Southwest Power Pool
REGIONAL STATE COMMITTEE
Cox Convention Center, Oklahoma City, OK
April 24, 2006

• MINUTES •

Administrative Items:
Members in attendance or represented by proxy were:
  Denise Bode, Oklahoma Corporation Commission (OCC)
  Brian Moline, Kansas Corporation Commission (KCC)
  Julie Parsley, Public Utility Commission of Texas (PUCT)
  Steve Gaw, Missouri Public Service Commission (MPSC)
  Mary Cochran, proxy for Sandra Hochstetter, Arkansas Public Service Commission (APSC)

There were 43 in attendance (Attendance – Attachment 1). Others in attendance via phone:
  Adrainne Brandt, Public Utility Commission of Texas
  Bridget Headrick, Public Utility Commission of Texas
  Tom DeBaun, Kansas Corporation Commission
  Ryan Kind, Missouri Office of the Public Counsel
  Walter Wolf, Stone, Pigman, Walther, Wittman, LLC
  Keith Tynes, Southwest Power Pool
  Alan Derichsweiler, Western Farmers
  Terri Eaton, Xcel Energy

President Bode called the meeting to order at 1:05p.m. Cheryl Robertson called roll and a quorum was declared. President Bode asked for adoption of the January 30, 2006 meeting minutes (RSC Minutes 1/30/06 – Attachment 2). Vice President Parsley moved to adopt the January 30, 2006 minutes. Mary Cochran seconded the motion. Hearing no objection, the minutes were approved by acclamation.

Updates:
RSC Financial Report
Les Dillahunty (SPP) presented the RSC Financial Report (RSC Financial Report – Attachment 3). Mr. Dillahunty reported that the RSC remained well under budget. He stated that expenditures included in the Budget report for February 2006 in the Outside Services category were expenditures associated with the state proceedings associated with the applications for the transfer of functional control that are not directly RSC cost and that those charges will be moved to general SPP expenditures.

RSC Officer Reports
President Bode asked for updates from the RSC officers. Vice President Parsley provided information regarding a recent ERCOT rotating outage. Problems occurred during an extraordinary period of hot weather when numerous units were off line for routine maintenance and the sudden loss of four units resulted in curtailments, calling attention to inadequate notification procedures for state and local officials. She asked what emergency response notification procedures SPP had in
Regional State Committee
April 24, 2006
Page 2 of 5

place and if they were adequate. Nick Brown stated that SPP meets the NERC recommendations; however, SPP has already formed a team to update the corporate response plan. ERCOT’s experience will be reviewed for lessons learned.

FERC Update
Tony Ingram provided an update on FERC activities. Mr. Ingram introduced Mike McLaughlin, FERC Director of Central Division Energy Markets and Reliability. He then updated the group on SPP FERC activities:

- SPP received a conditional External Market Monitor agreement requiring compliance action.
- A technical conference on ER06-432 was held on April 10. Comments are due April 25 and reply comments are due May 8.
- A conditional order was issued allowing LG&E to withdraw from Midwest ISO and SPP to perform tariff duties.
- A conditional order was issued granting SPP Entergy ICT status extending the contract to four years.

General information included:

- Order 670 states rules of certification to qualify as a Regional Entity. NERC filed for ERO status, which is still pending.
- RMO-16 issues reliability standards proposed by NERC.
- Friday, May 28, MISO is having a Cost Allocation Technical Conference. Mr. Ingram noted that the RSC and SPP have established a lead in this area.

President Bode then asked for a round of introductions including those joining via phone.

**Business Meeting:**
Kansas Electric Transmission Authority
Larry Holloway (KCC) was asked to provide a Kansas Electric Transmission Authority (KETA) overview (KETA Presentation – Attachment 4). The KETA consists of seven members; two from each of the house and senate and the balance is appointed by the governor. KETA plans to join an RTO, is not FERC jurisdictional, and hopes to benefit Kansas customers. Legislation has passed concerning KETA, the governor has approved KETA, but there is still no money allotted to fund the associated administrative responsibilities.

SPP Report
Nick Brown (SPP) was asked to provide his SPP report. Mr. Brown stated that the FERC order on the Energy Imbalance Market was issued March 20. Although there was disappointment in not being granted the May 1 operational milestone, there was relief to be able to test and perfect the Market as the result of the delay. SPP was directed to delay going live until no earlier than October 1, 2006. SPP committees and working groups are working on required revisions and clarifications. Special meetings of the Markets and Operations Policy Committee and the Board of Directors on May 16 and May 17 in Dallas were scheduled to respond to the compliance filing, May 19.

Mr. Brown reported that SPP filed ERO05-1416 in November 2005 requesting a rehearing, which limited customer’s right to rollover firm transmission. Mr. Brown thanked the Oklahoma Corporation Commission for their support by also filing in support of SPP’s position in this case.

A FERC Technical Conference was held in February regarding economic dispatch. Mr. Brown
thanked the RSC members and others who attended and added support for SPP. Finally, Mr. Brown asked for comments to assess how the RSC and SPP were doing. Much has been accomplished together: cost allocation, regional solutions, and a plan to build transmission.

Cost Allocation Working Group
Mike Proctor (MOPSC) was asked to provide an update on the Cost Allocation Working Group (CAWG Report – Attachment 5). Dr. Proctor provided a summary and key changes to the SPP Large Generator Interconnection Agreement (LGIA). He then reported on the CAWG review of Attachments J and Z (Attachment J and Z Report – Attachment 6). Proposed changes will be sent to RTWG for Tariff language. Dr. Proctor presented the scope of the Base Plan Guidelines Task Force (BPGTF): Develop Base Plan guidelines for consistent and equitable classification of projects, and identify potential changes to SPP Criteria or SPP Tariff to implement the guidelines for Base Plan funding. Dr. Proctor presented the following resolution for approval:

The SPP Board should not approve the SPP Base Plan Upgrade List until a stakeholder review of the proposed projects has been completed.

Following discussion, Commissioner Steve Gaw offered an amended resolution and moved for approval:

The SPP Board of Directors should approve or disapprove the SPP Base Plan Upgrade List in the Board materials for projects only after a stakeholder review of the proposed projects has been completed. This should be done expeditiously.

Treasurer Moline seconded the motion, which passed unanimously.

Kansas House Resolution No. 6005
Les Dillahunty reviewed the Kansas House Resolution No. 6005 that urged SPP to recognize the reliability component and value of economic transmission projects and to consider adopting an approach that would fund 80% of these projects in the Base Plan (House Resolution No. 6005 – Attachment 7). Treasurer Moline joined SPP in being compliant with the Resolution’s urging that this matter be brought to the attention of the RSC. No action was taken at this time but the RSC was reminded of the progress being made in the modifications to Attachments J & Z that would do more to encourage the development of economic projects.

New Mexico Attorney General & the LPSC vs. FERC; U.S. Court of Appeals
Les Dillahunty reviewed the New Mexico Attorney General and the Louisiana Public Service Commission filing with FERC regarding SPP’s RTO status (Case No. 04-1398 c/w No. 04-1399 – Attachment 8). SPP will be entering a brief on April 25 and will remain actively involved.

Electric Reliability Organization Status
Les Dillahunty provided information on SPP becoming a Regional Entity (RE). FERC issued an order allowing SPP to be both an RTO and an RE if there is sufficient proof of separation. SPP is dealing with this issue and asked consideration of the following resolution:
The SPP Regional State Committee (RSC) members hereby recognize the importance of ensuring appropriate separation and having adequate safeguards for the Regional Entity (RE) functions from other non-statutory functions performed by SPP. The RSC members also recognize the efficiencies SPP continues to realize in managing reliability within a combined RTO – RE organization for the benefit of consumers and bulk power system users in the participating SPP RSC member states. The SPP RSC therefore supports SPP’s activities in pursuit of Regional Entity status under a single organization and believes SPP can continue to effectively and efficiently administer Bulk-Power System reliability as a FERC recognized Regional Entity.

Vice President Parsley moved to approve the resolution. Mary Cochran seconded the motion. The motion passed with Commissioner Gaw abstaining.

Base Plan & Aggregate Study
Les Dillahunty provided an overview of the SPP Base Plan Upgrade list and aggregate study (Base Plan Upgrade & Aggregate Study – Attachment 9). Mr. Dillahunty presented data and annual revenue requirements responsibility by zones. The data indicates that in the 2006 and 2007 Base Plan Project List every state is a beneficiary of Base Plan Funding with the exception of New Mexico and Mississippi where no projects have been proposed. He also reviewed the aggregate study process and results per OATT Attachment Z.

EIS Order Confidentiality Provisions
Les Dillahunty provided information regarding the EIS Market Order confidentiality provisions (EIS Confidentiality Provisions – Attachment 10). FERC has directed SPP to file a non-disclosure agreement as part of the compliance filing adopting similar provisions as Midwest ISO and PJM. The FERC proposed Tariff language will be adopted for the May compliance filing.

Draft Agenda for Fall Technical Conference
Les Dillahunty stated that SPP is proposing a Technical Conference on Regional Resource Planning in the fall of 2006 (SPP Technical Conference – Attachment 11). This conference is budgeted but the date is yet to be determined. Mr. Dillahunty requested that the RSC confirm an agenda. President Bode instructed Joyce Davidson to hold a conference call to discuss an agenda and prepare a draft for the July RSC meeting.

Ancillary Services Cost Benefit Study
Carl Monroe provided an update on the Ancillary Services cost benefit study. The Ancillary Services Market needs to be designed and defined before the cost benefit study. SPP Staff will run the study and needs to determine if a vendor is required. The MOPC has set a schedule to conduct the study the first quarter of 2007 with the Energy Imbalance order the second quarter of 2007.

EIS Market Implementation
Carl Monroe (SPP) provided an update on the EIS Market implementation. Mr. Monroe stated that there were approximately 40 issues to address with many requiring as little as writing Tariff language from Market Protocols and certifying readiness. Testing is taking place on some systems with a few anticipated changes (trying to keep small in scope) before the October 1
date. Training is ongoing and everyone is working on the response to the 60 days compliance filing.

**Scheduling of Next Regular Meeting, Special Meetings or Events:**
President Bode noted that the next regularly scheduled RSC meeting is in Kansas City on July 24, 2006. Scheduled meetings and locations for the balance of 2006 are stated in Attachment 12 (Remaining 2006 RSC and SPP Board Meetings – Attachment 12). The annual meeting is October 23 in Tulsa, OK.

With no further business, the meeting was adjourned.

Respectfully Submitted,

Les Dillahunty
AGENDA

REGULAR MEETING
Monday, April 24, 2006
1:00 pm- 5:00 pm
Renaissance Hotel & Cox Convention Center
Oklahoma City, OK

1. CALL TO ORDER

2. PRELIMINARY MATTERS
   a. Declaration of a quorum
   b. Adoption of January 30, 2006 Minutes

3. UPDATES
   a. RSC Financial Report
   b. Other RSC officer reports
   c. FERC
   d. SPP

4. BUSINESS MEETING-ALL ITEMS SUBJECT TO DISCUSSION AND ACTION
   a. Cost Allocation Working Group (CAWG) status report .......... Dr. Mike Proctor
      • Large Generator Interconnection Agreement status
      • Attachment J and Z revisions status
      • Base Plan Guidelines Task Force (BPGTF) report
      • 2006 CAWG draft strategy
   b. Kansas Electric Transmission Authority (KETA) overview..... Larry Holloway
   c. Kansas House Resolution No. 6005 (inclusion of economic upgrades in Base Plan) ................................................................. Les Dillahunty
   d. New Mexico Attorney General & the LPSC vs. FERC; U.S. Court of Appeals for the D.C. Circuit, Cases No. 04-1398 & 04-1399 .............. Les Dillahunty
   e. Electric Reliability Organization Status Report................... Charles Yeung
   f. Base Plan Funding & Aggregate Study Update.................... Les Dillahunty
   g. SPP Tariff Modifications to Accommodate Local Criteria Transmission Upgrades................................................................. Les Dillahunty
   h. Ancillary Services Cost Benefit Study overview .................. Carl Monroe
   i. EIS Market Implementation Update .................................... Carl Monroe
      • Status of FERC Filing on EIS Issues
   j. EIS Order Confidentiality Provisions................................... Les Dillahunty
   k. Draft agenda for the Fall Technical Conference.................. Les Dillahunty
   l. Other issues

5. SCHEDULING OF NEXT REGULAR MEETING, SPECIAL MEETINGS OR EVENTS

6. ADJOURNMENT
Notice of Meeting of the Southwest Power Pool Regional State Committee

The Southwest Power Pool (SPP) Regional State Committee (RSC) will hold a public meeting at 1:00 pm CDT on April 24, 2006. The business meeting will involve discussion and possible action as set forth in the attached Agenda. Members who are not able to attend in person should submit a proxy in accordance with the Bylaws.

Persons planning to attend the meeting by teleconference should register online at least one day prior to the meeting at http://www.spp.org in order to obtain the telephone number for conference bridge access. The telephone number will be provided at close of business the day before the meeting.
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<tr>
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<tr>
<td>Walt Stewart</td>
<td>on behalf of EFI</td>
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<td>Cindy Holman</td>
<td>OMPA</td>
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<td>Robin Morecroft</td>
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<td>Ron Gary</td>
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<td>Mel Perkins</td>
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<td>Joshua Martin</td>
<td>SPP Director</td>
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<td>Mary Cochran</td>
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<td>Brian Molina</td>
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<td>Steve Bow</td>
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<td>Denise Bode</td>
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<td>Julie Parsley</td>
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<td>Jayce Davidson</td>
<td>OCC-PUD</td>
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<td>Anthony J. Ferante</td>
<td>OCC - Comm. Bldg's, OK</td>
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<td>Mike Proctor</td>
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<td>Larry Holloway</td>
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<td>Matt Tome</td>
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<td>David Flaschaker</td>
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<td>Lee Dillahunty</td>
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<td>David Douglass</td>
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<td>Craig Roach</td>
<td>Boston Pacific</td>
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<td>JEFF KNOTTEK</td>
<td>CU - SPRINGFIELD, MO</td>
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<td>Bobby Wescrow</td>
<td>State of Okla</td>
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<td>Bob Vandewater</td>
<td>OCC - Comm Clouds aide</td>
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<td>Rick Walker</td>
<td>The Wind Coalition</td>
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<td>Tim Woolley</td>
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<td>Tom Stechlik</td>
<td>Westar Energy</td>
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<td>Shah Hossein</td>
<td>Westar</td>
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## ATTENDANCE LIST

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<tr>
<td>Charles Young</td>
<td>SPP</td>
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<td>Nick Brown</td>
<td>SPP</td>
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<td>Lamana Lawrence</td>
<td>SPP</td>
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<td>Cheryl Robertson</td>
<td>SPP</td>
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April 21, 2006

To Whom It May Concern:

Please be advised that Mary Cochran has my proxy for the SPP Regional State Committee meeting on April 24, 2006.

Sincerely,

[Signature]

Sandra Hochstetter, Chairman
Arkansas Public Service Commission
Southwest Power Pool
REGIONAL STATE COMMITTEE
Omni Mandalay Hotel at Las Colinas, Dallas, Texas
January 30, 2006

• MINUTES •

Administrative Items:
Members in attendance or represented by proxy were:
   Denise Bode, Oklahoma Corporation Commission (OCC)
   Brian Moline, Kansas Corporation Commission (KCC)
   Adrianne Brandt, proxy for Julie Parsley, Public Utility Commission of Texas (PUCT)
   Steve Gaw, Missouri Public Service Commission (MPSC)
   Mary Cochran, proxy for Sandra Hochstetter, Arkansas Public Service Commission (APSC)

Others in attendance in person or via phone:
   Tom DeBaun, Kansas Corporation Commission
   Larry Holloway, Kansas Corporation Commission
   Matt Tome, Kansas Corporation Commission
   Joyce Davidson, Oklahoma Corporation Commission
   Karen Forbes, Oklahoma Corporation Commission
   Bridget Headrick, Public Utility Commission of Texas
   Mike Proctor, Missouri Public Service Commission
   Ryan Kind, Missouri Office of the Public Counsel
   Richard House, Arkansas Public Service Commission
   Jim Eckelberger, SPP Director
   Harry Skilton, SPP Director
   Josh Martin, SPP Director
   Nick Brown, SPP
   Carl Monroe, SPP
   Les Dillahunty, SPP
   Stacy Duckett, SPP
   Jeff Price, SPP
   Dianne Branch, SPP
   Cheryl Robertson, SPP
   Lamona Lawrence, SPP
   Nora Mead Brownell, Federal Energy Regulatory Commission
   Tony Ingram, Federal Energy Regulatory Commission
   John Rogers, Federal Energy Regulatory Commission
   Penny Murrell, Federal Energy Regulatory Commission
   David Fleischaker, Secretary of Energy, OK
   Walter Wolf, Stone, Pigman, Walther, Wittman, LLC
   Craig Roach, Boston Pacific
   Mel Perkins, OG+E
   Bob Koenig, OG+E
Updates:
President Bode called on Dianne Branch (SPP) to present the RSC Financial Report (RSC Financial Report – Attachment 2). Ms. Branch reviewed the RSC 2005 income statement concluding and reporting that the RSC was under budget for the year.

President Bode asked for updates from the RSC officers. Hearing none she moved on to the FERC report presented by Tony Ingram. Tony Ingram introduced Commissioner Nora Brownell and Penny Murrell from FERC. Commissioner Brownell saluted the RSC efforts and stated her belief that FERC and the states must work together to assure benefits to consumers. She also highlighted the Commission’s planned final rule addressing requirements for an Electric Reliability Organization, stressing its importance, and its relationship with regional authorities. Regarding the Commission’s recent final rule addressing its increased authority stemming from PUHCA repeal, Commissioner Brownell stated her belief that a less fragmented industry is better for all the states and should provide tangible benefits but she recognized the political pressure on states. She also summarized the meeting with Kansas stakeholders and regulators earlier the same day which addressed economic and reliability upgrades of transmission, characterizing this meeting as a case study in what the FERC and the states need to look at to assure that adequate infrastructure is in place and the costs of upgrades are appropriately allocated. Following Commissioner Brownell, Mr. Ingram reported that the Commission issued, in December, its final rule on RTO/ISO cost accounting which will facilitate tracking RTO costs, enhancing transparency. He also noted the Commission’s final rule addressing market manipulation and its proposed rule on transmission pricing incentives, which prompted comments from a diverse group of industry participants and interested parties.

Nick Brown was asked to provide an update of Southwest Power Pool (SPP) activities. Mr. Brown stated that he would cover the 2005 Year in Review (2005 Year in Review – Attachment 3) and address an action item under 4b of the agenda. Mr. Brown highlighted 6 initiatives of 2005:
Outreach/relationship growth, Transmission Utilization, Board Development, Reliability Improvement, Accountability Tracking, and Administrative Process. Mr. Brown stated that 2005 was a landmark year in terms of furthering transmission expansion. This was due in large part to the cost allocation plan, which was a bold action from the RSC and provided a procedure allowing for Base Plan upgrades. Attachment AA allowed the ability to pre pay smaller upgrades. A transmission definition was determined, which was not a small undertaking. Mr. Brown added that plans and financing are underway for a primary coordination center, which would be separate and secure. Mr. Brown asked Jeff Price (SPP) to present an update on the Cost Benefit Study conducted using higher fuel costs (Cost Benefit Study Presentation – Attachment 4). Mr. Price stated that the updated study for Arkansas and Missouri indicated that higher fuel prices significantly increase the benefits of the SPP EIS Market.

President Bode then asked for a round of introductions including those joining via phone.

**Business Meeting:**
President Bode called on Mike Proctor to report on the Cost Allocation Working Group status (CAWG Report – Attachment 5). Dr. Proctor reviewed work with the Generation Interconnection Task Force (GITF) including the cost allocation process for the generation interconnection credit process. The CAWG is working through Tariff revisions for Attachment Z and J to assure that revenue crediting for requested upgrades considers differences and similarities between new Network Transmission Service and Point to Point Transmission Service. SPP staff is working on “strawman” language. Future discussion will include the waiver process and the future roll-in of requested upgrades. The Base Plan Guidelines Task Force (BPGTF) is dealing with what projects are included in the Cost Allocation Base Plan. Standards are needed and it is planned to finish these standards by the end of March 2006. President Bode requested that projects be prioritized and that information be provided on new issues with a brief write up on all issues. President Bode inquired about the aggregate study. The second study is almost complete and it was asked that information be provided to the group.

Nick Brown asked to discuss a Service Agreement filed with FERC in August of 2005. At this time, the FERC members excused themselves from the room. Mr. Brown explained that the signed Service Agreement, Docket ER05-1416, had been denied by FERC in an October 27, 2005 order, which SPP feels is a departure from precedent. SPP filed a Request for Rehearing and Clarification in November 2005. Mr. Brown asked for a show of support from the RSC for a technical conference, which can be done without taking sides. It was the consensus of the group that a technical conference would be beneficial for understanding. The RSC may try to file joint comments. Hard copies of the order and the request for rehearing were distributed (Order and Request for Rehearing – Attachment 6).

Carl Monroe provided an update on the EIS Market implementation. Mr. Monroe reported that SPP made a Market Tariff filing on January 4. To date, fourteen comments/interventions/protests have been filed. SPP is working on their response, which is due on February 9. Mr. Monroe reported on the status of Market tasks. Generation was moved where SPP did deployment testing, Day in the life enhanced testing began January 23 with success, operated with scripted inputs, and unscripted Market trials will begin on February 20. Market participants were asked to present their status at the MOPC meeting. All stated that they would be ready for the May 1 Market implementation. Market readiness metrics were approved by MOPC, which provides objective criteria to evaluate each stage of testing.
Dianne Branch provided a SAS70 audit report (Report of Independent Accountants and Presentation – Attachment 7). Ms. Branch stated that the first ever SAS70 Type 1 audit had been performed in 2005 and reviewed the process, the outcome, and the remediation plan. A Type II audit, which is required to run no less than six months, is planned for May through October 2006. March 2006 will mark the beginning of the audit readiness assessment. Mr. Brown stated that the SAS70 audit helps our members who are under the Sarbanes Oxley Act by allowing one audit rather than many. SPP is not required to perform an audit under this act.

Nick Brown provided a report on the Board of Directors Evaluation and the Customer Satisfaction Survey (Board Evaluation and Customer Satisfaction Survey Results – Attachment 8). The Corporate Governance Committee formed an Organizational Effectiveness Task Force (OETF) in 2005 to evaluate Board of Directors effectiveness. This evaluation covered three primary areas including long-term strategy, need for more Board involvement, and a customer satisfaction survey. In regards to long-term strategy, the Strategic Planning Committee has scheduled a retreat in June. In addition to a Board evaluation, the OETF performed an organizational self-assessment looking at the process and improvements of various stakeholder committees and task forces. Group scopes were also reviewed.

Les Dillahunty inquired about the RSC internal audit and asked if anything was being done. President Bode stated that the process was started but that no timeline had been set as yet. She said that they would have a report at the April meeting on the auditor and the schedule of the audit.

**Scheduling of Next Regular Meeting, Special Meetings or Events:**
President Bode noted that the next regularly scheduled RSC meeting is in Oklahoma City on April 24, 2006. Scheduled meetings and locations for the balance of 2006, in addition to the April meeting are (Remaining 2006 RSC and SPP Board Meetings – Attachment 9):

- July 24 – Kansas City, MO
- October 23 (Annual Meeting) – Tulsa, OK

With no further business, the meeting was adjourned.

Respectfully Submitted,

Les Dillahunty
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<td>24,419</td>
<td>46,047</td>
<td>41,422</td>
<td>4,625</td>
<td>448,530</td>
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<td><strong>Total Income</strong></td>
<td>45,130</td>
<td>20,711</td>
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<td>46,047</td>
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<td>4,625</td>
<td>448,530</td>
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| **Expense**          |             |            |          |             |            |          |               |
| Operating Expense    |             |            |          |             |            |          |               |
| Meetings             | 2,947       |            |          | 3,864       |            |          |               |
| **Total Operating Expense** | 2,947 | 20,711 | 17,764 | 3,864 | 41,422 | 37,558 | 248,530 |

| Outside Services     |             |            |          |             |            |          |               |
| Cost Benefit Studies | 42,183      | -          | (42,183) | 42,183      | -          | (42,183) | 200,000       |
| **Total Outside Services** | 42,183 | -          | (42,183) | 42,183      | -          | (42,183) | 200,000       |

| **Total Expense**    | 45,130      | 20,711     | (24,419) | 46,047      | 41,422     | (4,625)  | 448,530       |

| **Net Income (Loss)**| -           | -          | -        | -           | -          | -        | -             |

(A) Year to date (YTD) operating costs are less than budget as the only costs incurred thru February are those expenses associated with meetings.

(B) YTD study costs are greater than budget as all 2006 study costs were budgeted for later in the year and costs incurred to date are related to studies originating in the prior year.

(C) YTD revenues are greater than budget given that ytd expenses are greater than budget.
KETA Coordination with SPP, KCC, and FERC

Larry Holloway
KCC Staff

- SPP
  - KETA’s role within SPP
    - Transmission owner?
  - SPP role with KETA
    - Planning, studies, operational control, tariff administrator, security coordinator
- FERC’s role
  - KETA is not FERC jurisdictional
    - But – KETA may be recovering costs through zonal tariffs that are
- KCC’s role
  - Certification for portions outside the state
  - Allocation of remaining costs to Kansas utilities
  - Recovery of costs in retail rates of jurisdictional utilities
KCC Jurisdiction under HB 2263

- Jurisdiction:
- New Sec. 8. (a) The authority shall not be subject to supervision or regulation by the state corporation commission, except that the authority shall be construed to be a public utility subject to the jurisdiction of the state corporation commission with regard to wire stringing and transmission line siting pursuant to K.S.A. 66-183 and 66-1,177 et seq., and amendments thereto.

KCC Jurisdiction (cont)

- Wire Stringing
  - Essentially refers to KCC adopted safety code
    - NESC
- Transmission Line Siting
  - Transmission lines 230 KV or greater and 5 miles or longer in length;
  - Not on existing transmission or limited access 4-lane highway right-of-way.
KCC Responsibilities under HB 2263

• Certifying KETA out of state transmission facilities for bonding:
  – 9 (b) Transmission facilities constructed, upgraded or repaired using proceeds of bonds issued pursuant to this section shall not be required to be located wholly within this state if:
    • (1) The majority of the costs of the construction, upgrade or repair is for construction, upgrade or repair of transmission facilities located or to be located in this state; and
    • (2) the state corporation commission certifies that the portions of the lines and appurtenances located outside this state will improve the reliability and security of the state’s electric transmission system or will contribute to the long-term economic well being of this state.

KCC Responsibilities (cont)

• Recovery of KETA costs not included in SPP Tariffs
  – 7 (a) (15) recovering its costs through tariffs of the southwest power pool regional transmission organization, or its successor, and, if all costs are not recovered through such tariffs, through assessments against all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility’s assessment shall be based on the benefits the utility receives from the construction or upgrade, as determined by the state corporation commission upon application by the authority. In determining allocation of benefits and costs to utilities, the commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility’s customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility’s customers in a manner approved by the utility’s governing body;
KCC Responsibilities (cont)

- KCC Cost Recovery Mechanism under HB 2234
  - **New Sec. 14.** (a) As used in this section:
    - (1) “Appurtenances” means all substations, towers, poles and other structures and equipment necessary for the bulk transfer of electricity.
    - (2) “Commission” means the state corporation commission.
    - (3) “Construction or upgrade of an electric transmission facility” means construction or upgrade of an electric line, and appurtenances, with an operating voltage of 115 kilovolts or more.
  - (b) Upon application, the commission may authorize recovery of costs associated with the construction or upgrade of an electric transmission facility if the commission finds that:
    - (1) (A) A regional transmission organization has identified such construction or upgrade as appropriate for reliable operation of the integrated electric transmission system or for economic benefits to transmission owners and customers; and (B) a state agency has determined that such construction or upgrade will provide measurable economic benefits to electric consumers in all or part of this state that will exceed anticipated project costs; and
    - (2) such costs are not being otherwise recovered.

KCC Responsibilities (cont)

- KCC Cost Recovery Mechanism Sec. 14 HB 2234 (cont)
  - (c) The commission shall review an application for recovery of costs pursuant to this section in an expedited manner if the application includes evidence that expedited construction or upgrade of the electric transmission facility will result in significant, measurable economic benefits to Kansas electric consumers. Recommendation or approval of construction or upgrade of an electric transmission facility by a regional transmission organization shall constitute a rebuttable presumption of the appropriateness of such construction or upgrade for system reliability or economic dispatch of power.
KCC Responsibilities (cont)

- KCC Cost Recovery Mechanism Sec. 14 HB 2234 (cont)
  - (d) In determining whether to approve recovery of costs pursuant to this section the commission may consider factors such as the speed with which Kansas electric consumers will benefit from the transmission facility and the long-term benefits of the transmission facility to Kansas electric consumers, or both, and whether such factors outweigh other less costly options. An application for recovery of costs pursuant to this section shall include such information as the commission requires to weigh such factors, including, but not limited to, information regarding estimated line losses, reactive power and voltage implications and long-term economic and system reliability benefits.

KCC Responsibilities (cont)

- KCC Cost Recovery Mechanism Sec. 14 HB 2234 (cont)
  - (e) Any recovery of costs authorized by the commission pursuant to this section shall be assessed against all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility’s assessment shall be based on the benefits the utility receives from the construction or upgrade. In determining allocation of benefits and costs to utilities, the commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility’s retail customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility’s retail customers in a manner approved by the utility’s governing body.
KCC Responsibilities (cont)

- KCC Cost Recovery Mechanism Sec. 14 HB 2234 (cont)
  - (f) All moneys collected by a utility from assessments authorized by the commission pursuant to this section shall be paid quarterly by the utility to the transmission operator or owner designated by the commission.
  - (g) Notwithstanding any other provision of law to the contrary, electric municipal utilities and electric cooperative utilities shall be subject to the jurisdiction of the commission for the limited purpose of implementing the provisions of this section.

FERC Jurisdiction

- Limited jurisdiction over KETA owned transmission lines
  - However, some new authority from the 2005 Energy Policy Act.
SPP Coordination with KETA (HB 2263)

- SPP Planning:
  - 7 (d) The authority shall exercise the rights and powers granted to it in this act only with respect to transmission facilities which the southwest power pool regional transmission organization, or its successor, has determined are compatible with plans adopted by such organization and which have been approved by such organization.

SPP Coordination with KETA (cont)

- Planning (cont)
  - 7 (a) (17) participating in and coordinating with the planning activities of the southwest power pool regional transmission organization, or its successor, and adjoining regional transmission organizations, or their successors; and
  - 7 (a) (18) participating in and coordinating with the planning activities of the southwest power pool regional reliability organization, or its successor, and adjoining regional reliability organizations, or their successors.
SPP Coordination with KETA (cont)

• Cost Recovery
  – 7 (a) (15) recovering its costs through tariffs of the southwest power pool regional transmission organization, or its successor, ....
  – Remaining cost recovery coordinated with KCC.

Concerns Regarding SPP Tariff

• Recognition of projects not owned by incumbent TOs
  – It is not clear how this would be handled under the tariff
  – Bylaws restrict TO participation to “500 miles or more of transmission lines at greater than 60KV”
  – Ideally, KETA would be a TO under SPP tariff and bylaws for KETA owned projects
    • Costs of projects (at least the base funded amount) would be factored into zone(s) where project is constructed.
    • Ideally, KCC allocated remaining costs would likely be on a zonal basis
    • KETA ownership of generation “attachment” or radial interconnection facilities could create interesting cost allocation problems
      – Who are beneficiaries?
• SPP tariff concerns will be discussed by the Cost Allocation Working Group in the future
Summary of Key Changes to SPP Large Generator Interconnection Agreement
SPP RTWG
March 2, 2006

Three-Party Agreement
Convert from a two-party agreement:
Transmission Provider (TP)
Interconnection Customer (IC)
to three-party agreement:
Transmission Provider
Interconnection Customer
Transmission Owner (TO)

• Specifically identify and separate TP & TO responsibilities and rights.
Interconnection Service

- Offer only Energy Resource Interconnection Service (ERIS).
- Delete all terms associated with Network Resource Interconnection Service (NRIS).
- Additional requirements associated with NRIS are addressed through the transmission service request process.

Types of Facilities

- Interconnection Customer Interconnection Facilities (ICIF)
- Transmission Owner Interconnection Facilities (TOIF)
- Attachment Facilities (AF)
- Requested Upgrades (RU) - Replaces the term Network Upgrades (NU). Using RU avoids conflict with the definition of NU already in the OATT which is associated with transmission service.
Types of Facilities - continued

- Stand Alone Network Upgrades (SANU) – Delete this term. Instead, the portions of the TOIF, AF and RU to be built by the IC will be identified in Appendix A.

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<tr>
<td>RU</td>
<td>IC</td>
<td>According to OATT</td>
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</table>
Interconnection and Upgrade Facilities

**Example**

- **Existing Transmission Facilities**
- **Interconnection Customer Interconnection Facilities**
- **Transmission Owner Interconnection Facilities**
- **Attachment Facilities (B1, B2 and B3)**
- **Requested Upgrades (New line, B4 and B5)**

### Construction Options – Article 5

- **Standard Option** – TO builds according to IC’s schedule
- **Option to Build** – TO can’t commit to meet IC’s schedule, so IC builds some or all facilities
- **Negotiated Option** – Negotiate schedule and liquidated damages for TO to build some or all facilities.

- Delete “Alternate Option” – This duplicates Negotiated Option. Also, it’s unlikely a TO would voluntarily take on liquidated damages and commit to meet IC’s schedule.
Refer to the SPP OATT

- Definitions- Any Capitalized terms not in Article 1 will be based on the definition in the OATT.
- Generator Balancing Service (Section 4.3)
- Payment for Reactive Power (Section 9.6.3)
- Compensation for IC outage schedule changes (Section 9.7.1.2)
- Reimbursement for Requested Upgrades (Section 11.4.1)
- Any billing except for construction (Article 12)
- Dispute Resolution (Article 27)

Other Large Changes

- Move Generating Facility Information, Sections 24.3 and 24.4, to Sections 5.10.4 and 5.10.5 respectively
- Article 17 Default – Clarify to make this a three step process
  1. Breach
  2. Time to cure Breach
  3. Default
Significant Additions

• Add Appendix G – Interconnection Requirements for Wind Generation in compliance with FERC Order 661A.

Changes to the SPP OATT

• The Task Force recommends changes to several definitions in the OATT to bring consistency between the OATT and the LGIP/LGIA. *(NOTE: Capitalized terms that are not defined in the LGIP/LGIA are based on the OATT definitions)*
• Changes are recommended in Attachment J to clarify how Requested Upgrades will be addressed.
• The Task Force recommends that the RTWG review for consistency the various definitions of “Transmission Owner” in the OATT, the Membership Agreement and the Bylaws.
Attachment Z

• Existing Attachment Z is unclear on several issues:
  – Are Project Sponsors that do not take additional long-term firm transmission service eligible for revenue credits?
  – If so, calculation of revenue credits from use by network service customers is incorrectly defined.
  – When should use of upgraded facilities by network service customers be rolled into rates (i.e., be base-plan funded) instead of resulting in revenue credits?
Proposed Change to Attachment Z

- CAWG hopes to complete discussion on proposed changes to Attachment Z at its next meeting on May 3.
  - SPP and its tariff consultant are working with the CAWG on these proposed changes.
  - Proposed changes will be recommended to the RTWG for its review.

Attachment J

- Issue related to timing for approval of Waiver Request for new or changed Designated Network Resources
  - Requests for new or changed DNRs are processed through aggregate transmission service study procedures – Time-line = 120 days per Attachment Z.
    - Cost are not known for sure until 90 days into the process, leaving 30 days for the Transmission Customer to make a commitment.
    - Waiver process may take up to 120 days.
Attachment J

• If 125% reserve limit is exceeded for the first few years after the new or changed generation resource comes on line:
  – Without a waiver, will the transmission costs be rolled into regional rates the year that the reserves go below 125%?
  – How does the 5 year commitment for DNRs play into the 125% reserve limit?

Current CAWG Discussions

• Attachment J has been on the CAWG agenda the last two meetings.
  – Primarily allowing full discussion of the issues.
  – Questions raised about Participant Funding via non-traditional owners of transmission.
• After Attachment Z is complete the CAWG will begin reviewing proposals for a rewrite on attachment J.
Report on BPGTF
Base Plan Guidelines Task Force
Recommendations

By
Michael S. Proctor
April 24, 2006

SCOPE of BPGTF

Develop Base Plan guidelines for consistent and equitable classification of projects, and identify potential changes to SPP Criteria or SPP Tariff to implement the guidelines for Base Plan funding.

1. Clarify interpretation issues between NERC/ERO Reliability Standards and SPP Criteria;
2. Review and summarize existing Transmission Owner (T.O.) criteria.
3. Develop requirements for project descriptions submitted to SPP for Base Plan project classification.
BPGTF RECOMMENDATION

• The BPGTF reviewed issues regarding the interpretation of NERC/ERO Reliability Standards and SPP Criteria.
  – The BPGTF recommends the Transmission Working Group (TWG) should consider review of voltage criteria on 230+ kV lines for the loss of a single component, and the inclusion of criteria detailing system voltages under normal operating conditions.

BPGTF RECOMMENDATION

• For identification of Base Plan Upgrades, only SPP Criteria and NERC Reliability Standards are applicable.
  – Local TO planning criteria/guidelines will be used to identify zonal upgrades that will go exclusively into the respective TO zonal rates. (i.e., no regional cost allocation)
  – Recommendation requires change to Attachment O.
BPGTF RECOMMENDATION

• In order to manage a transition between the existing tariff language and the time that the recommended tariff language changes are formalized incorporating Zonal Reliability Upgrades, the current SPP Transmission Expansion Plan needs to be re-evaluated.
  – Projects that are to be in-service in 2006 and 2007 will be classified for Base Plan designation according to the existing tariff language.
  – Any project with an in-service date of 2008 and beyond is to be evaluated using the new tariff language for the purpose of Base Plan designation. This will incorporate the use of Zonal Reliability Upgrades to classify projects that are needed according to a more stringent T.O. standard.

CONCERNS

• Projects in the SPP Transmission Plan for implementation in ’06 and ’07 are going to the SPP Board for approval (April 25, 2006).
  – These projects will be approved for base plan funding → regional cost allocation.
• There has not been a specific workshop or other opportunity for stakeholder review of the projects.
  – For example, it was not determined until the April MOPC meeting what projects would be included for base plan funding.
Proposed RSC Recommendation

• The SPP Board should not approve the SPP Base Plan Upgrade List until a stakeholder review of the proposed projects has been completed.
  – The BPGTF did not perform a review of specific projects.
  – Stakeholders who will pay for a portion of the costs of these projects should have the opportunity to review these projects before they are approved by the Board.
    • Stakeholders need detailed support for these projects in order to justify paying the allocated costs.

Discussion of Proposed Recommendation

• These are the first projects eligible for region-wide cost allocation – need to do it right!
• These will be the only projects that are based on local TO criteria – need to have a public review of the reliability need and costs.
• Public review processes needed to provide stakeholders with information to raise possible concerns or objections.
Possible Strategic Planning Subjects for the SPP CAWG

January 16, 2006
Rev. 1 March 17, 2006

1. Continue Attachment Z and J Revenue crediting process

2. Continued Reports from Generation Interconnection Task Force
   Small Generation Interconnection Procedure and Agreement (Filing due May 1, 2006)
   Order 661A Interconnection for Wind Energy

3. Reports from Base Plan Guideline Task Force (BPGTF)

4. Reports from Kansas Electric Transmission Authority (KETA)

5. Attachment Z Roll-In of Requested Upgrades
   • General discussion
   • Discussion regarding unpaid credits at time of roll-in

6. Attachment J Waiver Process
   • Discussion of schedule related to Aggregate process
   • Methodology for filing Waiver

7. Discuss methodology for RFP analysis for Transmission
   • SPP interface with RFP process
   • SPP interface with RFP study
   • Consultant or TO model data required for RFP study

Other SPP items to be monitored

a. Reactive Power discussions
   • SPP tariff requirements – Schedule 2
   • EIS Market requirements

b. Energy Imbalance discussions
   • SPP tariff requirements – Schedule 4
   • EIS Market requirements

c. Transmission usage and market analysis – heavily loaded flow gates, patterns of usage
   • General discussion for benefit of CAWG participants
   • Relation of flow gate analysis to credit process

d. EIS market activity
   • General discussion of EIS market activities
   • Current methodologies effecting cost

e. Increased Wind Overhead Conductor Ratings
   • General discussion
   • Update of status of implementation
A RESOLUTION urging the Southwest Power Pool to recognize the
reliability component and value of economic transmission projects.

WHEREAS, Transmission owners designate system reliability trans-
mission line projects to the Southwest Power Pool (SPP) as base plan;
and
WHEREAS, SPP-approved base plan projects are determined to pre-
serve and improve regional transmission system reliability; and
WHEREAS, One-third of approved base plan project costs is appor-
tioned to all SPP members through tariff charges and two-thirds is paid
by the transmission owner proposing the project; and
WHEREAS, The SPP has identified economic transmission projects
which would permit more cost-efficient dispatch of electricity and move
power from lower cost generators to higher cost service areas; and
WHEREAS, Economic transmission projects will contribute to the
overall transmission system’s reliability by providing redundancy to pro-
tect consumers from natural and manmade electric service interruptions;
and
WHEREAS, Such transmission redundancy and reliability enhance-
ments have a value to all SPP members: Now, therefore,
Be it resolved by the House of Representatives of the State of Kansas:
That the SPP is urged to recognize the reliability component and
value of economic transmission projects; and
Be it further resolved: That the SPP Board of Directors and Regional
State Committee recommend 80% of the costs of SPP-approved eco-
monic transmission projects be treated in the same manner as base plan
reliability projects for cost recovery; and
Be it further resolved: That the Kansas representative on the SPP
Regional State Committee is urged to support the concept of this pro-
posal; and
Be it further resolved: That the Chief Clerk of the House of Repre-
sentatives send an enrolled copy of this resolution to Brian Moline, chair-
person, State Corporation Commission; Nick Brown, President and CEO,
Southwest Power Pool, 415 N. McKinley, #140 Plaza West, Little Rock,
AR 72205; and Joseph T. Kelliher, chairperson, Federal Energy Regulatory Commission, 888 First St. NE, Washington, D.C. 20426.
Case No. 04-1398
c/w No. 04-1399

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

NEW MEXICO ATTORNEY GENERAL,

VERSUS

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

JOINT BRIEF OF PETITIONERS

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Paul L. Zimmering
Noel J. Darce
Dana M. Shelton
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Counsel for the New Mexico Attorney General
Case No. 04-1398
c/w No. 04-1399

UNITED STATES COURT OF APPEALS
FOR THE
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NEW MEXICO ATTORNEY GENERAL,

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FEDERAL ENERGY REGULATORY COMMISSION,

Petitioner,

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) Parties and Amici. The following are the parties, intervenors, and amici in this Court:

New Mexico Attorney General
Louisiana Public Service Commission
Federal Energy Regulatory commission
Southwest Power Pool, Inc.
Western Farmers Electric Cooperative
Morgan Stanley Capital Group, Inc.
Lafayette Utilities System
Missouri Joint Municipal Electric Utility Commission
Oklahoma Municipal Power Authority
West Texas Municipal Power Agency
East Texas Electric Cooperative, Inc.
Northeast Texas Electric Cooperative, Inc.
Tex-LA Electric Cooperative of Texas, Inc.
Southwest Industrial Custom Coalition

(B) Rulings Under Review. The following decisions of the Federal Energy Regulatory Commission are under review:

(i) Southwest Power Pool, Inc. Order Granting RTO Status Subject to Fulfillment of Requirements, 106 FERC ¶ 61.110 (February 10, 2004). Jt. App. ________.


(C) Related Cases. Counsel are aware of no related case.
RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The New Mexico Attorney General is an agency of the State of New Mexico, and the Louisiana Public Service Commission is an agency of the State of Louisiana. As a result, no corporate disclosure statements are required under Rule 26.1 on behalf of either Petitioner.
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STATUTES

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* Authorities upon which we chiefly rely are marked with asterisks.
JURISDICTIONAL STATEMENT

In these consolidated proceedings, the New Mexico Attorney General and the Louisiana Public Service Commission ("Louisiana Commission") seek the Court's review of final orders issued by the Federal Energy Regulatory Commission ("FERC"). This Court has jurisdiction pursuant to Section 313(b) of the Federal Power Act. 16 U.S.C. § 825j(b). These proceedings were instituted by timely filed Petitions for Review after the final order on rehearing was issued by FERC.

The FERC had jurisdiction over some issues in this matter pursuant to Section 205 of the Federal Power Act ("FPA"). 16 U.S.C. § 824d. The FERC issued its "Order Granting RTO Status Subject to Fulfillment of Requirements" on February 10, 2004. [106 FERC ¶ 61.110 (February 10, 2004); Jt. App. ___]. Timely requests for rehearing were filed, and on October 1, 2004, FERC issued its "Order on Rehearing." [109 FERC ¶ 61.010 (October 1, 2004); Jt. App. ___]. The Louisiana Public Service Commission and the New Mexico Attorney General each filed a separate timely Petition for Review on November 26, 2004.

STATEMENT REGARDING ORAL ARGUMENT

This case involves important issues concerning whether the FERC exceeded the scope of its authority and acted arbitrarily in its approval of the application of the Southwest Power Pool ("SPP") to become a Regional Transmission Organization ("RTO"). In particular the FERC has required, contrary to controlling precedent, that utilities will not be allowed to withdraw from the RTO absent FERC approval. It also required bundled retail load to be served
under the RTO tariffs, in addition to other issues. Oral argument would aid this Court in resolving these important issues.

**STANDING**

The Petitioners have standing to pursue this review. The Louisiana Commission is authorized by the Louisiana Constitution to regulate public utilities operating in Louisiana. At least one of those utilities was grandfathered into the SPP RTO, without obtaining requisite state approvals. The Louisiana Commission was a participant in the FERC dockets and raised in those dockets the issues under review herein. The New Mexico Attorney General is authorized by New Mexico statute to represent the interests of the State of New Mexico and utility ratepayers in matters before the FERC. It was an active participant in the FERC dockets and raised in those dockets the issues under review herein.
STATEMENT OF THE ISSUES

1. In violation of the Federal Power Act and controlling precedent the FERC in this matter ruled that a participant in the RTO will not be allowed to withdraw without first obtaining FERC approval. This is particularly troublesome where, as here, the public utility participants did not affirmatively join the RTO, but were grandfathered into the RTO without their affirmative consent and without obtaining requisite state approvals.

2. The FERC usurped the jurisdiction of state regulators in violation of the Federal Power Act by requiring transmission service for bundled retail load currently served by state regulated utilities be provided by the SPP RTO under the non-rate terms and conditions of the SPP RTO tariffs.

3. The FERC exceeded its authority and acted arbitrarily and capriciously by designating the SPP RTO to be the reliability organization for the region, without any supporting evidence or without any study indicating that the SPP RTO is capable of performing those functions along with its other RTO responsibilities.

4. The FERC exceeded its authority and acted arbitrarily and capriciously by requiring the SPP RTO to "solely determine the priority of transmission planning projects that address reliability and economic needs."
5. The FERC exceeded its authority and was arbitrary and capricious in ordering the SPP RTO to participate in a Joint and Common market with the Midwest ISO and PJM Interconnection without any study of the economic impacts on the SPP RTO participants or affected ratepayers.

6. The FERC exceeded its authority by creating a Regional State Committee ("RSC") consisting of representatives from participating states and by granting to the RSC authority to develop transmission rates and cost allocations that would be filed under Section 205 of the Federal power Act by the SPP RTO. The RSC cannot be delegated Section 205 authority indirectly nor can it usurp the jurisdictional authority of the state regulators.

STATEMENT OF THE CASE

1. Introduction

The Southwest Power Pool, Inc. ("SPP") is an Arkansas non-profit corporation. It became a regional reliability council in 1968 and joined with twelve other entities to form the National Electric Reliability Council, now known as the North American Electric Reliability Council. Participation in the SPP reliability council was voluntary and was not regulated by the FERC.

On October 15, 2003, SPP filed an application with FERC for recognition as a Regional Transmission Organization under FERC Orders 2000 and 2000-A.¹ SPP

argued that it satisfied all of the FERC conditions for qualification as an RTO and that it had sufficient independence, scope and configuration, and operational authority. The SPP accomplished the proposed transition from a reliability organization to a RTO by amending its pre-existing membership agreement. This had the effect of grandfathering into the RTO all former members of the reliability organization. Those former members were not given an opportunity to vote on the proposed changes, but were given some opt-out rights, which FERC has attempted to limit in approving a modified RTO structure.

The grandfathering of the prior members also created a conflict with state laws requiring state regulatory approval and consent before RTO participation can be allowed. In Louisiana, for example, Louisiana Commission orders and regulations require a filing by the petitioning utility demonstrating that its participation complies with Louisiana regulations and is otherwise in the public interest. Southwestern Electric Power Company ("SWEPCO"), an AEP subsidiary, is a public utility regulated by the Louisiana Commission that was a member of the SPP reliability organization. It has sent to the SPP a notice of its withdrawal from the RTO, but apparently may still technically be a member of the RTO and will remain a member until it obtains FERC approval to withdraw, under the orders that are the subject of review in this matter.

On February 10, 2004, FERC issued without hearing procedures an "Order Granting RTO Status Subject to Fulfillment of Requirements." [Southwest Power Pool, Inc., 106 FERC ¶ 61,110 (2004); Jt. App. __]. In that Order FERC provisionally
approved the SPP’s RTO status subject to the required amendments to its By-Laws and Membership Agreement and the completion of additional FERC ordered requirements.

Several of these FERC imposed requirements exceed the FERC’s authority and intrude upon the jurisdiction and authority of retail regulators. FERC required changes to the SPP By-laws and Membership Agreement, and it required that those changes be filed at FERC "pursuant to Section 205 of the Federal Power Act." [106 FERC ¶ 61,110, para. 2, Jt. App. _____]. FERC required SPP to expand its tariff to assure that SPP is the sole transmission provider and to assure that SPP has authority to independently and solely determine which projects to include in the regional transmission plan. FERC required SPP to enter into a "seams agreement" with the Midwest Independent Operator, Inc. ("Midwest ISO"), and to participate in a Joint and Common Market with Midwest ISO and PJM Interconnection ("PJM"). FERC required participating Transmission Owners to take service under the "non-rate terms and conditions" of the OATT to serve bundled retail load. [Id. at para. 108; Jt. App. _____].

The FERC ruled that the Regional State Committee ("RSC"), proposed as part of the SPP RTO application, would have primary responsibility to develop pricing and cost allocation proposals, rate design, and allocations associated with congestion management hedges and required that the SPP make any requested filings with FERC of those proposals under Section 205 of the Federal Power Act. FERC allowed the SPP to continue to act as reliability organization and a RTO without any determination of the appropriateness of that dual role. The Louisiana Commission and the New Mexico
Attorney General sought rehearing of these issues. On October 1, 2004, FERC issued its "Order on Rehearing" that granted in part and denied in part those rehearing requests. [109 FERC ¶ 61,010 (October 1, 2004); Jt. App. ____].

2. **State Jurisdiction and Order 2000**

Electric utility service has, since its inception, been regulated by the states pursuant to their police powers. There has never been federal regulation of public utility service to end-use customers. In 1935 the Federal Power Act granted to the Federal Power Commission, now the Federal Energy Regulatory Commission (FERC), the authority to regulate interstate sales of wholesale power and associated transmission.\(^2\) This grant specifically limited federal jurisdiction to "...those matters which are not subject to regulation by the states..." thus excluding federal authority over retail electric service to end-use customers, i.e., the bundled generation, transmission and distribution service provided by a utility directly to its customers pursuant to state law.\(^3\)

Petitioners and the majority of states regulate utility service to end use customers. Utilities in these states have a state-imposed legal obligation to serve all of the electric needs of their customers by planning, constructing and maintaining such generation, transmission and distribution facilities as are or will be needed to maintain reliable service. This is the primary method by which long-term reliability is maintained. State control of the construction and ownership of such facilities is sometimes maintained.


\(^3\) 16 U.S.C. § 824.
through issuance of a Certificate of Convenience and Necessity (CCN), which authorizes a utility facility to be constructed and placed in rates to serve retail customers. Some states, such as Louisiana, also require potential generation and transmission acquisitions to be tested against other market alternatives to determine whether they are in the best interest of ratepayers, and to test whether lower cost alternatives are available. FERC has no similar regulatory framework; it cannot order acquisition or construction of generating resources and has only limited responsibility or legal mechanisms for requiring the construction of transmission facilities. The concepts that provide the basic framework for state utility regulation are not present at the federal level, as there are no end-use customers in the federal paradigm. FERC's mandate is limited to regulation at the wholesale level, with no jurisdiction over the construction of generation or transmission for service to retail customers.

FERC Order 2000 was issued on January 6, 2000.\(^4\) FERC's stated purpose behind Order 2000 is to make the provision of electricity independent by encouraging the transfer of ownership or control of transmission facilities from integrated utilities that generate and deliver electricity for end use customers to a Regional Transmission Organization that does not have an interest in power generation, and thus, in theory, will not "discriminate" in favor of dispatching its own generation in a competitive market. The purpose to be filled by an RTO in a regulated market such as is maintained by Petitioners is less clear.

\(^4\) See Footnote 1, supra.
The SPP RTO now claims fifty members in eight states, and at the time of the filing at FERC it owned no transmission facilities. It administers an Open-Access Transmission Tariff (OATT) on behalf of its member utilities, but Petitioners’ end-use customers continue to pay state set rates for bundled electric service, and state-regulated utilities continue to have the obligation to serve end-use customers by constructing facilities to maintain reliable service under state law. No affected jurisdictional utility within the SPP RTO has sought or received permission from Petitioners to transfer ownership or control of facilities to the RTO. State approval in Louisiana and New Mexico is required prior to RTO participation.

The Commission’s order in this case would change the paradigm for transmission ownership and maintenance of reliability by requiring that service be provided not by the utilities that currently own and operate the transmission assets, and have an obligation to serve and maintain reliability under state law, but by the RTO. The RTO would obtain ownership or control of transmission assets and sell transmission and other related services to the utilities, who would then, in turn, provide the services to end-use customers. By interjecting the RTO into the picture, however, the transmission service provided by the utilities could lose its character as bundled retail service, and the states could potentially lose jurisdiction over transmission service and rates, which then could become wholesale services and rates subject to federal control. Such a result is not allowed under the Federal Power Act. The FERC has exceeded its authority as well by grandfathering old SPP members into the RTO and requiring them to remain members
absent FERC approval. In addition, the RTO would then likely be responsible for maintaining reliability, a matter traditionally handled under state law. This is a result not intended by the Federal Power Act and a function the RTO is not equipped to handle. It also exceeded its authority by delegating to the SPP sole authority over planning and by delegation to the RSC pricing authority, which the SPP is then required to file under Section 205 of the Federal Power Act. These requirements attempt to bypass the jurisdiction of the states over bundled retail service.

STANDARD OF REVIEW

368, 371-72 (1st Cir. 2004). The judiciary is the final authority on issues of statutory
construction and must reject administrative constructions that are contrary to clear
467 U.S. 837, 843, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). The FERC orders at issue
do not meet these standards.

**SUMMARY OF ARGUMENT**

I. The FERC and the SPP in concert have attempted to bypass
required state regulatory approvals of RTO participation by requiring FERC approval of
withdrawal from the SPP RTO. The existing voluntary members of the old SPP
reliability organization were automatically made members of the new SPP RTO because
SPP merely amended and filed its pre-existing membership agreement. Then FERC
imposed a requirement that the membership agreement become a tariff under Section 205
of the Federal Power Act and be filed with an amendment requiring FERC approval of
any withdrawal request by the affected utilities. SWEPCO, a utility regulated by the
Louisiana Commission, was subject to this grandfathering arrangement and has sent to
SPP a notice that it seeks to withdraw. That notice should be sufficient to allow
SWEPCO’s obligations to the SPP RTO to cease.

FERC has no authority under the Federal Power Act to force a utility into
an RTO. 16 U.S.C. § 824a-1, 824a-2, 824b, 824i. It has no authority to require its
approval for withdrawal from the RTO. *Atlantic City Electric Company, et al. v. FERC,*
295 F.3d 1 (D.C. Cir. 2002). The fact that the SPP itself does not object to this
requirement is not sufficient to protect the utilities and ratepayers subject to the jurisdictions of the Petitioners, which have been roped into the SPP RTO without required state approval.

Finally, FERC has ignored language in Section 5.1.b of the SPP membership agreement that allows a Member to withdraw without FERC approval if FERC amends the agreement. That language was included in the amended membership agreement to protect against FERC amending the voluntary RTO application in a manner that is not acceptable to the member.

2. The FERC has no authority to require bundled retail load to be served under the SPP OATT. In its Order approving the RTO, FERC ruled that the SPP would become the sole provider of all transmission service and that bundled retail load take service under the non-rate terms and conditions of the OATT. The Federal Power Act has never given FERC jurisdiction over bundled retail load. FERC told the U. S. Supreme Court that it lacked jurisdiction over bundled retail load.\(^5\) It did not assert jurisdiction over bundled retail load in Order No. 2000 and progeny. Here, utilities were placed into the RTO without requisite state approvals. This violates the voluntary nature of RTOs that were relied upon by this Court's rejection of challenges to Order 2000.\(^6\)

3. The FERC exceeded its authority by finding that the SPP-RTO must solely determine the priority of transmission projects that address reliability and

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\(^5\) Brief of FERC, New York v. FERC, 535 U.S. 1 (May 2001); Jr. App. ________.

\(^6\) Public Utility District No. of Snohomish County Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).
economic needs. Transmission planning and reliability are matters reserved to the states under the Federal Power Act. The states have the responsibility to assure the reliability of resources needed to serve bundled retail load. The FERC's authority over wholesale transactions does not allow it to control planning for services to end use retail customers.

4. The FERC exceeded its authority by delegating to the Regional State Committee ("RSC") powers to determine pricing and cost allocations for the RTO and to require SPP to file those proposals under Section 205 of the Federal Power Act. The FERC cannot delegate or give Section 205 filing rights indirectly to the RSC. It cannot allow the RSC to make decisions that may be adverse to utilities and consumers in some states. The RSC should only be an advisory, voluntary organization.

5. The FERC ordered the SPP-RTO to have a Joint and Common Market with the Midwest ISO and the PJM Interconnection. It did that without any evidence that such a common market would benefit or not harm SPP members and the ratepayers of SPP member utilities. Further, this requirement is tantamount to FERC ordering the creation of a large RTO. FERC has no authority to order the creation of a RTO or to order participation in it.

6. The FERC allowed the SPP to act as both a RTO and a reliability organization without any evidence that such a dual role was appropriate. As a result, its rejection of a challenge to the dual role was not reasoned decision making and was arbitrary and capricious.
ARGUMENT

I. No Basis Exists To Require FERC Approval For Withdrawal From The SPP RTO.

FERC, in conjunction with the SPP, has attempted to lock former SPP reliability organization members into the SPP RTO by approving a provision of the SPP RTO Membership Agreement that requires FERC approval before any utility can withdraw from the RTO. This requirement violates the FPA because FERC has no jurisdiction or authority to approve withdrawals. It also violates express terms of the SPP membership agreement, which allow withdrawal by any party, if the FERC does not approve the SPP RTO proposal as filed. The FERC cannot force RTO participation, and the requirement that it approve any withdrawals is an attempt to circumvent that lack of authority.

Former members of the SPP reliability organization were not given a choice to voluntarily join the SPP RTO; they were grandfathered into the SPP RTO without their affirmative consent. SPP proposed to establish the RTO by re-inventing its existing membership organization as an RTO. It merely amended its then current membership agreement without putting those changes to a formal membership vote. Certain members commented on the SPP plan, including SWEPCO, a public utility regulated by the Louisiana Commission. [Request for Confirmation of Rehearing at 10; Jt. App. ____]. In its filing, SWEPCO requested that FERC not automatically make it an SPP RTO member, unless state regulators are "given an adequate opportunity to conduct their reviews" to satisfy state approval requirements for joining an RTO. FERC
ignored these requests and found a "public utility member would have to provide notice to SPP and obtain Commission approval to withdraw from SPP." [106 FERC ¶ 61,110, para. 67; Jt. App. ____]. By doing so FERC is attempting both to force RTO membership and to override state authority to approve RTO membership. What the FERC has done is mandate RTO membership for all SPP members and then block voluntary withdrawal from the RTO. The Federal Power Act does not authorize this scheme.

Sections 205 and 206 of the Federal Power Act give the FERC some power to remedy discriminatory practices, but those Sections do not give the FERC the authority to require utilities to transfer control of their transmission assets or to transfer system operating responsibilities to an RTO. Sections 205 and 206 of the FPA only allow the FERC to remedy undue discrimination "with respect to any transmission or sale subject to the jurisdiction of the FERC."7

The FERC does not have the power to mandate participation in RTOs. Section 202(a) of the Federal Power Act provides for the creation of regional districts for the "voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy ..."8 However, this provision does not allow the FERC unilaterally to configure and mandate participation in RTOs. Section 202(a) requires that:

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8 16 U.S.C. § 824a(a).
Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.\(^9\)

This requires state participation and in no manner preempts State jurisdiction over any transfer of ownership or control that could impact retail rates and service.

Further, Section 202 of the Federal Power Act does not give the FERC any authority to usurp state regulation over planning and siting decisions. It requires all interconnection and coordination agreements be left to the "voluntary" action of the utilities.\(^10\) It gives the FERC no power to "compel any particular interconnection or technique of coordination."\(^11\) Nothing in Section 202 gives to the FERC power to preempt or override existing state authority.

The LPSC possesses exclusive jurisdiction over the retail rates of vertically-integrated utilities operating in Louisiana. Neither the Federal Power Act nor any decision interpreting that statute suggests that the FERC may preempt state jurisdiction over utilities bundled retail customers. Moreover, the LPSC has full authority to approve any transfer of ownership or control of transmission assets that may be required for RTO participation. It has issued an Order requiring its utilities to submit

\(^{9}\) 16 U.S.C. § 824a(a).


\(^{11}\) Id. at 12, citing Duke Power Co. v. Federal Power Commission, 401 F.2d 930, 943 (D.C. Cir. 1968).
studies of the costs and benefits of RTO formation prior to any decision to join an RTO. The FERC lacks the statutory authority to unilaterally approve RTOs, or require membership in such organizations, and the FERC cannot preempt the LPSC’s authority in this area.

The Louisiana Supreme Court has recognized that the plenary authority granted to the Louisiana Commission by Article IV, Section 21 of the Louisiana Constitution includes the authority to review transfers of ownership and control of the assets owned by Louisiana utilities. The Louisiana Commission has in place a General Order addressing requirements for approval of a change in ownership or control of the assets of a Louisiana utility. The Order encompasses every form of a change in control or ownership of more than one percent of a utility’s assets.

In addition, FERC has ignored other portions of the SPP agreement that allow membership withdrawal. FERC’s approval for withdrawal is not required under Section 5.1.b of the Membership Agreement. In the Order, the Commission erroneously concludes that the SPP’s members are bound to the modified Membership Agreement, “provided that the member may challenge any amendments at the Commission and exercise any withdrawal rights if it is dissatisfied with the amendment.” [Jt. App. 119].

The Commission’s position is inconsistent with the express terms of the Membership Agreement.

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13 General Order, In Re: Commission Approval Required of Sales, Leases, Mergers, Consolidations, Stock Transfers, and All Other Changes of Ownership or Control of Public Utilities Subject to Commission Jurisdiction (March 18, 1994); Jt. App. 119.
Agreement, which allow a member to withdraw in these circumstances without seeking proper approval from FERC.

The applicable provision of the Agreement found at 5.1.b. reads as follows:

In the event of any order or decision by FERC or by a court modifying this Agreement of the OATT submitted as part of seeking FERC acceptance or approval, that in the judgment of Member adversely affects it, then Member, at its sole discretion, may withdraw from this Agreement by providing written notice to the President of SPP no later than thirty days after such order or decision without receiving any FERC authorization. (Emphasis added.)

[Jt. App. _____].

Under this provision, any SPP member has an absolute right to withdraw from the Membership Agreement without obtaining FERC's authorization, if, as is the case here, the FERC's Order modifies the Agreement. As such, the FERC cannot unilaterally bind SPP Members to the revised Agreement, nor can FERC require an SPP member to obtain FERC approval if an SPP Member exercises its rights under Section 5.1.b. of the Membership Agreement. ¹⁴

The Commission does not possess jurisdiction to mandate the terms of the Membership Agreement. The Federal Power Act provisions upon which the Commission

¹⁴ Moreover, by requiring SPP to file a revised Membership Agreement as a condition of obtaining RTO status, FERC is effectively disapproving the Membership Agreement filed with SPP's RTO Proposal. As such, under the terms of the Membership Agreement, FERC's actions cause the Membership Agreement to no longer be effective, and "the signatories shall have no further obligations under this Agreement or any filing associated herewith." [Section 5.1.a., Exhibit No. SPP-4; Jt. App. _____].
claims to base its jurisdiction, express a policy of promoting interconnection; they do not empower the Commission to regulate the terms of specific interconnection agreements. See, e.g., City of Huntington v. Federal Power Comm'n, 498 F.2d 778, 784 (D.C. Cir. 1974). While FERC may have the authority to review ISO agreements at the outset and decide, based upon the evidence in the record, whether the entrance and exit rights contained in the agreement are just and reasonable within the meaning of Section 205, that is not what FERC did in the instant Order. See, e.g., Atlantic City Electric Co. v. FERC, 295 F.3d 1, 12 (D.C. Cir. 2002). Indeed, FERC did not review the withdrawal language of the Membership Agreement and find it to be in any way deficient. The FERC exceeded its jurisdiction under the FPA in requiring the SPP to revise its Membership Agreement and By-Laws and file the Amended Membership Agreement and By-Laws as one condition to obtaining RTO status.

II. The FERC Has No Jurisdiction To Require Bundled Retail Load To Take Service Under The SPP OATT.

In its Order Granting RTO Status, FERC provided that "... we will require that TO's [transmission owners] on behalf of their entire load including ... bundled retail loads, take service under the non-rate terms and conditions in the SPP OATT as a prerequisite to obtaining RTO status from the Commission." [106 FERC ¶ 61,110; Jt. App. ____]. The Commission continued, "...under a functioning SPP RTO, the SPP transmission owners will no longer be the transmission providers. SPP will become the sole provider of transmission service, as prescribed by Order 2000, and the transmission owners must take all transmission services from SPP." [Id.; Jt. App. ____].

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The FERC has no jurisdiction over bundled retail load and prior to this Order has not attempted to assert jurisdiction over bundled retail load. In Order No. 2000, FERC acknowledged that such an effort could be subject to legal challenge. FERC subsequently admitted in brief to the United States Supreme Court that it had no jurisdiction over the transmission component of bundled retail sales. FERC cannot create that jurisdiction itself as a requirement to RTO approval.

The Federal Power Act preserves to the states jurisdiction over all retail ratemaking issues, including rates, tariffs, terms and conditions. Congress has not sought to occupy state jurisdiction over ratemaking, expressly or otherwise. The FERC has jurisdiction over the sale of electric energy at wholesale in interstate commerce.\(^{15}\) "[S]ale of electric energy at wholesale in interstate commerce" is defined as "a sale of electric energy to any person for resale."\(^{16}\) However, the Federal Power Act limits federal regulation of electric utilities engaged in interstate commerce "to those matters which are not subject to regulation by the states."\(^{17}\) Thus, the exclusive source of the FERC's power specifically excludes from that authority matters that are subject to regulation by the states.

The U.S. Supreme Court confirmed this limited preemptive effect of the FPA. It held that the FPA "had no purpose or effect to cut down state power." To the

\(^{15}\) 16 U.S.C. § 824.
\(^{16}\) 16 U.S.C. § 824(d).
\(^{17}\) 16 U.S.C. § 824(a).
contrary, "perhaps its primary purpose was to aid in making state regulation effective."\textsuperscript{18} The United States Court of Appeals for the Fifth Circuit similarly held that it must be assumed that state police powers were not to be superseded by Federal Power Act in the absence of clear and manifest congressional purpose.\textsuperscript{19} "The critical question in any preemption analysis is always whether Congress intended that federal regulation suspend state law."\textsuperscript{20} The Federal Power Act was never intended to remove this authority from the states.

When Part II of the Federal Power Act was enacted in 1935, the states were regulating all aspects of retail transmission. These revisions to the Act were intended only to provide the Federal Power Commission with the power to regulate wholesale electric rates in interstate commerce, which the states could not regulate. It was intended to preserve, not override, the existing state authority.\textsuperscript{21} The legislative history of the Federal Power Act confirms that Congress intended to reserve to the states


regulation over those areas that states traditionally had regulated. That regulation included bundled retail transmission.\textsuperscript{22}

The Supreme Court decision in \textit{New York v. FERC} does not grant to the FERC jurisdiction over bundled retail sales.\textsuperscript{23} In that decision, the Court upheld FERC's jurisdiction over unbundled retail transmission, and found that an attempt to regulate bundled transmission would present "‘numerous difficult jurisdictional issues.’" [537 U.S. at 27, 122 S. Ct. at 1028, 152 L.Ed. 2d at 68 (Court agreeing with FERC Order No. 888 pronouncement.).] The FERC in fact argued to the Supreme Court that it lacked jurisdiction over the transmission component of bundled retail sales.\textsuperscript{24} While the Court did not decide the issue of whether the FERC had this authority, the Court stated that if the FERC claimed such jurisdiction that "would have even greater implications for the state's regulators of retail sales – a state regulatory power recognized by the same statutory provision that authorizes FERC's transmission jurisdiction."\textsuperscript{25} The state regulators possess exclusive jurisdiction over the retail services, rates, tariffs, terms and conditions of vertically-integrated utilities within their respective jurisdictions. Neither the Federal Power Act nor any decision interpreting that statute suggest that the FERC may preempt state jurisdiction over bundled retail services and rates.

\textsuperscript{22} H.R. No. 74-1318 (1935); Hearing on H.R. 5423 Before the House Comm. On Interstate and Foreign Commerce, 74\textsuperscript{th} Cong. (1935).


\textsuperscript{24} Brief of FERC, \textit{New York v. FERC}, May 2001, p. 50; Jt. App. ___].

\textsuperscript{25} 535 U.S. 1 at 45.
Further, the FERC did not assert jurisdiction over the transmission component of bundled retail load in Order No. 2000. FERC cites to Order 2000 in support of its assertion of jurisdiction over bundled retail service. [106 FERC ¶ 61,110, para. 109; Jt. App. ______]. However Order 2000 explicitly rejected that assertion of jurisdiction.

In Order 2000, certain parties argued that in order for RTOs to be effective, the Commission should assert jurisdiction over bundled retail transmission. Order 2000 states, "Industrial Consumers recommends that the Commission assert jurisdiction over the transmission component of bundled sales, and order that rates terms and conditions offered under the OATT apply to all eligible customers." [65 FR 809, 834]. The FERC rejected this argument:

> We believe that a voluntary approach is most appropriate at this time. We want the industry to focus its efforts on the potential benefits of RTO formation . . . rather than on a non-productive challenge to our legal authority to mandate RTO participation." [Id. at 834].

Likewise, nothing in Order 2000-A states that the Commission was seeking to require bundled retail customers to take service under the SPP OATT. In fact, in that decision the Commission acknowledged "the continuing jurisdiction of State Commissions over bundled retail sales." [Order 2000-A, 65 FR 12088 at 12100]. Order 2000-A merely required that "the RTO control all transmission facilities in the region" that were voluntarily put under the control of the RTO with the requested State approvals. That is distinguishable from this Order, which asserts jurisdiction over bundled retail service.
without state approvals, while attempting to prevent utilities from exiting the RTO without FERC approval. Legal challenges to the FERC's authority to issue Order 2000 were dismissed specifically because that Order was premised on voluntary participation. *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001). That voluntary participation is subject to State approval. There is no legal basis for the FERC to require bundled retail load to be served under the OATT of the SPP RTO.

III. The States Have Jurisdiction Over Transmission Planning And Reliability.

The FERC exceeded its authority by finding that the SPP RTO must "solely determine the priority of transmission planning projects that address reliability and economic needs." [Order, Slip Op. at 61: Jt. App. ____]. The legal assertion that the Commission has the authority to reach into state-regulated retail service and resource planning is misguided. The Federal Power Act reserves these matters for the states. Section 201, 16 U.S.C. §824. Indeed, the Commission itself argued to the Court in the *New York v. Enron* case that:

In light of the Commission's reasonable finding that it lacks jurisdiction over the transmission component of bundled retail sales under Section 201, the Commission was not required to regulate that transmission component under Section 206. (Emphasis added).\(^{26}\)

In addition, the New York case addresses only transmission jurisdiction, not jurisdiction over resource planning and adequacy standards, and not retail demand management. The New York case does, however, recognize, as did the Commission, that resource procurement is a traditional state responsibility. New York, 122 S. Ct. at 1026. There is no statute that even arguably gives the FERC authority over these matters.


While the statute clarified FERC's authority to order utilities to provide wholesale transmission service, it also "prohibited FERC from forcing utilities to engage in 'retail wheeling,' the transmission of power directly to a retail customer." House Comm. on Energy and Commerce, Energy Policy Act of 1992, P.L. 102-486, House Report No. 102-474(I) at 140 (1992), reprinted in 1992 U.S.C.C.A.N. 1953, 1963. Thus, it directed that "nothing in this subsection [§ 212(h)] shall affect any authority of any
State or local government under state law concerning the transmission of electric energy directly to an ultimate consumer.

Section 212(h) [16 U.S.C. § 824k(h)] provides that "nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer." If Congress meant to give FERC jurisdiction over the planning and reliability of all transmission, it would not have reserved to the states decisions on whether to allow transmissions directly to retail customers. Moreover, it would not have denied FERC authority to require unbundling of retail transactions.

Simply, there is nothing that gives FERC authority over transmission planning and reliability for bundled retail load. While FERC is given some jurisdiction over wholesale transmission issues, it is not given the authority to engage in transmission planning or siting. It is granted limited jurisdiction over interstate transmission. 16 U.S.C. § 824. It can require interconnection under limited circumstances. 16 U.S.C. § 824(a). It can support voluntary power pooling. 16 U.S.C. § 824a-1. That authority and the authority over transmission siting has remained with the States. The FERC's attempt to delegate this authority to the SPP violates the Federal Power Act, is beyond its authority, impinges upon the jurisdiction of the states, and thereby impinges upon the states' abilities to protect retail customers.
IV. The RSC Can Only Act As An Advisory Body Without Statutory Authorization.

The SPP included a Regional State Committee in its RTO proposal. The precise role of the RSC was left undefined. The FERC adopted language making the RSC a multi-state body that had primary responsibility "for developing proposals related to participant funding (or other pricing), license plate or postage stamp rates, FTR allocations, and transition mechanisms related to FTR allocation." [106 FERC ¶ 61,110, para. 219; Jt. App. ____]. The FERC on rehearing clarified that "our purpose in approving an RSC is not to usurp state authority, but, rather, to facilitate state consensus on certain regional issues and a partnership between this Commission and state commissions." [109 FERC ¶ 61,010 para. 90; Jt. App. ____]. However, FERC requires the SPP to file any proposal made by the RSC on these delegated issues under Section 205 of the Federal Power Act. [106 FERC ¶ 61,110 para. 219; Jt. App. ____].

The Petitioners do not object to the formation of an RSC as a voluntary effort to facilitate discussion of regional planning issues. Under such an approach, the RSC would have no independent authority to act and would not be able to act as a group absent consent of all participating regulators. It would have no authority to make a Section 205 filing. It should have no authority to override the wishes of one or more states if there is disagreement on pricing or other issues that have been delegated to it under the FERC orders.
However, the FERC, despite its promise "not to usurp state authority," provided no limitations on the RSC's ability to act if unanimity does not exist. The FERC left it to the RSC to decide any limitations of its own authority over the issues delegated by FERC. For example, if some participant regulators support participant funding of transmission additions (i.e., direct assignment of costs to cost-causer) and others don't, the FERC Order would not prohibit the RSC from requesting the SPP to make a Section 205 filing of a pricing proposal that may injure some states but benefit others. There is no basis for allowing the RSC that level of authority.

The RSC can have no authority except that which is lawfully delegated to it by FERC. The authority of individual representatives of different state regulators to act as a separate entity did not arise from an act of Congress or from legislation in the participating states. Such authority would not be needed for a voluntary advisory organization. However, FERC made it clear that the RSC has authority over pricing, cost allocation, rate design and allocation of congestion management hedges, and authority to ask SPP to make a section 205 filing on behalf of the RSC.

FERC argues in its rehearing order that the RSC is not unlawfully delegated authority because FERC reserves the right to reject a § 205 filing made on behalf of the RSC and because the SPP is not being forced to make Section 205 filings for the RSC but "(b)y deciding to proceed with its RTO application, SPP has voluntarily agreed to file with the Commission, pursuant to Section 205, certain regional proposals that may be developed by the RSC." [109 FERC ¶ 61,010 para. 91-92; Jr. App. ___].
However, only public utilities have statutory rights to make a Section 205 filing under the Federal Power Act. [16 U.S.C. § 824d]. The SPP RSC is not a public utility, and FERC has no authority to make it a public utility. Thus, the FERC cannot give to the RSC Section 205 filing rights.

By requiring the SPP to make § 205 filings for the RSC, the FERC is merely doing indirectly that which it cannot do directly. A state cannot order a utility to make a § 205 filing to change its rates. Commonwealth of Massachusetts v. United States, 729 F.2d 886 (1st Cir. 1984). If a state cannot force a utility to make such a filing, state representatives acting indirectly through the RSC would not be able to require such a filing either. In addition, the FERC cannot require a public utility to give up all or part of its Section 205 filing rights. Atlantic City Electric Co. v. FERC, 295 F.3d 1, 9 (D.C. Cir. 2002).

The fact that the SPP "voluntarily" will make a § 205 filing for the RSC does not somehow grant to the FERC the authority to require this "voluntary" action. On rehearing, FERC determined that its delegation of power to the RSC is proper because by deciding to proceed with the RTO the SPP "voluntarily" agreed to make Section 205 filings for the RSC, and the SPP is not being compelled to take any action. That is a distinction without a difference. The RSC is given authority to make proposals, affecting the SPP rates, it is given authority to "ask" the SPP to make a Section 205 filing of any such proposals, and the SPP is under an obligation to make that Section 205 filing. Such action is "voluntary" in a sense that only FERC can understand.
Furthermore, even if the voluntary nature of the Section 205 filings is sufficient to protect the rights of the SPP, it is not sufficient to protect the Petitioners. Petitioners complain that the RSC is granted authority to take independent actions that may be adverse to the interest of the Petitioners. If that is to occur, the individual RSC members should have to file a Section 206 complaint under the FPA with FERC, like all other non-utility affected persons.

Petitioners do not object to the RSC concept, if the RSC is a voluntary, advisory organization that is intended to facilitate regional coordination and planning. The RSC should not be able to substitute its own views over the objections of a participating state. The RSC cannot usurp the jurisdictional authority of state regulators by having the authority to make Section 205 filings, and should not be able to act without the consent of all participating regulators.

V. The Ordering Of A Joint And Common Market With PJM/MISO Is Beyond The Authority Of This Commission.

FERC approved the SPP RTO upon the condition that SPP participate in a joint and common market with PJM/MISO. [Jt. App. ____]. There is no evidence that this integration of SPP with PJM/MISO is appropriate or would provide any net benefits to the customers of RTO members. The implications of this requirement are that the market systems and congestion management schemes of SPP must be compatible with those existing for MISO and PJM.

This requirement effectively commits the SPP to adopt market design changes that are not fully known and may not be appropriate for consumers in the SPP
footprint. For example, this could require the adoption of a locational marginal pricing or "LMP" energy market similar to PJM when this has not been shown to be an appropriate method of congestion management for the SPP region. It has not been adopted by the SPP, nor has it been accepted by the affected states. Further, it has never been demonstrated that LMP, or any other congestion methodology, yields just and reasonable transmission or wholesale prices in the SPP region.

Finally, this requirement is tantamount to ordering the SPP utilities into an RTO that includes the MISO and PJM regions. It is unjust and unreasonable. It has not been shown to be in the best interest of ratepayers, it requires prior State approval (which have not yet been sought, much less obtained), and it is beyond the authority of FERC.

Section 202(a) of the Federal Power Act provides for the creation of regional districts for the "voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy . . ." [16 U.S.C. § 824a(a)]. However, this provision does not allow the FERC unilaterally to configure and mandate participation in RTOs. Section 202(a) requires that:

Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

[16 U.S.C. § 824a(a)].

In fact this requires state participation and requires states be given a reasonable opportunity to examine any proposed voluntary pooling plan. It does not grant FERC the
power to preempt state proceedings or state laws requiring activities which Section 202 allows.

The only way to analyze the appropriateness of RTO formation, and whether the membership of particular utilities in a specific RTO is in the public interest, is to determine the estimated detriments and costs of joining the RTO and compare those negatives to the benefits and savings that might be derived from such membership. Indeed, Section 202(a) requires FERC to perform such analyses. This has not been done. The FERC has previously recognized the importance of weighing the costs and benefits of RTO participation. [Order Providing Guidance on Continued Processing of RTO Filings, 97 FERC ¶ 61,146 (2001)]. FERC's rehearing recognized the need for a cost benefit analysis of SPP's participation in a joint and common market with PJM-MISO, but makes it clear that the results of such a study will not change its requirement. [109 FERC ¶ 61,010, para. 33: Jt. App. _______].

FERC presents this requirement as a fait accompli. The affected utilities, which require state approval to join an RTO are part of the RTO because they were members in SPP reliability organization. They cannot withdraw without FERC approval. They will be required to participate in a Joint and Common Market with many utilities in the midwest and/or the eastern seaboard, regardless of what future cost benefit analyses indicate, and regardless of whether it results in just and reasonable rates. This FERC requirement is not just and reasonable, is arbitrary and capricious, and does not constitute reasoned decision-making. As a result, this decision should be reversed.

- 32 -
VI. There Was No Evidence Presented Showing That The SPP Should Be
Allowed To Act As An RTO And As A Reliability Organization.

The New Mexico Attorney General argued at FERC that the SPP should
not be both an RTO and a Reliability Organization. A reliability organization should be
separate from one such as the SPP RTO, which is a commercial organization with a
financial stake in the RTO process. FERC rejected the New Mexico proposal out of hand
finding "we will take this matter into consideration; however, we will not require a
separation at this time." [Jt. App. ____]. It gave no reasoned analysis on why such a
separation, which "some other regions have successfully implemented" would not be
appropriate for the SPP. [Jt. App. ____ para. 88]. There is no evidence, in addition,
that the FERC is still taking "this matter into consideration." This does not constitute
reasoned decision making, and it is arbitrary and capricious. This decision should be
reversed.
CONCLUSION

For the reasons set forth herein, the FERC exceeded its authority under the Federal Power Act in amending and approving of SPP RTO; and it has done so in a manner designed to exclude scrutiny of state regulators. As a result, its approval of the SPP RTO provisions addressed here should be reversed.

Respectfully submitted:

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Counsel for the New Mexico Attorney General
RULE 32(c)(7)(b) CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with rule 32(A)(7)(B). It contains 7,944 words.

Noel J. Darce
CERTIFICATE OF SERVICE

I hereby certify that two copies of the Brief for Petitioners has been served
upon all counsel of record listed below and the Solicitor of the FERC by FedEx or
overnight delivery and properly addressed, this 9th day of March, 2006.

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- 36 -
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[Signature]

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Noél J. Darce
Transition Plan

- Existing Tariff Language
- Re-evaluate current project list
- 2006-2007 in-service date projects only
  - NERC Reliability Standards
  - SPP Criteria
  - Submitted Transmission Owner Criteria
Before and After

- **Base Plan < $100k**  
  $1.3M vs. $1.2 M

- **Base Plan >= $100k**  
  $216.4 M vs. $190.5 M

- **Unidentified (Category 6)**  
  $122.9 M vs. $0

What about Category 6?  “Unclassified”

- **$ Base Plan < $100k**  
  1. 1 Project ($0)

- **Base Plan >= $100k**  
  1. 10 Projects ($11.3M)

- “Other Upgrades”  
  1. Needed before Dec 31st, 2005  
     - 5 Projects ($11.9M)
  2. New Load  
     - 21 Projects ($69.2M)
  3. Good Utility Practice  
     - 7 Projects ($23.8M)

- **Removed from Expansion Plan**  
  1. 4 Projects ($6.3M)
Annual Revenue Requirement (ATRR) Responsibility by Zone

• 20 Base Plan Upgrades evaluated (with project cost less than $100k) in 2006, 14 additional in 2007

• 3 projects in 2006 with MW-mi impact, 4 additional in 2007

ATRR Responsibility by Zone 2006

Total Base Plan Zonal ATRR

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ATRR Responsibility by Zone
2007

Total Base Plan Zonal ATRR

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$ 4,000,788 | $ 4,555,545 | $ 3,653,414 | $ 58,663 | $ 12,268,411

Aggregate Study Overview

- Study Process Per OATT Attachment Z
- 3 Study Periods per year
  - Feb 1 – May 31
  - June 1 – Sept. 31
  - October 1 – Jan. 31
- Failure of Customer to execute Study Agreement causes Customer’s reservation to be withdrawn
- SPP provides the Customer options after SPP posts the Facility Study including withdrawal
## Aggregate Study Results

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EIS Market Order Confidentiality Provisions

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<tr>
<td>221</td>
<td>Given the discussion above that SPP’s section 7.4 of Attachment AE is virtually identical to provisions previously rejected by the Commission, we will reject this provision and direct SPP to align its tariff with that of the Midwest ISO and PJM with regard to state access to confidential information.</td>
<td>Protocols – None</td>
<td>Tariff – Needed</td>
<td>System Changes – None</td>
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<td>221</td>
<td>In addition, SPP is directed to delete the phrase &quot;or to a state regulator or its staff&quot; from sections 7.1.5 and 7.2(c) of Attachment AE, and make necessary conforming changes to other proposed tariff provisions consistent with our direction above. Further, Midwest ISO filed its non-disclosure agreement with the Commission; we will also direct SPP to file its non-disclosure agreement as part of its compliance filing.</td>
<td>We find that SPP’s adoption of the confidentiality provisions similar to those of Midwest ISO and PJM will allow state regulators within SPP to obtain confidential information that they believe is necessary for them to satisfy their statutory responsibilities, while at the same time ensuring that this information remains confidential and protected from unauthorized disclosure.</td>
<td>Protocols – None</td>
<td>Tariff – Needed</td>
</tr>
</tbody>
</table>
Proposed SPP Technical Conference
Fall 2006

1. Regulatory Overview
   • FERC/State make-up today vs. terms, vacancies
   • SPP Footprint State Issues
   • FERC Hot Buttons
     ▪ ERO
     ▪ National Corridors
     ▪ Long Term FTRs
     ▪ RTO
     ▪ ISO
     ▪ ICT
     ▪ Where things might be headed?
   • FERC’s Market Monitoring Role
   • FERC’s Interest in RTO Cost Comparison
   • Update on the status of the Reliability Entity (RE) approach being proposed for SPP

2. Economist / Analyst
   • What are energy prices today? Where might they go?
   • Who controls the oil from the international perspective?
   • Can we conserve? Is so, at what price?
   • Evaluation of nuclear and wind options in the SPP footprint
   • Is technology or coal gasification going to dramatically change the landscape?
   • Is electric utility deregulation static?
   • What is the role of rate design? What is it’s impact on generation and transmission expansion?

3. Transmission Planning
   • How does SPP compare with other regional organizations in terms of approach, participant funding?
   • What industry approaches are successful in transmission expansion?
   • Are economic upgrades tested as reliability upgrades in other RTO’s?
   • Will the complexity of SPP’s cost allocation cause us to re-think the approach and move to something that suggests we roll-in all new transmission as a means to address the simplification of the cost structure and the feeling of some that economics and reliability are inseparable and as such paid for in the same manner.
   • Are other RTO’s having greater success than SPP in the construction of transmission? If so, what is that success attributed?
4. Market Development
   • Where is SPP?
   • How does SPP compare to other RTO’s?
   • What are the issues facing those markets, implementation, and uplifts?
   • Do we believe that Day 2 is a steady state for a while as these systems are tried, tested, and operated or are there indications of new initiatives?
   • Ancillary Services Cost Benefit Study
   • Business structures
     ▪ RTO
     ▪ ICT
     ▪ ITC

5. Competitive bidding vs. transmission planning
   • SPP states are interested in competitive bidding for energy resources; however, the SPP systems are designed for commitments to transmission not speculative choices.
   • Presentation of a SPP straw man that could address the conceptual transmission alternative cost and implications of sourcing from alternative DNRs.

6. What studies don’t tell you?
   • Cost Benefit Studies cannot be compared side by side
   • What is the status of the current SPP Strategic Plan?
   • What is the result of SPP’s June 2006 Strategic Planning effort?
   • What is the status transmission expansion?
   • List of projects that are in service and near term projects
   • Base Plan Projects Update
   • Aggregate Study Results
   • CAWG/RTWG/MOPC Tariff evolution

7. Demand Side Management
   • What does this mean for SPP?
Southwest Power Pool, Inc.
Regional State Committee and Board of Directors/Members Committee
2006 Meetings

<table>
<thead>
<tr>
<th>Regional State Committee</th>
<th>Board of Directors/Members Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 24 (Kansas City, KS)</td>
<td>July 25</td>
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<tr>
<td>October 23 (Annual Meeting) (Tulsa, OK)</td>
<td>October 24 (Annual Meeting of Members)</td>
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</tbody>
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**Additional Board of Directors/Members Committee Meetings**
- Training Meeting: June 13, 2006, Little Rock, AR
- Organizational Meeting: December 5, 2006, Dallas, TX