²⁰⁸ Specifically, Oklahoma Commission requests that SPP provide details concerning the duties that the IMM is expected to undertake and the precise levels of State/Federal regulatory oversight that would be utilized.²⁰⁹ InterGen suggests that the Commission require SPP to engage an independent market monitor subject to the Commission oversight to monitor all aspects of market development and performance within 30 days of the establishment of an independent Board of Directors.²¹⁰

169. Kansas Commission indicates that SPP equates market monitoring only with evaluating transmission services.²¹¹ However, they recommend that the Commission require SPP to demonstrate that it will monitor the competitive wholesale energy markets, as well as transmission services, in conjunction with any external market monitor.²¹² Secondly, Kansas Commission comments that SPP's lack of monitoring of market behavior and market participants to determine whether any activity is constraining transmission or excluding competitors, neglect the function of its monitor.²¹³ The role of the market monitor should seek to uncover strategic behavior that could give rise to energy prices in excess of competitive energy prices.²¹⁴

c. SPP's Answer

170. In response to intervenors' requests for more details in SPP's proposal of the market monitor's functions and authority, SPP counters that its market monitoring proposal meets the Commission's basic condition of objectivity and independence.²¹⁵

²⁰⁸ Oklahoma Commission at 17-18.

²⁰⁹ Id.

²¹⁰ InterGen at 5-6.

²¹¹ Kansas Commission at 37.

²¹² Id.

²¹³ Id. at 37-38.

²¹⁴ Id. at 38.

²¹⁵ SPP's Answer at 21.

SPP elaborates that its proposal ensures that the market monitor is adequately funded, will have access to essential market information, and will have the full cooperation of SPP's staff and organizational group so that it can competently perform its duties.²¹⁶ SPP states that among other things, the market monitor, as proposed, will be responsible for monitoring and reporting compliance and market power issues; evaluate and recommend OATT modifications; develop reporting procedures to inform governmental agencies and others concerning market monitoring activities; and evaluate market participants' behavior to promote reliable, efficient, non-discriminatory transmission services.²¹⁷ These efforts, SPP concludes, meet the applicable Order No. 2000 requirements.

d. Commission's Response

171. Order No. 2000 requires that the RTO proposal contain a market monitoring plan designed to identify market design flaws, market power abuses and opportunities for efficiency improvement, and to propose appropriate actions. In particular, market monitoring must include: (1) evaluating the behavior of market participants in the RTO-administered markets, including TOs, to identify adverse effects of their conduct on the RTO's ability to provide reliable, efficient, and nondiscriminatory service; (2) periodically assessing whether behavior in markets in the RTO's region that are operated by others affects the RTO operations; and (3) filing with the Commission and other affected regulatory bodies reports on market design flaws, market power abuses in the RTO-operated markets, and on opportunities for enhancement of market efficiency.²¹⁸

172. In Order No. 2000, the Commission did not prescribe a particular market monitoring plan, or the specific elements of such a plan, because market monitoring continues to evolve as trade markets are created. The Commission provided for a flexible approach and noted that different market monitoring plans may be appropriate for different RTOs. We recognize that the SPP application does not include an energy

market at this time. While the role of the market monitor will expand as SPP develops its energy markets, we nonetheless conclude SPP must have an IMM in place to oversee the safe and reliable operation of the transmission system, as a prerequisite to obtaining RTO status from the Commission.

173. While SPP has provided a framework in its revised Bylaws, as noted above, as the energy markets develop, we will require that SPP provide a market monitoring plan

²¹⁶ Id.

²¹⁷ Id.

²¹⁸ Order No. 2000 at 31,155-56.

which includes appropriate market power mitigation measures to address market power problems in the spot markets²¹⁹ and a clear set of rules governing market participation conduct with the consequences for violations clearly spelled out.²²⁰ This plan should be on file with the Commission no later than sixty (60) days prior to implementing Phase 3 of its energy imbalance market. In addition, SPP's market monitoring plan must include the process that the IMM would use if the IMM thinks the markets are not resulting in just and reasonable prices or providing appropriate incentives for investment in needed infrastructure.²²¹ SPP's market monitoring plan should include periodic reports prepared by the IMM.²²² These reports will incorporate market metrics to provide a basis for measuring the performance of these markets across RTOs and ISOs, and to compare the performance of the market in each RTO or ISO over time. Metrics will also be developed to provide standard performance information on a monthly basis.

174. Finally, since SPP will be undertaking a review of the costs and benefits of developing more market functions and removing barriers to entry, we direct the IMM to perform analyses to support this effort. In this regard, the IMM should submit a report assessing the efficiency of current redispatch procedures to manage congestion to identify the costs that could be reduced using more efficient redispatch procedures in time to be considered when evaluating the Phase 2 design.

²¹⁹ These mitigation measures must work together with measures on resource adequacy to ensure that the measures do not suppress prices below the level necessary to attract needed investment in infrastructure in the region.

²²⁰ At a minimum this would include rules on: (1) physical withholding of supplies; (2) economic withholding of supplies; (3) reporting on availability of units; (4) factual accuracy of information submitted to the RTO or ISO; (5) the obligation of market participants to provide information to the market monitor; (6) cooperation of market participants in investigations or audits conducted by the market monitor, and (7) the requirement that all bids that designate specific resources must be physically feasible. See, also, Order Amending Market-Based Rate Tariffs and Authorizations, Docket Nos. EL01-118-000 and EL01-118-001, 105 FERC ¶ 61,218 at 57-59 (2003), for guidance on the relationship between the IMM and the Commission. This guidance should be reflected in the market monitoring plan.

²²¹ We note that this should include notifying the Commission, RSC, and other appropriate state authorities of the nature of the problem and recommended solutions.

²²² The IMM will provide annual reports on the state of its markets to the Commission, RSC, and other appropriate state regulatory authorities.

7. Planning and Expansion

a. Applicants

175. SPP proposes to be responsible for planning and directing or arranging transmission expansions, additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate State authorities under Sections 2.1.5(b) and 2.1.1(j) of the revised Membership Agreement. SPP also states that its Transmission Assessment Working Group (TAWG) is assigned the responsibility of designing a process to encourage open participation for market-motivated solutions to relieve long-term congestion; developing streamlined queuing process for both generation interconnection and transmission service requests; and developing a pro forma generation interconnection agreement.²²³

176. Section 3.3 of the revised Membership Agreement concerns the responsibilities of SPP and the transmission owner vis-à-vis construction. Article 3.3 (b) states that if a project forms a connection between facilities owned by multiple parties, all parties will be designated to provide their respective new facilities. The parties will agree among themselves as to how much of the project will be provided by each entity. If agreement cannot be reached, SPP will facilitate the ownership determination process.

177. Section 3.3 (c) states that a designated provider for a project can elect to arrange for a new entity or another transmission owner to build or own the project in its place. If a designated owner does not or cannot agree to implement the project in a timely manner, SPP will solicit and evaluate proposals for the project from other entities and select a replacement.

178. Finally, SPP's OATT under Attachment O, "Coordinated Planning Procedures," addresses planning criteria, planning and assessment studies, the need for new facilities, and construction.

b. Intervenors' Comments

i. Lack of Specificity and Insufficient Authority

179. ELCON makes a general claim that the filing lacks the requisite planning protocols with the degree of specificity that this extremely important function deserves.²²⁴

²²³ Exhibit No. SPP-28 (Testimony of Ricky Bittle) at 8 and 9.

²²⁴ ELCON at 29.

180. Golden Spread contends that the revised Membership Agreement fails to grant SPP sufficient authority over the planning process and points to Section 3.3.c of the revised Membership Agreement as failing to provide sanctions for SPP to impose against a transmission owner that fails to comply with SPP's direction to arrange for necessary transmission expansions, additions and upgrades as directed by SPP. Golden Spread argues that given that TOs, armed with the State-granted power of eminent domain, will likely be the primary builders of transmission upgrades and expansions for the foreseeable future, they cannot be permitted simply to pick and choose among potential transmission projects and build only the ones they find to their liking. This would lead only to more discrimination and a patchwork grid.²²⁵

181. Golden Spread states that the actual division of responsibilities between the proposed RTO and individual TOs is governed by Attachment O to the SPP OATT,²²⁶ to which no changes at all are proposed. Golden Spread faults language in the existing Attachment O that states, “[t]ransmission planning studies shall be performed by individual TOs,”²²⁷ and each Transmission Owner shall be able to specify its own criteria for use in “determining whether a violation of criteria exists and when a need for new facilities should be considered.”²²⁸ Golden Spread argues that the RTO must consolidate the overall regional transmission planning function “in house” and independently perform

all necessary facilities studies for the transmission system over which it exerts operational authority. Golden Spread states that the transmission plan should include facilities needed for both reliability and economic purposes,²²⁹ and should be developed with full

²²⁵ Golden Spread at 11 and 12.

²²⁶ Exhibit SPP-5 (SPP Tariff).

²²⁷ Exhibit SPP-5 (SPP Tariff), Original Sheet No. 184.

²²⁸ Id. at Original Sheet No. 183.

²²⁹ The revised Membership Agreement, Exhibit No. SPP-4, does require (at § 3.3a) that SPP is responsible for planning “that will enable it to provide efficient, reliable, and non-discriminatory transmission service....” (Emphasis added.) To the extent that the word “efficient” means that SPP must plan for projects needed for economic reasons as well as those required to maintain compliance with reliability

input from all affected stakeholders in the region, to assure that all potential efficiencies are identified.²³⁰

ii. Administration of Requests for Transmission Service and Interconnection Service

182. TDU Intervenors, Empire, Energetix, KEPCo and Sunflower find fault with SPP's existing administration of requests for transmission service. They contend (1) that SPP's current methodology and processes to evaluate and grant new transmission service requests do not adequately address existing system overload conditions;²³¹ (2) there is an enormous backlog in both SPP's queues for interconnection and transmission service and that SPP must demonstrate that it is capable of implementing and administering its own OATT; and (3) SPP's pro forma interconnection agreement is not part of the current filing and is not a part of SPP's OATT.²³²

183. KEPCo provides anecdotal information and argues that SPP's existing process for transmission planning and expansion is not as effective as is described by SPP. KEPCo states that inadequate transmission capacity is a critical issue that must be addressed by the Commission if the formation of RTOs is to have any of the perceived and well-advertised benefits. KEPCo contends that participant funding is not the answer.²³³

Sunflower states that SPP's administration of the existing transmission service queue has been laborious and does little to further market liquidity. Sunflower states that SPP's proposal to group transmission service requests should be adopted in any order addressing SPP's request for RTO status.²³⁴

c. SPP's Answer

criteria, this should be made explicit.

²³⁰ Golden Spread at 12 and 13.

²³¹ Empire at 4 and 5 and TDU Intervenors at 50.

²³² Energetix at 4.

²³³ KEPCo at 6. KEPCo states that a system impact study issued by SPP in 2003 showed that to move 9 MW from Westar Energy to Empire would require KEPCo to pay \$29.8 million in upgrade costs. KEPCo also cites what it believes are similar examples.

²³⁴ Sunflower at 5.

184. In response to Golden Spread's and KEPCo's protests, SPP contends that the issue the parties raise is not one of Order No. 2000 compliance, but rather one of pricing. SPP states that the construction of new facilities and the cost recovery methods "presents difficult economic and regulatory issues that defy easy resolution," as SPP transmission-owners are reluctant to build, and States are reluctant to permit construction when pricing (who will pay) remains an outstanding issue.²³⁵ SPP contends that the planning procedures described in its revised Membership Agreement are similar to procedures that the Commission approved for other RTOs and that they satisfy Order No. 2000 requirements.

d. Commission's Response

185. We commend SPP for its efforts in updating its transmission planning and expansion process. SPP is currently reviewing this function with an eye toward making the process more open and participatory and is evaluating a two-year planning cycle with the first year's focus on reliability and the second year's focus on market needs.²³⁶ The current draft of this cycle calls for approval of the transmission plan on September of the second year. We believe SPP's efforts here are a critical first step toward a regional assessment of transmission needs and strongly support its proactive efforts.

186. We also find promising SPP's proposed language here as well as SPP's ongoing efforts to accommodate third party investment and participation in transmission upgrade projects.²³⁷ We interpret SPP's proposal to permit participation by merchant transmission projects. We believe such participation when coordinated by SPP will contribute to a least cost outcome that maintains or improves reliability.²³⁸ Moreover, we have required that an RTO afford such participation.²³⁹

²³⁵ SPP's Answer at 17 and 18.

²³⁶ See Exhibit No. SPP-33 (Testimony of Bruce Rew) at 6 and http://www.spp.org/Doc_Results.asp?Group_id=352.

²³⁷ Section 3.9 of the revised Membership Agreement (Exhibit No. SPP-4) states: "Non-Transmission Owner shall be entitled to participate in regional joint planning and coordinated operation of the Electric Transmission System." See, also, Application at 56.

²³⁸ See Order No. 2000 at 31,164.

²³⁹ See, e.g., Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 at 62,520 (2001), order on reh'g, 103 FERC ¶ 61,169 (2003).

187. However, we note commenters' questions regarding SPP's: 1) administration of interconnection and transmission service requests and 2) planning and expansion of its transmission network. In light of these protests and our view of the critical nature of an independent review of regional transmission needs (and the critical need for clear procedures for funding those needs), we will require the following. SPP must file specified milestones to ensure that it meets the planning cycle noted above. Given SPP's efforts to date, we believe that SPP may not require the full three years timeframe contemplated in Order No. 2000.²⁴⁰ With independent governance, we believe SPP can significantly improve its capability to oversee regional transmission expansion to address reliability and economic needs and be responsive to commenters' concerns.

188. We also agree with commenters that Attachment O of SPP's OATT does not provide SPP with the authority to independently oversee the regional transmission plan and solely determine the priority of transmission planning projects that address reliability and economic needs. For example, while TOs can perform their own transmission planning studies, SPP's OATT does not provide that SPP should independently review and conduct such studies. Attachment O suggests that SPP would serve largely as a consolidator and reviewer of plans that others conduct. This role, as described in Attachment O, concerning SPP's authority to plan transmission is inconsistent with the revised Membership Agreement. Consistent with Order No. 2000, the RTO must independently decide which projects should be included and how they should be prioritized. We will require SPP to modify its Attachment O to make it consistent with the revised Membership Agreement with respect to the SPP's and the TOs' role in the transmission planning process. The TOs may perform studies and evaluate changes to their transmission systems; however, SPP should provide independent oversight of the individual TO's studies to assure that any proposed changes would not impede SPP's ability to provide efficient, reliable and non-discriminatory transmission service.²⁴¹ Accordingly, we direct SPP to file changes to Attachment O of its OATT to reflect SPP's authority to plan transmission, consistent with the discussion above.

189. SPP states that it is exploring funding options for transmission upgrades.²⁴² As noted above we require SPP to develop and file a transmission cost allocation plan by the end of this year. This plan should address pricing treatment for the projects identified in SPP's transmission plan. Regarding generator interconnecton pricing proposals, SPP should follow compliance procedures to Docket No. RM02-1-000, Standardization of Generator Interconnection Agreements and Procedures.²⁴³ We note that the SPP's

²⁴¹ Order No. 2000 at 31,163-64.

²⁴² See Exhibit No. SPP-28 (Testimony of Ricky Bittle) at 8.

²⁴³ See Notice Clarifying Compliance Procedures, Docket No. RM02-1-000

compliance with generator interconnection procedures will be handled in a separate proceeding and that our acceptance here is subject to our review of its compliance filing in Docket No. RM02-1-000.²⁴⁴ Finally, with regard to intervenors finding fault with SPP's administration of transmission requests, we will permit that when the independent board requirement is fulfilled, SPP may begin to group interconnection requests as other RTOs and ISOs do today.

190. With the modifications discussed above and SPP's commitment to meet the additional requirements discussed above, we find that SPP will satisfy the Commission's planning and expansion requirements.

8. Interregional Coordination

a. Applicants

191. The RTO must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

192. To ensure the integration of reliability practices within an interconnection and market interface among regions, the development of mechanisms to coordinate those activities is pertinent in the development of an RTO. SPP has been addressing seams issues since the 1965 and 1979 blackouts by providing regional responsibilities such as Automated Operating Reserve Sharing, Regional Reliability Coordination, Regional Transmission Tariff Provision, and Regional Scheduling in response to inter-utility seams.

193. SPP has continued to be an active proponent in addressing seams issues in a manner that will improve reliability and aid markets.²⁴⁵ SPP continues to collaborate with other regional and neighboring entities to improve seams management and to ensure that a customer will not be adversely affected by the existence of two or more regional providers. SPP advanced the One Stop Shopping (OSS) of services that involve adjacent RTO or transmission providers interconnected with SPP. Under the OSS process for Reservation/OASIS and Scheduling/Tagging, only one OASIS number applies to transactions between two regions. Also, SPP's commitment to the Joint and Common

(2004). SPP filed in compliance to this final rule in Docket No. ER04-434-000.

²⁴⁴ See Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003).

²⁴⁵ Exhibit No. SPP-10 (Testimony of Carl A. Monroe) at 13-21.

Market is based in part on a longer-term focus on seams management.

194. Through its Strategic Planning Committee SPP developed a Pro Forma Seams Agreement to promote proactive seams negotiations. The goal of the Committee is to recognize the number of seams issues that, if resolved, would improve the reliable operation of the electric power system and enhance the efficiency of electric services. The agreement offers comprehensive coverage of a wide-range of seams-related issues and identifies principals and commitments to be used to advance seams negotiations in the difficult areas of congestion management, transmission planning, and outage coordination. SPP states that it has worked extensively on methods to coordinate congestion management and transmission planning and expansion with RTOs, as seen in the super-regional congestion management protocol included in their draft joint operating agreement. Moreover, the Pro Forma Seams Agreement will further SPP's efforts to manage seams in areas such as planning, operations, market monitoring, ancillary services, and tariff practices. It has been the source document for SPP's past and present discussions with Midwest ISO, AECl, SeTrans, and others.

b. Intervenors' Comments

195. Arkansas and Missouri Commissions, KEPCO, and East Texas Cooperatives are concerned that SPP has not done enough to address seams issues. They ask the Commission to direct SPP to modify its Pro Forma Seams Agreement to: (a) reflect who will develop emergency procedures; (b) develop a procedure to properly estimate electrical flows; (c) have in place agreements that provide sufficient generation support through operating reserve sharing agreements; (d) ensure that reservations of transmission service are not unduly restrictive and anticompetitive; and (e) eliminate adverse effects on reliability and adequacy of generation.

196. ELCON and the Kentucky Commission ask that the Commission direct several modifications to the Pro Forma Seams Agreement to, among other things: (a) ensure that reservations of transmission service are not unduly restrictive and anticompetitive; (b) eliminate adverse effects on reliability and adequacy of generation; (c) spell out the procedures for consistently calculating AFC and ATC; and (d) include the formation of a region-wide transmission planning committee (e) include a design for charging for any inequalities in the cost burdens resulting from loop flows; and (f) ensure that ratepayers within the SPP region do not subsidize through and out use of the SPP transmission facilities.²⁴⁶

197. ELCON asserts that the Commission must strictly enforce the complementary

²⁴⁶ See Intervenors' comments on this issue, supra. See, also, Arkansas and Missouri Commissions at 22-25; KEPCo at 6-13; East Texas Cooperatives at 19-22.

principle of scope and interregional coordination if it intends to promote expansive regional electricity markets. The weaker an RTO proposal is assessed under scope and regional configuration, the stronger the showing required under interregional coordination.

198. Intervenors note that Section 6.1 of the Pro Forma Seams Agreement states, "Any party may terminate their participation in this Agreement upon sixty days notice to each of the other Parties." In contrast to this provision, the Members Agreement requires one-year notice and Commission approval to withdraw. Thus, Intervenors contend that SPP fails to provide adequate reliability practices by allowing parties to terminate their commitment with only a sixty day notice.

199. Kansas BPU generally supports SPP's RTO proposal but Kansas BPU has apprehensions on certain issues. Kansas BPU states that "the language in the Pro Forma Agreement may protect TOs and those with generating resources, but it does not necessarily protect transmission customers from overly burdensome surcharges or cost-shifts as a result of lost revenues." Kansas BPU acknowledges that the Commission has addressed the elimination of the Regional Through and Out Rates (RTOR) for transactions sinking in the combined Midwest ISO and PJM region, including the elimination of individual Through and Out (T&O) rates of several companies that have not yet joined an RTO." But Kansas BPU further requests that the Commission require elimination of the border rate for transactions between SPP and the Midwest ISO and PJM combined regions as part of SPP's "seams management" proposal.

200. The Kansas Corporation Commission comments that an RTO the size of SPP is too small to relieve the existing seam issues in the Midwest from the North-South electricity flows through Kansas that can interfere with reliability. The SPP RTO would create a boundary and a seam that would have to be addressed. They feel that the SPP Proposal is deficient because it fails to make seams a priority.

c. Commission's Response

201. We believe that, subject to certain modifications, SPP's proposal satisfies Order No. 2000 requirements for Interregional Coordination. First, as discussed above, SPP must develop and file a seams agreement with Midwest ISO. An SPP-Midwest ISO seams agreement is also important to assure effective interregional coordination.

202. Second, we expect SPP to address concerns raised by intervenors herein in negotiating seams agreements with Midwest ISO and other entities. We offer the following as additional guidance to SPP in developing seams agreements. We do not

require that all RTOs necessarily must have a uniform practice, but that RTO reliability and market interface practices must be compatible. RTOs must coordinate their practices with neighboring regions to ensure that market activity is not limited because of different regional practices. The reliability practices affect how markets interface with each other, and the market interface practices affect reliability. For example, TLR and congestion management are both used to unload an overloaded transmission interface, and these two practices must work together. They are best used as sequential steps to unload a line, with congestion management used first to unload a line in a market-oriented manner, and TLR used to unload a line in a fair manner when either congestion management is unavailable or an emergency condition requires immediate action. We therefore list below TLR as a reliability practice and congestion management as a market interface practice, understanding that these and other practices listed affect both reliability and markets.

203. The integration of reliability practices involves procedures for coordination of reliability practices and sharing of reliability data among regions in an interconnection, including procedures that address parallel path flows, ancillary service standards. The integration of market interface practices involves developing some level of standardization of inter-regional market standards and practices, including the coordination and sharing of data necessary for calculation of TTC and ATC, transmission reservation practices, scheduling practices, and congestion management procedures, as well as other market coordination requirements.²⁴⁷

204. Although we recognize that several of the modifications that intervenors urge, such as the consistent calculation of AFC and ATC and the development of a region-wide planning committee are necessary to promote the smooth development of the transmission system and eliminate inter-seams transmission problems, we do not find that the absence of these provisions from the Pro Forma Seams Agreement is a bar to the

formation of the SPP RTO. In its compliance filing, we direct SPP to include: (a) the nature of its negotiations with nearby TOs regarding seams issues; (b) the extent to which it has addressed intervenors' concerns into account in modifying the Pro Forma Seams Agreement; and (c) a timetable for filing these seams agreements.

D. Other Issues

1. Open Architecture

a. Applicants

²⁴⁷ See Order No. 2000 at 31,167-68.

205. SPP states that nothing in its proposed governing documents prevents it from entering into arrangements with any entity which requires a structure different than the structure set forth in these documents or prevents SPP from evolving into a different structure subject to Board of Directors and regulatory approval. Moreover, SPP argues that its proposal and historical actions show its willingness to allow departures from its basic structure to accommodate new structures and procedures.

206. SPP maintains that it is committed to open architecture and has developed pro forma agreements allowing Independent Transmission Company (ITC) structures. SPP states that its pro forma ITC Agreement prescribes the general terms and conditions applicable to ITCs seeking to operate within the SPP footprint. The ITC Agreement contains specific provisions designed to ensure system reliability, and vests SPP with ultimate authority to resolve real-time operational disputes that could arise between SPP, the ITC or ITC participants.

b. Commission's Response

207. We believe SPP's proposal meets the open architecture requirement.

2. Role of the States

a. Applicants

208. Order No. 2000 requires that any proposal to participate in an RTO must not contain any provision that would limit the capability of the RTO to evolve in ways that would improve its efficiency, consistent with the required characteristics and required functions of an RTO.²⁴⁸

209. In its filing, SPP included provisions in its Bylaws related to State regulatory involvement and a regional State committee.²⁴⁹ SPP states that over the years its State commissions have been active participants in shaping SPP's operation policies. SPP acknowledges that the State commissions have had representatives as non-voting board members and have participated in the development of most significant substantive

²⁴⁸ See Order No. 2000 at 31,170.

²⁴⁹ See Exhibit No. SPP-3 (SPP Bylaws), Section 7.0 (Regulatory Involvement and Regional State Committee).

matters by SPP. Moreover, SPP believes that it is important that State commissions have a significant role within SPP. However, SPP states that the precise future role of the State commissions continues to be a work in progress.

210. Section 7.2 (Regional State Committee) (RSC) of SPP's revised Bylaws provides the following:

An RSC, to be comprised of one designated commissioner from each State regulatory commission having jurisdiction over an SPP Member, shall be established to provide both direction and input on all matters pertinent to the participation of the Members in SPP. This direction and input shall be provided within the context of SPP's organizational group meetings as well as Board of Directors meetings. The SPP Staff will assist the RSC in its collective responsibilities and requests by providing information and analysis. SPP will fund the costs of the RSC pursuant to an annual budget developed by the RSC and submitted to SPP as part of its budgeting process, which budget must ultimately be approved by the Board of Directors.

SPP explains that its current Board of Directors felt strongly that, given the language ultimately adopted in Section 7.2 of its Bylaws (committing to the establishment and funding of an RSC and putting in place a framework for significant RSC involvement in all relevant SPP matters), no purpose would be served by delaying this filing in pursuit of an unattainable perfect solution.

211. SPP maintains that considerable effort was expended in an attempt to reach consensus on this issue. However, SPP states that a resolution was not achieved. SPP points out that legitimate concerns were raised about the appropriateness of incorporating, in binding Bylaws, specific RSC functions, duties, and authorizations when, at this point, the entity itself exists only in the abstract. SPP argues that the

inability to reach consensus can be attributed, at least in part, on the parties' divergent views on precisely what the Commission intended in the White Paper. SPP states that these views created different opinions on the scope of authority properly delegable to the RSC.

212. SPP contends that the RSC-related provisions adopted by its Board of Directors are intentionally broad and flexible. Moreover, SPP states that these provisions represent more than a useful starting point; arguing that they go well beyond any comparable provisions proposed by other RTO applicants. SPP maintains that it is committed to working diligently and cooperatively with the States to resolve this matter.

b. Intervenor's Comments

213. In their comments, the Arkansas, Missouri and Oklahoma Commissions (Supporting Commissions), explained that the States with retail jurisdiction over utilities in the SPP footprint, had met and attempted to work out language reflecting the role of an RSC for SPP.²⁵⁰ While the affected States could not reach agreement, four of the States developed a proposal which they shared with the SPP board.

214. With regard to the RSC's role, commenters state the Commission should provide further guidance on the RSC responsibilities before conferring RTO status. Oklahoma, separately, and Arkansas and Missouri Commissions, jointly, request that language detailing RSC responsibilities should be included in SPP's Bylaws. Oklahoma Commission also argues that the Commission and the States have the authority to determine RSC responsibilities, not SPP. Arkansas/Missouri Commissions identify jurisdictional authority as a concern in SPP's development as an RTO and request that an order approving an SPP RTO must include "binding principles," including (1) the Commission not asserting jurisdiction over any aspect of bundled retail transmission service (neither the RTO nor the Commission will substitute its judgment for that of the individual State jurisdictional public utilities in regard to priority service to retail customers) and (2) cost-effective incremental changes that are necessary and beneficial, or not detrimental, to retail ratepayers.

215. Kansas Commission states that: (1) the SPP proposal envisions an improper and legally questionable delegation of Commission authority and is vague about the RSC's role; (2) the RSC should be an advisory body; (3) minority State commission positions will be disadvantaged unless RSC decisions are unanimous; and (4) State law may bar the Kansas Commission from participating in the RSC. Louisiana Commission states that it

supports a mechanism for regional planning that includes the input of State regulators but cannot endorse the RSC concept unless it is satisfied that the RSC (and the RTO and FERC) cannot usurp State jurisdictional authority.

216. Texas Commission notes that four States, including Texas, reached agreement on a more specific provision in the Bylaws describing the RSC, but SPP did not include this provision; it requests that the RSC issue be resolved in this proceeding or in connection with the seating of a new SPP Board following approval of the application.²⁵¹

²⁵⁰ Arkansas and Missouri Commissions at 32-33.

²⁵¹ Arkansas and Missouri Commissions at 4-9, 32-36; Oklahoma Commission at 2, 4-8; Texas Commission at 8-9.

c. SPP's Answer

217. SPP reiterates that despite arduous and lengthy discussions between SPP and several State regulatory commissions, the States had diverging and ultimately irreconcilable range of views with regard to the formation of an RSC for the SPP region.²⁵² SPP contends that it did all that it could to promote a unanimously endorsed resolution, but to no avail. Therefore, SPP argues, rather than delay the RTO application when it appeared that no resolution was in sight, it adopted the general language of Section 7.0 of its Bylaws.²⁵³ SPP contends, however, that the SPP Board has directed its planning committee to continue negotiations with the States to determine the specifics of RSC.²⁵⁴

d. Commission's Response

218. The Commission supports an RSC in the SPP footprint. A representative RSC will benefit SPP and market participants by instituting a partnership between the FERC and State commissions through which regional issues can be addressed. We have carefully reviewed the SPP's and the Supporting Commissions' RSC proposals and recognize their respective concerns. However, we find that neither proposal adequately addresses several important issues. Accordingly, we will not accept the Supporting Commissions' proposal concerning RSCs or SPP's RSC proposal in its Revised Bylaws section entitled "7.0 Regulatory Involvement and Regional State Committee." We direct SPP to re-file a new RSC proposal to modify its bylaws that only incorporates the functions we describe below.

219. The RSC should have primary responsibility for determining regional proposals and the transition process in the following areas: (1) whether and to what extent participant funding would be used for transmission enhancements; (2) whether license plate or postage stamp rates will be used for the regional access charge; (3) FTR allocation where a locational price methodology is used; and (4) the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers' existing firm rights. If the RSC reaches a decision on the methodology that would be used, SPP would file this methodology pursuant to Section 205 of the FPA. SPP can also file its own proposal pursuant to Section 205.

²⁵² SPP's Answer at 7-8.

²⁵³ Id. at 7-9.

²⁵⁴ Id. at 9.

220. The RSC should also determine the approach for resource adequacy across the entire region. In addition, with respect to transmission planning, the RSC should determine whether transmission upgrades for remote resources will be included in the regional transmission planning process and the role of transmission owners in proposing transmission upgrades in the regional planning process.

221. Finally, the alternate proposal the Supporting Commissions filed provides for an affirmative vote of two-thirds of the RSC members voting to require a Section 205 filing. We do not believe that this element of the RSC structure needs to be included in SPP's Bylaws. Rather, the RSC should determine its voting structure, make such structure known, and, when a measure is passed in accordance with such structure, inform SPP.

The Commission orders:

(A) SPP's Application to be recognized as an RTO will be granted upon fulfillment of the six actions listed in paragraph 2 above, as discussed in the body of the order.

(B) SPP is hereby directed to submit compliance filings and additional materials to its application, as discussed in the body of this order.

(C) SPP is hereby granted limited waiver of 18 C.F.R. §35.34(k)(4)(iii), to allow the establishment of a real-time balancing market after the effective date of the RTO, as discussed in the body of this order.

By the Commission. Chairman Wood and Commissioner Kelliher concurring with separate statements attached.

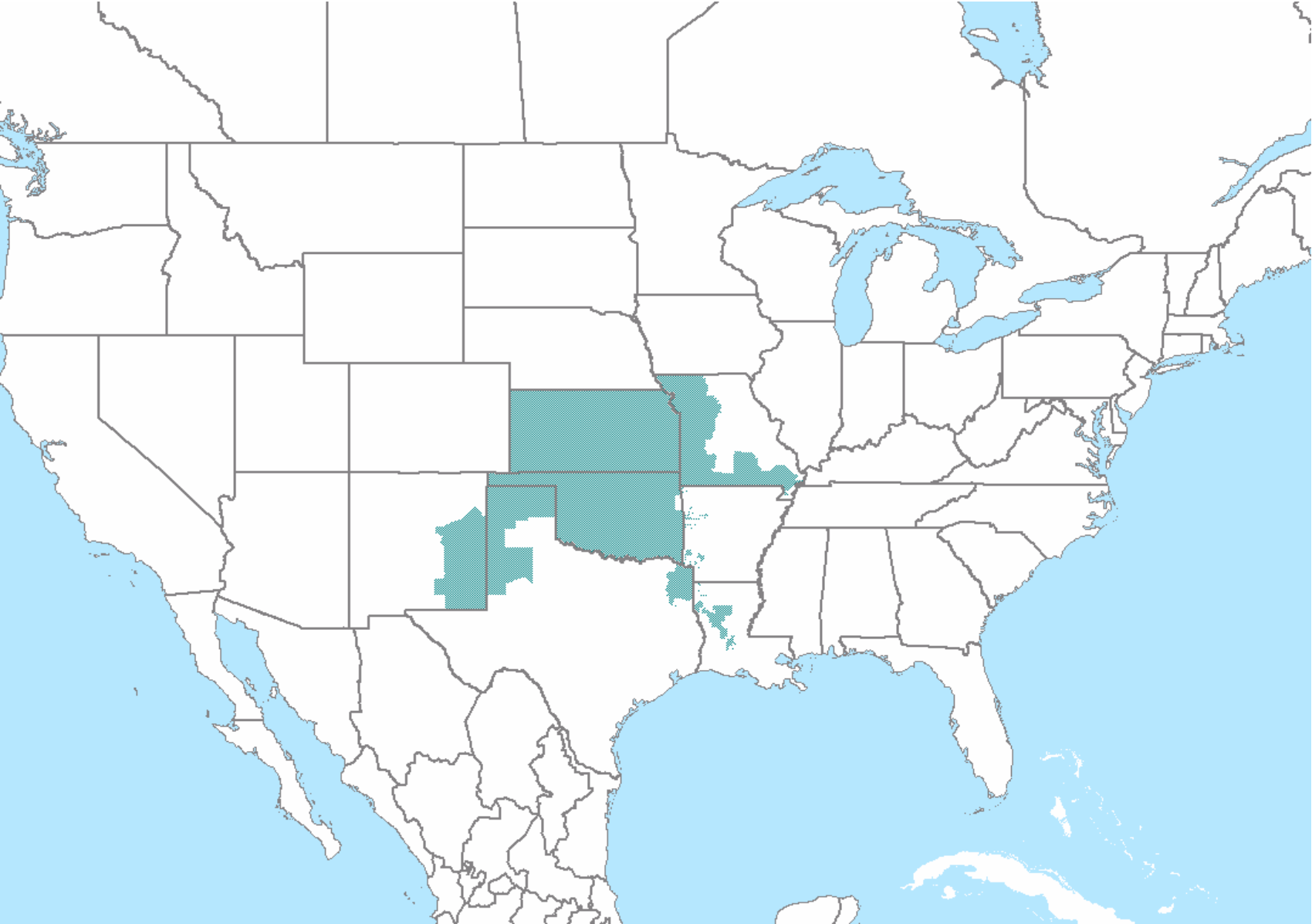
Magalie R. Salas,
Secretary.

ATTACHMENT A**INTERVENORS**

Ameren Services Company (Ameren)
Arkansas Electric Cooperative Corporation (AECC)
Cinergy Services, Inc. (Cinergy)
City Utilities of Springfield, Missouri (Springfield)
Dairyland Power Cooperative (Dairyland)
Dominion Virginia Power (Dominion Virginia Power)
The Detroit Edison Company (Detroit Edison)
Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC
(collectively, Duke Energy)
East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc.,
and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas
Cooperatives)
Electric Power Supply Association (EPSA)
The Electricity Consumers Resource Council (ELCON)
Empire District Electric Company (Empire)
Energetix, LLC (Energetix)
Exelon Corporation (Exelon)
InterGen Services, Inc. and Redbud Energy LP (collectively, InterGen)
Kansas City, Kansas, Board of Public Utilities (Kansas BPU)
Kansas City Power & Light Company (KCPL)
Kansas Corporation Commission (Kansas Commission)
Kansas Electric Power Cooperative, Inc. (KEPCo)
Lafayette Utilities System of Lafayette, Louisiana (Lafayette)
Louisiana Public Service Commission (Louisiana Commission)
Midwest Energy, Inc. (Midwest Energy)
Midwest Independent Transmission System Operator, Inc. (Midwest ISO)
Missouri Joint Municipal Electric Utility Commission, Oklahoma Municipal
Power Agency, and West Texas Municipal Power Agency (collectively,
TDU Intervenors)
Missouri Office of the Public Counsel (Missouri Public Counsel)
National Rural Electric Cooperative Association (NRECA)
Nebraska Public Power District (NPPD)
New Mexico Office of the Attorney General (NM Attorney General)
NRG Power Marketing, Inc. (NRG)
Oklahoma Corporation Commission (Oklahoma Commission)
Oklahoma Gas & Electric Company (Oklahoma G&E)
Oklahoma Renewable Energy Foundation (Oklahoma Renewable)

The Public Service Commission of Arkansas and Missouri (Arkansas and Missouri Commissions)
Public Utility Commission of Texas (Texas Commission)
Reliant Resources, Inc. (RRI)
Southeast Electricity Consumers Association (SeECA)
Southwestern Electric Power Company and Public Service Company of Oklahoma (collectively, SWEPCO)
Southwestern Power Administration (Southwestern Power Administration)
Southwestern Public Service Company (Southwestern Public Service)
Sunflower Electric Power Corporation (Sunflower)
Tenaska Power Service Co. (Tenaska Power)
Westar Energy, Inc. and Kansas Gas and Electric Company (collectively, Westar Energy)
Western Farmers Electric Cooperative (WFEC)
Wisconsin Electric Power Company (Wisconsin Electric)
Wisconsin Public Service Corp., Upper Peninsular Power Co., WPS Power Development Inc, and WPS Energy Services (collectively, WPS Companies)

SPP Region



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket Nos. RT04-1-000
ER04-48-000

(Issued February 10, 2004)

Wood, Chairman, concurring:

I am pleased that, at last, we have the opportunity to recognize the important role that the Southwest Power Pool (SPP) plays in providing needed leadership for the power markets in the nation's heart. This order granting regional transmission organization status to the SPP, following fulfillment of its commitments outlined herein, is significant. I only wish we had granted it two years ago, when its application actually had a larger scope than this one today. Today's application is, however, more complete, and bears the promise for significant improvements in infrastructure development and in broad-based, fair transmission service for the region's customers.

In this order, I would have accepted SPP's revised Bylaws with regard to the role of the Regional State Committee and would have directed the addition of certain additional language taken from the Supporting Commissions' pleading. Resolving this organizational issue definitively here today would allow the RSC member states to focus their efforts on the important substantive issues facing SPP in the coming months.

I strongly support the RSC concept. We have found that RSCs have proven successful in other regions. The Organization of MISO States (OMS), founded last June, produced highly detailed and substantive comments to mold the development of MISO's tariff, and continues to be engaged in all MISO processes, providing a consensus state input where such consensus is achieved. Similarly, the New England Conference of Public Utilities Commissioners provides such ongoing support and input to ISO New England's market development, a market which has made major strides in the last few years.

The period prior to a refiling of By-Law provisions gives an opportunity to the SPP members, stakeholders, board, and states to work out further agreement on RSC functions once the RSC establishes a presence and assumes responsibilities. While I would be fine with a broader delegation of responsibilities to the RSC than we indicated in the White Paper, there are a number of market participants in the SPP region not under the jurisdiction of a state commission which have concerns with this. I expect that, like the OMS to its north, the SPP RSC will earn parties' respect and appreciation and its crucial role will be easier to commit to words.

Like so much else in RTO policy, there must be a thoughtful balancing of interests.

Respectfully submitted,

Pat Wood, III
Chairman

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket Nos. RT04-1-000
ER04-48-000

(Issued February 10, 2004)

Joseph T. KELLIHER, Commissioner *concurring*:

1. I am writing separately to explain my reasoning with respect to the relationship between a Regional State Committee and a Regional Transmission Organization. I have great respect for the role of the States, and fully expect that the views and advice of a Regional State Committee will be given deference by a Regional Transmission Organization. That is being borne out in the Midwest. The Organization of MISO States (OMS) has played a significant advisory role in the development of Midwest ISO policies and influenced MISO filings made to the Commission. The success of the OMS as an advisory body to the Midwest ISO provides a strong working model for the Regional State Committee in the SPP footprint.

2. The SPP filing raises an important legal question, namely whether a Regional State Committee can require a Regional Transmission Organization to make a filing to the Commission. This issue has arisen before. In Commonwealth of Massachusetts v. United States, 729 F.2d 886 (1st Cir. 1984), the court considered whether a State could require a public utility under the Federal Power Act to make a filing to the Commission. The court held that a State cannot compel such a filing. It is worth noting that in the parlance of the Federal Power Act, a Regional Transmission Organization is a “public utility”. I doubt that the Federal courts would find what is impermissible for a State to do individually is permissible if a group of States act collectively.

3. I also note that there is concern among the States in the SPP region about granting a Regional State Committee this power. In particular, the Kansas Commission argued that a Regional State Committee should be an advisory body.

4. There are also serious questions about whether the Commission has legal authority to delegate to a Regional State Committee the power to require filings by a public utility.

Joseph T. Kelliher