

127 FERC ¶ 61,171  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Southwest Power Pool, Inc.

Docket No. OA08-61-001

ORDER ON COMPLIANCE FILING

(Issued May 21, 2009)

1. On February 6, 2009, Southwest Power Pool, Inc. (SPP) submitted for filing revisions to Attachment O of its Open Access Transmission Tariff (OATT) to comply with the July 11, 2008 order issued in this proceeding.<sup>1</sup> In this order, the Commission accepts SPP's tariff sheets, effective December 14, 2007 and October 17, 2008, as modified and subject to a further compliance filing, as discussed below.<sup>2</sup>

**I. Background**

2. In Order No. 890,<sup>3</sup> the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was

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<sup>1</sup> *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028 (2008) (SPP Planning Order).

<sup>2</sup> On October 16, 2008, the Commission accepted revisions to Attachment O to implement SPP's balanced portfolio process, with an effective date of October 17, 2008. See *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,054 (2008). Therefore, in its submittal in this proceeding, SPP filed two sets of tariff sheets – one set with a proposed effective date of December 14, 2007, which does not include the new balanced portfolio provisions (Exhibit No. 1 of SPP's filing), and one set with a proposed effective date of October 17, 2008 (Exhibit No. 3 of SPP's filing), which includes the balanced portfolio provisions the Commission previously accepted.

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed each transmission provider to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to its OATT (Attachment K).<sup>4</sup>

3. The Commission in Order No. 890 directed each transmission provider to address in its Attachment K planning process the following nine planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;<sup>5</sup> (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,<sup>6</sup> must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. As for Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) with Commission-approved transmission planning processes already on file, such as SPP, the Commission explained that when it initially approved these processes, they were found to be consistent with or superior to the existing *pro forma* OATT. However, because the *pro forma* OATT was being reformed by Order No. 890, the Commission found that it was necessary for each RTO and ISO either to reform its planning process or show that its planning process is consistent with or superior to the

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<sup>4</sup> SPP labeled its Attachment K transmission planning process as “Attachment O.” This was permitted by the Commission in Order No. 890. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n.246.

<sup>5</sup> In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

<sup>6</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

*pro forma* OATT, as modified by Order Nos. 890 and 890-A.<sup>7</sup> RTOs and ISOs were also directed to indicate in their compliance filings how all participating transmission owners within their footprints will comply with Order No. 890's planning requirements.<sup>8</sup>

5. In the SPP Planning Order, the Commission found that SPP's Attachment O transmission planning process, with certain modifications, complied with each of the nine planning principles and other requirements of Order No. 890. The Commission accepted SPP's filing, effective December 14, 2007, as modified and subject to further compliance filings. Specifically, the Commission directed SPP to submit, within 90 days of the issuance of the SPP Planning Order, an additional compliance filing to address issues related to the comparability principle (including its proposed right of first refusal for network upgrades), the regional participation principle, and the Order No. 890 requirement that local planning processes of RTO transmission owners be open and transparent.

6. On August 7, 2008, SPP filed a motion for extension of time to submit its compliance filing and on September 12, 2008, the Commission granted SPP an extension until February 6, 2009 to submit its compliance filing.<sup>9</sup>

## **II. Notice of Filing and Responsive Pleadings**

7. Notice of SPP's filing was published in the *Federal Register*, 74 Fed. Reg. 8525 (2009), with interventions and protests due on or before March 2, 2009. On February 26, 2009, the Arkansas Public Service Commission filed a notice of intervention. Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC (collectively, Joint TOs) filed a motion to intervene and comments and Oklahoma Gas and Electric Company (OG&E) filed comments. On February 27, 2009, ITC filed a protest and TDU Intervenors<sup>10</sup> filed a motion to intervene and protest. On March 13, 2009, Western Farmer's Electric Cooperative (Western Farmers) filed an out-of-time protest. SPP submitted an answer to the protests on March 16, 2009 and on April 24, 2009 LS Power Transmission, LLC (LS Power) filed a motion to intervene and protest out-of-time. On May 11, 2009, SPP filed an answer requesting that the

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<sup>7</sup> See *id.* P 439; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 174-5.

<sup>8</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440.

<sup>9</sup> *Southwest Power Pool, Inc.*, Notice of Extension of Time, Docket No. OA08-61-000 (Sept. 12, 2008).

<sup>10</sup> TDU Intervenors is comprised of the Missouri Joint Municipal Electric Utility Commission, the West Texas Municipal Power Agency, and Kansas Power Pool.

Commission reject LS Power's late-filed motion to intervene and protest. On May 15, 2009, LS Power filed an answer to SPP's answer.

### **III. Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), we will grant Western Farmer's late-filed protest and LS Power's late-filed motion to intervene and protest given their interest in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept SPP's March 16, 2009 answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept SPP's May 11, 2009 answer or LS Power's May 15, 2009 answer and will, therefore, reject them.

#### **B. Substantive Matters**

10. We find that SPP's revised Attachment O transmission planning process, with certain modifications, complies with the SPP Planning Order. Accordingly, we will accept SPP's compliance filing, as modified, to be effective December 14, 2007 and October 17, 2008, as requested. We also direct SPP to file, within 60 days of the date of this order, a further compliance filing as discussed below.

11. Although we accept SPP's compliance filing below, subject to a further compliance filing to address certain discrete issues, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission intends to convene regional technical conferences later this year to determine if further refinements to these processes are necessary. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement. The conferences will examine whether existing transmission planning processes adequately consider needs and

solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates. The Commission will also explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of inter-regional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

### 1. Comparability

12. The Commission found in the SPP Planning Order SPP's Attachment O transmission planning process to be consistent with Order No. 890's comparability planning principle with the exceptions noted below.<sup>11</sup>

#### a. Right of First Refusal

13. The Commission found that it was unclear whether SPP's Attachment O creates a broad right of first refusal for existing SPP transmission owners. The Commission stated that section IX(4) of Attachment O refers to "new transmission projects" that have been approved for construction in the SPP Transmission Expansion Plan (STEP)<sup>12</sup> and that a new project that connects existing facilities of a single transmission owner will be "designated" for construction by that transmission owner. A project that forms a connection between facilities owned by two transmission owners will be "designated" for construction by both entities under the original SPP proposal.<sup>13</sup> The Commission found that the STEP, however, may include transmission projects requested by any entity that is willing to assume the cost of such upgrade and found unclear whether the right of first refusal in section IX refers to all transmission projects included in the STEP, including projects that are proposed by third-party transmission owners. Accordingly, the Commission directed SPP to clarify its Attachment O provisions regarding construction of upgrades proposed by third-party transmission owners in a compliance filing.<sup>14</sup> The Commission stated its belief that participation in the planning process may be discouraged if projects proposed by third-party transmission owners are subject to a potential, but unspecified, right by existing transmission owners to

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<sup>11</sup> SPP Planning Order, 124 FERC ¶ 61,028 at P 39.

<sup>12</sup> The STEP includes transmission upgrades relating to transmission service requests, generation interconnection service requests, and satisfaction of reliability criteria, as well as transmission upgrades that provide economic benefits.

<sup>13</sup> SPP Planning Order, 124 FERC ¶ 61,028 at P 40.

<sup>14</sup> *Id.* P 41.

undertake construction of such projects. The Commission added that a broad right of first refusal may violate Commission precedent.<sup>15</sup>

**i. Proposal**

14. SPP has revised section VIII.2 of Attachment O<sup>16</sup> to clarify that any owner of Transmission Facilities (as defined in the OATT) that are or may be used by SPP to provide transmission service may sign the SPP Membership Agreement<sup>17</sup> as a Transmission Owner and thus acquire all rights and obligations of Transmission Owners under the OATT and Membership Agreement, including the rights and obligations associated with construction of transmission projects included in the STEP. SPP states that third-party transmission owners that execute the Membership Agreement will thus be on equal footing with incumbent SPP Transmission Owners.

15. Additionally, SPP states that it is revising Attachment O to provide further clarity regarding Notifications to Construct related to transmission projects included in the STEP.<sup>18</sup> Specifically, SPP proposes to modify section VIII.4 to require that SPP issue to a transmission owner designated to construct a project a Notification to Construct that contains SPP's specifications for the project, a reasonable project schedule, and a project completion date. The proposed revisions also add a new section VIII.5 indicating that upgrades needed to accommodate generation interconnections do not require Notifications to Construct. In addition, SPP seeks to amend section VIII.4 to clarify how responsibility for construction will be determined when more than one entity is designated to construct a facility and how Notifications to Construct will be provided to multiple designated transmission owners for a single STEP project.

16. SPP also proposes to revise section VIII.6 to require a designated transmission owner to respond to a Notification to Construct within 90 days of receipt of the Notification to Construct. In order to preserve its right to construct a facility, the

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<sup>15</sup> *Id.* P 40 (citing *Carolina Power and Light Co., et al.*, 94 FERC ¶ 61,273, at 62,010 (*GridSouth*), *order on reh'g*, 95 FERC ¶ 61,282 (2001) (*GridSouth Rehearing Order*)).

<sup>16</sup> Attachment O has been renumbered such that section IX, which the Commission referred to in the SPP Planning Order, is now section VIII.

<sup>17</sup> The SPP Membership Agreement is available at <http://www.spp.org/publications/Current%20Membership%20Agreement.pdf>.

<sup>18</sup> SPP issues Notifications to Construct to entities designated to construct facilities identified in the STEP.

designated transmission owner must commit in writing, within the 90-day period, to construct the facility in accordance with the specifications and schedule outlined in the Notification to Construct. SPP states that this revision alleviates the concern that the timeframe for a designated transmission owner to agree to construct a designated facility is open-ended, subject only to SPP determination of the timeliness of the designated transmission owner's response. Although the designated transmission owner is not required to secure all financing, licensing, and regulatory approvals within 90 days, it must commit in writing to construct the project according to the specifications and schedule. The designated transmission owner can propose to modify the schedule or specifications; however, any proposed modifications require SPP approval.

17. Under SPP's proposed revisions, if the designated transmission owner fails to commit within 90 days, SPP must solicit proposals from other entities that meet certain legal, regulatory, technical, financial, and managerial qualifications as specified in section VIII and SPP's business practices, including state regulatory certifications where required, satisfaction of SPP's creditworthiness requirements, and execution (or willingness to execute) the SPP Membership Agreement. The proposed revisions additionally clarify that a Notification to Construct imposes on a transmission owner an obligation to construct in the event that SPP is unable to find another entity to construct the project under the procedures set forth in Attachment O.

## ii. Protests

18. TDU Intervenors argue that SPP's proposal to maintain a right of first refusal does not comply with the SPP Planning Order. They claim that the Commission found that to the extent Attachment O creates a right of first refusal for incumbent transmission owners to construct transmission facilities, Attachment O violates the comparability principle of Order No. 890 and Commission precedent. They note that the SPP Planning Order was not the first time the Commission has required SPP to remove a right of first refusal for transmission expansion from the SPP OATT.<sup>19</sup> TDU Intervenors contend that the Commission has consistently rejected such rights of first refusal for transmission owners.<sup>20</sup>

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<sup>19</sup> TDU Intervenors Protest at 5-6 (citing *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, at P 79 (2005)).

<sup>20</sup> *Id.* at 6 (citing *New York Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 (2004); *Arizona Public Serv. Co.*, 101 FERC ¶ 61,033, at P 200, *order on reh'g*, 101 FERC ¶ 61,350, at P 65- 66 (2002); *Cleco Power LLC*, 101 FERC ¶ 61,008 (2002); *GridSouth*, 94 FERC ¶ 61,273 at 62,010).

19. TDU Intervenors argue that the revisions to section VIII do nothing to eliminate the right of first refusal for incumbent transmission owners. TDU Intervenors state that the ability of would-be transmission constructors to become “Transmission Owners” under the SPP Membership Agreement (as proposed in section VIII.2) does not place such transmission owners on the same legal footing as incumbent transmission owners. TDU Intervenors argue that, while such parties might be transmission owners in name, until they own significant transmission assets, the fact that they are legally entitled to the same right of first refusal as other transmission owners will do them no practical good because the right of first refusal spelled out in section VIII.4 of Attachment O designates incumbent transmission owners to construct based on whether the proposed facilities connect with their existing facilities.<sup>21</sup> According to TDU Intervenors, this means entities that sign the Membership Agreement but initially own no transmission facilities in the SPP region will have no genuine ability to benefit from a right of first refusal, while the incumbent transmission owners who own facilities in SPP (to which projects proposed in the STEP will attach) will have the right to build virtually all new facilities. TDU Intervenors argue that this will keep third-party transmission owners from gaining a foothold. TDU Intervenors conclude that SPP’s proposed revisions fail to implement the SPP Planning Order or to bring Attachment O in line with Order No. 890’s comparability principle and Commission precedent.

20. Like TDU Intervenors, ITC contends that section VIII of Attachment O continues to discriminate against third parties that seek to construct and own new transmission facilities within SPP. ITC argues that section VIII.2 may preclude entities that do not own transmission facilities in SPP from constructing transmission in SPP. ITC argues that an entity designated to build transmission facilities by SPP or another transmission owner should be able to become a transmission owner under the SPP OATT even if it does not already own transmission facilities in the SPP region.<sup>22</sup> ITC states that SPP has taken the position that SPP may not designate as the constructor and owner of a transmission project any entity that has not executed the Membership Agreement as a Transmission Owner. ITC asserts that this means that a third-party transmission company cannot be designated by SPP to build transmission in SPP unless it already owns transmission facilities in SPP. In particular, ITC argues that the phrase “may be

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<sup>21</sup> *Id.* at 7 (citing SPP OATT, section VIII.4).

<sup>22</sup> ITC suggests an amendment to section VIII.2 to replace the term “Transmission Owner” with “designated builder” arguing that such language would more clearly enable entities designated to build transmission in SPP to become SPP Transmission Owners even if they do not own existing transmission facilities in SPP. ITC Protest at 9.

used” in proposed section VIII.2 of Attachment O is ambiguous and leaves a great deal of discretion to SPP.<sup>23</sup>

21. ITC argues that although SPP proposed revisions appear to address the Commission’s concerns about there being an unspecified right of first refusal, the changes do not alleviate the Commission’s concern about SPP’s broad right of first refusal for certain incumbent transmission owners. ITC argues that, if an independent transmission company such as ITC invests time and resources to develop a transmission project in SPP, and SPP approves that project as necessary and appropriate, the right to construct that project would be given not to ITC, but to the SPP transmission owner(s) to which that project would interconnect. ITC states that this goes to the heart of the Commission’s concern, expressed in the SPP Planning Order, that participation in the planning process may be discouraged if projects proposed by third-party transmission owners are subject to a potential, but unspecified right by existing transmission owners to undertake construction of such projects.

22. Moreover, ITC states, the proposed right of first refusal does not apply equally to all incumbent transmission owners because incumbent transmission owners who own facilities to which a proposed project will interconnect will receive a right of first refusal to construct new facilities, but incumbent transmission owners through whose footprints a new transmission project passes but does not interconnect would be ineligible for such rights. ITC argues that, if SPP is to rely on a right of first refusal to determine who may construct new transmission, such rights should be provided to all transmission owners across whose footprints a new transmission project would pass, not just interconnecting transmission owners.

23. ITC also argues that designated transmission owners should not be able to propose alternative schedules or specifications for projects after those projects have been fully developed and vetted under SPP planning processes, as section VIII.6 would permit. ITC believes the right for a transmission owner to propose alternatives will provide an opportunity for indefinite extension of the 90-day right of first refusal window because there is no timetable applicable to SPP’s consideration of a proposed alternative schedule or project specifications. ITC asserts that, if SPP’s proposed right of first refusal is to be retained, any consideration of alternative schedules and

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<sup>23</sup> Proposed section VIII.2 of Attachment O provides, in pertinent part, that

Any owner of Transmission Facilities . . . which are or may be used by the Transmission Provider to provide transmission service pursuant to Part II and Part III of this Tariff, shall have the right to sign the SPP Membership Agreement as a Transmission Owner and thereby acquire all of the rights and obligations of a Transmission Owner described therein . . .

specifications must be confined to the 90-day window. ITC further argues that others should be given the opportunity to build projects on the terms and conditions specified by SPP if the incumbent transmission owner is unwilling to do so. Further, ITC states that this provision does not have proper stakeholder support.

24. Next, ITC argues that proposed section VIII.6 would impose unreasonable eligibility qualifications for entities that want to construct transmission projects that the incumbent transmission owners decide not to construct. According to ITC, the proposed revisions to Attachment O require entities that are selected by SPP to build transmission facilities to “have obtained all state regulatory authority necessary to construct, own and operate transmission facilities within the state(s) where the project is located.”<sup>24</sup> ITC believes this provision is unclear and potentially discriminates against independent transmission companies. ITC states that an entity may not be able to become authorized by a state to construct a particular transmission project until SPP has designated that entity to construct a project. ITC asserts that meeting the requirements embodied in the SPP Membership Agreement with respect to authority to conduct business should be sufficient.

25. ITC also questions the second qualification, which requires that entities meet creditworthiness requirements, separate and apart from those embodied in the SPP OATT and the SPP Membership Agreement. Because a designated transmission builder must be able to sign the SPP Membership Agreement to become a transmission owner, ITC asserts that meeting the requirements in the SPP Membership Agreement should suffice. ITC contends that requiring any more is discriminatory and violates the comparability principle.

26. ITC also objects to the requirement that entities meet other unspecified qualifications to be set forth in SPP’s business practices. ITC asserts that the Commission should not allow such an important matter as eligibility to construct transmission to be the subject of provisions never reviewed or approved by the Commission. In addition, ITC states that the requirement that an entity be able to sign or have signed the SPP Membership Agreement as a transmission owner is acceptable as long as it is clear that an entity that otherwise qualifies to sign the Membership Agreement may not be denied the right to do so because it does not currently own transmission in SPP.

27. Finally, ITC suggests that the Commission order SPP to reformulate its Attachment O consistent with ITC’s arguments and with the comments offered by ITC’s Chairman, President and Chief Executive Officer in Docket No. AD08-13-000 (Transmission Barriers to Entry). Specifically, an investor-owned, cooperative, or

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<sup>24</sup> ITC Protest at 14 (citing SPP OATT, Attachment O, section VIII.6).

municipal utility should have the first right to build new transmission in its footprint, but that right should not become a barrier to construction of new transmission and to the participation of new transmission builders.<sup>25</sup> An incumbent investor-owned, cooperative, or municipal utility should have the following three options when asked to build transmission by an RTO or independent planning authority: (1) agree to build the transmission project; (2) designate another entity, or partner with another entity, to build the transmission project; or (3) decline to build or assign the transmission project, in which case an independent transmission company unaffiliated with any market participant should be designated by the RTO or planning authority to undertake the transmission project. ITC argues that if an incumbent transmission owner fails to elect one of these three options within 90 days, it should forfeit the right to construct the transmission in its footprint and that right should go to an independent transmission company.<sup>26</sup> Therefore, ITC concludes that the Commission should reject SPP's compliance filing.

28. LS Power reiterates arguments made by TDU Intervenors and ITC. LS Power argues that SPP's proposed tariff provisions do not eliminate the right of first refusal for incumbent transmission owners and that the Commission should reject SPP's filing.

29. Western Farmers protests the proposed revision to section VIII.6 of Attachment O providing that, if the original designated transmission owner fails to commit within the 90-day window and SPP is unable to find another entity to construct a project, then nothing relieves the original designated transmission owner of its obligation to construct the project. Western Farmers argues that this provision essentially imposes on the designated transmission owner a provider-of-last-resort obligation, which goes beyond what is required by the SPP Planning Order and exceeds the scope of the SPP Membership Agreement. Western Farmers states that the SPP Planning Order raised concerns about the ability of third-party transmission companies to participate in the construction and ownership of facilities identified in the STEP but did not require SPP to impose a provider-of-last-resort obligation. Western Farmers argues that contrary to SPP's arguments, nothing in section 3.3(a) of the Membership Agreement absolutely requires the designated transmission owner to build a transmission facility if the designated transmission owner is unable or unwilling to do so.

30. Additionally, Western Farmers argues that there is nothing in section 3.3(c) of the SPP Membership Agreement requiring SPP to revert back to the originally

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<sup>25</sup> *Id.* at 17 (citing Post-Technical Conference Comments of ITC Holding Corp. in Docket No. AD08-13-000, at 2-3) (filed November 13, 2008) (ITC Post-Technical Conference Comments)).

<sup>26</sup> *Id.* (citing ITC Post-Technical Conference Comments at 5).

designated transmission owner if SPP is unable to find a third-party entity to construct the facilities. Western Farmers states that the Membership Agreement is silent on what to do in such a situation and SPP has not explained why existing mechanisms, such as dispute resolution procedures, are inadequate for addressing this situation.

### iii. Comments

31. Joint TOs and OG&E support SPP's proposed revisions to section VIII. Joint TOs state that SPP's clarifications will substantially improve the procedures regarding construction of upgrades and narrow the scope of the right of first refusal in response to the concerns the Commission outlined in the SPP Planning Order. Joint TOs note that they have been collaborating with ITC to construct certain SPP projects for which, under the proposed Attachment O, the Joint TOs would receive a right of first refusal. According to Joint TOs, the Commission should encourage approaches such as the collaborative arrangement between ITC and Joint TOs in order to facilitate cost effective and timely construction of new facilities urgently needed in the SPP region, particularly to move the substantial amounts of new wind generation from rural areas east to markets.

32. OG&E agrees that SPP's proposed revisions address the Commission's concern about SPP's right of first refusal. OG&E states that the revisions provide a specific and narrow timeframe for existing transmission owners to exercise their right to construct and provide third-party transmission owners certainty as to when their proposals to construct will be considered by SPP. OG&E further states that ITC has taken the position outside of this proceeding that an incumbent utility should have the right to construct transmission projects in its service area if it exercises that right within 90 days.<sup>27</sup> OG&E also states that the proposed tariff provisions are substantially similar to longstanding planning procedures used by Midwest Independent Transmission System Operator, Inc. (Midwest ISO).<sup>28</sup>

33. Additionally, OG&E states that SPP's proposal gives third parties that own transmission facilities the option of becoming transmission owners under the SPP Membership Agreement, allowing such entities to be treated like existing transmission owners with respect to construction of transmission facilities. Importantly, OG&E

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<sup>27</sup> OG&E Comments at 4 (citing ITC Post-Technical Conference Comments at 3-6).

<sup>28</sup> *Id.* at 4-5 (citing Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System, Appendix B (Planning Framework), section VI (Development of the Midwest ISO Transmission Plan), at Original Sheet No. 111 and First Revised Sheet No. 112).

states, these expanded third-party rights will not interfere with SPP's ability to ensure that STEP projects are built, because under the SPP Membership Agreement all transmission owners have an obligation to construct facilities as directed by SPP.<sup>29</sup> OG&E adds that SPP's proposal has the support of the SPP stakeholders and that the proposed tariff revisions reflect extensive SPP stakeholder discussions and were approved by the SPP Board of Directors. OG&E states that the tariff revisions represent significant compromises by all stakeholders and should be approved by the Commission as a reasonable balancing of interests of existing SPP transmission owners, third-party transmission owners, and the affected state commissions.

**iv. Answer**

34. SPP argues in response to TDU Intervenors and ITC that the Commission did not conclude in the SPP Planning Order that Attachment O provides any improper right of first refusal, nor did the Commission find that the rights and obligations imposed by Attachment O violate the comparability principle or Commission precedent. SPP argues that the Commission expressed concern regarding the "potential" for "broad" and "unspecified" rights for existing transmission owners and directed SPP to address the concern. SPP states that it did so by proposing revisions to section VIII of Attachment O to extend only limited and specified rights to existing transmission owners to receive a first Notification to Construct.

35. Concerning ITC's argument that existing transmission owners with facilities that interconnect to new projects will be treated differently from those with facilities across which a new project will pass but not interconnect, SPP states that its process is logically designed so that the Notifications to Construct are sent first to the entities whose transmission systems will be most affected by an upgrade. According to SPP, transmission owners whose systems are not directly interconnected to a new transmission facility will not be affected in the same manner that a directly interconnected system would be. Therefore, it is reasonable that only the transmission owners directly interconnected to a new project will receive a first Notification to Construct.

36. SPP adds that, contrary to ITC's concern about the phrase "may be used" in section VIII.2, the clear meaning of that section is that an owner of facilities that are capable of being used by SPP to provide transmission service may execute the Membership Agreement as a transmission owner. SPP also disagrees that the proposed Attachment O provides existing SPP transmission owners the unfettered ability to delay transmission projects. SPP argues that the ability of a designated transmission owner to request a modification to the construction schedule or specifications does not extend that

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<sup>29</sup> *Id.* at 5 (citing SPP Membership Agreement, section 3.3).

transmission owner's obligation to commit within the 90-day response window specified in Attachment O. SPP states that if, the commitment to construct is not received within 90 days or contains requested modifications that are not acceptable to SPP, then SPP is required to solicit proposals from other entities.

37. With regard to the qualifications set forth in section VIII.6 of Attachment O, SPP states that ITC's concerns are misplaced as the qualifications simply provide SPP with assurance that only qualified entities will be designated to build, without erecting barriers to qualified bidders. SPP states that ITC is incorrect in suggesting that SPP will require state regulatory certification for a third-party project before SPP designates such project for inclusion in the STEP. SPP explains that Attachment O merely requires that an entity receive general state approval to own and operate transmission in the state in order to qualify to build a project in SPP. For example, SPP states, ITC itself has received a certificate of public convenience to transact business as an electric utility in Kansas. SPP states that ITC has therefore fulfilled the requirement under Attachment O that an entity has obtained all regulatory authority necessary to construct, own and operate transmission facilities within the state of Kansas.

38. Regarding TDU Intervenors' and ITC's argument that allowing third parties to sign the SPP Membership Agreement will not give third parties the same rights to construct as existing transmission owners, SPP states that it is proper for an entity to become a "Transmission Owner" only when it actually owns transmission assets that it has transferred to SPP's operational control.<sup>30</sup> SPP states that such transfer cannot occur until facilities are operational and that when such transfer does occur, transmission owners then take on the obligation to build and receive the right to a first Notification to Construct future transmission projects that will interconnect to their facilities.

39. SPP also argues that, by articulating a process to determine which entity receives a first Notification to Construct, Attachment O ensures that SPP will be able to obligate a party to build needed transmission projects. SPP explains that under Attachment O and section 3.3 of the SPP Membership Agreement, existing transmission owners have an obligation to build transmission projects as directed by SPP. SPP states that this obligation is parallel to the obligation to serve customers imposed by the state regulatory authorities within the SPP footprint and that, during the stakeholder process, the state regulators' representatives expressed the need for SPP to retain the obligation to build for existing transmission owners. SPP states that the right to receive the initial Notification to Construct is concomitant with this obligation to build.

40. Additionally, SPP states that imposing an obligation to construct on an entity without also permitting a right to receive the first Notification to Construct could be

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<sup>30</sup> SPP Answer at 8 (citing SPP Membership Agreement, section 4.14).

viewed as unreasonable when compared to the treatment of those that do not have an existing obligation to build. SPP argues that third parties that are not existing transmission owners do not have the same obligation to build and generally build transmission on a voluntary basis. SPP states that, compared to an existing transmission owner with an obligation to build, a third party can be more selective regarding the projects in which it becomes involved.

41. SPP also avers that Western Farmers misreads the SPP Membership Agreement regarding a transmission owner's obligation to construct facilities. SPP states that section 3.3(a) of the SPP Membership Agreement provides that, "Transmission Owner *shall* use due diligence to construct transmission facilities *as directed by SPP*."<sup>31</sup> According to SPP, the obligation to build under section 3.3(a) is tempered only by the ability of the transmission owner to obtain all necessary regulatory approvals. SPP disagrees with Western Farmers' claim that the provision in section 3.3(c), which states that SPP will solicit and evaluate proposals for a project from other entities if the transmission owner designated to build it does not or cannot agree to implement the project in a timely manner, alleviates a transmission owner's obligation to build. SPP argues that this provision does not negate the transmission owner's obligation to use due diligence to build, as established in section 3.3(a), but rather provides SPP the ability to seek an alternative entity to build a project in a timely fashion if the designated entity fails to do so.

#### v. Commission Determination

42. We find SPP's clarification regarding its proposed right of first refusal in section VIII of its Attachment O complies with the requirements of the SPP Planning Order.

43. Contrary to TDU Intervenors' and ITC's claim, the Commission did not direct SPP to eliminate any right of first refusal from Attachment O nor did we state that any right of first refusal violates Order No. 890 and Commission precedents.<sup>32</sup> Rather, the Commission directed SPP to clarify whether SPP's Attachment O creates a broad right of first refusal for existing SPP transmission owners. SPP's proposed revisions address the ambiguity the Commission was concerned about by clarifying the application of the

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<sup>31</sup> *Id.* at n.13 (citing SPP Membership Agreement, section 3.3(a)) (emphasis added by SPP).

<sup>32</sup> While the Commission referenced *GridSouth* in illustrating an instance in which the Commission has found a right of first refusal granted to existing transmission owners to be overly broad, we did not prejudge SPP's proposal but required it to submit a compliance filing clarifying its provision. *See* SPP Planning Order, 124 FERC ¶ 61,028 at P 40 & n.35.

right of first refusal and further limiting it by imposing the 90-day deadline.<sup>33</sup> Therefore, SPP has satisfied the requirements of the SPP Planning Order in this regard. Nonetheless, as stated in the SPP Planning Order, the Commission is concerned that a right of first refusal could discourage third-party transmission developers from proposing projects. In the *GridSouth Rehearing Order*, the Commission found that the proposed right of first refusal provision presented the possibility of discrimination by self-interested transmission owners favoring their own generation (as well as the possibility of conflicts that could reduce reliability) and possibly precluded third-parties from planning and constructing lower cost or superior transmission facilities or upgrades.<sup>34</sup> While we are accepting SPP's right of first refusal here, the Commission will explore at the technical conferences later this year the impact that such rights of first refusal have on transmission development.

44. Regarding the ability to become a transmission owner under the SPP Membership Agreement, we agree with SPP that it is reasonable that such transmission owner actually own facilities in SPP because by definition an entity becomes a "Transmission Owner" under the SPP Membership Agreement and OATT upon transferring functional control of operational facilities to SPP. However, we find SPP's governing documents to be unclear on this requirement. SPP's proposed Attachment O provides in relevant part that "[a]ny owner of Transmission Facilities . . . which are or may be used by the Transmission Provider to provide transmission service . . . shall have the right to sign the SPP Membership Agreement as a Transmission Owner and thereby acquire all of the rights and obligations of a Transmission Owner described therein."<sup>35</sup> SPP's Membership Agreement is consistent with Attachment O and states

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<sup>33</sup> We also note that in response to SPP's initial December 14, 2007 transmission planning compliance filing, ITC filed comments actually suggesting that SPP revise Attachment O to require that a transmission owner provide a firm commitment to construct within 90 days of SPP's approval of a project and that if such firm commitment is not provided, SPP could solicit interest and evaluate qualifications for the project from third parties that seek to construct and own new transmission facilities. *See id.* at P 35.

<sup>34</sup> *GridSouth Rehearing Order* at 61,995-96 (2001). *But see Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,326, at 66,519-20 (2001), *order on reh'g*, 103 FERC P 61,169 (2003) (accepting Midwest ISO's proposed transmission planning procedures that included a right of first refusal); *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 185-86 (2004) (accepting SPP's planning procedures that included a right of first refusal).

<sup>35</sup> SPP OATT, Attachment O, section VIII.2. In addition, SPP's OATT defines Transmission Owner as "Each member of SPP whose transmission facilities (in whole or in part) make up the Transmission System and has executed a membership agreement as a Transmission Owner" (SPP OATT, section 1.45a).

that “[a] Non-Transmission Owner that owns or controls Tariff Facilities may have its status changed to a Transmission Owner under this Agreement upon notice to SPP and execution of this Agreement as a Transmission Owner.”<sup>36</sup> However, SPP’s Bylaws define a transmission owning member as “[a] Member that has placed more than 500 miles of non-radial facilities operated at or above 60 kV under the independent administration of SPP for the provision of regional transmission service as set forth in the Membership Agreement.”<sup>37</sup> We will thus require SPP to clarify, in a further compliance filing, how the language in its Bylaws is consistent with the language in its OATT and Membership Agreement (that does not specify any type or amount of facilities a non-transmission owner would have to acquire in order to become a transmission owner within SPP).

45. Further, we find reasonable the requirement for SPP to initially issue Notifications to Construct to transmission owners to whose facilities a new project will interconnect. As SPP explains, such transmission providers are most directly affected by new projects that interconnect to their facilities. With regard to the use of the phrase “may be used” in proposed section VIII.2, we find SPP’s clarification that this phrase means facilities that “are capable of being used” by SPP to provide transmission service to be acceptable. However, we will direct SPP, in the compliance filing directed below, to replace the phrase “may be” with “are capable of being” in the first sentence of section VIII.2 in order to eliminate the potential for confusion as to the meaning of the phrase.

46. We agree with SPP that proposed section VII.6 does not provide incumbent transmission owners the ability to delay transmission projects indefinitely because the designated transmission owner is required to commit to construct, decline to build the project, or offer an alternative solution within the 90-day response window.<sup>38</sup> However, SPP must place an appropriate limit on the time allotted for SPP’s consideration of a proposed alternative schedule or project specifications in order to ensure that the required projects are built in a timely manner and without delay. Otherwise, there may be no limitation on how long or for how many rounds the renegotiation of project

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<sup>36</sup> SPP Membership Agreement, section 1.14.

<sup>37</sup> SPP Bylaws at 1.22.

<sup>38</sup> As noted above, earlier in this proceeding ITC suggested that SPP’s proposed Attachment O be revised to require that a transmission owner provide a firm commitment to construct within 90 days of SPP’s approval of a project and that if such firm commitment is not provided, SPP could solicit interest and evaluate qualifications for the project from third parties that seek to construct and own new transmission facilities. *See* SPP Planning Order, 124 FERC ¶ 61,028 at P 35.

parameters could continue. In the compliance filing directed below, SPP must include in Attachment O a timetable limiting the project specification/schedule renegotiation process in order to ensure that projects are built in a timely manner.

47. With regard to qualifications entities must meet to be eligible to construct network upgrades, we find that SPP's answer adequately addresses ITC's concerns with regard to the state regulatory approval qualification. SPP states that its proposed language merely requires that an entity be able to own and operate transmission in the state in order to qualify to build a project in SPP and that ITC itself has already met this requirement to build facilities in the state of Kansas.

48. We find that ITC's concern that a designated transmission builder will be required to meet creditworthiness requirements beyond what is in the SPP OATT and SPP Membership Agreement is misplaced. Attachment O requires entities to meet the creditworthiness requirements of SPP, which are those outlined in the OATT and Membership Agreement and nothing more. In addition, we find that the fourth qualification, which requires entities to meet technical, financial, and managerial qualifications specified in SPP's Business Practices,<sup>39</sup> is reasonable, as we agree that SPP should have some assurance that entities have the ability to complete proposed transmission projects.

49. Further, we will accept SPP's proposed revision to section VIII.6 requiring the originally designated transmission owner to construct new facilities if SPP is unable to find another entity to do so. We find this language to be consistent with the Commission's directive in the SPP Planning Order that SPP clarify the rights and obligations involved in the construction of upgrades<sup>40</sup> and consistent with transmission owner rights and obligations as defined in the SPP Membership Agreement. We disagree with Western Farmers' reading of the SPP Membership Agreement. Section 3.3(a) of SPP's Membership Agreement provides, in relevant part:

Transmission Owner shall use due diligence to construct transmission facilities as directed by SPP in accordance with the OATT and this Agreement, subject to such siting, permitting, and environmental constraints as may be imposed by state, local and federal laws and regulations, and subject to

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<sup>39</sup> See:

[http://www.spp.org/publications/SPP\\_Business\\_Practices\\_2009\\_01\\_26%20%20w\\_RevHis.pdf](http://www.spp.org/publications/SPP_Business_Practices_2009_01_26%20%20w_RevHis.pdf)

<sup>40</sup> See SPP Planning Order, 124 FERC ¶ 61,028 at P 41.

the receipt of any necessary federal or state regulatory approvals.

50. The Commission interprets this provision to mean that the transmission owner is required to use due diligence to construct transmission facilities but it is recognized that such efforts may be subject to siting, permitting, and environmental constraints and other regulatory approvals needed from local, state, or federal regulatory bodies. Thus, even in the absence of SPP's proposed revisions to section VIII.6 of Attachment O, transmission owners who are signatories to the SPP Membership Agreement, like Western Farmers, are required under the SPP OATT and the Membership Agreement to use due diligence to construct facilities as directed by SPP.

**b. Comparable Treatment of Resources**

51. The Commission found in the SPP Planning Order that SPP submitted tariff language providing that, as a general matter, demand resources will be treated comparably.<sup>41</sup> However, the Commission also found that, because Order No. 890-A was issued on December 28, 2007, subsequent to SPP and its transmission owners submitting their initial Order No. 890 transmission planning compliance filing, SPP did not have an opportunity to demonstrate that it complies with the comparability requirement of Order No. 890-A. Specifically, Order No. 890-A required that the transmission provider needs to identify as part of its transmission planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."<sup>42</sup> Therefore, the Commission directed SPP to make a compliance filing addressing the necessary demonstration required by Order No. 890-A.

**i. Proposal**

52. SPP states that it has proposed revisions to Attachment O to ensure compliance with Order No. 890-A. With regard to demand resources in particular, SPP states that its planning process requires that transmission owners that have demand response programs incorporate them into load forecasts, and that the information sharing provisions of Attachment O require transmission customers with existing or planned demand resources to provide information on such resources.<sup>43</sup> SPP's Attachment O also requires that reliability studies performed in accordance with the planning process

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<sup>41</sup> *Id.* P 42.

<sup>42</sup> *Id.* (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216).

<sup>43</sup> SPP OATT, Attachment O, section IX.4.c.

specifically examine the impact of existing and planned demand response resources on load forecasts<sup>44</sup> and that reliability studies shall accommodate, on a comparable basis to generation resources, demand response resources that are capable of providing the functions assessed in the STEP and can be relied upon on a long term basis.<sup>45</sup> SPP also proposes adding language to clarify that existing and planned demand response resources will be evaluated as part of the analysis performed in reliability studies.<sup>46</sup> SPP adds that it continues to collaborate with its stakeholders in addressing the incorporation of demand resources into SPP's planning process and its markets.<sup>47</sup>

53. For each annual planning cycle, SPP first specifies, in consultation with stakeholders and stakeholder working groups,<sup>48</sup> the method, criteria, assumptions and data to be used in developing an assessment of the transmission system on the basis of maintaining reliability of the SPP region and identifying opportunities to reduce congestion.<sup>49</sup> SPP then performs and distributes the results of the assessment, soliciting feedback from stakeholder working groups and stakeholders on alternative solutions to address the reliability and economic needs identified in the assessment.<sup>50</sup> Upon completing its review of stakeholder comments, SPP shall prepare a draft list of projects for review by stakeholders.<sup>51</sup> Based on comments it receives, SPP will create a

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<sup>44</sup> *Id.* at section III.4.c.iii.

<sup>45</sup> *Id.* at section III.4.f.

<sup>46</sup> *Id.* at section III.4.c.vi.

<sup>47</sup> On February 27, 2009, in Docket No ER06-451-000, SPP filed a report with the Commission discussing its continuing efforts to integrate demand response. Also, SPP states that it is in the process of revising its Market Protocols and OATT, through its stakeholder process, specifically to address participation by demand resources in the SPP Energy Imbalance Service (EIS) Market, including modifications to permit demand resources to submit resource plans and offer curves in the EIS Market. SPP filed these revisions on February 24, 2009, in Docket No. ER09-748-000. On April 24, 2009, the Commission issued a deficiency letter requesting additional information and detail regarding SPP's proposal.

<sup>48</sup> Stakeholder working group meetings are open to all entities. *See* SPP OATT, Attachment O, section III.2.b.

<sup>49</sup> *Id.* section VI.3.

<sup>50</sup> *Id.* section VI.4.

<sup>51</sup> *Id.* section VI.5.

recommended list of upgrades for review and approval by the Markets and Operations Policy Committee and Board of Directors.<sup>52</sup>

ii. **Commission Determination**

54. We find that SPP has partially complied with the requirements in the SPP Planning related to the comparability principle. Attachment O identifies where and when in the planning process all stakeholders have an opportunity to provide their input regarding the development of methodology, criteria, assumptions and data used by SPP in transmission planning activities.<sup>53</sup> However, while Attachment O provides that stakeholders can propose alternatives to reliability and economic needs identified in the annual assessment, SPP does not affirmatively state that sponsors may propose transmission, generation, and demand resources as alternative solutions to identified needs. SPP also fails to identify how it will evaluate and select alternative solutions when determining what facilities will be presented for review and approval by the Operations Policy Committee and Board of Directors. We therefore require SPP to submit a further compliance filing, within 60 days of this order, revising Attachment O to state that sponsors of transmission, generation, and demand resources can propose alternative solutions to any needs identified by SPP in its transmission planning process. In addition, SPP must identify in Attachment O how it will evaluate and select from among competing alternative solutions such that all types of resources are considered on a comparable basis.<sup>54</sup>

55. With regard to economic planning studies requested by stakeholders, SPP does not address how it will ensure comparable treatment of resources in its economic planning process. While any stakeholder can request that SPP study a potential economic upgrade, section IV of Attachment O provides that economic upgrades include only those transmission upgrades and additions that have been shown to provide economic benefits related to customers' access to generation options. We therefore require SPP to submit a further compliance filing, within 60 days of this order, revising

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<sup>52</sup> *Id.* sections VI.5, VII.

<sup>53</sup> Stakeholder groups can provide input before methodology, criteria and assumptions are finalized. *See id.* section VI.3.

<sup>54</sup> Tariff language could, for example, state that solutions will be evaluated against each other based on a comparison of their relative economics and effectiveness of performance. Although the particular standard a transmission provider uses to perform this evaluation can vary, it should be clear from the tariff language how one type of investment would be considered against another and how the transmission provider would choose one resource over another or a competing proposal.

Attachment O to indicate clearly that a stakeholder is able to submit a request for SPP to study potential upgrades or other investments necessary to integrate any resource, whether transmission, generation or demand resources, identified by the stakeholder.

## 2. Regional Participation

56. The Commission found in the SPP Planning Order that SPP met the regional participation principle with respect to the transmission owners in the SPP footprint but not with respect to inter-regional coordination. Accordingly, the Commission directed SPP to submit a compliance filing describing how the provisions of each of the agreements with its neighboring regions listed in Attachment O meet the inter-regional coordination requirement of Order No. 890 (and, if necessary, propose revised Attachment O language).<sup>55</sup>

### a. Proposal

57. SPP states that it coordinates inter-regional planning with Midwest ISO via a Joint Operating Agreement that provides for data exchange and establishes a Joint Planning Committee that is required to meet semi-annually to review and coordinate transmission planning activities.<sup>56</sup> SPP states that the Midwest ISO-SPP Joint Operating Agreement is modeled after a Joint Operating Agreement between Midwest ISO and PJM Interconnection, L.L.C. that the Commission has held complies with Order No. 890's inter-regional coordination requirements.<sup>57</sup>

58. SPP also states that it executed a Joint Operating Agreement with Associated Electric Cooperative, Inc. (AECI)<sup>58</sup> that contains a Coordinated Regional Transmission Expansion Planning process in Article 7, under which a Joint Planning Committee is established to develop procedures for power system analysis models, prepare Joint and

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<sup>55</sup> SPP Planning Order, 124 FERC ¶ 61,028 at P 49.

<sup>56</sup> SPP Transmittal Letter at 13 (citing Southwest Power Pool, Inc., FERC Electric Tariff, Second Revised Rate Schedule No. 9, Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool, Inc., Article 9).

<sup>57</sup> *Id.* (citing *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163, at 75-76 (2008) (*PJM Order*)).

<sup>58</sup> *Id.* (citing *Southwest Power Pool, Inc.*, Docket No. ER08-1516-000 (Oct. 20, 2008) (unpublished letter order) (accepting the SPP-AECI Joint Operating Agreement for filing)).

Coordinated System Plans, and otherwise coordinate all joint planning activities.<sup>59</sup> The AECI Joint Operating Agreement also establishes an Interregional Planning Stakeholder Advisory Committee to facilitate stakeholder review of and input into coordinated system planning<sup>60</sup> and contains provisions for the sharing of data,<sup>61</sup> development of a Joint and Coordinated System Plan<sup>62</sup> and cost allocation for upgrades identified in the Joint and Coordinated System Plan.<sup>63</sup> SPP states that these provisions ensure that planning along the SPP-AECI seam complies with the requirements of Order No. 890.

59. Additionally, SPP states that its agreement with Southwestern Power Administration (SPA) (SPP-SPA Agreement) contains provisions governing inter-regional planning. SPP administers transmission service over SPA's transmission facilities in accordance with Attachment AD of the SPP OATT. Under section 14 of Attachment AD, SPP is permitted to recommend upgrades or expansions to SPA transmission facilities by submitting a proposal including its findings and proposed cost sharing to SPA, and SPA agrees to coordinate transmission planning and construction activities with SPP.<sup>64</sup>

60. SPP also participates in the Eastern Interconnection Reliability Assessment Group (ERAG)<sup>65</sup> with other North American Electric Reliability Corporation (NERC) regional organizations, which requires SPP to cooperate on the development and procedures employed by the regional organizations to conduct power system analyses and studies and to participate, as necessary in reliability assessments efforts of the other regional organizations. SPP states that participation in ERAG enables SPP and the other regional organizations in the Eastern Interconnection to coordinate reliability studies and facilitate data sharing.

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<sup>59</sup> *Id.* (citing AECI Joint Operating Agreement Article 7).

<sup>60</sup> *Id.*(citing AECI Joint Operating Agreement section 7.1.1).

<sup>61</sup> *Id.* at section 7.2.

<sup>62</sup> *Id.* at section 7.3.5.

<sup>63</sup> *Id.* at section 7.4.3.

<sup>64</sup> SPP Transmittal Letter (citing SPP OATT, Attachment AD, section 14).

<sup>65</sup> *See* ERAG Agreement at:

<http://www.erag.info/Documents/ManagementCommittee/Eastern%20Interconnection%20Coordination%20Agreement.pdf>

61. In addition, SPP states that concurrently with the instant filing, it submitted for filing with the Commission a Letter Agreement with Entergy Services, Inc. (Entergy) (SPP-Entergy Agreement) to establish coordinated regional planning efforts between SPP and Entergy.<sup>66</sup> SPP states that the SPP-Entergy Agreement and its “Principles Governing Regional Planning” (Principles) establish that the parties will, as required by Order Nos. 890 and 890-A and other applicable Commission orders share system plans to ensure that they are simultaneously feasible and otherwise share and use consistent assumptions and data in the development of such plans and identify system enhancements that could relieve congestion or integrate new resources.<sup>67</sup> The SPP-Entergy Agreement requires SPP and Entergy to form a joint planning committee to oversee transmission planning activities, establishes provisions for data sharing necessary to engage in coordinated transmission system planning as required by Order Nos. 890 and 890-A, governs cost allocation for the cost of studies performed and upgrades identified by the parties under the Principles, and provides for stakeholder involvement in the inter-regional planning process.

62. SPP adds that SPP and Entergy also intend to discuss possible further coordination activities, including additional coordination efforts related to data sharing, transmission planning, operations and granting of services. SPP plans to raise in these discussions the potential participation of Entergy in the annual aggregate studies performed by SPP with respect to long-term transmission service requests, participation of Entergy in the analysis of regional economic upgrades through SPP’s tariff provisions concerning its Balanced Portfolio process, sharing of real-time data and models and coordination of Available Flowgate Capacities, coordination of congestion management between the Entergy and SPP systems, joint studies of generation interconnection requests that have impacts on both the Entergy and SPP systems, and development of other cost allocation procedures for regional planning projects.

**b. Commission Determination**

63. We find that SPP’s Joint Operating Agreements with Midwest ISO and AECI, and its agreement with SPA, satisfy the inter-regional participation requirement. SPP has adequately explained in its compliance filing how each of these agreements provides a forum for the sharing of data, information, and assumptions in order to coordinate planning among the regions. For example, the SPP-Midwest ISO and the SPP-AECI Joint Operating Agreements require, among other things, coordination of planning and transmission system expansion information, the goal of which is to strengthen

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<sup>66</sup> The SPP-Entergy Agreement was submitted for filing with the Commission under Docket No. ER09-659-000, as amended in ER09-659-001.

<sup>67</sup> SPP-Entergy Agreement at sections 1.3 and 1.5.

coordination in transmission, operations and other transactions. They also include language providing for the creation of an inter-regional stakeholder planning advisory committee to facilitate stakeholder review and input into coordinated system planning.<sup>68</sup> Similarly, SPP will coordinate transmission planning and construction activities with SPA under the SPP-SPA Agreement. Moreover, all of the agreements contain provisions for coordinated planning for interconnection and long-term firm transmission service requests. Attachment O also provides SPP will solicit input from stakeholders regarding inter-regional studies under any of these agreements.<sup>69</sup>

64. With regard to the inter-regional planning between SPP and Entergy, as noted above, contemporaneous with the instant filing, SPP separately filed the SPP-Entergy Agreement in Docket No. ER09-659-000 describing its planning relationship with Entergy. Entergy also included the language of the SPP-Entergy Agreement in its proposed Attachment K, which it filed in Docket No. OA08-54-004. Protestors in both proceedings argue, among other things, that the SPP-Entergy Agreement is not adequate to meet Order No. 890's requirement for regional participants and regional planning between SPP and Entergy, and that a comprehensive seams agreement is needed.

65. In its order addressing the SPP-Entergy Agreement that SPP filed in Docket No. ER09-659-000, the Commission found that the Agreement should be reviewed in context with SPP's compliance with the inter-regional coordination requirements of Order No. 890.<sup>70</sup> The Commission also found the language of the SPP-Entergy Agreement to be so similar in substance to the language Entergy proposed in its Attachment K to warrant simultaneous consideration of issues raised by the SPP and Entergy proposals. The Commission stated that many of the concerns raised in the comments and protest involve whether the Agreement satisfies both SPP's and Entergy's compliance with Order No. 890's regional participation principle. The Commission accepted and nominally suspended the SPP-Entergy Agreement and made it subject to both the outcome of Docket Nos. OA08-61-001 and OA08-59-004.<sup>71</sup>

66. Given that protestors raised concerns about the inter-regional coordination between SPP and Entergy in the proceeding on Entergy's transmission planning process but did not raise those concerns here we find it is more appropriate to address whether

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<sup>68</sup> See SPP-Midwest ISO Joint Operating Agreement, section 9.1.2; SPP-AECI Joint Operating Agreement, section 7.1.i.

<sup>69</sup> SPP OATT, Attachment O, section X.3.

<sup>70</sup> *Southwest Power Pool Inc.*, 127 FERC ¶ 61,032 (2009).

<sup>71</sup> *Id.* P 19.

the coordination between SPP and Entergy meets the inter-regional coordination requirements of Order No. 890 when the Commission addresses Entergy's transmission planning process. Accordingly, the Commission will make a determination on whether the SPP-Entergy Agreement meets the inter-regional coordination requirement when the Commission addresses Entergy's revisions to its Attachment K to incorporate the language of the SPP-Entergy Agreement in an order to be issued in Docket No. OA08-59-004. SPP's compliance with Order No. 890 with regard to coordination with Entergy is therefore subject to the outcome of that order.

### 3. Local Planning

67. The Commission in the SPP Planning Order found that SPP had failed to adequately describe how the local planning processes of its transmission owners will satisfy the requirements of Order No. 890. In particular, the Commission found that SPP had not explained how the specific plans and projects submitted by transmission owners that choose to have separate local planning processes will be evaluated as part of the SPP planning process for potential inclusion in the STEP, and to what extent local plans developed by these transmission owners will be subject to further review and approval by stakeholders and SPP. The Commission therefore directed SPP to revise Attachment O to state specifically how projects submitted by a transmission owner with a separate Attachment K for local planning will be evaluated as part of the SPP planning process.<sup>72</sup>

68. In addition, the Commission presumed that SPP transmission owners that did not file their own Attachment K planning processes intended to rely on the SPP planning process to ensure their local planning complies with Order No. 890. However, the Commission found that Attachment O also lacked sufficient clarity and specificity with respect to local planning for these transmission owners. Specifically, the Commission was not convinced that stakeholders will be able to participate at an early stage in the local planning process conducted by SPP transmission owners that have not filed their own Attachment K processes.<sup>73</sup> Therefore, to address local planning requirements for SPP participating transmission owners who do not have Attachment K planning processes separate from the SPP Attachment O, the Commission directed SPP to modify its OATT to (i) require each such participating transmission owner's local plan to be made available on a website for review by stakeholders in the planning process subject to Critical Energy Infrastructure Information (CEII) and existing confidentiality provisions; (ii) provide links to each such participating transmission owner's local plan on SPP's website; (iii) require such participating transmission owners to post the

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<sup>72</sup> SPP Planning Order, 124 FERC ¶ 61,028 at P 68.

<sup>73</sup> *Id.* P 69.

planning criteria and assumptions used in its current local plan; (iv) provide links to each such participating transmission owner's planning criteria and assumptions on SPP's website; and (v) require such participating transmission owners to provide a reasonable opportunity for written comments after the posting of their local plan.<sup>74</sup>

**a. Proposal**

69. SPP revised Attachment O to more clearly state that all transmission owners' local plans will be developed by Commission-approved processes. SPP also commits to make all local plans submitted to SPP for inclusion in its planning process accessible via a link on SPP's website, with instructions to explain the process for accessing CEII and confidential portions of redacted transmission owner local plans. SPP will provide an electronic link on its website for stakeholders to submit written comments on both the STEP and transmission owner-specific local plans and criteria.<sup>75</sup>

70. Additionally, SPP proposes to revise its roles and responsibilities so that Attachment O states that SPP will review, and include as appropriate, all local area upgrades proposed by all transmission owners, including those plans developed by transmission owners that have their own Commission-approved local planning process.<sup>76</sup> SPP further revised Attachment O to insure that the technical advice, assistance and oversight stakeholder groups provide in the SPP transmission planning process, explicitly apply to the development of coordinated planning among SPP and transmission owners, including network upgrades developed by transmission owners that have their own Commission-approved local planning process.<sup>77</sup> In addition, SPP proposes language specifying that it will include in its reliability studies of the SPP system any network upgrades developed by transmission owners with separate Commission-approved local planning processes.<sup>78</sup>

**b. Commission Determination**

71. SPP has complied with the requirements of the SPP Planning Order with respect to local planning activities. The revisions to Attachment O make clear that any local plans incorporated into SPP's STEP will be developed pursuant to Commission-

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<sup>74</sup> *Id.* P 70.

<sup>75</sup> SPP OATT, Attachment O, sections III.5.iii and VI.6.b.

<sup>76</sup> *Id.* at section III.1.e

<sup>77</sup> *Id.* at section III.2.a.i.

<sup>78</sup> *Id.* at sections III.4.a and III.4.c.ii.

approved processes. In reviewing those separate planning processes, the Commission can ensure adequate participation of stakeholders at the early stages of plan development. In addition, SPP has clarified the processes by which all transmission owners, including those relying solely on SPP to satisfy their local planning obligations under Order No. 890, will provide the criteria to be used by SPP in developing the STEP, including opportunities for stakeholders to review and comment on that criteria.

72. Finally, SPP revised Attachment O to clarify that every transmission owner, whether or not it has a separate Commission-approved local transmission planning process, must provide SPP with company-specific planning criteria by April 1 of each year. The individual planning criteria will be used by SPP when determining whether a reliability violation exists in its annual assessment. SPP will make these planning criteria available via an electronic link on SPP's website and incorporate it into the criteria SPP uses in performing each assessment.<sup>79</sup> SPP, in consultation with the stakeholder working groups, will then finalize all planning criteria as part of the assessment study scope.<sup>80</sup>

The Commission orders:

(A) SPP's compliance filing is hereby accepted, as modified, effective December 14, 2007, and October 17, 2008, subject to a further compliance filing, as discussed in the body of this order and subject to the outcome of Docket No. OA08-59-004.

(B) SPP is hereby directed to submit a further compliance filing, within 60 days of the date of this order, as discussed in the body of this order

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>79</sup> *Id.* at section III.3.

<sup>80</sup> *Id.* at section VI.3.

Document Content(s)

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