

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

Southwest Power Pool, Inc.

)

Docket No. ER12-1179-003

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

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213, Southwest Power Pool, Inc. (“SPP”) files this answer¹ to the comments and protests filed in response to SPP’s February 15, 2013 Compliance Filing² in this proceeding.³ In support, SPP states as follows:

I. BACKGROUND

On February 29, 2012, and as amended on May 15, 2012, SPP proposed revisions to its Open Access Transmission Tariff (“Tariff”) to implement the SPP Integrated Marketplace, to be effective March 1, 2014.⁴ As detailed in the Integrated Marketplace

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 Submission of Tariff Revisions to Implement SPP Integrated Marketplace, Docket No. ER12-1179-003, (Feb. 15, 2013) (“February 15 Compliance Filing”).

³ As discussed herein, this answer focuses on the more significant objections asserted in the protests; it does not attempt to address each and every issue raised by protestors. SPP’s silence should not be construed as a concession by SPP on any argument or issue before the Commission.

⁴ Submission of Tariff Revisions to Implement SPP Integrated Marketplace of Southwest Power Pool, Inc., Docket No. ER12-1179-000 (Feb. 29, 2012)
(continued)

Filing and supporting testimony, the Integrated Marketplace includes Day-Ahead and Real-Time Energy and Operating Reserve Markets and Transmission Congestion Rights (“TCR”) markets aimed at maximizing the cost-effective utilization of energy Resources and the regional transmission system, resulting in estimated annual net benefits of between \$45 million and \$100 million.⁵ In addition, SPP proposed the formation of a new SPP Balancing Authority Area to consolidate and assume the responsibilities of the 16 separate Balancing Authority Areas currently operating within the SPP footprint, and a market power monitoring and mitigation plan based on conduct and impact thresholds.

On October 18, 2012, the Commission conditionally approved SPP’s Integrated Marketplace Filing, subject to additional compliance filings.⁶ Relevant for purposes here, the Commission directed SPP to make a compliance filing to address certain issues identified in the October 18 Order and to provide additional support for elements of SPP’s Integrated Marketplace proposal.⁷

In the February 15 Compliance Filing, SPP proposed several changes to the operation and design of its Day-Ahead Market and Real-Time Balancing Market.

(continued)

(“Integrated Marketplace Filing”); Amending Filing of Tariff Revisions to Implement SPP Integrated Marketplace, Docket No. ER12-1179-001 (May 15, 2012) (“May 15 Amending Filing”).

⁵ Integrated Marketplace Filing, Transmittal Letter at 2 and Exhibit No. SPP-1 (Prepared Direct Testimony of Carl A. Monroe) at 7-8.

⁶ *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048, at PP 1-3 (2012) (“October 18 Order”), *order on reh’g and clarification*, 142 FERC ¶ 61,205 (2013) (“March 21 Order”).

⁷ October 18 Order at P 506. By order issued November 28, 2012, the Commission extended the compliance filing deadline to February 15, 2013. *Sw. Power Pool, Inc.*, Notice of Extension of Time, Docket Nos. ER12-1179-000 and -001 (Nov. 28, 2012).

Among other things, SPP's February 15 Compliance Filing included: revised must-offer procedures (including clarifications to its Resource eligibility provisions and enhanced verification and monitoring procedures to enable the Market Monitor to identify manipulative behavior); new Tariff provisions to clarify the inclusion of Dispatchable Variable Energy Resources ("DVER") and Non-DVERs in the Integrated Marketplace; revised eligibility requirements for receiving Make Whole Payments and the allocation of Make Whole Payment costs; additional justification and support for SPP marginal loss surplus refund methodology; clarifications concerning the operation of demand curves to adjust Market Clearing Prices ("MCP") and Locational Marginal Prices ("LMP") during shortage situations; modifications to the procedures to determine Auction Revenue Rights ("ARR") eligibility and "incremental" ARR allocations; and revised provisions governing monthly and annual TCR auctions.

The February 15 Compliance Filing also made various revisions to add details and clarifying language to address the use of bilateral settlement schedules ("BSS") during market settlement, the treatment of non-participating entities, and the management of congestion between SPP and other Balancing Authority Areas.

Finally, SPP offered revised market power mitigation and monitoring procedures and explanations required by the Commission. SPP revised the provisions governing the development of mitigated offers to provide more detail, provided justification for and revisions to its conduct and impact thresholds, and clarified and expanded the Market Monitor's monitoring and reporting obligations.

In response to the February 15 Compliance Filing, several parties filed comments and protests challenging various elements of SPP's proposed market design.⁸ SPP submits this response to address the more significant issues raised in these comments and protests, including SPP's proposed ARR and TCR eligibility and allocation rules, SPP's proposed must-offer requirements, rules governing the BSS process, Make Whole Payment requirements, market mitigation (including mitigated offer calculations and duties of the Market Monitor), Demand Response aggregation procedures, marginal loss calculation methodology, DVER output forecasting, and treatment of non-participating embedded load. This answer will ensure a full and accurate record and provide clarifications to aid the Commission's decision-making.

II. ANSWER

A. SPP's Proposed Tariff Revisions Governing ARR Eligibility and Allocation Are Compliant and Should Be Approved.

1. No Change is Required to SPP's ARR Eligibility Rules for Contracts Subject to Rollover.

TDU Intervenors⁹ argue that SPP has not fully complied with the October 18 Order relating to ARR eligibility for contracts subject to rollover. Specifically, TDU Intervenors claim that the Commission intended SPP to model its eligibility criteria on those approved in the Midwest ISO, where potential, *but not yet exercised*, rollover rights

⁸ Certain of these pleadings raise arguments on issues that have already been addressed in prior Commission orders or SPP filings.

⁹ The TDU Intervenors include: City of Independence, Missouri; Kansas Power Pool; Missouri Joint Municipal Electric Utility Commission; and West Texas Municipal Power Agency.

are awarded ARR for the full amount, subject to *post-hoc* cancellation if the customer declines to exercise its rollover option.¹⁰

The TDU Intervenors' claim is without merit. The Commission nowhere directed SPP to adopt a default procedure, much less the specific MISO procedure that awards ARR subject to cancellation. The Commission simply noted that SPP had not explained the process it would employ for contracts eligible for rollover.¹¹ In response, SPP clarified that a customer that has exercised its rollover rights is eligible for ARR corresponding to the level of service rolled over.¹²

No further clarification or revision is required. The hypothetical issue posed by TDU Intervenors – and, hence, the need to address “potential, but not yet exercised, rollover rights” – cannot arise under SPP's Tariff. This is because transmission customers must notify SPP of their rollover decision one year before the expiration of their service agreements. SPP will therefore know in advance of the relevant ARR auction year whether a customer has exercised its rollover rights. The retrospective cancellation procedure adopted as the default for potential rollovers in the Midwest ISO is therefore unnecessary.¹³

¹⁰ Protest of TDU Intervenors, Docket No. ER12-1179-003, at 16-17 (Mar. 8, 2013) (“TDU Intervenors Protest”).

¹¹ October 18 Order at P 239.

¹² February 15 Compliance Filing, Transmittal Letter at 24.

¹³ It should also be noted that injecting the retrospective cancellation procedure in SPP's simultaneous feasibility market design would prevent SPP from awarding ARR to other participants and increase underfunding possibilities attributable to awarded ARR that are subsequently cancelled.

2. SPP's Revised Process for Awarding ARR for Transmission Service Subject to Redispatch Complies with the October 18 Order.

BP Wind Energy North America Inc. (“BP Wind”) advances a series of criticisms against SPP’s study process to determine ARR eligibility for transmission service that is subject to a redispatch condition,¹⁴ all of which lack merit. In the October 18 Order, the Commission found SPP’s proposed treatment of ARR eligibility for firm point-to-point transmission customers with redispatch obligations just and reasonable as modified,¹⁵ but directed SPP to revise its Tariff to “make clear that such firm point-to-point transmission customers with redispatch obligations will obtain ARR allocations except for those times of the year and for only those amounts of service that are subject to the redispatch obligation.”¹⁶ In other words, the Commission found reasonable SPP’s proposal to differentiate between point-to-point transmission service subject to redispatch and transmission service with no redispatch obligation for purposes of determining ARR eligibility. Moreover, the Commission did not require SPP to modify how it determines when redispatch is necessary or make any changes to its current study process for transmission service requests.

Determining ARR eligibility is inherently a forward-looking activity. The ARR process developed by SPP was designed to conform to SPP’s current procedures for studying and granting transmission service. Those procedures determine whether sufficient Available Transfer Capability (“ATC”) exists to accommodate the request; if

¹⁴ Limited Protest of BP Wind Energy North America Inc., Docket No. ER12-1179-003, 3-6 (Mar. 8, 2013) (“BP Wind Protest”).

¹⁵ October 18 Order at P 267.

¹⁶ *Id.* at P 268.

ATC is insufficient to meet the request, SPP offers the customer the option of using interim redispatch, when necessary, to provide transmission service pending the completion of necessary system upgrades.

While BP Wind is correct that SPP's study process only looks at certain peak seasons (i.e., summer and winter), BP Wind's characterization of the consequences of looking only at certain seasons is incorrect.¹⁷ For example, BP Wind asserts that "the process for granting service does not apply a 'period' criteria, i.e., if the winter peak cases identify no overloads and a summer peak case does, SPP will only grant service subject to redispatch, with redispatch applying until such time as no case shows an overload occurring."¹⁸ Despite the fact that, in BP Wind's hypothetical scenario, the requested transmission service would be granted "subject to redispatch" for the entire term of the service until the necessary upgrades are completed, the redispatch obligation arises only in the seasons (in this case, summer) that the studies identified overloads. Accordingly, the customer would be eligible for its full allotment of candidate ARR's in all periods except during the summer peak season.

BP Wind's suggestion that SPP should award full ARR eligibility except for when redispatch is *actually* needed (in other words, when real-time loading on the system requires SPP to redispatch generation and charge transmission service customers with redispatch obligations the costs associated with such redispatch)¹⁹ should be rejected. As

¹⁷ See BP Wind Protest 4-5.

¹⁸ *Id.* at 5.

¹⁹ See, e.g., *id.* at 4-5 (suggesting that SPP's study process does not determine with certainty when redispatch is needed, only when it definitely is not), 5 n.13 (indicating that redispatch cost exposure under Section 13.5 of the Tariff is limited to those periods when constraints arise).

discussed above, determining ARR eligibility is a forward-looking process, and it is implicit that real-time operations may differ from the conditions identified in the study process. While it is true that, during real-time, redispatch may not *actually* be necessary for a particular period when the study granting the reservation identified the overload possibility, it would be impossible for SPP to determine, at the time that ARR eligibility is determined, whether the conditions that the study process determines may lead to overloads in a particular season will *actually* occur. In other words, SPP cannot possibly award ARRs based on actual, real-time system conditions that cannot possibly be known at the time that ARR eligibility is determined.²⁰

B. SPP’s Must-Offer Rules Comply with the Commission’s Directives in the October 18 Order.

TDU Intervenors protest SPP’s proposed rules for the day-ahead must-offer requirement. TDU Intervenors argue that the Tariff revisions included in SPP’s February 15 Compliance Filing designed to identify the types of firm power purchases that would satisfy the must-offer requirement are too restrictive and will lead to unjustified penalties. TDU Intervenors also argue that SPP’s proposed load forecasting error tolerance percentage disproportionately impacts smaller load-serving entities (“LSE”). Therefore, TDU Intervenors propose adding a minimum MW error standard. SPP answers these assertions below.

²⁰ BP Wind acknowledges as much in its protest, stating, “BP Wind Energy understands that information as to actual redispatch events under Section 13.5 will not be known when ARR allocations are awarded.” *Id.* at 6. However, BP Wind provides no detail as to what additional level of study granularity would satisfy its concerns that the transmission service study process does not.

1. SPP's Proposed Definition of "Net Resource Capacity" Available for Satisfying the Day-Ahead Must-Offer Requirement Should Be Approved.

TDU Intervenors oppose SPP's new rules that establish a seller's service obligation as "equivalent to supply of native load customers" in order for firm power purchases to be considered a "net resource capacity" for purposes of satisfying SPP's day-ahead must-offer requirement.²¹ TDU Intervenors advance two specific challenges. First, TDU Intervenors argue that a native-load-equivalence requirement is unnecessary to demonstrate deliverability, inasmuch as deliverability is assured by SPP's firm transmission service requirement.²² Second, TDU Intervenors argue that the native-load-equivalent requirement is too restrictive and will prevent a significant amount of physical capacity from reaching the Day-Ahead Market. In this regard, TDU Intervenors refer to SPP's prior comments that power purchase agreements for system power sales are not eligible to be offered into the Day-Ahead Market.²³ According to TDU Intervenors, absent changes to these design features, LSEs could face penalties as a result of their failure to offer capacity that the market rules do not let them offer.

SPP's must-offer requirement satisfies the compliance directives of the October 18 Order. In response to TDU Intervenors' first point, the native-load-equivalence is the

²¹ See TDU Intervenors Protest at 4 (citing February 15 Compliance Filing, Revised Tariff at Attachment AE § 2.11.1.A(4)(ii)).

²² *Id.* at 5.

²³ *Id.* at 6 (referring to Answer of Southwest Power Pool, Inc., Docket No. ER12-1179-000 (May 15, 2012) ("May 15 2012 Answer")).

same requirement specified under Section 2.1.2 of the SPP Criteria²⁴ to qualify a power purchase as firm power that can be included in meeting an LSE's obligations under SPP Criteria 2.

More to the point, however, TDU Intervenors' concern that SPP's must-offer requirement will improperly exclude certain power purchases from eligibility appears to be based on a misunderstanding of SPP's Tariff. The ability to offer a Resource into the market, and to utilize firm power purchases to meet SPP's must-offer requirements, is dependent on who registers the Resource. If the owner/seller agrees to let the buyer register the Resource in the market, the buyer can offer the generation into the market. In this scenario, the Resource being offered is not considered by SPP as a power purchase, but rather as a Resource registered by a Market Participant. In contrast, if the owner/seller retains registration responsibility for the Resource, only the seller can offer the Resource into the Market. An exception applies for Resources registered as joint operating units, in which case all owners can register their portion and offer each portion according to the rules.

Under SPP's must-offer rules, in cases where the Resource is not registered by the Market Participant, such Market Participant will be credited for a firm power purchase agreement only if it meets the deliverability/native load standards of SPP's Tariff. The seller will have its must-offer obligation increased, and the buyer will have its must-offer obligation reduced, by the amount of the firm power purchase.

²⁴ Southwest Power Pool, Inc., *Southwest Power Pool Criteria* § 2.1.2 (Jan. 30, 2012), <http://www.spp.org/publications/SPP%20Criteria%20and%20Appendices%20January%202012.pdf> ("SPP Criteria").

2. SPP's Proposed Forecasting Tolerance Percentage is Reasonable and Should Be Approved.

TDU Intervenors do not challenge SPP's proposed 10% tolerance for load forecasting error *per se*, but contend that basing SPP's acceptable range of forecasting error on a single percentage could have a disproportionate impact on smaller LSEs.²⁵ In their view, this should be remedied by introducing a minimum MW error to SPP's proposed tolerance percentage.²⁶

The Commission should reject TDU Intervenors' recommendation for two reasons. First, in the October 18 Order, the Commission directed SPP to "propose and justify an acceptable range of forecasting error (e.g., a certain deviation, expressed as a *percentage*, above or below the actual operating daily peak load value that SPP deems acceptable)."²⁷ SPP's February 15 Compliance Filing included Tariff revisions – i.e., a proposed 10% tolerance percentage for load forecasts – that correspond precisely to the Commission's instruction. SPP fully supported the reasonableness of this percentage and demonstrated that it was based on SPP's historical load forecasting experience in the current SPP Balancing Authorities.²⁸

TDU Intervenors suggest that smaller entities cannot be expected to achieve the same level of forecasting accuracy as SPP. However, TDU Intervenors offer no empirical support for this proposition, suggesting only that smaller entities have

²⁵ TDU Intervenor Protest at 8-9.

²⁶ *Id.* at 9.

²⁷ October 18 Order at P 54 n.61 (emphasis added).

²⁸ See February 15 Compliance Filing, Exhibit No. SPP-10 (Prepared Testimony in Support of Compliance Filing of Richard L. Dillon) at 19 (justifying the proposed 10% forecast tolerance).

proportionately lower load factors and larger load swings, which could contribute to greater forecast variations. But, intuitively, the opposite should be true: with larger and more disparate loads, the chance and margin for error would presumably increase.

Moreover, the implications of an erroneous forecast are the same regardless of whether the load being served is large or small. This is because the essential purpose of the must-offer requirement is to ensure that sufficient Resources are available to cover the load of an LSE. It is entirely beside the point that in cases where both entities fail the 10% tolerance standard, the load shortfall of a smaller LSE is, in MWs, less than that of a larger LSE. Contrary to the inference invited by TDU Intervenors, there is nothing discriminatory or inequitable in applying a fixed tolerance percentage to all Market Participants under the must-offer requirement; the same percentage applies equally to all.²⁹

C. The Commission Should Accept SPP's Proposed Tariff Revisions Governing Bilateral Agreements and Bilateral Settlement Schedules.

1. SPP's Proposed Transitional Mechanism for Integrating Existing Bilateral Agreements Is Just and Reasonable.

In the February 15 Compliance Filing, SPP proposed to implement a default BSS transition mechanism when the parties to an existing contract are unable to reach agreement on the terms of a BSS.³⁰ SPP proposed that the transition mechanism apply to bilateral contracts entered into prior to October 18, 2012 – i.e., the date of the Commission's order conditionally approving the Integrated Marketplace. SPP defended the selection of that date by explaining that, no later than the issuance date of the

²⁹ Introducing a MW minimum as part of the verification process would also undoubtedly generate disputes about where to set the minimum.

³⁰ See *id.*, Revised Tariff at Attachment AE § 8.2.1.

Commission's order, Market Participants entering into contracts to meet their Energy and Operating Reserve obligations were on notice that they would have to register and confirm the parameters of any bilateral agreement consistent with SPP's Market Protocols.

TDU Intervenors oppose the October 18, 2012 cutoff date, claiming that it fails to comply with the Commission's order and is "too early" and "illogical."³¹ TDU Intervenors would apply the transition mechanism to contracts entered into up to the date of market start-up (i.e., March 1, 2014).

The Commission should reject TDU Intervenors' protest and accept SPP's as-filed proposal. The proposed default transition mechanism was developed to comply with the Commission's order and serves to facilitate integration of existing contracts where there is a disagreement between the contracting parties. Because it places significant administrative burdens on SPP, including the obligation to review the disputed agreement, arrange a meeting between the contracting parties, and verify that any submitted BSS conforms to the terms of the existing agreement, SPP reasonably chose to limit the applicability of the default procedure to contracts entered into after the Commission issued the October 18 Order and not invite contracting parties to bring their unsettled disputes concerning *new* contracts to SPP.

Contrary to TDU Intervenors' claim, it is of no moment that Market Participants may not have known the precise terms and parameters of the transition mechanism as of October 18, 2012. The critical fact is that, as of October 18, 2012, Market Participants understood that if they entered into new contracts, they would have to reach agreement on terms and conditions that would then be reflected in a BSS.

³¹ TDU Intervenors Protest at 19.

By extending the cutoff date to March 2014, as TDU Intervenors urge, more disputed contracts are likely to be subject to the transition process and default to the SPP-managed review and resolution procedures. But the Commission's rationale does not support permitting contracting parties to avail themselves of this default process for transactions negotiated after October 18, 2012. As the Commission's order makes clear, the transition was required to address the treatment of "*existing* bilateral agreements," which term is properly understood in the temporal context of the Commission's ruling and, specifically, the Commission's targeted concern that "[t]he parties to *existing* bilateral agreements *have already* negotiated the terms and rates of their agreement," thereby necessitating a procedure to address extant unsettled agreements.³²

Indeed, in the October 18 Order, and in the two prior instances where this issue arose, the Commission emphasized its preference that the bilateral parties resolve their differences themselves, utilizing the transitional default only as a last resort.³³ It would make no sense, and run directly counter to the Commission's earlier findings, to allow parties who had not yet entered into a contract as of the date of the Commission's ruling on SPP's market design, and for whom the default protections were not intended to apply, to negotiate contract terms without resolving key market-related issues, such as load registration and congestion/loss responsibility. Certainly, as of October 18, 2012, contracting parties understood the importance of resolving these issues in order to participate in the Integrated Marketplace and should not be permitted to leave these

³² October 18 Order at P 326.

³³ *Id.*; see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,157, at P 162 (2004); *Calif. Indep. Sys. Operator Corp.*, 105 FERC ¶ 61,140, at PP 51-60 (2003).

issues unsettled. The Commission should therefore accept SPP's proposed October 18, 2012 cutoff date for application of the BSS transitional mechanism in Section 8.2.1 of Attachment AE.

2. The Commission Should Confirm SPP's Right to Terminate a BSS upon Default.

TDU Intervenors also challenge SPP's right to terminate a BSS if either party is in default of its obligations to SPP under Section 8.2 of Attachment AE. TDU Intervenors argue that a buyer could lose its BSS if the seller has failed to pay its transmission service bill to SPP.³⁴

TDU Intervenors misconstrue the import of Section 8.2. As should be evident by its terms, Section 8.2 permits SPP to terminate the BSS only if there is a default of a party's obligation to SPP *under the BSS*. That is why, following the reference to SPP's right to terminate upon a default, Section 8.2 goes on to provide that "the Transmission Provider will resettle with Market Participants as if the Bilateral Settlement Schedule did not exist."

Thus, no change to Section 8.2 is required. When a BSS party defaults on a payment to SPP for an obligation arising under a BSS, SPP must be able to protect itself and other Market Participants from financial exposure by terminating the BSS. Indeed, TDU Intervenors' protest does not appear to dispute this. SPP cannot be forced to honor the BSS while the BSS counterparties exchange claims and counterclaims over their respective rights, obligations, and liabilities. In short, terminating the BSS is SPP's only way to protect SPP's market from the economic consequences of a BSS default.

³⁴ TDU Intervenors Protest at 22.

3. As Clarified, the Commission Should Accept SPP’s Proposed Deliverability Requirement for Bilateral Transactions.

TDU Intervenors also challenge proposed Section 2.2(11) of Attachment AE, which allows the seller under a bilateral agreement to register the buyer’s load as its own as long as the “capacity and energy is supplied under standards of reliability and availability equivalent to supply of native load customers.” TDU Intervenors contend that this “native load” firmness requirement is unnecessary and unsupported. In TDU Intervenors’ view, “if the seller considers its obligations under a bilateral sale agreement sufficiently firm to take on market responsibility for that portion of the buyer’s load, [TDU Intervenors] cannot see why SPP should not permit it to do so.”³⁵

In the October 18 Order, the Commission directed SPP to clarify how it will ensure that offered Resources are deliverable to the load they were offered to cover. In response to such directive, and after extensive stakeholder discussion, the firm deliverability/native load standard was adopted. Thus, under Section 2.11.1(A)(4)(ii) of Attachment AE, a Market Participant’s must-offer obligations may be satisfied either by offering its own Resources or through firm power purchases that are “deliverable with transmission service comparable to Firm Point-To-Point Transmission Service or Firm Network Integration Transmission Service and the capacity and energy is supplied under standards of reliability and availability equivalent to supply of native load customers.”

When developing procedures for administering bilateral transactions, SPP incorporated the same firm deliverability and native load requirement. Upon consideration of the comments of TDU Intervenors, and subject to the Commission’s concurrence, SPP would not object to allowing load transfers and/or bilateral contracts to

³⁵ *Id.* at 26.

count toward must-offer obligations as long as the seller agrees to assume responsibility for the buyer's load that is transferred or served under the bilateral agreement. With this clarification, the Commission should approve proposed Section 2.2(11).

4. SPP Agrees that an Ambiguity Concerning the Determination of a BSS Settlement Location Requires Clarification.

TDU Intervenors claim that Section 8.2.1(4) of Attachment AE is ambiguous and should be clarified.³⁶ That Section provides that, where a buyer creates a BSS for an existing bilateral contract (due to inability to reach agreement with the seller), the settlement location for the BSS will be the source Settlement Location of the associated transmission service reservation "described under Section 7.1.1(1)(a)(i) or 7.1.1(2)(a)(i)."

As TDU Intervenors properly point out, Section 8.2.1(4) was intended to apply in situations involving power purchase agreements out of multiple units (e.g., slice of system), but would not apply in the context of other bilateral contracts, such as a bilateral contract for purchase out of a single Resource having its own Resource settlement location within SPP or a purchase backed by a Resource outside of SPP. To correct this error, SPP will revise Section 8.2.1(4) to refer to Section 7.1.1(1)(a) if so directed by the Commission.

D. The Commission Should Reject Challenges to SPP's Make Whole Payment Tariff Provisions.

1. TDU Intervenors Have Not Shown SPP's Make Whole Payment Tariff Provisions to be Unreasonable.

To comply with the October 18 Order, SPP was required to develop Tariff provisions designed to ensure that Resources committed by local transmission operators in response to a reliability issue are committed in a non-discriminatory manner.

³⁶ See *id.* at 20-21.

Accordingly, SPP proposed several specific criteria for evaluating commitment decisions by local operators, including the cost, ownership, Resource operating parameters, availability of non-selected Resources relative to selected Resources, and prior unit commitment decisions by the local operator.³⁷ Only those unit commitments that pass SPP's proposed discrimination screen are eligible for Make Whole Payments.

TDU Intervenors assert that SPP's February 15 Compliance Filing falls short in several respects. First, according to TDU Intervenors, SPP fails to provide any Tariff provision to ensure that SPP's own unit commitment actions are non-discriminatory.³⁸ Moreover, TDU Intervenors claim that SPP's proposed discrimination screen lacks specificity and leaves too much to SPP's subjective determination.³⁹ TDU Intervenors also complain that SPP has failed to propose Tariff language describing how SPP would determine whether a unit commitment is needed for local, as opposed to regional, reliability.⁴⁰ Finally, TDU Intervenors assert that SPP's Tariff does not include safeguards for other conceivable forms of discrimination, including hypothetical situations where a transmission operator might be incented to commit a competitor's Resources in anticipation of being able subsequently to commit its own Resources to capture high LMPs.⁴¹

³⁷ See February 15 Compliance Filing, Revised Tariff at Attachment AE § 6.1.2.1.

³⁸ TDU Intervenors Protest at 11.

³⁹ *Id.* at 12.

⁴⁰ *Id.* at 12-13.

⁴¹ *Id.* at 14. TDU Intervenors propose corrections to inadvertent Tariff errors, to which SPP does not oppose. See *id.* at 15 n.15.

The Commission should reject TDU Intervenors' arguments. In the first place, no purpose would be served by Tariff language requiring SPP's own unit commitment decisions to be non-discriminatory. As an independent RTO, SPP has no ability or incentive to discriminate and must administer its Tariff obligations in an open, non-discriminatory fashion; the Tariff addition suggested by TDU Intervenors is therefore superfluous.

Moreover, contrary to TDU Intervenors' implication, SPP does not merely take the "simple and expedient approach of accepting the transmission operator's [commitment] suggestion."⁴² Rather, in each instance where SPP manually commits a Resource at the request of a transmission operator, SPP conducts its own independent assessment.

TDU Intervenors are similarly mistaken in their criticism of SPP's proposed discrimination screen in Section 6.1.2.1(i) of Attachment AE. The development of this screen was a topic of lengthy stakeholder discussion, with certain stakeholders arguing that the screen was too stringent, and others arguing that it was not stringent enough. In the course of these stakeholder discussions, it became evident that no single factor or set of factors could be applied for the purpose of creating a *per se* discrimination standard. The criteria ultimately adopted and proposed by SPP reflect the reality that reliability-based commitment decisions must be evaluated on a case-by-case basis, with consideration given to a broad range of relevant factors. SPP's subjective and independent judgment is a necessary part of all such evaluations. Regardless, as in all

⁴² *Id.* at 11-12.

other matters, an apparent exercise of market power is subject to examination by the Market Monitor and referral to the Commission's Office of Enforcement.

TDU Intervenors are also incorrect in arguing that SPP's Tariff fails to reflect how SPP would determine whether a unit commitment is needed for local reliability versus regional reliability. The allocation of Make Whole Payment costs, and whether such costs will be allocated locally or regionally, depends on whether a Resource is committed to address a Local Reliability Issue. As defined in SPP's Tariff, a Local Reliability Issue is a condition within the SPP Balancing Authority Area that does not affect the SPP Transmission System.⁴³ Thus, the Tariff is clear: Make Whole Payment costs associated with a unit committed in response to a system-wide reliability issue will be allocated regionally; Make Whole Payment costs associated with a unit committed in response to a Local Reliability Issue will be allocated locally. No additional Tariff language is necessary.

Finally, the Commission should reject TDU Intervenors' suggestion that additional protective provisions be included in SPP's Tariff to cover other theoretical forms of discrimination. In the October 18 Order, the Commission stated: "[i]n order for

⁴³ See February 15 Compliance Filing, Revised Tariff at Attachment AE § 1.1 (Definitions L). Additionally, Westar Energy, Inc.'s ("Westar") criticism of this definition and request that the Commission require SPP to adopt a brightline 100 kV cut-off for purposes of determining whether a reliability issue on a transmission facility is a "Local Reliability Issue" is unavailing. See Motion to File Limited Protest Out of Time and Limited Protest of Westar Energy, Inc., Docket No. ER12-1179-003, at 2-3 (Mar. 13, 2013). First, the Commission did not require adoption of a brightline definition. Moreover, contrary to Westar, a brightline voltage cut-off is inappropriate because there are sub-100 kV transmission facilities that do affect the SPP Transmission System, and thus could cause a reliability issue that impacts the broader region. Westar has not explained how allocating the costs to address such an issue locally would be just and reasonable.

resources that are committed by the local transmission owner to receive make whole payments we would expect the manual commitment decision to be reviewed by SPP to ensure it was done in a non-discriminatory manner.”⁴⁴ To meet the Commission’s expectation, new Section 8.6.5(1) was added to Attachment AE to provide that Resources committed by a transmission operator in a discriminatory manner – as determined pursuant to SPP’s proposed discrimination screen in Section 6.1.2.1 of Attachment AE – would be ineligible for Make Whole Payments.

TDU Intervenors argue that SPP’s Tariff must be expanded because other forms of discrimination could theoretically go unchecked. TDU Intervenors offer an example where a transmission operator might opt to commit a competitor’s Resource to resolve a local constraint, even though that operator’s own Resources are less expensive.⁴⁵ Under TDU Intervenors’ theory, an operator may choose such a strategy if it would permit the operator to commit its own units in subsequent run hours in order to capitalize on anticipated increases in LMPs.⁴⁶

TDU Intervenors stop short of offering any specific Tariff language to address their concerns. That is hardly surprising given the infeasibility of providing preemptive Tariff coverage for every conceivable type of discriminatory conduct. Even in the hypothetical example provided by TDU Intervenors, no explanation was offered on how an operator could reliably predict when to anticipate higher LMPs so that it could plan its commitment decisions accordingly. Indeed, it is not even clear that the scenario posited

⁴⁴ October 18 Order at P 185.

⁴⁵ TDU Intervenors Protest at 14.

⁴⁶ *Id.*

by TDU Intervenors could arise in connection with a Local Reliability Issue. In any event, an attempt to self-commit units (or direct SPP to commit units) to capture higher LMPs unrelated to a Local Reliability Issue would not be eligible for Make Whole Payments.

The short response to TDU Intervenors is that SPP has complied with the Commission's October 18 Order. The Commission did not direct SPP to incorporate into its Tariff broad prophylactic provisions curbing every type of discriminatory action that might theoretically be encountered. Adequate monitoring and mitigation procedures are in place to address known and reasonably expected instances of market manipulation or exercise of market power. TDU Intervenors' concerns are entirely speculative and do not justify additional Tariff revisions.

2. SPP Has Already Corrected the Error Identified by BP Wind Concerning RUC Make Whole Payments.

In its protest, BP Wind requests that the Commission direct SPP to correct an error in the Integrated Marketplace Tariff provisions governing the calculation of RUC Make Whole Payments.⁴⁷ Specifically, BP Wind observes that SPP agreed in its May 15, 2012 Answer addressing the original Integrated Marketplace Filing that a reference to a Resource's *maximum* operating limit in Section 8.6.7(A)(2)(f) of Attachment AE should instead refer to the Resource's *minimum* operating limit.⁴⁸ SPP has made this correction as part of its March 28, 2013 filing to adopt additional modifications to the Integrated

⁴⁷ BP Wind Protest at 6-7.

⁴⁸ *Id.* at 7 (citing May 15 2012 Answer at 42 (May 15, 2012)).

Marketplace, which is currently pending before the Commission in Docket No. ER13-1173-000.⁴⁹ This proposed revision addresses BP Wind’s concerns.

E. SPP’s Compliance Filing Addresses the Commission’s Directives on the Development of Mitigated Offers.

TDU Intervenors raise three concerns related to SPP’s proposed Tariff revisions governing the development of mitigated offers. Specifically, TDU Intervenors argue that: (i) SPP’s proposal to include opportunity costs in mitigated offers is “unclear” and contains a “fundamental defect;”⁵⁰ (ii) SPP’s proposal does not properly explain or limit the eligibility of Resources for determining opportunity cost recovery in mitigated offers;⁵¹ and (iii) SPP’s Market Monitor lacks the necessary authority to monitor mitigated offers.⁵² SPP responds to each of TDU Intervenors’ concerns below.

1. SPP’s Methodology for Determining Opportunity Costs in Mitigated Offers is Just and Reasonable.

In compliance with the October 18 Order, SPP revised its Tariff to provide a clearer definition of “opportunity costs” for purposes of determining mitigated offers. Specifically, SPP added language that “[o]ppportunity cost shall be an estimate of the Energy and Operating Reserve Markets revenues net of short run marginal costs for the

⁴⁹ Submission of Tariff Revisions to Modify SPP Integrated Marketplace, Docket No. ER13-1173-000, Transmittal Letter at 12 and Proposed Tariff at Attachment AE § 8.6.7(A)(2)(f) (Mar. 28, 2013).

⁵⁰ TDU Intervenors Protest at 27-28.

⁵¹ *Id.* at 30-31.

⁵² *Id.* at 31-32.

marginal foregone run time during the period of limitation as detailed in the Market Protocols.”⁵³

TDU Intervenors argue that this definition lacks the specificity required by the Commission’s order. TDU Intervenors propose different language that, in their view, makes clear that “opportunity costs reflect revenues that the resource could have properly recovered were it to run during a period of time other than the mitigation period.”⁵⁴

TDU Intervenors’ concerns are misplaced. With the proposed changes to Section 3.2(C) of Attachment AF, SPP’s Tariff now clearly describes what constitutes an opportunity cost for purposes of a mitigated offer. This Tariff provision recognizes that the calculation details to determine the amount of opportunity costs reflected in a mitigated offer will be included in mitigated offer development guidelines in the Market Protocols.⁵⁵ SPP’s definition therefore complies with the Commission’s order and is not improved by TDU Intervenors’ alternative language, which merely re-arranges the wording of language originally proposed by SPP.

SPP notes that TDU Intervenors’ protest appears to be based, in part, on an incorrect understanding of revised Section 3.2(C). Specifically, TDU Intervenors mistakenly assume that the “period of limitation” referenced in the new definition equates to the mitigation time period. In fact, however, the phrase “period of limitation” refers to the timeframe when Resources are subject to run-time restrictions, not mitigation. The revised definition of “opportunity cost” therefore captures revenues that could have been

⁵³ February 15 Compliance Filing, Revised Tariff at Attachment AF § 3.2(C).

⁵⁴ TDU Intervenors Protest at 28.

⁵⁵ Such guidelines will be developed through the stakeholder process.

received during periods when run-time restrictions are in effect and is not associated with the period of mitigation.

TDU Intervenors are also mistaken in claiming that SPP's opportunity cost definition could allow a Market Participant to seek recovery of market revenues that reflect non-competitive market conditions and market power premiums. As a solution, TDU Intervenors propose that SPP revise its Tariff "to ensure that the determination of opportunity costs is based on market prices prevailing under *competitive* conditions."⁵⁶

For at least two reasons, the Commission should reject TDU Intervenors' suggestion. First, with SPP's mitigation measures, prices should always be at or near competitive levels. Indeed, that is the essential objective of having mitigation procedures in place.

Second, TDU Intervenors' suggestion to tie opportunity costs *directly* to competitive market prices is not feasible. Opportunity costs are based on forward-looking prices. As a result, it is not possible to determine whether or not those prices are competitive. In addition, as proposed, Market Participants are the ones calculating the mitigated offers in the Integrated Marketplace. Market Participants do not have access to the data required to determine during which periods the Market is competitive.

⁵⁶ *Id.* at 29 (emphasis in original). In support, TDU Intervenors suggest that MISO's reference level approach for mitigated offers would be instructive because it restricts Resource recovery to competitive market conditions. *Id.* But this criticism ignores the fact that MISO's reference levels are backward looking and calculated by the Market Monitor, as opposed to SPP's forward-looking approach.

Therefore, Market Participants have no way of ensuring that their determination of opportunity costs will always equate to competitive market prices.⁵⁷

Finally, TDU Intervenors suggest that SPP's determination of opportunity costs should reflect the "inter-temporal revenues" from a Resource's actual operational restrictions.⁵⁸ SPP agrees with this recommendation and notes that this qualification is currently included as part of the process being developed for opportunity costs in the mitigated offer development guidelines in the Market Protocols. These guidelines will be further developed and finalized through the SPP stakeholder process.

2. SPP Will Amend the Resource Eligibility Limitations for Opportunity Costs.

TDU Intervenors argue that, in accordance with *PJM*,⁵⁹ SPP's proposal to explain and limit the eligibility of Resources for which opportunity costs may be included in developing mitigated offers is deficient because it is "unclear and unsupported."⁶⁰ As discussed below, and subject to the Commission's concurrence, SPP agrees that in one respect the proposed eligibility limitations should be amended.

In *PJM*, the Independent Market Monitor ("IMM") suggested that a *force majeure* event would give rise to a fuel supply limitation. On this basis, the IMM recommended

⁵⁷ In fact, in *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,192, at P 28 (2011) ("*PJM*"), the Commission rejected arguments advocating consideration of dynamic factors in the opportunity cost calculation.

⁵⁸ TDU Intervenors Protest at 30.

⁵⁹ *PJM* at P 32.

⁶⁰ TDU Intervenors Protest at 30-31.

that fuel shortages due to *force majeure* events be recognized in the determination of opportunity cost adders.⁶¹

SPP agrees that *force majeure* events constitute an appropriate Resource fuel supply limitation that should be accounted for in the calculation of a Resource's opportunity costs for purposes of determining mitigated offer prices. Accordingly, consistent with the IMM's determination in *PJM*, SPP will include a *force majeure* requirement to the section for opportunity costs in the mitigated offer development guidelines. These guidelines, as noted, are currently undergoing review and finalization in SPP's stakeholder process.

3. SPP's Market Monitor Has Sufficient Authority to Monitor Market Participant's Mitigated Offers.

TDU Intervenors contend that SPP's proposal for the Market Monitor to review each Market Participant's mitigated offer is insufficient and does not comply with the Commission's directives in the October 18 Order. Rather, in their view, the Market Monitor should have the authority, if necessary, to revise a Market Participant's mitigated offer curves.⁶² TDU Intervenors argue that if the Market Monitor disagrees with a Market Participant's calculation of a mitigated offer, the Market Monitor's position should prevail, subject to dispute resolution.⁶³

SPP Tariff revisions comply with the Commission's order. As proposed, Section 3.5 of Attachment AF requires that a Market Participant provide the operation cost data

⁶¹ *PJM* at P 30.

⁶² TDU Intervenors Protest at 31.

⁶³ *Id.* at 32.

necessary to calculate its mitigated offer.⁶⁴ The Market Monitor validates this cost data against publicly available historical information.⁶⁵ The Market Monitor then utilizes this data and the formulas in the Tariff to compute shadow mitigated offer prices.⁶⁶ By doing so, the Market Monitor is able to confirm the accuracy of each Market Participant's mitigated offer.⁶⁷ Thus, as directed by the Commission, SPP's Market Monitor will have sufficient oversight of a Market Participant's mitigated offers to ensure that they are calculated in conformance with SPP's guidelines.

Additionally, SPP's has revised its Tariff to require referral to the Commission whenever a concern arises over the calculation or validity of Market Participant's mitigated offer. These revisions comply with the requirements of the October 18 Order. There, the Commission instructed that the Market Monitor should be able to intercede and substitute its own mitigated offer, in lieu of the Market Participant's offer, only if adequate monitoring procedures for the Market Monitor were not in place. As SPP has shown, the Market Monitor has the necessary oversight over Market Participant's mitigated offers. Moreover, the current mitigated offer development guidelines provide that if a Market Participant submits a dispute over its mitigated offer, the previously approved mitigated offer is used until the dispute is resolved. For these reasons, TDU Intervenors' request for the Market Monitor's calculated mitigated offer to control, subject to dispute resolution, should be denied.

⁶⁴ See February 15 Compliance Filing, Revised Tariff at Attachment AF § 3.5.

⁶⁵ See *id.*, Exhibit No. SPP-11 (Prepared Testimony in Support of Compliance Filing of Dr. John Hyatt) at 23.

⁶⁶ See *id.*

⁶⁷ See *id.*

G. SPP's Demand Response Aggregation Requirements Do Not Preclude NPPD's Demand Response Resources from Participating in the Integrated Marketplace.

NPPD expresses concerns that SPP's proposed Demand Response provisions are "limited to retail customers" and requests clarification that the provisions allowing aggregation of retail customers would also apply to wholesale customers.⁶⁸ As SPP indicated in the transmittal letter and Mr. Dillon's testimony, SPP utilizes the same aggregation procedures for both retail Demand Response customers and wholesale Demand Response customers.⁶⁹ SPP's aggregation procedures were adopted to comply with Order No. 719,⁷⁰ which requires, among other things, that RTOs and ISOs adopt provisions to "permit an [aggregator of *retail* customers ("ARC")] to bid demand response on behalf of *retail* customers directly into the RTO's or ISO's organized markets, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate."⁷¹ While the language of SPP's Tariff addresses aggregation of retail customers in compliance with Order No. 719, SPP accepts aggregation of wholesale customers as well, provided that the Market Participant follows all applicable Integrated Marketplace rules and practices, and registers its Demand Response Resources in accordance with the registration procedures set forth in the Tariff.

⁶⁸ Protest of the Nebraska Public Power District, Docket No. ER12-1179-003, at 3 (Mar. 8, 2013) ("NPPD Protest").

⁶⁹ February 15 Compliance Filing, Transmittal Letter at 7 and Exhibit No. SPP-10 (Prepared Testimony in Support of Compliance Filing of Richard L. Dillon) at 3.

⁷⁰ *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, III FERC Stats. & Regs., Regs. Preambles ¶ 31,292, *reh'g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

⁷¹ *Id.* at P 154 (emphasis added).

NPPD also criticizes SPP’s proposed aggregation rules, which require that customers that are aggregated into a single Resource must be located at the same electrically-equivalent point.⁷² NPPD suggests that this requirement would cause it to “rollback [its current] aggregation of customers within the NPPD balancing area.”⁷³ NPPD’s concerns are overstated. As the Commission noted in its October 18 Order, SPP’s Demand Response aggregation proposal (for the EIS Market) is also pending before the Commission in SPP’s Order No. 719 compliance proceeding.⁷⁴ The Commission conditioned its acceptance of the Integrated Marketplace ARC provisions on the outcome of that proceeding,⁷⁵ but directed SPP to provide additional explanations regarding the requirement that customers within a single aggregated Resource be located at the same electrically equivalent point,⁷⁶ which Mr. Dillon addressed in his testimony.⁷⁷ As SPP has noted previously, its aggregation requirements do not preclude participation of Demand Response Resources or limit an ARC’s ability to represent multiple Demand Response loads at different electrical points – it only requires that the ARC register and offer load located at different electrical points as separate Resources.⁷⁸

⁷² NPPD Protest at 2-6.

⁷³ *Id.* at 6.

⁷⁴ October 18 Order at P 83.

⁷⁵ *Id.*

⁷⁶ *Id.* at P 84.

⁷⁷ February 15 Compliance Filing, Exhibit No. SPP-10 (Prepared Testimony in Support of Compliance Filing of Richard L. Dillon) at 3-4.

⁷⁸ *See, e.g.,* Compliance Filing Revising Tariff in Response to Order in Docket Nos. ER09-1050, ER09-748, and ER09-1192 of Southwest Power Pool, Inc., Docket No. ER12-550-000, at 11 (Dec. 5, 2011) (stating that “the locational requirement
(continued)

Regardless of the outcome of SPP's Order No. 719 compliance proceeding and any parallel revisions to the Integrated Marketplace Tariff, if NPPD chooses to have its Demand Response participate in SPP's wholesale Demand Response program, then NPPD should be able to bid its entire 600 MW load reduction⁷⁹ into the Integrated Marketplace, as one or more Resources depending on the loads' electrical location.

H. NPPD's Criticisms of SPP's Marginal Loss Methodology Should Be Rejected as a Collateral Attack on Prior Commission Orders.

Once again, NPPD requests that the Commission require SPP to implement a five-year "transitional refund mechanism" for SPP's proposed marginal loss refund methodology.⁸⁰ NPPD's request constitutes a collateral attack on the October 18 Order and should be rejected.

NPPD first expressed its desire for a transitional mechanism in its protest of SPP's original Integrated Marketplace Filing,⁸¹ requesting that the Commission direct SPP to implement a five-year transition in which SPP would "refund load-serving entities the difference between the marginal loss charge and average losses on a Balancing Authority Area basis."⁸² In response, the Commission stated:

(continued)

does not affect the ability of an ARC to represent multiple retail customers across the SPP region, provided that the customers are organized into demand response resources based on electrical location").

⁷⁹ See NPPD Protest at 6.

⁸⁰ *Id.* at 8-9.

⁸¹ Motion to Intervene, Comments, and Protest of the Nebraska Public Power District, Docket No. ER12-1179-000, at 7-8, 27-29 (Mar. 30, 2012) ("NPPD March 2012 Protest").

⁸² *Id.* at 28.

In addition, the Commission finds that *SPP has demonstrated that a transitional refund period is not necessary* for its proposal to be just and reasonable. While NPPD describes the unique circumstances that warranted a transition period in the MISO proceeding, SPP has demonstrated that the circumstances present in MISO are not present in SPP. For the Commission to find that a transition for SPP is warranted, based upon the MISO precedent, NPPD would have to explain why it would be adversely affected by the lack of a transitional refund period. NPPD has not made that showing here.⁸³

As the Commission has already determined that a transitional mechanism is unnecessary, NPPD's repeated request for such a mechanism is both beyond the scope of SPP's February 15 Compliance Filing and a collateral attack on the October 18 Order.⁸⁴ It therefore should be rejected.

Moreover, on rehearing, NPPD argued again in support of a transitional mechanism for marginal losses,⁸⁵ which the Commission again rejected in its recent order on rehearing of the October 18 Order.⁸⁶ The Commission noted that “[o]n rehearing, NPPD has not demonstrated that the Commission erred,”⁸⁷ and, in response to NPPD's request for clarification that the issue of a transitional mechanism could be raised at a later date, the Commission stated, “because we already determined that a transition

⁸³ October 18 Order at P 213 (emphasis added).

⁸⁴ *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,126, at P 24 (2010) (rejecting arguments as collateral attacks on prior orders and stating that collateral attacks can thwart “administrative efficiency and are strongly discouraged.” (quoting *Entergy Nuclear Operations, Inc. v. Consol. Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,117, at P 12 (2005)); *see also People of the State of Cal. ex rel. Brown v. Powerex Corp.*, 139 FERC ¶ 61,210, at P 38 (2012); *Mich. Elec. Transmission Co.*, 138 FERC ¶ 61,203, at P 18 (2012).

⁸⁵ Request for Rehearing and Request for Clarification of Nebraska Public Power District, Docket No. ER12-1179-001, at 9-11 (Nov. 19, 2012).

⁸⁶ March 21 Order at PP 33-36.

⁸⁷ *Id.* at P 34.

period is not necessary for SPP, we deny NPPD’s request for clarification.”⁸⁸ Thus, the Commission has ruled finally and repeatedly on NPPD’s request for a transitional mechanism for marginal loss refunds, and should reject NPPD’s protest here.

I. SPP Provided Sufficient Explanation of its Methodology for Determining Output Forecasts for DVERs.

E.ON Climate & Renewables North America LLC (“E.ON”) suggests that SPP’s February 15 Compliance Filing failed to provide sufficient detail regarding SPP’s methodology for producing output forecasts for DVERs.⁸⁹ E.ON’s exaggerations of the Commission’s compliance directive and mischaracterization of SPP’s compliance proposal are entitled to no weight.

In the October 18 Order, the Commission directed SPP to include in its compliance filing “an explanation of . . . its methodology for determining SPP’s output forecasts for dispatchable VERs,” based on the Commission’s concern that “forecasted values may be used for a dispatchable VER’s maximum operating limit and, therefore could have rate implications.”⁹⁰ In response, SPP explained in its February 15 Compliance Filing that “SPP will develop output forecasts for each wind powered VER on an hourly basis using a physical modeling that considers the relationships between the wind powered VER and certain forecast data,”⁹¹ and proposed Tariff revisions specifying the timing of such forecasts and the data to be incorporated into the forecast, with a

⁸⁸ *Id.* at P 35.

⁸⁹ Comments of E.ON Climate & Renewables North America LLC, Docket No. ER12-1179-003, at 3-4 (Mar. 8, 2013) (“E.ON Comments”).

⁹⁰ October 18 Order at 115.

⁹¹ February 15 Compliance Filing, Transmittal Letter at 9.

reference to further details in the Market Protocols.⁹² The Market Protocols contain additional significant details regarding SPP’s forecasting methodology, including SPP’s production of an hourly “Expected Wind Output Forecast,” an hourly “SPP Total Wind Power Forecast,” and an hourly probabilistic “Production Potential” forecast for each wind powered VER.⁹³ Together, the transmittal letter, Tariff, and Market Protocols explain SPP’s methodology for determining output forecasts, consistent with the Commission’s directive.

E.ON’s criticism that SPP has placed the details in its protocols rather than in the Tariff⁹⁴ is unavailing. First, the October 18 Order did not require that the level of specificity that E.ON demands be included in the Tariff. Second, details regarding SPP’s forecasting methodology are the type of “implementation details” that Commission precedent allows to be included in business practice manuals, such as the Market Protocols, rather than the Tariff.⁹⁵ SPP’s methodology is sufficiently reflected in the Tariff, with details spelled out in the Market Protocols, and the Commission should thus reject E.ON’s criticisms.

⁹² *Id.*, Revised Tariff at Attachment AE § 3.1.2(2).

⁹³ *See Southwest Power Pool, Inc., Market Protocols SPP Integrated Marketplace Revision 13.0a*, § 4.1.2.2 (Mar. 15, 2013), <http://www.spp.org/publications/Integrated%20Marketplace%20Protocols%202013.0a.pdf>.

⁹⁴ E.ON Comments at 4.

⁹⁵ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008) (emphasis added) (citations omitted) (stating that “[t]he Commission’s policy, as implemented through the rule of reason, is that only those practices that *significantly* affect rates, terms and conditions fall within the directive of . . . the FPA” and that “[i]t is appropriate for Business Practice Manuals to contain implementation details, such as instructions, guidelines, examples and charts, which guide internal operations and inform market participants” of how a utility conducts its operations under its tariff).

J. Contrary to NPPD, SPP Has Complied With the Commission’s Directive Regarding Non-Participating Embedded Load.

NPPD’s assertions that SPP has failed to comply with the Commission’s directives regarding non-participating embedded load⁹⁶ lack merit. In the October 18 Order, the Commission directed SPP “to revise its Tariff to clarify that SPP members with non-participating embedded loads are not responsible for Integrated Marketplace costs or requirements attributable to the operation of generation or transmission to serve these loads.”⁹⁷ In other words, the Commission was concerned that in situations where an SPP member has within its footprint a load that does not wish to participate in the SPP markets, the SPP member should not be assessed any market-related charges associated with that embedded load.⁹⁸

In its February 15 Compliance Filing, SPP proposed to modify its previously-approved market registration provisions to provide that non-participating embedded loads or generation must either register in the Integrated Marketplace or transfer to an external Balancing Authority.⁹⁹ As SPP explained, “[b]y requiring registration and/or transfer-out of all non-participating embedded load/generation, revised Section 2.2 ensures that none of the associated costs will be re-assigned to other SPP members, thereby addressing the

⁹⁶ NPPD Protest at 6-7.

⁹⁷ October 18 Order at P 334.

⁹⁸ *See id.* at P 333 (stating that such members “must be assured that they are not responsible for Integrated Marketplace costs or requirements attributable” to these loads).

⁹⁹ *See* February 15 Compliance Filing, Transmittal Letter at 33 and Revised Tariff at Attachment AE § 2.2(2).

Commission’s compliance objective in paragraph 334 of the October 18 Order.”¹⁰⁰ This explanation, and the proposed Tariff revisions, provide the entire relief NPPD is seeking. The proposed Tariff revisions would ensure that, as a host utility to a non-participating embedded load, NPPD would not be responsible for market-related costs associated with that load, because the load will be required either to register in the Integrated Marketplace in its own capacity (thereby undertaking the obligation for all market-related charges), or else transfer to another balancing authority (by way of pseudo-tie or some similar mechanism).

While SPP has not adopted the exact wording of the October 18 Order, as NPPD requests, the October 18 Order did not direct SPP to adopt any specific wording verbatim in its Tariff. The revisions that SPP proposed *clarify* that charges associated with non-participating embedded load will not be assessed to the host Market Participant, and also ensure that such charges will not be assessed (through SPP’s revenue neutrality provisions) to NPPD or any other Market Participant, consistent with the Commission’s directive to SPP to “revise its Tariff to clarify that SPP members with non-participating embedded loads are not responsible for Integrated Marketplace costs or requirements attributable . . . to serve these loads.”¹⁰¹

¹⁰⁰ See *id.*, Transmittal Letter at 33.

¹⁰¹ October 18 Order at P 334.

III. CONCLUSION

For the reasons set forth above and in the February 15 Compliance Filing, SPP requests that the Commission accept this answer, reject the comments and protests, and find that the Tariff revisions in the February 15 Compliance Filing satisfy the Commission's directives in the October 18 Order.

Respectfully submitted,

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April 19, 2013

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 19th day of April, 2013.

/s/ Matthew J. Binette

Matthew J. Binette

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