

December 1, 2009

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

FILED
SECRETARY OF THE
COMMISSION
2009 DEC -1 P 4: 01
FEDERAL ENERGY
REGULATORY COMMISSION

Re: *Southwest Power Pool, Inc.*, Docket No. ER09-1192-____
Submission of Compliance Filing Revising Bylaws

Dear Secretary Bose:

Pursuant to section 206 of the Federal Power Act (“FPA”), 16 U.S.C. § 824e, and Part 35 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. Part 35, Southwest Power Pool, Inc. (“SPP”), as authorized by its Membership, hereby submits revisions to its Bylaws¹ to comply with the Commission’s September 17, 2009 orders² in this proceeding and a related proceeding. SPP requests an effective date of September 30, 2009 for the proposed revisions.

I. BACKGROUND

A. SPP

SPP is a Commission-approved Regional Transmission Organization (“RTO”). It is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP currently has 54 Members in nine states and serves more than 5 million customers in a 370,000 square-mile area. Its members include 12 investor-owned utilities, 9 municipal systems, 11 generation and transmission cooperatives, 4 state agencies, 5 independent power producers, 10 power marketers, and 3 independent transmission companies. As an RTO, SPP is a transmission provider currently

¹ Southwest Power Pool, Inc. Bylaws, Original Volume No. 4 (“Bylaws”).

² *Sw. Power Pool, Inc.*, 128 FERC ¶ 61,245 (2009) (“SPP Bylaws Order”); *N. Am. Elec. Reliability Corp.*, 128 FERC ¶ 61,244 (2009) (“NERC Order”).

administering transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

In addition to providing Open Access Transmission Tariff (“Tariff”) services as an RTO, SPP serves as a “Regional Entity” for the North American Electric Reliability Corporation (“NERC”). SPP signed a Regional Entity Delegation Agreement with NERC and was approved as a Regional Entity by the Commission on April 19, 2007.³ In this capacity, the SPP Regional Entity (“SPP RE”) is responsible for enforcing NERC-approved reliability standards for all users, owners and operators of the bulk power system within the SPP region. The SPP RE is also responsible for proposing reliability standards applicable to its region and investigating violations of reliability standards occurring within its region. The SPP RE-related activities are overseen by three independent Regional Entity Trustees.

B. Previous Revisions to SPP Bylaws

On May 22, 2009, SPP submitted revisions to its Bylaws⁴ to: (a) address changes to the SPP RE structure and management including the creation of a SPP RE General Manager position to oversee the SPP RE function; (b) adopt provisions requested by SPP stakeholders governing meeting attendance and quorum requirements; (c) incorporate changes necessitated by Order No. 719;⁵ and (d) make other administrative and ministerial changes to clarify the Bylaws, reflect current practices, and make other technical corrections. Revisions to SPP’s Bylaws provisions governing the SPP RE function are considered “Regional Entity Rules” under the Commission’s regulations and therefore also must be approved by NERC and filed with the Commission.⁶ NERC filed

³ *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,060 (“*Delegation Agreement Order*”), *order on reh'g*, 120 FERC ¶ 61,260 (2007) (“*Delegation Agreement Rehearing Order*”).

⁴ Submission of Revisions to Bylaws of Southwest Power Pool, Inc., Docket No. ER09-1192-000 (May 22, 2009) (“May 22 Filing”).

⁵ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, III FERC Stats. & Regs., Regs. Preambles ¶ 31,281 (2008), *as amended* 126 FERC ¶ 61,261, *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009). SPP submitted its Order No. 719 compliance filing on April 28, 2009. Submission of Order No. 719 Compliance Filing Revising Tariff of Southwest Power Pool, Inc., Docket No. ER09-1050-000 (Apr. 28, 2009) (“SPP Order No. 719 Compliance Filing”).

⁶ 18 C.F.R. §§ 39.1 & 39.10.

the Bylaws revisions included in SPP's May 22 Filing with the Commission on May 21, 2009.⁷

On September 17, 2009, the Commission issued the *SPP Bylaws Order* addressing the May 22 Filing and the *NERC Order* addressing the NERC May 21 Filing. The *SPP Bylaws Order* accepted SPP's proposed administrative and ministerial Bylaws revisions,⁸ and accepted, subject to the outcome of SPP's Order No. 719 compliance proceeding in Docket No. ER09-1050-000, proposed revisions related to SPP's compliance with Order No. 719 and revisions related to SPP meeting attendance and quorum requirements.⁹ The *SPP Bylaws Order* also directed SPP to submit a compliance filing in accordance with the *NERC Order*,¹⁰ which directed NERC and SPP to submit additional Bylaws revisions to list the specific duties of the SPP RE General Manager¹¹ and to submit explanations and examples of SPP's proposed new voting procedures.¹²

C. SPP Stakeholder Process

The Bylaws revisions proposed in this filing were developed through SPP's stakeholder process. The revisions were approved unanimously by the SPP Corporate Governance Committee ("CGC") on September 24, 2009. SPP provided notice of the proposed revisions to its Membership on September 25, 2009, and the proposed revisions were adopted by the SPP Membership without opposition on October 27, 2009.¹³

⁷ Petition of the North American Electric Reliability Corporation for Approval of Proposed Revisions to the Bylaws of Southwest Power Pool, Inc., Docket No. RR09-4-000 (May 21, 2009) ("NERC May 21 Filing").

⁸ *SPP Bylaws Order* at P 18.

⁹ *Id.* at PP 14, 16.

¹⁰ *Id.* at P 10.

¹¹ *NERC Order* at P 10.

¹² *Id.* at P 12.

¹³ Modifications to Section 9 of the Bylaws require approval by the SPP Membership after 30 days notice. Bylaws § 10.0.

D. NERC Approval Process

The Bylaws provisions included in this filing were approved by the NERC Board of Directors on November 5, 2009 and are being filed with the Commission by NERC contemporaneously with this filing.

E. Additional Bylaws Revisions

In addition to the Bylaws revisions proposed in this compliance filing, SPP is also submitting today a separate filing containing additional Bylaws revisions to clarify the duties of the SPP RE Trustees and reflect that certain duties previously assigned to the SPP RE Trustees have been assigned to the SPP RE General Manager.

II. COMPLIANCE FILING

In the *SPP Bylaws Order* and the *NERC Order*, the Commission directed SPP and NERC to submit additional revisions to the Bylaws to specify the duties of the SPP RE General Manager, and to submit explanations and examples of SPP's proposed changes to its voting procedures.

A. Revisions to Section 9.3 of the SPP Bylaws

In the *NERC Order*, the Commission directed SPP and NERC "to submit a compliance filing that includes modifications to proposed section 9.3 of the SPP bylaws that identify the specific duties of the RE General Manager, similar to the lists of duties set forth in the SPP bylaws for Regional Entity staff and Regional Entity trustees."¹⁴

SPP proposes to revise its Bylaws to list several specific responsibilities for the SPP RE General Manager, including:

- (a) providing guidance and oversight of the execution of the performance of delegated statutory functions from NERC;
- (b) developing and managing an appropriate organizational structure and staffing levels to accomplish SPP RE functions;
- (c) developing an annual SPP RE business plan and budget for SPP RE Trustee, NERC, and Commission approval;
- (d) providing sound fiscal management;

¹⁴ *NERC Order* at P 10.

- (e) ensuring compliance with SPP's Bylaws and Regional Entity Delegation Agreement, as well as other applicable federal, state, and local laws; and
- (f) interfacing with SPP Members and stakeholders, federal and state regulators, other Regional Entities, and NERC on matters related to the reliability of the bulk power system.¹⁵

Additionally, SPP proposes to revise Section 9.3 of the Bylaws to indicate that the SPP RE General Manager "will provide leadership and vision, oversee the execution of the RE strategic direction, and direct the day-to-day operations of the RE."

These revisions provide a well-defined, comprehensive description of the RE General Manager's specific duties to allow the Commission and other interested entities to understand the oversight of the SPP RE function, in compliance with the *NERC Order*.¹⁶

B. Explanation of Voting Procedures

In the May 22 Filing, SPP proposed to revise its Bylaws provisions governing the election of SPP RE Trustees.¹⁷ SPP proposed to change the voting provisions to allow each SPP Member to vote for or against a nominee, instead of limiting a Member's options to voting for a nominee or abstaining from the vote. SPP also proposed to revise the Bylaws to require a supermajority to elect a Trustee candidate in an election where only one candidate is nominated, and a simple majority when multiple candidates are nominated.¹⁸

In the *NERC Order*, the Commission directed SPP and NERC to submit in a compliance filing a fuller explanation of the voting procedure for SPP RE Trustee candidates, including clear examples of "negative voting" situations involving one candidate and multiple candidates.¹⁹

¹⁵ These revisions are reflected in attached Exhibits I and II in clean and redline form, respectively.

¹⁶ *NERC Order* at P 10.

¹⁷ *See* May 22 Filing at 5.

¹⁸ *Id.* SPP proposed similar voting provisions for the election to the SPP Board of Directors. *See id.* at 5, 9-10.

¹⁹ *NERC Order* at P 12.

As indicated above, under SPP's historic voting procedures, Members were only permitted to cast a vote "for" a candidate or else abstain from voting. At the request of its stakeholders, SPP proposed to modify its voting procedures to permit Members the option of voting "against" a candidate as an alternative to abstaining. The purpose for this change is to permit Members the opportunity to communicate clearly their support for or opposition to a candidate, rather than simply not voting. Votes "for" or "against" a candidate count as a vote for the purposes of establishing the number of votes required for a majority or supermajority, whereas abstentions do not count as a vote. Additionally, if no candidate receives the required simple majority of votes cast (or supermajority in the case of an election involving only one candidate), the seat remains vacant and the CGC is required to present a new nominee or nominees at a future meeting of the Membership.²⁰

For example, if only one candidate is nominated for a Trustee seat, the ballot will offer the options of voting "for" or "against" the candidate, and the candidate will be required to receive a supermajority to be elected, pursuant to Section 9.7.3(e)(1) of the Bylaws as proposed in the May 22 Filing.²¹ A Member will have the option to vote "for" or "against" the candidate or to abstain from the voting. Any abstentions do not count as a vote, meaning that only votes cast "for" or "against" will be counted for the purposes of determining the number of "for" votes needed to constitute a supermajority. Additionally, pursuant to Section 9.3 of the Bylaws, each Membership sector (Transmission Owning Members and Transmission Using Members) votes separately, and the two sector votes are averaged to determine the outcome of the vote, meaning that a candidate that is the only nominee for a Trustee position is elected if the average of the two sector voting percentages is at least sixty-six percent. If the candidate does not receive a supermajority of the votes cast, the candidate will not be elected and the CGC will present a new nominee at a future meeting of the Membership.²²

Likewise, in an election to fill a Trustee seat where multiple candidates are nominated, the ballot will offer the options of voting "for" or "against" each candidate, and a candidate will be required to receive a simple majority of the average of the two Membership sector votes to be elected, pursuant to Section 9.7.3(e)(2) of the Bylaws as proposed in the May 22 Filing.²³ A Member will again have the option to vote "for" one

²⁰ Bylaws §§ 9.7.3(e)(1) & (2).

²¹ May 22 Filing, Exhibit No. 2 at First Revised Sheet No. 44.

²² Bylaws § 9.7.3(e)(1).

²³ May 22 Filing, Exhibit No. 2 at First Revised Sheet No. 44.

candidate and “against” the remaining candidates or to abstain from the voting, and an abstention will not count as a vote for the purposes of determining the number of “for” votes needed to constitute a simple majority. If no candidate receives a simple majority of the votes cast, the seat will remain vacant and the CGC will present a new nominee at a future meeting of the Membership.²⁴

III. ADDITIONAL INFORMATION

A. Information Required by the Commission’s Regulations

(1) Documents submitted with this filing:

In addition to this transmittal letter, the following exhibits are included in this filing:

Exhibit I Revised Bylaws Sheets (Clean Version)

Exhibit II Revised Bylaws Sheets (Redlined Version)

Exhibit III Service List

(2) Effective Date:

As discussed above, SPP requests that the Commission accept the proposed Bylaws revisions with an effective date of September 30, 2009, the effective date of the revisions proposed in the May 22 Filing.

(3) Service:

SPP has served a copy of this filing on all its Members and Customers, NERC, and all parties on the service list compiled by the Commission Secretary for this proceeding. A complete copy of this filing will be posted on the SPP web site www.spp.org, and is also being served on all affected state commissions.

²⁴ Bylaws § 9.7.3(e)(2).

(4) Requisite Agreements:

SPP's Membership approved the Bylaws revisions proposed in this filing as detailed above.

(5) Estimate of transactions and revenues:

Not applicable.

(6) Basis of rates:

The basis for the proposed Bylaws revisions are explained above.

(7) Comparison to rates for similar services:

Not applicable.

(8) Specifically assignable facilities installed or modified:

There are none.

B. Communications

Correspondence and communications with respect to this filing should be sent to, and SPP requests the Secretary to include on the official service list, the following:

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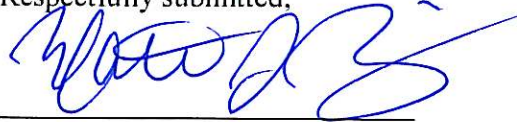
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IV. CONCLUSION

For all of the foregoing reasons, SPP respectfully requests that the Commission accept the proposed Bylaws revisions with an effective date of September 30, 2009. SPP further requests a waiver of any additional Commission regulations that the Commission may deem applicable.

Respectfully submitted,



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**Attorneys for
Southwest Power Pool, Inc.**

cc: Penny Murrell
Michael Donnini
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Exhibit I

9.3 RE General Manager

The RE General Manager shall be selected by and report to the SPP Regional Entity Trustees, and will provide leadership and vision, oversee the execution of RE strategic direction, and direct the day-to-day operations of the RE. The RE General Manager shall carry out the rights, duties and obligations of the SPP RE pursuant to the authority granted by these Bylaws, the Regional Entity Trustees, and SPP corporate policies. The RE General Manager's responsibilities shall include but are not limited to:

- (a) Providing guidance and oversight of the execution of the performance of delegated statutory functions from the ERO;
- (b) Developing and managing an appropriate organizational structure and staffing levels to accomplish the RE functions;
- (c) Developing an annual RE business plan and budget for RE Trustee, NERC and FERC approval;
- (d) Providing sound fiscal management;
- (e) Ensuring compliance with SPP's Bylaws and Regional Entity Delegation Agreement, as well as other applicable federal, state, and local laws; and
- (f) Interfacing with SPP members and stakeholders, federal and state regulators, other Regional Entities, and NERC on matters related to the reliability of the bulk power system.

The President shall ensure that the RE General Manager has adequate resources, access to information, and the full cooperation of Staff and Organizational Groups for the effective execution of his/her duties.

Exhibit II

9.3 RE General Manager

The RE General Manager shall be selected by and report to the SPP Regional Entity

~~Trustees~~, and will provide leadership and vision, oversee the execution of RE strategic direction, and direct the day-to-day operations of the RE. The RE General Manager shall carry out the rights, duties and obligations of the SPP RE pursuant to the authority granted by these Bylaws, the Regional Entity Trustees, and SPP corporate policies. The RE General Manager's responsibilities shall include but are not limited to:

- (a) Providing guidance and oversight of the execution of the performance of delegated statutory functions from the ERO;
- (b) Developing and managing an appropriate organizational structure and staffing levels to accomplish the RE functions;
- (c) Developing an annual RE business plan and budget for RE Trustee, NERC and FERC approval;
- (d) Providing sound fiscal management;
- (e) Ensuring compliance with SPP's Bylaws and Regional Entity Delegation Agreement, as well as other applicable federal, state, and local laws; and
- (f) Interfacing with SPP members and stakeholders, federal and state regulators, other Regional Entities, and NERC on matters related to the reliability of the bulk power system.

The President shall ensure that the RE General Manager has adequate resources, access to information, and the full cooperation of Staff and Organizational Groups for the effective execution of his/her duties.

Exhibit III

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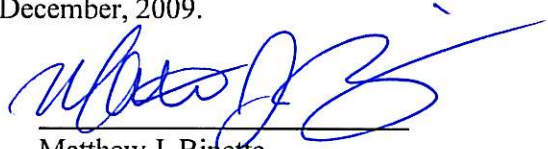
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CERTIFICATE OF SERVICE

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 1st day of December, 2009.



Matthew J. Binette

**Attorney for
Southwest Power Pool, Inc.**