

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

SOUTHWEST POWER POOL, INC.

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DOCKET NOS. ER12-1586-000
ER12-1586-001

**REQUEST FOR CLARIFICATION OF
SOUTHWEST POWER POOL,
WESTERN AREA POWER ADMINISTRATION,
BASIN ELECTRIC POWER COOPERATIVE AND
HEARTLAND CONSUMERS POWER DISTRICT**

Southwest Power Pool, Inc. (“SPP”), Western Area Power Administration (“Western”), Basin Electric Power Cooperative (“Basin Electric”) and Heartland Consumers Power District (“Heartland”) (Western, Basin Electric and Heartland are referred to as the “IS Parties”), pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,¹ hereby request clarification of Paragraph 106 of the Commission’s September 18, 2012 *Order Granting Petition for Declaratory Order and Conditionally Accepting Joint Operating Agreement*² (“September 18 Order”). The Commission should clarify that the modifications to the Joint Operating Agreement (“JOA”) that SPP is filing contemporaneously with this Request for Clarification address the concerns expressed by the Commission that the JOA could adversely affect the transmission rights or service of third parties.

¹ 18 C.F.R. § 385.212 (2012).

² *Southwest Power Pool, Inc.*, 140 FERC ¶ 61,199 (2012).

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I. BACKGROUND

On April 20, 2012, SPP submitted for filing an executed JOA between SPP and Western that provides for coordination of data exchange, planning, scheduling and other aspects of transmission operations. On June 19, 2012, the Commission Staff issued a deficiency letter requesting that SPP provide additional information about the proposed JOA. Staff's questions included an inquiry as to whether Sections 5.4 - 5.6 of the proposed JOA would affect transmission service provided by third parties, including MISO.³ On July 20, 2012, SPP filed a response to the Deficiency Letter. In its response, SPP explained that the proposed JOA would not result in any difference in the way SPP analyzes requests for transmission service and would not affect transmission service by third parties.⁴ SPP also explained that sections 5.4 - 5.6 do not reduce or detract from currently-recognized contractual rights between either SPP or Western and third parties. SPP's Deficiency Response also included proposed revisions to clarify sections 5.4 - 5.6 of the JOA.

The Commission's September 18 Order, *inter alia*, conditionally accepted the JOA, subject to the revisions SPP proposed in its July 20, 2012 Deficiency Response and certain other revisions. SPP's Request for Clarification addresses the additional revisions to the JOA that the Commission included in its order.

³ Letter requesting Southwest Power Pool, Inc., Docket No. ER12-1586-000, to provide additional information, p. 3 (June 19, 2012) ("Deficiency Letter").

⁴ Letter from Southwest Power Pool, Inc., Docket No. ER12-1586-000, July 19, 2012 ("Deficiency Response").

II. REQUEST FOR CLARIFICATION

SPP and the IS Parties respectfully request that the Commission clarify that the revisions to the JOA SPP has proposed in its contemporaneous compliance filing comply with the Commission's directive to amend the JOA to ensure that the third party rights and transmission service are not affected, and that therefore it is not necessary to amend the JOA further to limit the applicability of Sections 5.4 – 5.6 to energy sourced within SPP or Western. Such a modification would create an inconsistency in the applicability of the JOA that would result in unduly discriminatory transmission service. SPP and the IS Parties believe that the need for clarification of the September 18 Order may have been triggered in part by the way in which SPP responded to one of the questions that Commission Staff asked in its June 19, 2012 Deficiency Letter. In question 6, Staff requested SPP to explain whether energy generated in MISO has caused loop flows on the Integrated System and, if so, how that loop flow was treated and whether charges would have been assessed for the loop flow if the JOA had been in effect at the time.⁵ In its Deficiency Response, SPP stated that the JOA does not apply to energy generated by MISO or any third party, by which SPP intended to convey that the JOA does not apply to transmission service provided pursuant to the tariff of any third party, or to deliveries of generation by third parties (including MISO) within their own systems or to other third parties, regardless of whether it creates loop flows on SPP's or Western's system.⁶ SPP went on to state that the JOA is intended to require SPP and Western to respect their own contract path capacity

⁵ Deficiency Letter, p. 3.

⁶ Deficiency Response, p. 8.

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when they provide transmission service within their own systems, when they engage in energy exchanges with each other, and when they engage in energy exchanges with third parties.

However, SPP did not intend to indicate that the JOA's requirement that it and Western respect their own contract path capacity would not apply to their transactions in which the source of the energy being delivered within or across the SPP or Western systems is a third party. If the JOA did not apply in such situations, Western or SPP could exceed its contract path capacity on its own system in any instance in which it is delivering energy received from a third party, while being bound to respect its own contract path capacity only for deliveries of energy sourced within SPP or Western. That was not SPP's or Western's intent because it would result in an inconsistent application of the contract path limitations and result in transmission service that is unduly discriminatory to transmission customers whose energy sources are within SPP or Western. SPP and the IS Parties apologize for any confusion that the Deficiency Response may have caused.

SPP's compliance filing in this docket contains revisions to the JOA that implement all of the revisions SPP proposed to make in its Deficiency Response. Those revisions also clarify that the only limitations on transmission usage that the JOA imposes are limitations on SPP and Western's use of transmission service. As modified, Section 5.4 provides that SPP and Western may exchange energy between themselves up to the contract path capacity between them. Revised Section 5.5 provides that the amount of energy delivered within SPP's or Western's system, or between two transmission owners within SPP or Western, is limited to the contract path capacity within SPP or Western. Revised Section 5.6 provides that when SPP or Western exchanges energy with a third party, it will respect its contract path capacity with that party, and that the appropriate transmission service to support a particular transaction that would otherwise

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exceed SPP's or Western's contract path capacity be obtained pursuant to an applicable tariff before SPP or Western engage in the transaction. All three sections apply regardless of whether the energy that is being exchanged is sourced from SPP, Western or a third party, provided that SPP or Western is the transmission service provider for the energy. However, all three sections also impose the requirement for SPP and Western to respect the contract path capacity only on the SPP and Western systems. They do not – and indeed could not, since the JOA is a bilateral agreement and not a tariff of general applicability – limit in any way the transmission service provided by any third party or limit deliveries of generation by third parties (including MISO) within their own systems or to other third parties.

SPP and the IS Parties believe the revisions that SPP is proposing in its compliance filing fully address the concerns expressed by the Commission in its Deficiency Letter and in its September 18, 2012 Order with respect to the possibility that the JOA could limit transmission service of third parties or the transmission rights of third parties without implementing the unduly discriminatory provision of transmission service that would result if the JOA includes the restriction to energy sourced in Western or SPP that the Commission discussed in its order. Therefore, SPP and the IS Parties respectfully request that the Commission clarify that it is not necessary for SPP to modify Sections 5.4 – 5.6 of the JOA to make them applicable only to energy generated within SPP or Western but rather allow the sections to apply to all transactions that either SPP or Western are involved in as the transmission service provider.

III. CONCLUSION

For the reasons discussed above, SPP and the IS Parties respectfully request that the Commission clarify that SPP's modifications to the JOA address the concerns the Commission expressed in its September 18 Order and that it is not necessary for SPP to make further

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modifications to Sections 5.4 – 5.6 of the JOA to make them applicable only to energy sourced within SPP or Western.

Respectfully submitted,

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October 18, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have served this day copies of the foregoing on the official service list compiled by the Office of the Secretary in accordance with Rule 2010 of the Commission Rules of Practice and Procedure.

Dated at Washington, D.C. this 18th day of October, 2012.

/s/ Laura R. Chipkin

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