

153 FERC ¶ 61,169
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 13, 2015

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER16-126-000

Wright & Talisman, P.C.
1200 G Street, NW
Suite 600
Washington, DC 20005

Attention: Matthew J. Binette

Reference: Petition for Waiver and Motion for Expedited Action

Dear Mr. Binette:

1. On October 20, 2015, Southwest Power Pool, Inc. (SPP) filed a petition for waiver of provisions of its Open Access Transmission Tariff (Tariff) and a motion for expedited action and shortened comment period. SPP requests that the Commission issue an order granting waiver of sections III.2.b.i and III.2.b.iii of Attachment Y, Transmission Owner Selection Process for Competitive Upgrades, of the SPP Tariff to permit a 2016 Industry Expert Panelist to serve on the 2015 Industry Expert Panel (IEP) that will review and evaluate the proposals submitted in response to the request for proposals (RFP) for the Walkemeyer-North Liberal Project (Project). In this order, we grant the requested waiver, as discussed below.

2. Under section III.2 of the SPP Tariff, SPP issues an RFP for Competitive Upgrades following approval by the SPP Board of Directors for inclusion of the upgrades in the SPP Transmission Expansion Plan. After closure of the RFP response window, the Tariff requires that the Oversight Committee¹ create an IEP from a previously identified pool of qualified industry experts to review, score, and rank all proposals received in

¹ The Oversight Committee is composed exclusively of members of the SPP Board of Directors and is responsible, among other things, for overseeing all aspects of the IEP process.

response to the RFP. Within 60 days of commencing such reviews, the IEP is required to submit to the SPP Board of Directors a single recommended proposal and an alternative proposal for each Competitive Upgrade.²

3. SPP states that the Oversight Committee is required to establish an IEP candidate pool on an annual basis composed of qualified industry experts from which the Oversight Committee will establish IEPs to evaluate proposals submitted in response to SPP RFPs for Competitive Upgrades. IEP candidates are required to have expertise in one or more of the following areas: (1) electric transmission engineering design; (2) electric engineering project management; (3) electric transmission operations; (4) electric transmission rate design; and (5) electric transmission finance.³ SPP adds that the IEP candidate pool must be approved by the SPP Board of Directors during a meeting that occurs before any meeting in which a Competitive Upgrade is approved, and the Tariff requires that the Oversight Committee's recommended IEP candidate pool be posted on the SPP website prior to the SPP Board of Director's approval.⁴

4. SPP states that, when an IEP is needed to evaluate proposals submitted in response to an RFP, the Oversight Committee creates one or more IEPs consisting of three to five candidates from the pre-established IEP candidate pool that collectively satisfy each of the five IEP expertise areas.⁵ According to SPP, on October 28, 2014, the SPP Board of Directors approved the Oversight Committee's recommended 2015 IEP candidate pool. SPP states that the deadline to submit proposals in response to the RFP is November 2, 2015. SPP states that, following the submission deadline, the Oversight Committee is required to create an IEP from the 2015 candidate pool to review proposals for the Project, and the IEP is scheduled to commence review of the Project proposals by November 30, 2015.⁶ Under Attachment Y of the SPP Tariff, the IEP will have until January 29, 2016 (60 calendar days) to submit its recommendations to the SPP Board of Directors.⁷

² SPP Petition at 2.

³ *Id.* at 3 (citing SPP Tariff, section III.2.b.i).

⁴ *Id.* (citing SPP Tariff, section III.2.b.iii).

⁵ *Id.* (citing SPP Tariff, section III.2.b.iv).

⁶ *Id.* at 5-6.

⁷ *Id.* at 6 (citing SPP Tariff, section III.2.d.vi).

5. SPP asserts that the need for a waiver was determined following notification by one of the 2015 IEP candidates that the candidate may not be able to serve on the IEP for the Project. SPP explains that no other candidate in the 2015 IEP candidate pool has the expertise required to serve as a suitable replacement. SPP states that a candidate with the requisite expertise has been identified during review of applications for the 2016 IEP candidate pool and could serve as a replacement, if needed. SPP explains that, even if the SPP Board of Directors approves the recommended 2016 IEP candidate pool at the October 27, 2015 meeting, because the SPP Tariff requires the candidate pool be established on an annual basis in a meeting that precedes a meeting where the Competitive Upgrade is approved, members of the 2016 IEP candidate pool would not be eligible to participate on an IEP evaluating the Project. Thus, SPP requests that the Commission grant waiver of sections III.2.b.i and III.2.b.iii of Attachment Y so that the identified applicant for the 2016 IEP candidate pool, if approved by the SPP Board of Directors, may serve on the IEP that will evaluate proposals for the Project, in the event that the 2015 IEP candidate is unable to serve.⁸

6. SPP argues that its request for waiver is limited in scope as it covers just two subsections of Attachment Y of the SPP Tariff, addresses a one-time potential inability of a single IEP candidate to serve, and, if granted, would simply allow the identified applicant for the 2016 IEP candidate pool to serve on the IEP that will evaluate proposals for the Project, if needed. SPP asserts that granting the waiver will remedy a concrete problem and remove regulatory uncertainty regarding review of the proposals submitted for the Project. Absent a waiver, SPP states it is unclear how the Oversight Committee could create an IEP for the Project and remain compliant with the requirements and timeframes established in Attachment Y. Lastly, SPP argues that the requested waiver creates no undesirable consequences or harm to third parties. SPP states that SPP staff vetted and recommended the identified replacement to the Oversight Committee to serve on the 2016 IEP candidate pool. SPP further states that the candidate's qualifications will be reviewed and approved by both the Oversight Committee and the SPP Board of Directors prior to serving on the IEP for the Project. Absent a waiver, SPP states that third parties could be harmed because review of the proposals for the Project could be delayed, potentially harming RFP respondents, customers, and the ultimate designated Transmission Owner.⁹

7. SPP requests expedited issuance of an order on its waiver request in this proceeding by November 2, 2015.¹⁰ SPP states that expedited action would enable SPP

⁸ *Id.* at 7-8.

⁹ *Id.* at 8-10.

¹⁰ *Id.* at 11.

to comply with the IEP timelines and requirements set forth in the Tariff and to maintain its expected schedule for selecting a proposal and issuing a notification to construct for the Project.

8. Notice of the filing was published in the *Federal Register*, 80 Fed. Reg. 65,990 (2015), with interventions and protests due on or before October 30, 2015. Timely motions to intervene were filed by Ameren Services Company, Exelon Corporation, Sunflower Electric Power Corporation, and Mid-Kansas Electric Company, LLC. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. We find good cause to grant SPP's requested waiver. The Commission has previously granted waivers of tariff provisions in situations where, as relevant here: (i) the waiver is of limited scope; (ii) a concrete problem was remedied by granting the waiver; and (iii) the waiver did not have undesirable consequences, such as harming third parties.¹¹ We find that SPP's requested waiver satisfies these conditions. Specifically, the requested waiver is of limited scope as it covers just two subsections of the SPP Tariff and addresses a one-time event. In addition, we find that granting the waiver will remedy a concrete problem and allow for regulatory certainty regarding review of the proposals submitted for the Project. Finally, we find that the requested waiver will create no undesirable consequences since the candidate's qualifications will be reviewed and approved by both the Oversight Committee and the SPP Board of Directors prior to serving on the IEP for the Project.

10. Accordingly, SPP's request for waiver of sections III.2.b.i and III.2.b.iii of Attachment Y of the SPP Tariff is hereby granted.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ See, e.g., *Sw. Power Pool, Inc.*, 151 FERC ¶ 61,122, at P 12 (2015); *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,162, at P 8 (2009); *Sw. Power Pool, Inc.*, 124 FERC ¶ 61,316, at PP 9-10, *modified by*, 125 FERC ¶ 61,019 (2008).