

December 11, 2013

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Southwest Power Pool, Inc.*, Docket No. ER14-____-000
Compliance Filing to Implement a Distribution Mechanism for Unreserved
Use Penalty Revenues

Dear Secretary Bose:

Pursuant to Section 206 of the Federal Power Act, 16 U.S.C. 824d (“FPA”), and Section 35.13 of the Federal Energy Regulatory Commission’s (“Commission”) Regulations, 18 C.F.R. § 35.13, Southwest Power Pool, Inc. (“SPP”) submits revisions to its Open Access Transmission Tariff (“Tariff”)¹ to incorporate a mechanism to distribute penalty revenues collected by SPP for unreserved use of firm transmission service. Such filing is in compliance with the Commission’s directives from previous orders,² as more fully described below.

I. BACKGROUND

A. SPP

SPP is a Commission-approved Regional Transmission Organization (“RTO”).³ It is an Arkansas non-profit corporation with its principal place of business in Little

¹ Southwest Power Pool, Inc., FERC Electric Tariff, Sixth Revised Volume No. 1.

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (“Order No. 890”), *order on reh’g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (“Order No. 890-A”), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). *See also Sw. Power Pool, Inc.*, 123 FERC ¶ 61,176 (2008) (“Order on Compliance”).

³ *See Sw. Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh’g*, 110 FERC ¶ 61,137 (2005).

Rock, Arkansas. SPP has 74 Members, including 14 investor-owned utilities, 11 municipal systems, 13 generation and transmission cooperatives, 4 state agencies, 11 independent power producers, 12 power marketers and 9 independent transmission companies. As an RTO, SPP administers open access Transmission Service over approximately 48,930 miles of transmission lines covering portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas, across the facilities of SPP's Transmission Owners, administers a centralized real-time energy imbalance service market, and has received conditional Commission approval to implement day ahead and real-time energy and operating reserve markets with locational marginal pricing and market-based congestion management, which SPP plans to commence in March 2014.

B. The Tariff's Penalty Rate for Unreserved Use of Firm Transmission Service

The Tariff contains a penalty rate to be assessed against a transmission customer for improper or unreserved use of the transmission system. The penalty provision applies to both Point-to-Point Transmission Service ("Transmission Service")⁴ and Network Integration Transmission Service ("NITS"). Section 13.7(c) of the Tariff provides that a Transmission Customer shall pay a penalty for Firm Transmission Service the Transmission Customer uses, but has not reserved.⁵ The penalty rate is set by the Tariff at 100% of the Firm Point-to-Point Transmission Service charges under Tariff schedules 7 and 11 for the period for which the unreserved service was actually used. Such 100% penalty is in addition to the applicable charges for all of the firm capacity actually used by the Transmission Customer.⁶ The penalty provision of Section 13.7(c) is also applicable to the provision of NITS under the Tariff; specifically wherein a network customer improperly utilizes network service to serve sales of

⁴ See Tariff at Definitions T (Transmission Service is defined by the Tariff as Firm and Non-Firm Point-to-Point Transmission service).

⁵ SPP's unreserved use penalty rate is not at issue in this filing. SPP's current unreserved use penalty rate contained in Section 13.7(c) of the Tariff was approved by the Commission at *Sw. Power Pool, Inc.*, 126 FERC ¶ 61,244 (2009) at P 23 (finding that SPP has complied with the Commission's directives by revising its unreserved use penalty provisions in Section 13.7 and 14.5 of the Tariff to comply with Order No. 890).

⁶ Section 13.7(c) further provides that the Transmission Owners shall be compensated for applicable charges for the unreserved firm capacity used (i.e., "100% of the (i) Firm Point-to-Point Transmission Service charge, (ii) Base Plan Zonal Charge and (iii) Region-wide Charge for the period for which they have provided service").

capacity to non-designated loads, and the provision of transmission service to third parties.⁷

Notwithstanding the incorporation of this unreserved use penalty into the Tariff, the Tariff does not currently contain a mechanism to distribute such penalties revenues if or when SPP collects such revenues. As described in more detail below, SPP has collected unreserved use penalty revenues pursuant to a Commission approved settlement; and therefore, this filing proposes a distribution mechanism consistent with Commission directives to allow SPP to distribute the revenues in a just and reasonable manner.

C. Commission Directive Regarding Mechanism to Distribute Revenues for Unreserved Use Penalties

In October of 2007, SPP submitted its compliance filing⁸ to satisfy the requirements of the Commission's Order No. 890. Amongst the many reforms implemented by Order No. 890, the Commission required transmission providers to submit a proposed methodology for distribution of unreserved use penalty revenues to non-offending transmission customers.⁹ The Commission clarified in Order No. 890-A that 1) a transmission provider that elects to impose unreserved use penalties must submit to the Commission a FPA Section 205 filings stating the applicable unreserved use penalty rate;¹⁰ and 2) each transmission provider must submit a one-time compliance filing under FPA Section 206 proposing the transmission provider's methodology for distributing penalty revenues from unreserved use of the transmission system.¹¹ The Commission further stated that the one-time compliance filing can be submitted at any time prior to the first distribution of penalties.¹²

In its Order No. 890 Compliance Filing, SPP proposed that penalty revenues collected by SPP will be utilized to reduce the administration charge that SPP assesses Transmission Customer pursuant to the Tariff's Attachment 1-A.¹³ SPP argued that

⁷ See Tariff at § 28.6.

⁸ Submission of Compliance Filing Revising Tariff of Southwest Power Pool, Inc., Docket No. OA08-5-000 (Oct. 11, 2007) ("Order No. 890 Compliance Filing").

⁹ Order No. 890 at P 861.

¹⁰ See *supra* n. 5.

¹¹ Order No. 890-A at P 472.

¹² *Id.* The Commission does not require that methodologies pertaining to informational filings be included in the Tariff, however, the Commission did not prohibit a transmission provider from including the mechanism to distribute penalty revenues in the Tariff.

¹³ See Order No. 890 Compliance Filing at 7.

such a mechanism is administratively efficient because penalty revenues are minimal compared to SPP's overall budget; and, as a result, the impacts on SPP's administration charge for all customers will be small compared to the amount of penalty assessed against any one customer.¹⁴

In the Order on Compliance, the Commission found that SPP's proposed mechanism to distribute unreserved use penalties as a reduction of the administrative charge for all customers was inconsistent with the requirements of Order No. 890. The Commission stated that SPP's proposal did not assure that offending customers would not benefit from the reduction of the Schedule 1-A administrative charges.¹⁵ The Commission ordered that SPP should, consistent with the clarification of Order No. 890-A, submit a one-time compliance filing pursuant to FPA Section 206 proposing a methodology for distributing revenues from unreserved use penalties prior to the distribution of the penalties.¹⁶

D. Section 205 Settlement in Docket No. ER13-1032

On March 4, 2013, SPP submitted a Settlement Agreement between SPP and Municipal Energy Agency of Nebraska ("MEAN") which resolved all issues relating to a dispute between SPP and MEAN regarding MEAN's use of SPP's transmission system to serve its load.¹⁷ The settlement terms include a payment of roughly \$6 million dollars as a settlement amount. The Commission approved the Settlement Agreement on August 8, 2013.¹⁸ The portion of the approximately \$6 million settlement amount applicable to the Transmission Service taken has been distributed to Transmission Owners to compensate them for the Transmission Service provided consistent with Section 13.7(c) of the Tariff. The remaining portion consists of the unreserved use penalty which SPP now holds in escrow pending approval of a mechanism to distribute these penalty revenues.

Therefore, SPP submits the instant filing to revise the Tariff to provide a mechanism for distribution of revenues from unreserved use penalties prior to the distribution of the penalty revenues resulting from the Settlement Agreement, consistent with the requirements of Order No. 890 and the Order on Compliance.

¹⁴ *Id.*

¹⁵ Order on Compliance at P 34.

¹⁶ *Id.* at P 35.

¹⁷ Filing of Settlement Agreement of Southwest Power Pool, Inc., Docket No. ER13-1032-000 (Mar. 4, 2013) ("Settlement Agreement").

¹⁸ *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER13-1032-000 (Aug. 8, 2013).

II. DESCRIPTION OF TARIFF REVISIONS AND JUSTIFICATION

A. SPP's Proposed Mechanism to Distribute Unreserved Use Penalty Revenues

SPP proposes to utilize a distribution mechanism for unreserved use penalty revenues that would be distributed to Transmission Customers by way of a reduction of the Transmission Customer's Schedule 1-A charges that SPP collects; with the exception being the penalized Transmission Customer, which would not receive any of the penalty revenue proceeds. To facilitate that approach, SPP proposes to revise Section 13.7(c) to include a provision that would effectuate distribution of unreserved use penalty revenues (which are in excess of the applicable charges distributed to Transmission Owners to compensate for Transmission Service). These penalty revenues shall be distributed by SPP to Transmission Customers on a pro-rata basis of its monthly Schedule 1-A charge for the billing cycle that ends at least 15 calendar days after the date SPP collects the penalty revenues from the penalized customer.

SPP will implement the proposed language to distribute the revenues from the Settlement Agreement by allocating the penalty revenues to all Transmission Customers that were active (i.e., paying the SPP administration fee) in the 2013 calendar year as a rebate to Schedule 1-A fees incurred during the year. For all of eligible customers (except the penalized customer), SPP will create a pro-rata share value based on the total combined amounts of Schedule 1-A and monthly assessment charges paid for firm transmission reservations for the entire 2013 calendar year. This pro-rata share will then be used to allocate each dollar from the penalty portion, which is currently in an escrow account, to all eligible customers by a Schedule 1-A adjustment in the monthly transmission invoice. On a prospective basis, SPP will implement the proposed language for any future penalty revenues received by SPP pursuant to Section 13.7(c), if any, by allocating the penalty revenues to all Transmission Customers (except for the penalized customer) that were active in the calendar year up to the date in which SPP receives the penalty revenues.¹⁹

The Commission recognized in Order No. 890 that transmission providers are free to propose mechanisms that involve the crediting of operational penalties against revenue requirements.²⁰ The Commission has approved a similar mechanism for penalty distribution for the Midcontinent Independent System Operator, Inc. ("MISO") wherein the MISO Tariff provides for the distribution of penalty revenues

¹⁹ For example, if SPP receives penalty revenues pursuant to Section 13.7(c) in mid-calendar year 2015, SPP would utilize January-June 2015 receivables to create a pro-rata share for the distribution.

²⁰ As referenced in the Order on Compliance at P 33. *See* Order No. 890 at P 862.

as a reduction of the transmission provider's costs.²¹ Similarly, in this filing SPP proposes to offset its administrative charges that SPP collects under Schedule 1-A. Analogous to a reduction of transmission provider's costs, SPP will pass the financial benefit of the penalty revenues on to transmission customers by way of a reduction to the customer's Schedule 1-A charge, except for the penalized customer which shall not receive the benefit of the reduced administrative charge. The mechanism to distribute penalty revenues from unreserved use of transmission service through a reduction of the non-penalized Transmission Customers' administrative charges is consistent with the Commission's requirements described herein and is an equitable means to distribute the benefit of such revenues to SPP customers. Therefore, SPP respectfully requests that the Commission approve this filing as just and reasonable.

B. Stakeholder Review and Conclusion

The Tariff revisions proposed by SPP were developed by SPP staff and vetted through the stakeholder process, and were approved by the SPP Board of Directors.²² While SPP recognizes that stakeholder approval does not by itself cause a filing to be just and reasonable, SPP requests that the Commission extend appropriate deference to the wishes of SPP's stakeholders, consistent with Commission precedent.²³ Further, the addition of this language will allow SPP to distribute the aforesaid

²¹ Midcontinent Independent System Operator, Inc., FERC Electric Tariff, Module B at Section 13.7(e). The MISO Tariff provides "[t]hese penalty revenues shall reduce the Transmission Provider's costs (for other than the penalized Transmission Customer) to be recovered under Schedule 10."

²² See approval of TRR 108 in the SPP Board of Directors/Members Committee Minutes at Agenda Item 3, posted at: <http://www.spp.org/publications/BOD102913.pdf>.

²³ The Commission has previously recognized that provisions approved through RTO stakeholder processes are due deference. See *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283, at P 33 (2009) (noting that the Commission "accord[s] an appropriate degree of deference to RTO stakeholder processes"); *New Eng. Power Pool*, 105 FERC ¶ 61,300, at P 34 (2003) (Commission approval of transmission cost allocation proposal based upon an extensive and thorough stakeholder process); Policy Statement Regarding Regional Transmission Groups, 1991-1996 FERC Stats. & Regs., Regs. Preambles ¶ 30,976, at 30,872 (1993) (the Commission will afford the appropriate degree of deference to the stakeholder approval process). The Commission's deference to RTO stakeholder processes has been upheld by the courts. See *Pub. Serv. Comm'n of Wis. v. FERC*, 545 F.3d 1058, 1062-63 (D.C. Cir. 2008) (noting that the Commission often gives weight to RTO proposals that reflect the position of the majority of the RTO's stakeholders) (quoting *Am.Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 172 (2008)).

penalty revenues, and all future penalty revenues collected pursuant to unreserved use of the transmission system, to all Transmission Customers, except the penalized Transmission. The distribution mechanism developed by SPP, and as filed herein, is a reasonable means to accomplish the goal of distributing these penalty revenues in an equitable manner that benefits non-penalized customers.

For these reasons, SPP requests the Commission accept the Tariff revisions included in this filing as just and reasonable.

III. EFFECTIVE DATES

SPP requests an effective date of December 11, 2013 for this filing, which is the date of the submission of this filing to the Commission. In its Order on Compliance, the Commission affirmed that transmission providers should request an effective date for any distribution mechanism to be coincident to the date of the distribution mechanism's filing.²⁴ The Commission also provided that a transmission provider who has made such filing may implement the methodology immediately, subject to refund should the Commission require additional revisions upon review.²⁵ Therefore, SPP requests that the Commission accept the proposed revisions to the Tariff to become effective as of the date of this filing. SPP intends to commence distribution of the penalty revenues in the manner consistent with the Tariff revision proposed herein, and upon the date submitted and subject to refund, in accordance with the Commission's directives in the Order on Compliance.

IV. ADDITIONAL INFORMATION

A. Documents Submitted with this Filing:

In addition to this transmittal letter, the following documents are included with this filing:

Clean and Redline Tariff revisions under the Sixth Revised Volume No. 1.

B. Service:

SPP has electronically served a copy of this filing on all its Members and Customers. A complete copy of this filing will be posted on the SPP web site, www.spp.org, and is also being served on all affected state commissions.

²⁴ Order on Compliance at P 32.

²⁵ *Id.*

C. Requisite Agreement:

These revisions to the Tariff do not require any contracts or agreements to implement, other than the Commission accepted Settlement Agreement or subsequent agreements as applicable, as described herein, which provide the penalty revenues SPP will distribute.

D. Part 35.13 Cost of Service Support

To the extent necessary, SPP requests waiver of any provisions of section 35.13 of the Commission's regulations that may be deemed to require information relating to the effect of the rate change or cost support in the form of cost-of-service statements for the enclosed revisions. SPP notes that the enclosed revisions do not provide for a rate increase.

E. Communications

Correspondence and communications with respect to this filing should be sent to, and SPP requests the Secretary to include on the official service list, the following:

Nicole Wagner
Manager-Regulatory Policy
Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223
Telephone: (501) 688-1642
Fax: (501) 482-2022
jwagner@spp.org

Matthew Harward
Attorney
Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223
Telephone: (501) 614-3560
Fax: (501) 482-2022
mharward@spp.org

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V. CONCLUSION

For all of the foregoing reasons, SPP respectfully requests that the Commission accept the Tariff revisions proposed herein as just and reasonable, with the effective date as discussed above.

Respectfully submitted,

/s/ **Matthew Harward**

Matthew Harward

Southwest Power Pool, Inc.

201 Worthen Drive

Little Rock, AR 72223

Telephone: (501) 614-3560

mharward@spp.org

Attorney for

Southwest Power Pool, Inc.

13.7 Classification of Firm Transmission Service:

- (a) The Transmission Customer taking Firm Point-To-Point Transmission Service may (1) change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1 or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.3.
- (b) The Transmission Customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the Transmission Provider's Transmission System. For such a purchase of transmission service, the resources will be designated as multiple Points of Receipt, unless (i) the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt, or (ii) the generating units or plants are in the same Control Area of a Transmission Owner in which case the units or plants also would be considered as a single Point of Receipt; provided, however, that generation which is dynamically scheduled shall be considered as part of the Control Area where it is physically located. In the event of a change in the ownership or control of generation resources previously aggregated as a single Point of Receipt under this provision, such generation may be disaggregated and treated as multiple Points of Receipt, provided that all other terms of this Tariff and the Service Agreement are met.
- (c) The Transmission Provider shall provide firm deliveries of capacity and energy from the Point(s) of Receipt to the Point(s) of Delivery. Each Point of Receipt at which firm transfer capability is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Receipt. Points of Receipt and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. Each Point of Delivery at which firm transfer capability is reserved by the Transmission Customer shall be set forth in the Firm

Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Delivery. Points of Delivery and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. The greater of either (1) the sum of the capacity reservations at the Point(s) of Receipt, or (2) the sum of the capacity reservations at the Point(s) of Delivery shall be the Transmission Customer's Reserved Capacity. The Transmission Customer will be billed for its Reserved Capacity under the terms of Schedules 7 and 11. The Transmission Customer may not exceed its firm capacity reserved at each Point of Receipt and each Point of Delivery except as otherwise specified in Section 22. In the event that a Transmission Customer (including Third-Party Sales by a Transmission Owner) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved, the Transmission Customer shall pay the following penalty (in addition to the applicable charges for all of the firm capacity actually used): 100% of the Firm Point-To-Point Transmission Service charges under Schedules 7 and 11 for the period for which the unreserved service was actually used. The charges for the unreserved service shall be based upon the duration of the period when the unreserved capacity was used. For example, one hour shall be billed at the charge for weekday deliveries, repeated daily use of unreserved capacity within a seven day period shall increase the duration of the period to a weekly duration and multiple instances of unreserved use during more than one seven day period during a calendar month shall increase the duration of the period to a monthly duration. The Transmission Provider shall compensate the Transmission Owners for 100% of the (i) Firm Point-To-Point Transmission Service charge, (ii) Base Plan Zonal Charge and (iii) Region-wide Charge for the period for which they have provided service. The penalty revenues in excess of the amount distributed to Transmission Owners shall be used to

reduce the Schedule 1-A charges collected by the Transmission Provider from the Transmission Customers. All Transmission Customers, except the penalized Transmission Customer, shall receive a reduction of Schedule 1-A charges pursuant to this section. Such penalty revenues shall be distributed by the Transmission Provider to Transmission Customers on a pro-rata basis of each Transmission Customer's monthly Schedule 1-A charge, except for the penalized Transmission Customer, for the next billing period ending at least 15 calendar days after the date the Transmission Provider collects the penalty revenues from the penalized Transmission Customer. For the amounts exceeding reserved capacity, the Transmission Customer also must replace losses as required by this Tariff.

13.7 Classification of Firm Transmission Service:

- (a) The Transmission Customer taking Firm Point-To-Point Transmission Service may (1) change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1 or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.3.
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reduce the Schedule 1-A charges collected by the Transmission Provider from the Transmission Customers. All Transmission Customers, except the penalized Transmission Customer, shall receive a reduction of Schedule 1-A charges pursuant to this section. Such penalty revenues shall be distributed by the Transmission Provider to Transmission Customers on a pro-rata basis of each Transmission Customer's monthly Schedule 1-A charge, except for the penalized Transmission Customer, for the next billing period ending at least 15 calendar days after the date the Transmission Provider collects the penalty revenues from the penalized Transmission Customer. For the amounts exceeding reserved capacity, the Transmission Customer also must replace losses as required by this Tariff.