

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

**Southwest Power Pool, Inc.**                    )

**Docket No. ER13-1939-000**

**MOTION FOR LEAVE TO ANSWER AND  
ANSWER OF SOUTHWEST POWER POOL, INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission” or “FERC”), 18 C.F.R. §§ 385.212 and 385.213, Southwest Power Pool, Inc. (“SPP”) submits this Motion For Leave To Answer and Answer to the “Protest Of [the “SERTP Sponsors”]<sup>1</sup> to the Compliance Filing of Southwest Power Pool, Inc.” (“SERTP Protest”)<sup>2</sup> filed on September 9, 2013, in this proceeding.

**I. INTRODUCTION**

The procedural history of Order No. 1000, and these proceedings, has been addressed in numerous compliance filings by Public Utility transmission providers and Commission orders, and SPP will not repeat the history in this Answer. As relevant here,

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<sup>1</sup> The SERTP Sponsors include: Associated Electric Cooperative, Inc. (“AECI”); Dalton Utilities; Duke Energy Carolinas, LLC and Duke Energy Progress, Inc.; Georgia Transmission Corporation; Louisville Gas and Electric Company and Kentucky Utilities Company; the Municipal Electric Authority of Georgia; PowerSouth Energy Cooperative; Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, “Southern Companies”); the South Mississippi Electric Power Association; and the Tennessee Valley Authority.

<sup>2</sup> Protest of Associated Electric Cooperative, Inc., et al., Docket No. ER13-1939-000 (Sept. 9, 2013).

on July 10, 2013, SPP submitted its Compliance Filing<sup>3</sup> to address the interregional coordination and cost allocation principles of Order No. 1000.<sup>4</sup> Included in the Compliance Filing were a proposed interregional coordination and cost allocation principles between the SPP and SERTP planning regions,<sup>5</sup> and a description of two distinct areas of disagreement between SPP and SERTP’s Public Utility transmission providers.<sup>6</sup> Additionally, SPP requested a waiver of Order No. 1000’s requirements to engage in interregional coordination and cost allocation principles with regards to SERTP (“Waiver Request”).<sup>7</sup>

On September 9, 2013, the SERTP Sponsors filed the SERTP Protest arguing SPP’s proposed compliance language with SERTP goes beyond the interregional coordination and cost allocation principle requirements of Order No. 1000, and the Commission should accept the SERTP Sponsors proposals filed in their own dockets. Additionally, the SERTP Sponsors did not object to SPP’s Waiver Request to engage in interregional coordination activities between the two regions.<sup>8</sup> SPP intervened in the SERTP Sponsors’ compliance filing dockets; however, SPP did not file a protest in any

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<sup>3</sup> Compliance Filing of Southwest Power Pool, Inc., Docket No. ER13-1939-000 (July 10, 2013) (“Compliance Filing”).

<sup>4</sup> *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011) (“Order No. 1000”), *order on reh’g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>5</sup> *See* Compliance Filing Transmittal Letter at Section III.A.2.b.

<sup>6</sup> *See id.* at Section III.A.2.c.

<sup>7</sup> *See id.* at Section III.A.2.a.

<sup>8</sup> *See* SERTP Protest at 15.

of these dockets.<sup>9</sup> SPP knows the Commission will consider the arguments made in both SPP and the SERTP Sponsors dockets when reviewing and deciding on the appropriate terms for interregional coordination and cost allocation principles of Order No. 1000 between the SPP and SERTP regions.

SPP submits this limited response to ensure the Commission's proper understanding of two issues raised by the SERTP Protest. More specifically, SPP explains how the SERTP Sponsors misinterpret SPP's position regarding AECI's performance during negotiations. Secondly, SPP provides its views regarding the SERTP Sponsors' characterization of the supporting testimony SPP filed in its Compliance Filing.

## **II. MOTION FOR LEAVE TO ANSWER**

SPP respectfully requests leave to answer the SERTP Protest filed in this proceeding to aid the Commission's decision-making process.<sup>10</sup> The Commission permits answers to protests for good cause shown, and the Commission has held that answers are permitted when they ensure a more accurate and complete record or provide useful and relevant information that will assist the Commission in its deliberative process by correcting errors and clarifying the issues.<sup>11</sup> Here, the Commission should accept

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<sup>9</sup> See Motion for Leave to Intervene of Southwest Power Pool, Inc., Docket Nos. ER13-1941-000, ER13-1928-000, ER13-1930-000 and ER13-1940 (Sept. 9, 2013).

<sup>10</sup> SPP's silence on other conclusions or statements contained in the SERTP Protest should not be considered SPP's agreement or acquiescence to those conclusions or statements.

<sup>11</sup> See, e.g., *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 19 (2010) (accepting answers that "provided information that assisted us in our decision-making process"); *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,223, at P 40 (2013); *Duke Energy Kentucky, Inc.*, 122 FERC ¶ 61,182, at P 25 (2008); *City of*

SPP's answer because it provides useful and relevant information that will help the Commission's decision-making process.

### III. ANSWER

#### A. **The SERTP Protest Misinterprets the Waiver Request and Reinforces the Need for Commission Clarification on the Matter**

The SERTP Protest expresses concern that the Compliance Filing may be misconstrued as indicating that AECI did not participate in the negotiations between the parties in good faith.<sup>12</sup> The SERTP Protest also explains why AECI is not required to comply with the requirements of Order No. 1000 through a tariff,<sup>13</sup> and represent that the SERTP Sponsors do not oppose SPP's requested waiver to engage in interregional coordination activities between SPP and SERTP.<sup>14</sup> However, the SERTP Protest does not refute, directly or indirectly, any of SPP's statements regarding the need for a waiver between SPP and SERTP. Indeed, the SERTP Protest highlights and reinforces the need for the Commission to either grant SPP's requested waiver, or provide clarification consistent with SPP's Waiver Request.

As an initial matter, with SPP's experience and relationship with AECI, we believe that AECI negotiated in good faith during negotiations of the SPP-SERTP Proposal. Although representatives from other companies were the point of contact for the SERTP Sponsors, SPP accepts AECI's representation that it negotiated in good faith,

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*Vernon, Cal.*, 115 FERC ¶ 61,374, at P 31 (2006); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,168, at P 29 (2006).

<sup>12</sup> See SERTP Protest at 13.

<sup>13</sup> See *id.* at 13-14.

<sup>14</sup> See *id.* at 4.

without reservation and at face value. SPP has a long and positive relationship with AECI. SPP and AECI have entered into a Joint Operating Agreement<sup>15</sup> which includes provisions for the exchange of planning data and information,<sup>16</sup> joint and coordinated system planning to identify enhancements to the transmission system capability needed to maintain reliability, improve operational performance, or provide an economic benefit to the parties,<sup>17</sup> and allocation of costs of upgrades pursuant to joint planning.<sup>18</sup>

To clarify, SPP's Compliance Filing (and thereby, the Waiver Request) was intended to spell out the issue (and inherent challenges) from SPP's perspective. The SERTP Protest makes a point to state that it was able to find complete agreement with all its other neighboring planning regions.<sup>19</sup> A distinction not articulated in SERTP's Protest was that its other seams with a neighboring planning region involve two jurisdictional entities. To SPP's understanding, the seam between SPP and SERTP is the only SERTP seam without an interconnection between two Commission jurisdictional entities. This is an important fact that the Commission should consider when reviewing the Waiver Request and accompanying requests for clarification.

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<sup>15</sup> Joint Operating Agreement Among and Between Southwest Power Pool, Inc. and Associated Electric Cooperative, Inc., Southwest Power Pool, Inc. Rate Schedule FERC No. 10 (Aug. 12, 2008) ("SPP-AECI JOA"). The JOA may be accessed at: <http://www.spp.org/publications/AECI%20SPP%20JOA%20Final%20Signed%2008-12-08.pdf>.

<sup>16</sup> See SPP-AECI JOA at § 7.2.

<sup>17</sup> See *id.* at § 7.3.

<sup>18</sup> See *id.* at § 7.4.

<sup>19</sup> See SERTP Protest at 12.

Second, the SERTP Protest is illustrative of the need for Commission approval of the Waiver Request, or at a minimum, the clarifications requested in the Compliance Filing. SPP believes that the SERTP Sponsors acknowledge and reinforce SPP's arguments in the Compliance Filing regarding the need for a waiver of interregional coordination between the regions: 1) the SERTP Protest affirms SPP's understanding that AECI did not intend to implement the SPP-SERTP Proposal in its tariff; and 2) neither SERTP nor SPP will have a binding contractual agreement with AECI for the purpose of SPP meeting its Order No. 1000 requirements.

Nowhere are the above issues more apparent than the SERTP Protest's argument that a Nonjurisdictional entity is not bound by the requirements to file its tariff with the Commission, and the explanation why AECI is not required to implement the SPP-SERTP Proposal into a "safe harbor tariff." The SERTP Protest implies that SPP's statement in the Waiver Request that "AECI, the only SERTP Sponsor that shares a seam with SPP, 'has opted not to comply with the interregional requirement [sic] of Order No. 1000 though adoption of the SPP-SERTP Proposal into its tariff,'" is somehow an improper issue.<sup>20</sup> The SERTP Protest then explains why AECI is not required to file a tariff with the Commission,<sup>21</sup> and further argues that Order No. 1000 does not require a Nonjurisdictional entity to file a "safe harbor tariff."<sup>22</sup>

SPP's statement that AECI did not commit to filing the SPP-SERTP Proposal in a "safe harbor tariff", or any tariff, is correct. While it may be true that AECI is not

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<sup>20</sup> See *id.* at 13.

<sup>21</sup> See *id.* at 13-14.

<sup>22</sup> See *id.* at 14.

obligated to implement a “safe harbor tariff” for the reasons stated in the SERTP Protest, that fact alone does not remove SPP’s concerns. To the contrary, it supports SPP’s determination that absent an executable agreement by AECI, there is no tie with a Public Utility transmission provider in SERTP with which SPP will engage in interregional coordination that meets SPP’s Order No. 1000 requirements. Further, the SERTP Sponsors do not provide any information in its pleading which alleviate SPP’s concerns.

The lack of contractual obligation on the part of AECI to comply with the interregional coordination and cost allocation requirements of SPP to meet the Order No. 1000 requirements is also reinforced by the SERTP Protest’s reference to AECI’s participation in a joint filing in support of the Public Utility transmission Providers of SERTP’s compliance filings. According to the SERTP Sponsors, this filing is evidence of AECI’s “commitment to sponsorship of the SERTP process in support of meeting Order No. 1000’s requirements as described in that motion.”<sup>23</sup> SPP does not question AECI’s current commitment to participate in SERTP.

However, a “joint filing in support” does not constitute sufficient contractual agreement that is equivalent to the obligations SPP and its members will assume by implementing the SPP-SERTP Proposal in the SPP Tariff. The SERTP Protest admitted that it was “unclear whether any Nonjurisdictional SERTP Sponsors will continue in light of the required changes to the SERTP contained in the SERTP [Regional] Compliance Order,” with the caveat that “as of the date of this [SERTP Protest], AECI remains an SERTP Sponsor.”<sup>24</sup> SPP understands that entities participating in SERTP may leave, and

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<sup>23</sup> See SERTP Protest at 15-16.

<sup>24</sup> See *id.* at n. 34.

therefore, if the Commission approves the SPP-SERTP Proposal, neither SPP, or SERTP itself, will have any contractual or other legal rights related to its Order No. 1000 interregional coordination and cost allocation requirements with AECI.

This issue is a great matter of concern for the SPP stakeholders who will be required to invest time and potentially significant resources in the SPP-SERTP Proposal. Therefore, SPP would request that the Commission accept SPP's clarification regarding its confidence in AECI's actions during negotiation; and accept SPP's explanation of SPP's Waiver Request. Additionally, SPP would focus the Commission on the SERTP Sponsors non-objection to the Waiver Request in conjunction with all other reasons articulated by SPP in the Compliance Filing. SPP respectfully re-affirms its Waiver Request. Or, in the alternative, if the Commission denies the Waiver Request, SPP would respectfully request clarification consistent with the Compliance Filing and the requirements of Order No. 1000.<sup>25</sup>

**B. The SERTP Protest Misinterprets SPP's Testimony**

The SERTP Protest makes an argument, which implies that SPP's filed testimony should not be considered expert testimony that should be classified as "facts" or "evidence."<sup>26</sup> The SERTP Protest then raises the fact that much of the filed testimony is also used as a basis to argue SPP's position in the Compliance Filing.<sup>27</sup> SPP does not desire to enter into arguments regarding the nature and purposes of testimony filed in support of a filing; however, SPP would state that it is not an uncommon practice in

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<sup>25</sup> See Compliance Filing Transmittal Letter at 15.

<sup>26</sup> See SERTP Protest at 14.

<sup>27</sup> See *id.* at 14-15.

filings at the Commission to utilize testimony to support arguments. Disagreement with the conclusions of an argument or the interpretation of the application of law therein is a product of our common administrative and judicial systems.

With that said, SPP responds to conclusions contained in the SERTP Protest regarding the Public Utility transmission providers of SERTP's decision to not consider lower voltage projects (below 300 kV) and projects less than 100 miles in interregional coordination and cost allocation principles between SPP and SERTP. The SERTP Protest takes issue with SPP's assertion that "[limiting] consideration to only higher voltage projects will bias the cost-effective analysis towards higher cost solutions, and therefore, less economically efficient."<sup>28</sup> The SERTP Proposal argues that the avoided cost approach requires that approved interregional projects will be more "economically efficient" than the projects they displace.<sup>29</sup>

The SERTP Protest misses SPP's point and is out of context. The SERTP Proposal, at its foundation, does not consider lower voltage projects which could be more efficient or cost-effective than the "higher voltage projects" to which SERTP limits consideration. SPP disagrees with that approach. SPP attempted to compromise by accepting SERTP's imposition of the higher voltage limitation and offered its proposed language that would allow the parties to consider lower voltage projects "at the request of either party." Although SPP stakeholders preferred the option to consider all potential projects, rather than limit consideration to 300+ kV projects, SPP stakeholders approved SPP's proposed language in compromise as a means to leave the door open for SPP to

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<sup>28</sup> See *id.* at 14. See also Compliance Filing, Exhibit No. SPP-4, Prepared Direct Testimony of David Kelley at 16-17.

<sup>29</sup> See SERTP Protest at 15.

suggest projects which SPP believed could provide mutually beneficial solutions to reliability issues at the SPP-SERTP seam.

SERTP rejected SPP’s offered language and filed its own “case by case” language, which allows SERTP the leverage to do what they complain is the problem with SPP’s language: allow one party the authority to force its will on the other party. Under the SERTP’s proposed “case by case” language, SERTP has the ability to deny SPP’s request to consider more efficient and more cost effective interregional solutions to regional issues. SERTP does not appreciate SPP’s suggestion that consideration of projects under 300 kV and less than 100 miles in length might allow the cost-effective analysis to determine the most efficient and most cost-effective solution.<sup>30</sup>

To illustrate, SPP provides a simple hypothetical example of how the SERTP Proposal might limit the potential interregional transmission project solution to be a more expensive, and less cost-effective, alternative. The example is based on the assumption that two regional projects at \$75 million each with a total combined benefit of \$175 million resulting in a benefit/cost ratio (“B/C”) of 1.16. Additionally, in our example, as an alternative to the regional solutions there are two potential interregional solutions, one of which does not meet SERTP’s criteria for consideration.

Project Type	Voltage (kV)	Cost (millions)	Benefits (millions)	B/C	Most cost effective
Regional	SPP- 230 SERTP-230	\$75 \$75	\$175 total	1.16	
Interregional	345	\$200	\$250	1.25	
Interregional	230	\$125	\$200	1.6	✓

<sup>30</sup> See Compliance Filing, Exhibit No. SPP-4, Prepared Direct Testimony of David Kelley at 16-17.

In this example, the SERTP Proposal would not allow for the least cost and most cost-effective solution to be considered due to SERTP's voltage limitation. SERTP's proposal inherently weights the interregional evaluation toward more expensive and less cost effective solutions. On the other hand, SPP's proposed language would give SPP and SERTP stakeholders the opportunity to consider the least cost and most cost effective solution. Notwithstanding the differing interpretations and disagreement between SPP and SERTP regarding compliance with interregional coordination and cost allocation requirements of Order No. 1000, SPP remains committed to working with AECI, on an ongoing basis, to develop solutions to meet transmission needs at the seam. Further, SPP is committed to working with SERTP to establish an Order No. 1000 interregional process upon direction by the Commission.

#### **IV. CONCLUSION**

For the reasons stated above, the Commission should accept SPP's Motion for Leave to Answer and Answer in this proceeding.

Respectfully submitted,

/s/ Matthew Harward

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**Attorney for  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 24<sup>th</sup> day of September, 2013.

*/s/ Michelle Harris* \_\_\_\_\_  
Michelle Harris