

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

SOUTHWEST POWER POOL, INC.

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DOCKET NO. ER12-1586-002

**ANSWER OF SOUTHWEST POWER POOL,
WESTERN AREA POWER ADMINISTRATION,
BASIN ELECTRIC POWER COOPERATIVE AND
HEARTLAND CONSUMERS POWER DISTRICT
TO PROTESTS**

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”) hereby request permission to answer, and submit this answer to the Protest of the Midwest Independent Transmission System Operator, Inc. (“MISO”) and the Protest of the MISO Transmission Owners (“MISO TOs”) filed in this proceeding on November 8, 2012 (“MISO Protest” and “MISO TO Protest,” respectively). The Commission should reject the Protests to SPP’s October 18 Compliance Filing because SPP’s proposed revisions to the SPP-Western Joint Operating Agreement (“SPP-Western JOA” or “JOA”) (the “Compliance Filing”) are just and reasonable, and MISO’s proposed revisions are unjust and unreasonable.

I. MOTION FOR LEAVE TO ANSWER

Rule 213(a)(2) provides that a party may answer a protest in circumstances where the decisional authority permits the answer for good cause shown. The Commission has permitted answers to protests that clarify the record, contribute to an understanding of the issues or assist

the decision-making process.¹ SPP and the IS Parties' Answer addresses new arguments raised by MISO and the MISO TOs. This Answer will assist the Commission in its decision-making process, will ensure a complete record, and will provide information that is helpful to the disposition of key issues. Therefore, good cause exists to grant this motion for leave to answer.

II. ANSWER

A. THE PROPOSED REVISIONS TO THE SPP-WESTERN JOA SHOULD BE CONSIDERED IN LIGHT OF THE REQUEST FOR CLARIFICATION.

The principal point in the MISO Protest and the MISO TO Protest -- that SPP's compliance filing is not consistent with the Commission's order -- elevates form over substance and is nothing more than an attempt to advance, one more time, arguments that the FERC already has rejected. SPP and the IS Parties recognize that the Commission's general policy is to require that compliance filings adopt only changes that comply with the Commission's order. However, in this instance, in part because of the way in which SPP had answered the Commission's Deficiency Letter, the Commission concluded that the parties had not implemented their intent in drafting Section 5.6.1 of the JOA. Consequently, the Commission directed a modification to the JOA "to ensure that section 5.6 reflects SPP and Western's stated intention."² In other words, the Commission determined that the JOA was unjust and unreasonable because it did not do what the parties intended it to do. The purpose of the Request for Clarification was to explain the parties' intention and to propose revisions that implement

¹ See, e.g., *NorthWestern Corp.*, 127 FERC ¶ 61,266, at P 15 n.5 (2009) (answers to protest accepted because they assisted the Commission in its decision-making process); *Mountain States Transmission Intertie, LLC*, 127 FERC ¶ 61,270, at P 55 (2009) (answers to protest accepted because they assisted the Commission in its decision-making process); *S. Natural Gas Co.*, 121 FERC ¶ 61,118, at P 5 (2007) (answer to protest accepted because it assisted the Commission in understanding the issues and ensured a complete record); *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,112, at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

² *Southwest Power Pool, Inc., et al.*, 140 FERC ¶ 61,199 (2012) ("September 18 Order"), P 106.

that intention. The Compliance Filing was intended to comply with the Commission's order by modifying the JOA to reflect the parties' original intent, as explained in the Request for Clarification. If the Commission were to reject the Compliance Filing because it does not comply with the order, even though it reflects the parties' intent, SPP and Western could thereafter agree upon and file an amendment to the JOA that adopts language that reflects their intent. In order to avoid the waste of the Commission's and the parties' resources, it is more efficient in the limited circumstances presented in this proceeding to evaluate the Compliance Filing in light of the Request for Clarification.

B. SPP'S COMPLIANCE FILING IS JUST AND REASONABLE AND MISO'S PROPOSED REVISIONS TO THE SPP-WESTERN JOA ARE NOT.

The issue presented by MISO's and the MISO TOs' Protests is whether it is unjust and unreasonable for the SPP-Western JOA to provide that each party to the agreement will respect its contract path capacity when it engages in transactions with third parties. MISO's proposed revisions to the SPP-Western JOA may be considered by the Commission only if the terms proposed by SPP are unjust and unreasonable.³ The Commission has already determined that the SPP-Western JOA will not reduce MISO's capacity sharing rights under the MISO-SPP JOA.⁴ The revision to Section 5.6.1 that SPP and the IS Parties have proposed makes clear that the section applies only to the Parties' "own system's Contract Path capacity." That is completely consistent with the Parties' original intent and the objectives of the Commission's order. It is not unjust and unreasonable because SPP's agreement with Western that SPP will not exceed its contract path capacity in its transactions with third parties does not reduce MISO's capacity

³ See, e.g., *California Independent System Operator Corporation* 111 FERC ¶ 61,337 at P 27 (2005).

⁴ September 18 Order, at P 101.

sharing rights under the MISO-SPP JOA. Since that provision is just and reasonable, the Commission should accept it.

If the Commission does not accept SPP's proposed revision, it also should not accept MISO's proposed revisions because they are unjust and unreasonable. MISO's argument concerning undue discrimination⁵ is illogical and inconsistent with the principles of Open Access Transmission Service. MISO asserts that since it has not signed the SPP-Western JOA, SPP and Western are permitted to grant transmission service to MISO and other third parties that exceeds SPP's and Western's contract path capacity if the energy being transmitted is sourced from a third party's system, even though SPP and Western can deny requests by MISO and other third parties for transmission service that exceeds SPP's and Western's contract path capacity if the energy is sourced from the SPP or Western systems.⁶ That interpretation of the "not similarly situated" exception to the undue discrimination prohibition of the Federal Power Act is not only illogical but would overturn the Commission's entire Open Access Transmission policy. In pre-Open Access days, transmission providers treated potential customers differently based on where their energy was sourced: they gave preference to transmission for energy sourced on their own systems. Open Access eliminated that preference. MISO is now proposing to re-implement that pre-Open Access preference (only in reverse) by allowing transmission providers to give customers whose energy is sourced off their transmission system the right to transmission capacity in excess of contract path capacity, while allowing a bilateral agreement between two transmission providers to restrict transmission customers whose energy is sourced on the transmission provider's transmission system to that system's contract path capacity. Such a

⁵ MISO Protest, p. 5.

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policy would be inapposite to the Commission's Open Access policy as expressed in sixteen years of Commission orders.

MISO's proposed revision to the SPP-Western JOA also is unjust and unreasonable because it would not be effective in achieving MISO's objective. MISO apparently believes that its proposed revision would impose on SPP and Western an obligation to exceed their contract path capacity in granting transmission service. However, limiting or eliminating SPP's and Western's bilateral agreement to not exceed their contract path capacity does not *require* them to grant transmission service that exceeds that contract path capacity. SPP and Western respected their contract path capacity when granting transmission service before they entered into the SPP-Western JOA. They can continue to respect their contract path capacity when they evaluate transmission requests regardless of whether the amendments that MISO proposes are adopted.

Moreover, if MISO believes that by forcing a modification to the SPP-Western JOA it can force Western to exceed its contract path capacity when it grants transmission service, it is mistaken. Western is not a public utility that is subject to Section 205 of the Federal Power Act. Therefore, even if the Commission were to decide that it is just and reasonable to require a transmission provider to ignore its contract path capacity when granting transmission service, which is what MISO appears to be proposing, it could not require Western to do so in this proceeding.

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III. CONCLUSION

Wherefore, SPP and the IS Parties request that the Commission grant their motion for leave to answer the Protests of MISO and the MISO TOs; deny the Protests; and accept SPP's Compliance Filing.

Respectfully submitted,

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November 21, 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 21st day of November, 2012.

Thomas L. Blackburn
Counsel for Basin Electric
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