

I. BACKGROUND

On February 29, 2012,³ as amended on May 15, 2012,⁴ SPP submitted to the Commission proposed revisions to its Tariff to transition from its current real-time Energy Imbalance Service (“EIS”) Market to the SPP Integrated Marketplace in March 2014. On October 18, 2012, the Commission issued an order conditionally approving the tariff revisions implementing SPP’s Integrated Marketplace, subject to modification of several components of SPP’s proposal.⁵

In the October 2012 Order, in response to a protest by NPPD, the Commission concluded that “SPP members with non-participating embedded loads, such as NPPD, must be assured that they are not responsible for Integrated Marketplace costs,” and directed SPP to revise its tariff “to specify that entities that are in any of the other SPP footprints but that choose not to participate in the Integrated Marketplace will not be subject to the Integrated Marketplace’s rules and practices.”⁶ The Commission later clarified this directive, explaining that it “does not preclude SPP from proposing Tariff provisions requiring a party external to SPP that chooses to engage in transactions in the Integrated Marketplace to comply with Integrated Marketplace rules and practices, if

³ Submission by Southwest Power Pool, Inc. of Tariff Revisions to Implement Integrated Marketplace, Docket No. ER12-1179-000 (Feb. 29, 2012) (“Integrated Marketplace Filing”).

⁴ Amendatory Filing by Southwest Power Pool, Inc. of Tariff Revisions to Implement SPP Integrated Marketplace, Docket No. ER12-1179-001 (dated May 15, 2012).

⁵ *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) (“October 2012 Order”), *order on reh’g and clarification*, 142 FERC ¶ 61,205 (2013) (“March 2013 Order”).

⁶ October 2012 Order at P 333.

applicable to those transactions, even if the external party is not otherwise transacting in the Integrated Marketplace.”⁷

Consistent with the Commission’s directive in the October 2012 Order and its clarification in the March 2013 Order, SPP made a compliance filing proposing to revise Section 2.2(2) of Attachment AE of its tariff to provide that non-participating embedded load must either register the load in the Integrated Marketplace or transfer the load to an external Balancing Authority.⁸ NPPD protested the proposed revision of Section 2.2(2) of Attachment AE, stating “NPPD does not agree that SPP can force non-participating embedded load to choose either of these options.”⁹ In the September 20 Order the Commission nonetheless accepted SPP’s proposed revision to Section 2.2 of Attachment AE, stating:

[W]e find that SPP’s proposed revisions to section 2.2(2) of Attachment AE comply with the Commission’s directive regarding embedded load. Rather than revising the Tariff language to state that SPP members with non-participating loads will be assured that they are not responsible for Integrated Marketplace costs or requirements attributable to such loads/generation, SPP’s Tariff revisions in section 2.2 establish the mechanisms by which SPP members with non-participating loads will be assured that they are not responsible for Integrated Marketplace costs or requirements . . . We agree with SPP that its proposal assures 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

⁷ March 2013 Order at P 78.

⁸ Submission by Southwest Power Pool, Inc. of Tariff Revisions to Implement SPP Integrated Marketplace, Docket No. ER12-1179-003, at 33 (Feb. 15, 2013) (“February Compliance Filing”). SPP later filed a supplement to the February Compliance Filing. Supplemental Representation of Southwest Power Pool, Inc., Docket No. ER12-1179-003 (Mar. 1, 2013).

⁹ Protest of the Nebraska Power District, Docket No. ER12-1179-003, at 7 (March 8, 2013) (“NPPD March Protest”).

assessed any market-related charges associated with that embedded load. Thus, SPP's proposal complies with the October Order.¹⁰

The September 20 Order specifically refuted the NPPD March Protest, stating, "NPPD does not provide any evidence that SPP's proposed requirements are unjust and unreasonable, nor does NPPD provide any alternative solutions by which SPP members with non-participating loads would be assured that they are not responsible for Integrated Marketplace costs or requirements attributable to such loads."¹¹

On October 21, 2013, NPPD filed the Request for Rehearing challenging the Commission's finding that revised Section 2.2(2) of Attachment AE is just and reasonable and complies with the October 2012 Order. The Request for Rehearing argues that in the October 2012 Order:

[T]he Commission correctly held that an entity participating in SPP's other footprint [sic] could choose not to participate in the Integrated Marketplace, while continuing to participate in, and being responsible for the costs related to, services in the other footprint. . . . The Commission's September 20 Order denies embedded load the opportunity to participate in SPP's ancillary service market, without being forced to participate fully in the Integrated Marketplace.¹²

NPPD requests that SPP be directed to file tariff revisions to provide that non-participating embedded load "may choose to purchase services from SPP's other footprints and that SPP will be authorized to charge only those costs, including Integrated Marketplace costs, related to the services provided to such load."¹³

¹⁰ September 20 Order at P 234.

¹¹ *Id.* at P 235.

¹² Request for Rehearing at 1–2.

¹³ *Id.* at 8.

II. MOTION FOR LEAVE TO ANSWER

SPP requests leave to answer the Request for Rehearing to clarify the issues regarding which NPPD requests rehearing and explain why rehearing of issues NPPD raises is prohibited. 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.¹⁴ Here, the Commission should accept SPP's answer because it clarifies issues in the proceeding and will aid in the Commission's decision-making process.

III. ANSWER

A. NPPD Lacks Standing to Request Rehearing.

Because NPPD fails to allege any harm to it resulting from the September 20 Order, NPPD lacks standing to bring the Request for Rehearing. Section 313 of the FPA states that any person "aggrieved by an order issued by the Commission in a proceeding under this Act" may timely seek rehearing, and must "set forth specifically the ground or grounds upon which such application is based."¹⁵

¹⁴ See, e.g., *Northern Natural Gas Co.*, 137 FERC ¶ 61,202, at P 10 (2011) ("Rule 713 (d) (1) of the Commission's regulations . . . does not permit answers to requests for rehearing. However, the Commission will accept the answer in this case, since Northern's answer clarifies the record, and therefore its acceptance will expedite our resolution of the issues."), *reh'g denied*, 144 FERC ¶ 61,221 (2012); *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,317, at P 18 (2009) ("While . . . rules state that an answer may not be made to a request for rehearing absent authorization, we will accept the answer under Rule 213 because it assisted the Commission in its decision-making process").

¹⁵ FPA § 313, 16 U.S.C. § 8251(a).

A party who has not been aggrieved may not seek rehearing under FPA section 313.¹⁶ SPP’s revised Section 2.2(2) of Attachment AE, approved in the September Order, ensures that transmission owners like NPPD are not responsible for Integrated Marketplace costs associated with non-participating embedded load. In fact, under revised Section 2.2(2) it will be impossible for transmission owners to be held responsible under the SPP tariff for Integrated Marketplace costs of non-participating embedded load because such loads must either become participating loads or join another Balancing Authority Area.¹⁷ Nothing in NPPD’s Request for Rehearing alleges that the Integrated Marketplace will subject NPPD to Integrated Marketplace costs related to non-participating embedded load. Indeed, NPPD fails to provide any evidence that revised Section 2.2(2) will harm NPPD.

The only ill effects NPPD alleges may result from the September 20 Order are those that purportedly may affect other parties – Tri-State, or its agent, Basin Electric Cooperative (“Basin”) – by being required to register their embedded load or join another

¹⁶ See *Erie Boulevard Hydropower, L.P.*, 120 FERC ¶ 61,267, at PP 8, 10 (2007) (“Adirondack’s arguments on rehearing allege errors that would affect GIPA’s interests rather than its own. . . . At no point in its rehearing request does Adirondack explain how its interests might be adversely affected by our issuance of a new license for the School Street Project. . . . In short, it does not appear that Adirondack is aggrieved by our relicensing order within the meaning of section 313 of the FPA. Consequently, Adirondack may not seek rehearing or judicial review of that order.”).

¹⁷ February Compliance Filing at 33.

Balancing Authority Area.¹⁸ However, a party claiming to represent another party's interests on rehearing does not have standing to raise those interests.¹⁹

Significantly, Tri-State – which under the revised provision must either register its embedded load with the Integrated Marketplace or join another Balancing Authority Area – did not seek rehearing of the September 20 Order. Nor did Basin. NPPD should not be heard raising arguments on rehearing that were not raised by the parties who are actually subject to the challenged agency action. To permit NPPD to raise such interests, when no other party has raised them, would read out of Section 313 the jurisdictional requirement that a party seeking rehearing demonstrate that it is aggrieved by the Commission's order. Because the allegedly affected parties do not seek rehearing, NPPD should not be permitted to disrupt SPP's implementation of the Integrated Marketplace through its further rehearing request. NPPD alleges no harm that it will suffer from the September 20 Order, and the Commission should dismiss the Request for Rehearing.

B. NPPD Improperly Rests its Argument on a Non-Existent SPP “Footprint.”

Even if NPPD were allowed to assert the purported interests of Tri-State, the Commission should deny the Request for Rehearing. NPPD's assertion of harm to Tri-State appears to be predicated on an erroneous reading of the October 2012 Order: a reading that suggests that Tri-State's use of SPP's imbalance services will be *outside* of the Integrated Marketplace footprint. NPPD claims that “Tri-State's participation in the

¹⁸ Rehearing Request at 6–7.

¹⁹ See *Erie Boulevard Hydropower, L.P.*, 120 FERC ¶ 61,267, at P 10 n.11 (“Even if Adirondack is found to be able to represent GIPA's interests, this would not establish its standing.”).

SPP market is limited to the EIS footprint . . .”²⁰ While SPP currently provides imbalance energy service to Basin and Tri-State through its voluntary EIS market in which some but not all SPP members participate, the Integrated Marketplace’s real-time balancing market component will *replace* the EIS Market.²¹ There will be no separate EIS market footprint, as NPPD appears to hypothesize. SPP will prospectively provide all energy imbalance services through the real-time balancing market component of the Integrated Marketplace. The Integrated Marketplace footprint will supersede and subsume the current EIS Market services that SPP provides. To the extent that Basin or Tri-State obtains imbalance services from SPP after the implementation of the Integrated Marketplace, Basin and Tri-State will directly participate in the Integrated Marketplace and bear all related costs.²²

NPPD’s Request for Rehearing lacks any factual predicate. The September 20 Order properly found that SPP’s tariff revisions satisfy the October 2012 Order’s directive regarding embedded load, and was not arbitrary and capricious. To the extent Tri-State’s load remains within the SPP Balancing Authority Area and uses energy imbalance service, Tri-State will be participating in the Integrated Marketplace, and properly must register and be accountable for costs associated with the Integrated

²⁰ Request for Rehearing at 7.

²¹ See October 2012 Order at P 17 (describing the Integrated Marketplace’s components).

²² NPPD similarly claims that Tri-State will participate in “the Reactive Power Service footprint and the Frequency Response Service footprint,” Request for Rehearing at 7, but there are no such separate SPP footprints. See October 2012 Order at P 333 n.498 (identifying current footprints); See also March 2013 Order at P 70 n.96 (same as October 2012 Order).

Marketplace for the services it receives. Tri-State can avoid all of these charges for its embedded load by joining another Balancing Authority Area, as permitted by the September 20 Order. The Commission properly determined that these requirements complied with SPP's compliance obligations.

C. The GFA 494 Dispute Is Not Relevant to the Request for Rehearing.

In its Request for Rehearing, NPPD alleges certain facts regarding the treatment of GFA 494 in the Integrated Marketplace. These matters have already been raised in another sub-docket and were set for resolution through settlement judge procedures and, if necessary, an evidentiary hearing.²³ SPP will not burden this response by addressing NPPD's discussion of GFA 494.²⁴ SPP has already fully responded to these points in the appropriate sub-dockets.²⁵ The evidentiary issues relating to the proper treatment of GFA 494 are not germane to the issue of whether SPP's tariff revisions complied with the Commission's October 2012 Order and are not properly resolved here.

²³ *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,254, at P 17 (2013).

²⁴ Request for Rehearing at 6.

²⁵ *E.g.*, Reply Comments of Southwest Power Pool, Inc., Docket No. ER12-1179-000 -001 (Aug. 30, 2013); Motion of Southwest Power Pool, Inc. for Leave to File Further Reply Comments, Docket Nos. ER12-1179-000, -001, (Sept. 10, 2013).

IV. CONCLUSION

For the foregoing reasons, the Commission should accept this answer and deny NPPD's Request for Rehearing.

Respectfully submitted,

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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 at Washington, D.C., this 5th day of November, 2013.

/s/ Victoria M. Lauterbach

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