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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Southwest Power Pool, Inc.) Docket Nos. ER08-1419-001, 002

REQUEST FOR REHEARING OF SOUTHWEST POWER POOL, INC.

Pursuant to Rule 713 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ Southwest Power Pool, Inc., (“SPP”) submits this Request for Rehearing of the order issued on June 18, 2009 in the above-captioned dockets.² SPP seeks rehearing of the new requirement that the Commission has imposed on SPP to release proprietary and commercially sensitive resource specific cost data of its members and other market participants to those members’ and other market participants’ competitors, whenever that data is used in planning studies. The requirement is contrary to SPP’s agreements with its members when they joined the Regional Transmission Organization (“RTO”) and is inconsistent with the operation of a competitive marketplace.

I. BACKGROUND

On August 15, 2008, SPP filed amendments to its Open Access Transmission Tariff³ to establish a process for including a “balanced portfolio” of economic upgrades into the SPP Transmission Expansion Plan and a regional postage stamp rate design for

¹ 18 C.F.R. § 385.713.

² *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,271 (2009) (“Rehearing Order”).

³ Open Access Transmission Tariff For Services Offered By Southwest Power Pool, FERC Electric Tariff, Fifth Revised Volume No. 1 (“SPP Tariff” or “OATT”).

recovery of the costs of the upgrades.⁴ The amendments were developed through an extensive stakeholder process and had overwhelming stakeholder and state commission support.⁵

On October 16, 2008, the Commission accepted SPP's proposed tariff revisions, subject to modifications.⁶ In that order, among other things, the Commission directed "SPP to create a mechanism that allows for market participants . . . to review the system design software results [in the planning process], subject to signing confidentiality agreements or other needed arrangements to protect sensitive information."⁷

On November 17, 2008, SPP filed a request for clarification or, in the alternative, rehearing of the October 16 Order.⁸ In the Rehearing Request, SPP stated the following specification of error:

The Commission should clarify that current Tariff provisions comply with the Commission's requirement in the October 16 Order to provide a mechanism that allows for market participants to review the results of the system design software, including appropriate arrangements to protect sensitive information, and that no further Tariff amendments are necessary.

⁴ SPP Submission of Revisions to Open Access Transmission Tariff to Add "Balanced Portfolio" Cost Allocation Process for Economic Planning Upgrades, Docket No. ER08-1419-000 (Aug. 15, 2008) ("August 15 Filing").

⁵ August 15 Filing at 2; *see also* Amended Notice Of Intervention Of The Missouri Public Service Commission, Docket No. ER08-1419-000, at 1-3 (Sept. 11, 2008).

⁶ *See Southwest Power Pool, Inc.*, 125 FERC ¶ 61,054 (2008) ("October 16 Order").

⁷ Rehearing Order at P 4, *citing* October 16 Order at P 37.

⁸ Request For Clarification Or, In The Alternative, Rehearing Of Southwest Power Pool, Inc., Docket No. ER08-1419-001 (Nov. 17, 2008) ("Rehearing Request").

Alternatively, if the Commission ruled such further tariff amendments are necessary, it should reverse such ruling as contrary to Commission precedent.⁹

Subsequently, on December 15, 2008, SPP submitted its compliance filing pursuant to the October 16 Order.¹⁰ In the compliance filing, to further address the October 16 Order, SPP added a new subsection (f) to section IV.6 of Attachment O which provides that “in developing a potential balanced portfolio, SPP will publish a timely report, including but not limited to, the study input assumptions, the estimated costs included in the potential balanced portfolio, and the expected economic benefits of the potential balanced portfolio.”¹¹

In the Rehearing Order, the Commission rejected SPP’s argument that “because the Commission accepted its Attachment O transmission planning process . . . outlined in Order No. 890, its Attachment O is inherently compliant with the Commission’s directives in the October 16 Order.”¹² Therefore, the Commission denied rehearing and “SPP’s request for the Commission to clarify that existing provisions of the SPP OATT comply with the Commission’s requirement in the October 16 Order.”¹³ It relatedly found that SPP’s compliance filing did not comply with the Commission’s directives in the October 16 Order.¹⁴ Specifically, it found that “SPP has not proposed in its

⁹ Rehearing Request at 2.

¹⁰ Submission of Compliance Filing, Docket No. ER08-1419-002 (Dec. 15, 2008).

¹¹ Rehearing Order at P 18.

¹² Rehearing Order at P 14.

¹³ Rehearing Order at P 17.

¹⁴ Rehearing Order at P 14.

compliance filing tariff language creating a mechanism that allows market participants to review the system design software results, subject to signing confidentiality agreements or other needed arrangements to protect sensitive information as directed in the October 16 Order.”¹⁵ Consequently, the Commission directed SPP to submit “revised tariff sheets with provisions ensuring that system design software results needed for stakeholders to verify the application of the assumptions in creating the adjusted production cost-benefit metrics will be made available subject to the signing of confidentiality agreements or other needed arrangements to protect sensitive information.”¹⁶

The Commission further found unjust and unreasonable the Information Exchange provisions of Attachment O of the Tariff that “prohibit SPP from making resource specific data available if the data has been designated confidential by the data provider or if the data can be used to (i) determine security constrained unit commitment or economic dispatch for resources; or (ii) perform an economic evaluation of costs and benefits”¹⁷ because they “restrict[] access to resource specific data that market participants need to verify that the results of the balanced portfolio studies.”¹⁸ It held that these provisions are “unduly discriminatory and inconsistent with the transparency requirement of Order No. 890” because they deny “access to information that market participants need to replicate the results of transmission planning studies.”¹⁹ Therefore,

¹⁵ Rehearing Order at P 40.

¹⁶ Rehearing Order at P 40.

¹⁷ Rehearing Order at P 41.

¹⁸ Rehearing Order at P 41.

¹⁹ Rehearing Order at P 41.

the Commission directed SPP “to revise section IX.7 . . . to provide that resource-specific data in the planning process be disclosed by SPP, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.”²⁰ The Commission stated that it had “inadvertently” approved these tariff provisions earlier.²¹

For the reasons discussed below, SPP seeks rehearing of the Rehearing Order to the extent that it requires disclosure by SPP of “resource-specific data” of its members and other market participants.

II. SPECIFICATION OF ERRORS AND STATEMENT OF ISSUES

In accordance with Order No. 663-A²² and Rule 713 of the Commission’s regulations,²³ SPP states the following issues and specifications of error:

- The Commission erred by denying “SPP’s request for the Commission to clarify that existing provisions of the SPP OATT comply with the Commission’s requirement in the October 16 Order.”²⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).
- The Commission erred in holding that Order No. 890-A’s²⁵ requirement that “transmission providers maintain

²⁰ Rehearing Order at P 41.

²¹ Rehearing Order at P 14.

²² *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,211 (2006).

²³ 18 C.F.R. § 385.713.

²⁴ Rehearing Order at P 17.

²⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), (continued . . .)

information as confidential” is consistent with “[r]eleasing confidential information under appropriate confidentiality agreements.”²⁶

- The Commission erred in requiring SPP to create a new “mechanism that allows for market participants . . . to review the system design software, subject to signing confidentiality agreements or other needed arrangements to protect sensitive information.”²⁷
- The Commission erred in finding unjust and unreasonable “the Information Exchange provisions of Attachment O [that] prohibit SPP from making resource specific data available if the data has been designated confidential by the data provider or if the data can be used to (i) determine security constrained unit commitment or economic dispatch for resources; or (ii) perform an economic evaluation of costs and benefits.”²⁸

III. REHEARING REQUEST

A. It Is Just And Reasonable To Prohibit Disclosure Of Resource Specific Information Because The Type Of Information Is Commercially Proprietary To Those That Provide It To SPP

In the Rehearing Order, the Commission erred in finding unjust and unreasonable that “the Information Exchange provisions of Attachment O prohibit SPP from making resource specific data available if the data has been designated confidential by the data provider or if the data can be used to (i) determine security constrained unit commitment or economic dispatch for resources; or (ii) perform an economic evaluation of costs and

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order on reh’g and clarification, Order No. 890-B, 123 FERC ¶ 61,299 (2008),
order on reh’g and clarification, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

²⁶ Rehearing Order at P 16.

²⁷ Rehearing Order at P 39.

²⁸ Rehearing Order at P 41.

benefits.”²⁹ Contrary to this Commission ruling, because of the highly proprietary and competitively sensitive nature of the resource-specific data that SPP members provide to SPP to use in transmission studies, it is just and reasonable to prohibit disclosure of such information to third parties.

The resource specific data that are used in balanced portfolio studies (as well as generation interconnection and transmission service request studies) are highly proprietary to the data providers. For example, to determine the benefits of a potential balanced portfolio, SPP uses resource-specific fuel costs, incremental heat rates, and other market sensitive production cost information to perform production cost analyses.³⁰ Similarly, in the transmission service request studies, SPP utilizes generation commitment and dispatch orders, which is not been released to the public because it is market sensitive. All of this information is of the type that market participants would always designate as confidential and certainly would not share with their competitors, regardless of any arrangements to keep it confidential. Indeed, requiring the sharing of such information with competitors, which would be the result of the Commission’s directive in the Rehearing Order, generally would be inconsistent with sound commercial business practices and, more importantly, would be inconsistent with maintaining a competitive marketplace where competitors do not share their proprietary and competitively sensitive costs of production. Simply put, the highly proprietary nature of the resource-specific data used in transmission studies justifies the need for a prohibition on its disclosure.

²⁹ Rehearing Order at P 41.

³⁰ See SPP Tariff at Attachment O § Section IV(6)(d).

The advantage of using such resource-specific data in SPP's transmission studies also underscores the need to protect such information from disclosure. By using resource-specific data that best reflects the actual operations on the transmission system, SPP is able to produce more precise and effective study results concerning the reliability and economic needs of the transmission system that accurately determine the benefits of economic-based upgrades and the need for reliability-based upgrades. This creates transmission plans that do not engender controversy and dispute regarding the assumptions used in SPP's transmission planning. Fear of disclosure of competitive information could cause market participants to withhold their resource specific data. While studies still could be performed, their accuracy would be diminished if SPP could not use resource specific data.

When a market participant provides highly proprietary confidential information to SPP, the expectation is that such information will not be disclosed to third parties -- with or without a confidentiality agreement or other protections. In other words, contrary to the Commission's holding in the Rehearing Order, "[m]aintain[ing] information as confidential" and "[r]eleasing confidential information under appropriate confidentiality agreements" *are* inconsistent.³¹ The simple presence of a confidentiality agreement does not protect competitively sensitive cost data. While it protects the data from further distribution, the market participant receives and sees the confidential and proprietary information of its competitors and cannot help but make future competitive decisions based on the knowledge that has been transferred. This is contrary to the very competitive marketplace that the Commission is charged with promoting.

³¹ Rehearing Order at P 16.

B. Releasing Resource-Specific Information As Directed By The Commission In The Rehearing Order Is Contrary To SPP's Obligations Under Its Membership Agreement And Inconsistent With Other Sections Of The SPP Tariff

Moreover, SPP has the obligation pursuant to its Membership Agreement³² to preserve the confidentiality of SPP member information that is designated as confidential.³³ Section 3.5 (Providing Information) of the Southwest Power Pool, Inc., Membership Agreement specifies:

Member shall provide such information to SPP as is necessary for SPP to perform its obligations under this Agreement and the OATT and for planning and operational purposes. *Such information shall be treated as confidential when so designated* so long as its designation is reasonable.³⁴

As a result of the obligation imposed on SPP by section 3.5, SPP members provide commercially sensitive information to SPP with the expectation that SPP will treat such information in a confidential manner, including *not disclosing it to third parties that may be potential competitors*. Furthermore, as described above, the type of data that SPP members routinely provide to SPP in connection with transmission planning (i.e., production costs) falls squarely within the category of proprietary information SPP members reasonably would designate as confidential pursuant to the Membership Agreement.

³² Southwest Power Pool, Inc., Membership Agreement, Original Volume No. 3 (“Membership Agreement”).

³³ SPP also extends this obligation to other market participants due to the importance of retaining the confidentiality of commercially sensitive information regardless of the source.

³⁴ Membership Agreement § 3.5 (emphasis added).

If SPP now will be required to disclose such resource-specific data pursuant to the SPP Tariff, to comply SPP would be in the untenable position of violating (unless members voted to change it) section 3.5 of the Membership Agreement. The ramification of such violation would be that the SPP members potentially would seek to change the Membership Agreement to relieve them from the obligation to provide – and potentially would stop providing – the commercially sensitive information that SPP requires for its transmission planning studies. As a result, SPP potentially may not have access to the best and most accurate information available to conduct sound transmission planning studies.

Requiring SPP to disclose confidential information also is inconsistent with other SPP Tariff provisions. Section 7.1.4 of Attachment AE of the SPP Tariff (Energy Imbalance Service Market) provides that “[n]o Market Participant shall have a right hereunder to receive or review any documents, data, or other information of another Market Participant, including documents, data, or other information provided to SPP, to the extent such documents, data, or information have been designated as Confidential Information” and “SPP shall not disclose to Market Participants or to third parties, any Confidential Information of a Market Participant.”³⁵ It would be unjust and unreasonable to require disclosure of commercially sensitive information in the context of transmission planning that the SPP Tariff elsewhere expressly requires to be maintained as confidential.

³⁵ SPP Tariff, Attachment AE § 7.1.4(a)&(b).

As discussed above (*see* section III.A), there are sound reasons for these restrictions in the SPP Membership Agreement and SPP Tariff. The Commission should not undo them.

C. The Existing SPP Tariff And SPP’s Compliance Amendments Satisfy The Commission’s Mandate To Ensure That System Design Software Results Needed To Verify The Application Of The Assumptions Used In The Balanced Portfolio Production Cost-Benefit Metrics Are Available

In any event, the existing SPP Tariff and the SPP Tariff as amended by the compliance filing should be sufficient to comply with the Commission’s directive to ensure that that system design software results needed for stakeholders to verify the application of the assumptions in creating the adjusted production cost-benefit metrics will be made available. As a result of SPP’s filing to comply with Order No. 890,³⁶ the SPP Tariff already contained provisions that enable stakeholders appropriate access to data in order to replicate the results of the transmission planning studies, including balanced portfolio studies. Specifically, section VI.6(b) of Attachment O of the SPP Tariff includes the following provision:

The related study results, criteria, assumptions and data underlying the studies used to develop the list of upgrades within proposed Balanced Portfolios and proposed reliability upgrades shall be posted on the SPP website, with password protected access if required to preserve the confidentiality of information in accordance with the provisions of the Tariff and the SPP Membership Agreement and to address CEII requirements. . . . The CEII

³⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,241, order on reh’g, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), order on reh’g and clarification, Order No. 890-B, 123 FERC ¶ 61,299 (2008), order on reh’g and clarification, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

compliant redacted version of the SPP Transmission Expansion Plan shall be posted on the SPP website. Redacted versions shall include instructions for acquiring the complete version of the SPP Transmission Expansion Plan.³⁷

Consistent with Order No. 890-B, in implementing this provision, SPP does not disclose commercially sensitive information, including resource-specific data (e.g. production cost models and generation dispatch methodologies) “to those engaged in the marketing, sale, or purchase of electric power at wholesale.”³⁸ This restriction, as the Commission expressly recognized in Order No. 890-B, is entirely appropriate given the proprietary and competitively sensitive nature of the information.

Additionally, in the August 15 Filing, SPP specified that balanced portfolios are considered “High Priority Studies” for which SPP will issue a report and post the report and related studies and the criteria, assumptions and data on the SPP website, with password protected access if required to preserve the confidentiality of information.³⁹

³⁷ This section was amended in the August 15 Filing to apply to “upgrades within proposed Balanced Portfolios.”

³⁸ Order No. 890-B at P 37.

³⁹ See August 15 Filing, Attachment II, [First Revised Sheet No. 300C and Original Sheet No. 300C.01]. New section IV(3)(g) of Attachment O of the SPP Tariff states:

For each high priority study the Transmission Provider shall publish a report, including but not limited to, the study input assumptions, the estimated cost of the upgrades included in the high priority study, the expected economic benefits of the upgrades, and identify reliability impacts, if any, of the upgrades. The report and related studies and the criteria, assumptions and data underlying the report shall be posted on the SPP website, with password protected access if required to preserve the confidentiality of information in accordance with the provisions of the Tariff and the SPP Membership Agreement and to address Critical Energy

(continued . . .)

Again, in the event that the report and related criteria, assumptions and data contain commercially sensitive data including resource-specific data, consistent with Order No. 890-B, SPP limits disclosure of such information to those *not* “engaged in the marketing, sale, or purchase of electric power at wholesale.”⁴⁰

Finally, in the compliance filing, SPP added a new subsection (f) to section IV.6 of Attachment O to specify that SPP would publish a report that would contain, among other things, the study input assumptions for the balanced portfolio studies. This additional section clarifies that the Commission-approved procedures for treating confidential information shall apply to the balanced portfolio reports. Stated simply, these provisions provide market participants with sufficient information to evaluate SPP’s planning process and study results. With this information, interested parties engaged in the marketing, sale, or purchase of electric power at wholesale to which disclosure of commercially sensitive information is restricted can still closely replicate the balanced portfolio and other transmission planning studies by using their own generation information and otherwise available generic generation data.

At a very minimum, the Commission should maintain the well-established distinction between transmission personnel and competitive duty personnel engaged in wholesale markets. The Commission should make clear that it is not ordering SPP to

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Infrastructure Information (CEII) requirements. The CEII compliant redacted version of the report shall be posted on the SPP website. The redacted version shall include instructions for acquiring the complete version of the report.

⁴⁰ Order No. 890-B at P 37.

disclose commercially and competitively sensitive resource specific generation data to those that are “engaged in the marketing, sale, or purchase of electric power at wholesale.”

IV. CONCLUSION

For the reasons stated above, the Commission should grant rehearing to the extent it has directed further SPP Tariff revisions to ensure “that system design software results needed for stakeholders to verify the application of the assumptions in creating the adjusted production cost-benefit metrics will be made available subject to the signing of confidentiality agreements or other needed arrangements to protect sensitive information”⁴¹ and “to provide that resource-specific data in the planning process be disclosed by SPP, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.”⁴² It is unjust and unreasonable to require SPP to disclose commercially sensitive resource-specific data of its members to third parties beyond the restricted disclosures that SPP already makes under its tariff.

Respectfully submitted,



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⁴¹ Rehearing Order at P 40.

⁴² Rehearing Order at P 41.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 17th day of July 2009.

A handwritten signature in cursive script, reading "Carrie L. Bumgarner". The signature is written in black ink and is positioned above a horizontal line.

Carrie L. Bumgarner