

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

Southwest Power Pool, Inc.

)

Docket No. ER11-3967-000

**ANSWER OF
SOUTHWEST POWER POOL, INC.**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.213, Southwest Power Pool, Inc. ("SPP") files this answer¹ to the comments and protests submitted in this proceeding.² While SPP does not oppose some suggestions proposed by some commenters, certain comments and protests address issues beyond the scope of this proceeding and therefore should be rejected.

¹ SPP seeks leave to submit this answer to assist the Commission's decision-making process and clarify the issues. The Commission regularly allows answers for such purposes. *See, e.g., Sw. Power Pool, Inc.*, 135 FERC ¶ 61,223, at P 27 (2011) (accepting answers that aided the Commission's decision-making); *Sw. Power Pool, Inc.*, 132 FERC ¶ 61,042, at P 28 (2010) (same), *reh'g denied*, 136 FERC ¶ 61,050 (2011); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 19 (2010) (same); *Sw. Power Pool, Inc.*, 128 FERC ¶ 61,018, at P 15 (2009) (same); *Sw. Power Pool, Inc.*, 126 FERC ¶ 61,153, at P 18 (2009) (same).

² Motion for Leave to Intervene, Comments, and Request for Clarification of DC Energy, LLC, Docket No. ER11-3967-000 (July 21, 2011) ("DC Energy Comments"); Motion to Intervene and Comments of East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, and Tex-La Electric Cooperative of Texas, Inc., Docket No. ER11-3967-000 (July 21, 2011) ("East Texas Cooperatives Comments"); Limited Protest and Request for Clarification of the Electric Power Supply Association, Docket Nos. ER11-3967-000, *et al.* (July 25, 2011) ("EPSA Protest"); Motion to Intervene and Limited Protest of Missouri Joint Municipal Electric Utility Commission, Docket No. ER11-3967-000 (July 21, 2011) ("MJMEUC Protest"); Motion to Intervene and Comments of Morgan Stanley Capital Group Inc. Macquarie Energy LLC and DB Energy Trading LLC, Docket Nos. ER11-3967-000, *et al.* (July 21, 2011) ("Indicated Participants Comments"); Motion to Intervene and Comments of Western Farmers Electric Cooperative, Docket No. ER11-3967-000 (July 21, 2011) ("WFEC Comments").

I. BACKGROUND

On October 21, 2010, the Commission issued Order No. 741³ mandating reforms to credit policies used in organized wholesale electric power markets, including: (1) shortened settlement timeframes; (2) restrictions on the use of unsecured credit; (3) elimination of unsecured credit in financial transmission rights or equivalent markets; (4) adoption of steps to address the risk that Regional Transmission Organizations (“RTO”) and Independent System Operators (“ISO”) may not be allowed to use netting and set-offs in the event of a market participant bankruptcy; (5) adoption of minimum criteria for market participation; (6) clarification regarding the organized market administrator’s ability to invoke “material adverse change” to demand additional collateral from market participants; and (7) adoption of a standardized two-day grace period to cure collateral calls.⁴ On February 17, 2011, the Commission issued Order No. 741-A, denying rehearing of most of the Commission’s directives in Order No. 741.⁵

On June 30, 2011, SPP submitted its compliance filing addressing all Order No. 741 requirements except the requirement to adopt procedures to address netting of market

³ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, III FERC Stats. & Regs., Regs. Preambles ¶ 31,317 (2010), *order on reh’g*, Order No. 741-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,320, *reh’g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

⁴ *See* Order No. 741 at P 4.

⁵ Order No. 741-A modified the unsecured credit limit for corporate families established in Order No. 741 and extended the deadline to comply with the netting and set-off requirements of Order No. 741. *See* Order No. 741-A at PP 9, 25. Order No. 741-A denied rehearing of the remaining Order No. 741 requirements. *See id.* at PP 1, 14, 22, 33, 35.

participant obligations and set-off in bankruptcy.⁶ On the same day, SPP submitted a separate filing under section 205 of the Federal Power Act⁷ proposing revisions to its Open Access Transmission Tariff (“Tariff”) to adopt other billing and credit policy reforms not expressly required by Order No. 741.⁸

II. ANSWER

A. Several Comments Request Changes Outside the Scope of Order No. 741

1. *Comments Requesting Credit Policy Changes Beyond Those Required by Order No. 741 Should Be Rejected*

Several of the protests and comments request changes to aspects of SPP’s Credit Policy that were not required by Order No. 741 and therefore are inappropriate for a compliance filing. The Commission should reject these comments requesting that SPP make additional changes to its Credit Policy that are beyond the scope of Order No. 741.

For example, the Electric Power Supply Association (“EPSA”) requests a host of changes to SPP’s existing Credit Policy that are neither required by Order No. 741 nor implicated in SPP’s Compliance Filing. EPSA acknowledges that “many of the concerns identified below are with existing provisions of SPP’s tariff,”⁹ yet requests that the Commission in this compliance proceeding order changes to SPP’s existing Tariff

⁶ Order No. 741 Compliance Filing of Southwest Power Pool, Inc., Docket No. ER11-3967-000 (June 30, 2011) (“Compliance Filing”).

⁷ 16 U.S.C. § 824d.

⁸ Revisions to SPP Tariff to Enhance Credit Policies of Southwest Power Pool, Inc., Docket No. ER11-3958-000 (June 30, 2011) (“Enhanced Credit Policy Filing”).

⁹ EPSA Protest at 9.

provisions that are outside of the requirements of Order No. 741. The Commission should reject EPSA's "concerns" as inappropriate in a compliance proceeding.

Specifically, EPSA raises concerns with several existing provisions in SPP's Credit Policy set forth in Attachment X of the SPP Tariff, including Sections 3.1.1.1 ("Audited Financial Statements and Related Information"), 3.1.1.3 ("Loss Contingencies"), 3.1.1.5 ("Total Potential Exposure Information"), and 3.2.3 ("Rating Agency Information"). None of these sections has anything to do with the requirements of Order No. 741 (i.e., settlement timeframes, restrictions on unsecured credit, netting of market participant obligations, minimum participation criteria, material adverse change, collateral call cure period).¹⁰ EPSA's comments are thus outside the scope of this proceeding, which is limited to SPP's compliance with Order No. 741 requirements, and should be disregarded. Moreover, even if SPP were to agree that changes to these sections should be adopted, a compliance filing in response to a Commission order is not the appropriate place to make such *sua sponte* modifications to existing Tariff provisions.¹¹

Likewise, EPSA expresses concerns with sections of SPP's Credit Policy that SPP does propose to modify; however, Order No. 741 does not mandate that SPP make any revisions to address EPSA's concerns. For instance, EPSA observes that Section 3.2.2 of

¹⁰ See *supra* note 5 and accompanying text.

¹¹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156, at P 57 n.51 (2008) ("The Commission has previously held that compliance filings must be limited to the specific directives ordered by the Commission."); *Niagara Mohawk Power Corp., et al.*, 121 FERC ¶ 61,275, at P 38 (2007) (rejecting aspects of a compliance filing that exceeded the directives of a final Commission rule); *NorthWestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005) (rejecting revisions in a compliance filing that were "outside the scope" of the Commission's directives).

Attachment X, which establishes SPP’s procedures for requiring the posting of additional financial security, “does not specify whether there is a limit or cap on the additional financial security that SPP can request under these circumstances.”¹² As an initial matter, Order No. 741 did not require that RTOs specify a limit or cap on the amount of additional financial security that the RTO may request in response to a material adverse change. Additionally, while EPSA reads this paragraph in isolation, the amount of financial security that SPP will request from market participants is governed by other provisions of the Credit Policy, including Articles Four and Five of Attachment X, which address the calculation of a market participant’s “Total Credit Limit” and “Total Potential Exposure,” respectively. A market participant’s Total Credit Limit includes its unsecured credit allowance and any financial security,¹³ which together must be sufficient to cover the market participant’s Total Potential Exposure.¹⁴ Thus, EPSA’s requested clarification is neither required by Order No. 741 nor necessary, and should thus be rejected.

EPSA also takes issue with SPP’s material adverse change provisions, arguing that some of the events listed as material adverse changes are not “material.”¹⁵ Specifically, EPSA criticizes the inclusion of mergers, consolidations, or acquisitions as not “necessarily” having a material adverse effect on credit.¹⁶ However, in Order No. 741, the Commission directed RTOs to adopt an illustrative list of events that *may* cause

¹² See EPSA Protest at 10.

¹³ See SPP Tariff, Attachment X § 4.5.

¹⁴ See *id.* § 5.3.1 (“Transaction Limits”).

¹⁵ See EPSA Protest at 13.

¹⁶ See *id.*

the RTO to invoke its material adverse change clause.¹⁷ Nothing in Order No. 741 nor in SPP's material adverse change provisions compel SPP automatically to invoke material adverse change when such events occur. Order No. 741 afforded RTOs flexibility to determine when a change in circumstance is material,¹⁸ and SPP's material adverse change provisions comply with Order No. 741 by providing an illustrative list of the types of events that may trigger SPP's material adverse change options. EPSA's concerns, therefore, are unfounded.

DC Energy, LLC ("DC Energy") also requests that the Commission direct SPP to modify its Credit Policy in ways not required by Order No. 741. Specifically, DC Energy requests that the Commission direct SPP "to supplement its proposed revisions in order to clarify the level of audited financial statements granularity that is required."¹⁹ Nowhere in Order No. 741 did the Commission address the submission of financial statements or the level of granularity that RTOs must require. In addition, it is difficult to determine how this request relates to the Commission's goal in Order No. 741 of reforming credit requirements to reduce the risk of defaults that would be socialized to all market participants.²⁰ If DC Energy is concerned about the format requirements for SPP's credit application process, it should address those concerns with SPP or the Commission in another forum.

¹⁷ Order No. 741 at P 149.

¹⁸ *See id.* at PP 149-50.

¹⁹ DC Energy Comments at 3.

²⁰ *See, e.g.*, Order No. 741 at PP 1-4, 7, 12-13, 32-34, 51-53, 72, 116, 119, 131, 133, 150; Order No. 741-A at PP 2, 9, 15, 22, 33, 35; Order No. 741-B at PP 3, 8-11.

DC Energy’s request that the Commission direct SPP to “use the stakeholder process to develop a transparent material adverse change determination process”²¹ is equally inapposite. First, SPP developed its material adverse change provisions through its stakeholder process, as discussed in the Compliance Filing.²² Moreover, to the extent that DC Energy is requesting that stakeholders be involved in material adverse change determinations, such involvement would be inappropriate as it would lead to market participant involvement in decisions regarding a competitor’s continued participation and activity in the market.

Finally, in response to DC Energy’s “understanding that SPP will accept the audited financial statements of a corporate parent as the market participant’s guarantor to demonstrate that the market participant has met the minimum participation criteria as it pertains to minimum tangible net worth or total assets,”²³ DC Energy is mistaken. As SPP expressly indicated in the Compliance Filing, “[t]he market participant must be able to satisfy one of these requirements without the assistance of a corporate parent or affiliate.”²⁴ Order No. 741 does not require SPP to accept a corporate parent’s credit information to satisfy the minimum participation criteria on behalf of a subsidiary.

²¹ See DC Energy Comments at 3-4.

²² See Compliance Filing at 3 (discussing the stakeholder process used to develop the Compliance Filing).

²³ DC Energy Comments at 3.

²⁴ Compliance Filing at 10-11; see also *id.* at Proposed Attachment X § 3.1.1.8 (“If the applying Market Participant, *without assistance from a parent or Affiliate*, is unable to meet the minimum criteria for market participation, the applying Market Participant shall be declined participation in all SPP markets.”).

2. *Comments Requesting Standardized RTO Credit Policies Are Impermissible Collateral Attacks on Order No. 741*

In addition to requesting changes to existing provisions of the SPP Credit Policy that are not at issue in this proceeding, certain commenters request that the Commission impose additional requirements on SPP and other RTOs that were not addressed in Order No. 741. Specifically, the “Indicated Participants”²⁵ and the EPSA decry the “lack of uniformity”²⁶ among RTO minimum participation criteria and request that the Commission require standardization of these requirements.²⁷ However, in Order No. 741 the Commission expressly indicated that:

[T]he Commission will not specify criteria at this time, and instead directs that each ISO and RTO develop these criteria through their stakeholder processes. Consequently, the Commission directs each ISO and RTO to submit a compliance filing that includes tariff revisions to establish minimum criteria for market participation. ***Each ISO and RTO will need to consider the minimum criteria that are most applicable to its markets.***²⁸

Subsequently, in Order No. 741-A, the Commission denied a request for rehearing asking that the Commission require uniform minimum participation criteria.²⁹ EPSA’s and the Indicated Participants’ requests for standardization are collateral attacks on Order Nos. 741 and 741-A that should be rejected. To the extent that these parties are dissatisfied

²⁵ The “Indicated Participants” are Morgan Stanley Capital Group Inc., Macquarie Energy LLC, and DB Energy Trading LLC.

²⁶ EPSA Protest at 2.

²⁷ *See id.* at 2-3, 13-15; Indicated Participants Comments at 8-18.

²⁸ Order No. 741 at P 132 (emphasis added).

²⁹ Order No. 741-A at P 33 (denying all requests for rehearing of the minimum participation criteria); *see also id.* at P 28 (summarizing a request for rehearing requesting that the Commission “require that the criteria be uniform across ISOs and RTOs”).

with the Commission's determinations, they should have sought rehearing of Order Nos. 741 and 741-A.

B. SPP Does Not Oppose Changing Certain Aspects of Its Minimum Criteria for Market Participation as Commenters Suggest

While SPP believes that its proposed Tariff revisions fully comply with the Order No. 741 requirement to adopt minimum criteria for market participation and provide a just and reasonable framework for protecting SPP and market participants from risks associated with unqualified entities participating in SPP markets, SPP understands the desire of some commenters for additional detail regarding a market participant's risk management certification. Accordingly, SPP is willing to adopt certain revisions to Attachment X in a compliance filing if directed by the Commission to do so.

Specifically, in its Compliance Filing, SPP proposed a new Section 3.1.1.6 of Attachment X to require all market participants to submit an annual attestation of risk management capabilities.³⁰ Under this requirement, each market participant is required to submit an attestation annually to: (1) attest that the attesting officer has signature authority to make the statement; (2) describe the market participants risk management capabilities and procedures, including whether the market participant is engaged in hedging; (3) identify the employee(s) of the market participant who perform the risk management activities described in the attestation or identify any outside organization with which the market participant contracts to perform the risk management activities; (4) define the special training, skills, experience, and industry tenure of such employees; and

³⁰ See Compliance Filing, Proposed Attachment X § 3.1.1.6.

(5) provide any other information that may assist SPP in determining the risk management capabilities of the market participant.³¹

Several commenters request that SPP provide additional detail regarding the risk management attestation requirements and the standards and criteria SPP will use to assess a market participant's attestation to determine whether its risk management capabilities are sufficient for participation in SPP markets.³² For example, EPSA recommends that SPP adopt a standard risk management attestation form to be completed by market participants each year, as proposed by some of the other RTOs in their Order No. 741 compliance filings.³³ SPP agrees that a standard attestation form will provide market participants with additional detail regarding the type of information and documentation that SPP will require to demonstrate a market participant's risk management capabilities. Accordingly, SPP is amenable to developing and adopting a standard risk management attestation form to be submitted in a compliance filing if the Commission so directs.

In addition to requesting additional detail regarding the minimum risk management criteria and attestation, some commenters request that SPP allow market participants a limited time period to cure any deficiency in its attestation or its failure to submit the attestation, prior to being prohibited from participating in the market.³⁴ As currently written, Section 3.1.1.6 does not expressly allow for such a cure period. SPP

³¹ See *id.* §§ 3.1.1.6(a)-(e).

³² See East Texas Cooperatives Comments at 2-4; MJMEUC Protest at 4-5; WFEC Comments at 4-5.

³³ See EPSA Protest at 10.

³⁴ See East Texas Cooperatives Comments at 4; MJMEUC Protest at 5-6; WFEC Comments at 5.

agrees that a market participant that fails to submit an attestation or provides an incomplete attestation should be afforded a limited opportunity to rectify any deficiencies before being precluded from transacting in the market. Therefore, SPP is amenable, if ordered by the Commission, to adopt language providing a two-day cure period for a market participant to correct its insufficient attestation. A two-day cure period is consistent with other cure periods SPP has proposed in its billing practices and Credit Policy,³⁵ as well as with the cure period other RTOs have proposed.³⁶

Additionally, in response to comments that Section 3.1.1.6 lacks sufficient detail regarding the standards and criteria SPP will use in evaluating whether a market participant's risk management capabilities are sufficient for participation in the market,³⁷ SPP clarifies that its review of a market participant's attestation will be limited to determining whether the market participant has provided all of the required information. Specifically, SPP will review a market participant's attestation to ensure that it provides the necessary description of the market participant's risk management program, identifies the employees or outside organizations that perform the risk management activities described in the attestation, and defines the skills, training, and experience of such employees or organizations. If a market participant provides all of the required

³⁵ See Enhanced Credit Policy Filing at 6-7 (proposing a two-day cure period for transmission invoice payment defaults and other "events of default" under the SPP Credit Policy); Compliance Filing at 14 (proposing a two-day cure period for collateral calls).

³⁶ See, e.g., Revisions to the ISO New England Inc. Transmission, Markets and Services Tariff in Compliance With Order Nos. 741 and 741-A, Docket No. ER11-3953-000, at 17 (June 30, 2011) (proposing a two-day cure period to correct deficiencies in market participant risk management certifications).

³⁷ See East Texas Cooperatives Comments at 3-4; MJMEUC Protest at 4-6; WFECC Comments at 4-5.

information, SPP will accept the market participant’s attestation as sufficient to satisfy the requirements of Section 3.1.1.6.

While SPP is amenable to some of the Credit Policy changes suggested by some commenters, MJMEUC’s suggestion that load-serving entities should be exempted from SPP’s risk management attestation requirements in Section 3.1.1.6³⁸ is misplaced. Although MJMEUC is correct that the Commission noted in Order No. 741-A that it “did not mandate a single set of criteria for all participants in a market,”³⁹ neither Order No. 741 nor subsequent orders authorize RTOs to exempt certain classes of market participants from minimum requirements for participation. In fact, Order No. 741 “directs that these criteria apply to all market participants rather than only to certain participants.”⁴⁰ Because any market participant default, whether by a load serving entity or other market participant, is uplifted to all other market participants, requiring a risk management attestation from all market participants is necessary to ensure “that each market participant has adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole.”⁴¹

³⁸ See MJMEUC Protest at 6.

³⁹ *Id.* (internal quotations omitted).

⁴⁰ Order No. 741 at P 133.

⁴¹ *Id.* at P 131.

C. WFEC’s Request to Exempt Not-For-Profit Market Participants from the Two-Day Collateral Cure Period Contravenes the Language and Intent of Order No. 741

WFEC’s request that the Commission require SPP to retain language allowing not-for-profit market participants an additional two weeks to cure a collateral call contravenes the language and intent of Order No. 741 and should be rejected.

In Order No. 741, the Commission directed RTOs “to include in the credit provisions of [their] tariff language to limit the time period allowed to post additional collateral,” and “to allow no more than two days to ‘cure’ a collateral call.”⁴² In its Compliance Filing, SPP proposed Tariff revisions to limit the time period to post additional collateral to two days, and removed an existing provision that provided not-for-profit entities the ability to request an additional two weeks to satisfy a collateral call.⁴³ SPP indicated that it proposed “this revision in response to the Commission’s expressed preference that the credit reforms required by Order No. 741 be generally applicable to all market participants.”⁴⁴

Contrary to WFEC’s assertion that “Order No. 741 does not require the removal of such a provision,”⁴⁵ the language of Order No. 741 directs all RTOs to adopt a standard two-day cure period for collateral calls.⁴⁶ In so doing, the Commission specifically rejected arguments by several commenters that public power entities should

⁴² Order No. 741 at P 160.

⁴³ See Compliance Filing at 14 and Proposed Attachment X § 3.2.2.

⁴⁴ See *id.* at 14 (*citing* Order No. 741 at PP 164-65).

⁴⁵ See WFEC Comments at 6.

⁴⁶ Order No. 741 at P 160.

not be subject to the same cure period for collateral calls as other entities.⁴⁷ Additionally, in Order No. 741-A, the Commission again rejected a request that the Commission provide a longer cure period for not-for-profit entities,⁴⁸ indicating that:

In establishing the two-day cure period in Order No. 741, the Commission carefully weighed the needs of market participants with the need for the mitigation of uncertainty when the organized electric wholesale markets are under stress. . . . As a result, timely cure of a collateral deficiency is critical. . . . [W]e found – and continue to find – that the two-day cure period strikes a reasonable balance between mitigating uncertainty in the market and providing for the needs of participants.⁴⁹

Retaining the existing cure period exception for not-for-profit entities would violate the express findings of Order Nos. 741 and 741-A, and the Commission should reject WFEC’s collateral attack on these prior Commission orders.

Moreover, in support of its request for an exception of the two-day cure period, WFEC selectively quotes from the applicability paragraphs of Order No. 741 but omits critical language. Specifically, WFEC indicates that in Order No. 741, “the Commission is not prohibiting an RTO from requesting ‘specific exemptions based on [the RTO’s] experience and appropriate supporting evidence, particularly for individual entities whose [market] participation is such that a default would not risk significant market disruptions.’”⁵⁰ However, WFEC’s quotation omits language from Order No. 741

⁴⁷ See *id.* at P 155 (summarizing comments advocating for an exemption from the two-day cure requirements for collateral calls).

⁴⁸ See Order No. 741-A at P 34 (summarizing the East Texas Cooperatives rehearing request that “the Commission could establish a . . . three-day period for not-for-profit load-serving entities, such as cooperatives, municipalities, and other public power entities”).

⁴⁹ *Id.* at P 35.

⁵⁰ WFEC Comments at 6 (*quoting* Order No. 741 at P 165).

indicating that “the Commission is aware that ISOs and RTOs may, *through their stakeholder processes*, ask for specific exemptions based on their experience and appropriate supporting evidence”⁵¹ The revisions proposed in SPP’s Compliance Filing, including the proposed removal of the cure period exception for not-for-profit entities, were developed through the SPP stakeholder process. SPP and its stakeholders decided to remove this language in compliance with the Order No. 741 mandate to reduce the cure period for collateral calls for all market participants, rather than request that the Commission grant an exemption. Accordingly, WFEC should have raised this concern during the SPP stakeholder process, but failed to do so. WFEC’s selective quotation from Order No. 741 does not justify the request for an exemption from the standard cure period for collateral calls.

⁵¹ Order No. 741 at P 165.

III. CONCLUSION

The Commission should reject comments and protests that raise issues outside the scope of this proceeding and determine that SPP's Compliance Filing satisfies the requirements of Order No. 741.

Respectfully submitted,

/s/ Matthew J. Binette
Barry S. Spector
Matthew J. Binette
WRIGHT & TALISMAN, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005-3802
Telephone: (202) 393-1200
Fax: (202) 393-1240
spector@wrightlaw.com
binette@wrightlaw.com

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

August 5, 2011

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 5th day of August, 2011.

/s/ Matthew J. Binette
Matthew J. Binette

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