

114 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southwest Power Pool, Inc.

Docket No. ER06-432-000

ORDER ON PROPOSED CREDIT POLICY

(Issued February 28, 2006)

1. In this order, the Commission addresses proposed tariff revisions submitted by Southwest Power Pool, Inc. (SPP) to incorporate its credit policy into its open access transmission tariff (OATT). As discussed below, SPP's filing attempts to strike a balance between maximizing the participation in the markets SPP proposes to implement, by establishing financial security requirements that are not excessive, while minimizing the likelihood of losses due to default and consequential uplift by nondefaulting customers. With certain modifications, SPP's credit provisions achieve such a balance, while also providing a transparent process that allows the customers and potential customers of SPP to determine how SPP evaluates their creditworthiness. Accordingly, we will conditionally accept and suspend SPP's filing to become effective on March 1, 2006, subject to refund and outcome of a technical conference and direct a compliance filing no later than 30 days from the date of this order. SPP is also directed to submit OATT provisions implementing a shortened settlement period 250 days after the start up date of market operations or provide an explanation why the settlement period cannot be shortened. We also encourage SPP to continue to refine its credit policy with stakeholder input and submit such refinements for Commission approval as it gains more experience in its markets.

Background

2. The Commission has found that "the tariff is the appropriate place for all matters affecting rates, terms and conditions of jurisdictional transactions regarding creditworthiness and collateral requirements."¹ On November 19, 2004, the Commission issued a policy statement concerning creditworthiness standards and procedures for electric transmission providers to increase transparency and competitiveness in electricity

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at 453 (*TEMT II Order*), *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *order on reh'g and compliance filing*, 111 FERC ¶ 61,250 (2005).

markets.² The Commission stated that it wanted to ensure that a customer would be able to determine beforehand the general amount of security it needed to receive transmission service or to participate in an independent system operator (ISO) or regional transmission organization (RTO) market.³ The Commission explained that standards that were not transparent “could serve to undermine certainty in the markets and ...result in creditworthiness requirements ...being turned into barriers to legitimate market activity, thus affecting market participation and liquidity levels in the market.”⁴

3. SPP has been authorized as an RTO since October 1, 2004,⁵ and submits the proposed tariff revisions under section 205 of the Federal Power Act (FPA),⁶ pursuant to the *Credit Policy Statement*. SPP states that it developed its proposed credit policy through its stakeholder process and the policy was approved by the Board of Directors on October 25, 2005. SPP submitted its credit policy as Attachment X (Credit Policy or Attachment X) to its OATT and several OATT revisions in its filing to the Commission on December 30, 2005.

4. SPP, at this time, has not established markets. Its proposal to establish an energy imbalance service market is pending before the Commission in Docket No. ER06-451-000. Its credit policy will apply to all its “credit customers,”⁷ including those that participate in its markets (market participants).

Summary of SPP’s Proposed Credit Policy (Attachment X)

5. SPP contends that its proposed Credit Policy is transparent, does not unduly restrict transactions, and minimizes the likelihood of losses due to defaults and consequential uplift from SPP’s members. SPP states that its proposed Credit Policy achieves these goals by specifying the information credit customers must provide and the

² *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 at P 1 (2004) (*Credit Policy Statement*).

³ *Id.* at P 11.

⁴ *Id.*

⁵ *See Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh’g*, 110 FERC ¶ 61,137 (2005).

⁶ 16 U.S.C. § 824d (2000).

⁷ SPP defines a credit customer as “[a]ny person that takes or seeks to take service under the [OATT] including all Transmission Service or other services under the [OATT], including any market services.” Section 2.1 of Attachment X.

financial requirements they must satisfy in order to maintain creditworthiness. Furthermore, SPP argues that its proposed Credit Policy sets out fair and clear evaluation criteria for large, small, and not-for-profit credit customers.

6. Article One of Attachment X provides an overview of SPP's proposed Credit Policy. A credit customer is required to satisfy the credit requirements under the Credit Policy in order to take a service subject to this policy. SPP proposes to conduct an initial and ongoing credit assessment that is based upon quantitative and qualitative measures identified in the Credit Policy. Credit customers are required to submit credit information to SPP periodically and upon the occurrence of certain events. SPP states that it has the authority to establish and revise a credit customer's total credit limit and the terms and conditions of the extension of credit based on the credit assessments. Each credit customer is required to execute a credit application (Appendix A to Attachment X) and submit the credit information requested by SPP. If SPP determines that a customer's extension of credit must be supported by financial security, upon SPP's request, the customer must execute the Credit and Security Agreement (Appendix B). A form letter of credit and corporate guaranty are provided as Appendix C and D respectively, however, SPP states that any variations in these forms must be reasonably acceptable to SPP.

7. Article Two contains the definitions of the terms used in the Credit Policy. Article Three identifies the information SPP requires each credit customer to submit in order to perform the initial credit assessment, and an ongoing review and update of these credit assessments.

8. Article Four sets forth the provisions regarding the creditworthiness analysis and how SPP establishes the total potential exposure for a credit customer. SPP conducts a credit assessment for each credit customer using quantitative and qualitative (non-financial measures) criteria, which are identified in the article. SPP uses the credit assessment to generate a composite score, which is a determination of a customer's financial strength and creditworthiness.⁸ A composite credit score is a numeric score ranging from one to six, where a score of one is the strongest score (indicating strong financial health and/or strong qualitative measures) and a score of six is the weakest score (indicating poor financial health and/or weak qualitative measures). SPP further states that the quantitative and qualitative criteria are weighted differently for large, small, and not-for-profit customers.⁹ SPP identifies the minimum qualitative measures for the different types of entities, and further, proposes to include the qualitative measures as 30 percent of the composite credit score for large and small companies and 50 percent of the composite credit score for not-for-profit entities.

⁸ Section 4.2 of Attachment X.

⁹ Section 4.2 of Attachment X; and *see Credit Policy Statement* at P 13.

9. SPP proposes to convert a customer's composite credit score to an unsecured credit allowance extended to a credit customer.¹⁰ The unsecured credit allowance is calculated as a percentage of the customer's tangible net worth and the percentage is determined based on the composite credit score and the type of company.¹¹ SPP claims that the different percentages account for the different capital structures of for-profit and not-for-profit entities. SPP proposes that the maximum unsecured credit allowance for a credit customer is \$25 million, and that the minimum unsecured credit allowance for a not-for-profit credit customer is \$50,000.¹² Section 4.3.2 sets forth provisions regarding the determination of the unsecured credit allowance for credit customers with a corporate guaranty; section 4.3.3 sets forth the provisions regarding the determination of creditworthiness of credit customers that are affiliates. Section 4.4 provides that any credit customer may provide financial security in addition to or in lieu of any unsecured credit allowance SPP granted and allows a customer to request and obtain an explanation from SPP of how SPP calculated the required level of financial security. Section 4.5 provides that SPP will determine the total credit limit for each credit customer as the sum of the unsecured credit allowance approved by SPP for the credit customer and the amount of any financial security posted by the credit customer.

10. Article Five sets forth the process for calculating a credit customer's total potential exposure and SPP's use of the total potential exposure. The total potential exposure is the estimated cumulative financial obligation incurred by a credit customer under the OATT. SPP calculates the total potential exposure for each credit customer to ensure that a credit customer only engages in activities within its total credit limit. A credit customer is required to support its total potential exposure with credit. The credit can be an unsecured credit allowance or financial security, or a combination of the two. This article also sets out the violations of total potential exposure and how credit customers can cure such violation.

11. Article Six sets forth provisions regarding corporate guaranties. Article Seven sets forth the requirements related to financial security, which may be provided as either a cash deposit or an irrevocable letter of credit. In addition, in order to protect SPP from preference claims under bankruptcy laws, SPP requires credit customers to execute a Credit and Security Agreement (Appendix B) with respect to such financial security. Article 8 specifies events of customer default as well as SPP's legal rights and remedies

¹⁰ Section 4.3 of Attachment X.

¹¹ Table 1 provides a matrix to determine the percentages for large, small and not-for-profit credit customers depending on the composite credit score.

¹² Section 4.3.1 of Attachment X.

associated with customer default. Article Nine contains notice provisions, *i.e.*, requiring credit customers to designate a credit contact for purposes of notice and how to provide notice to SPP.

12. SPP proposes to revise various other sections of its tariff in order to incorporate the Credit Policy into the Tariff.¹³ According to SPP, the revisions primarily include references to the Credit Policy or revisions to reflect the terms used in the Credit Policy, including the definition of financial security.

13. SPP requests an effective date of March 1, 2006, for its proposed Credit Policy and tariff revisions.

Notice of Filing, Interventions and Protests

14. Notice of SPP's filing was published in the *Federal Register*, 71 Fed. Reg. 3,075 (2006), with comments, interventions and protests due on or before January 20, 2006. A timely motion to intervene was filed by Westar Energy, Inc. Timely motions to intervene and protests were filed by: East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives); Golden Spread Electric Cooperative, Inc. (Golden Spread); Kansas Municipal Utilities and Kansas Power Pool (collectively, Kansas Municipals); and the Missouri Joint Municipal Electric Utility Commission and the Oklahoma Municipal Power Authority (collectively, TDU Intervenors). Western Farmers Electric Cooperative filed a motion to intervene one day out of time.

15. On February 6, 2006, SPP filed an answer to the protests. TDU Intervenors submitted a reply to SPP's answer on February 21, 2006.

¹³ Section 1.5 (Completed Application), section 1.6a (Credit Policy), section 7.2 (Interest on Unpaid Balances), section 7.2(a) (Financial Assurance Held By SPP), section 7.3 (Customer Default), section 11 (Creditworthiness), section 15.3 (Initiating Service in the Absence of an Executed Service Agreement), section 17.3 (Credit Arrangements), section 17.4 (Notice of Deficient Application), section 17.6 (Execution of Service Agreement), section 19.1 (Notice of Need for System Impact Study), section 19.4 (Facilities Study Procedures), section 20.3 (Refund Obligation for Unfinished Facility Additions), section 22.2 (Modifications on a Firm Basis), section 29.2 (Application Procedures), section 32.1 (Notice for Need for System Impact Study), section 32.4 (Facilities Study Procedures) and section 3.0 of Attachment A (Form of Service Agreement For Point-to-Point Transmission Service).

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given its interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay, the Commission finds good cause to grant the untimely and unopposed motion to intervene of the Western Farmers Electric Cooperative.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept SPP's and TDU Intervenors' answers because it has provided information that assisted us in our decision-making process.

18. If the Commission does not require SPP to modify its proposed Credit Policy consistent with their request, TDU Intervenors ask the Commission to nominally suspend SPP's filing, and set for hearing and settlement judge procedures the disputed matters. SPP in its answer argues that the Commission should accept its filing without modification. As discussed below, we require SPP to modify its filing in certain ways and we direct a technical conference. Therefore, we do not find that hearing and settlement judge procedures are necessary.

B. SPP's Credit Policy

19. We note that this filing is one of several that have recently been made by ISOs and RTOs to revise the credit or collateral requirements for participation in the markets run by these organizations.¹⁴ The Commission has stated that it "believe[d] that the development of creditworthiness requirements specific to each ISO/RTO through a stakeholder process is appropriate because of the greater variability and difficulty required to measure the credit exposure of providing these additional services."¹⁵ In praising Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO's) "vibrant" stakeholder process, the Commission reiterated that it valued the stakeholder

¹⁴ See, e.g., *Outback Power Marketing, Inc. v. PJM Interconnection, LLC*, 104 FERC ¶ 61,079 (2003); *New York Independent System Operator, Inc.*, 104 FERC ¶ 61,311 (2003); *New England Power Pool*, 107 FERC ¶ 61,201 (2004); *TEMT II Order*; and *PJM Interconnection, LLC*, 109 FERC ¶ 61,241 (2004) (order on tariff revisions).

¹⁵ *Credit Policy Statement* at P 2.

process to determine regional creditworthiness.¹⁶ It also found that because credit is a collective market mechanism, in that all market participants share in the extension of credit and therefore share in the losses, significant weight should be given to the stakeholder process.¹⁷ We encourage all of SPP's customers to participate in the stakeholder process and to vet their proposals through that forum to gauge overall stakeholder benefits before proposals are submitted to the Commission. However, the Commission cannot accept any proposal from the stakeholder process that is unduly burdensome or unduly discriminatory.¹⁸

20. In reviewing these filings, we must balance the goals of allowing the ISOs and RTOs to reduce their risk of exposure in the event of default while at the same time ensuring that the credit or collateral requirements are not so stringent that they unnecessarily inhibit access to the marketplace. To permit the Commission to balance these interests, it is incumbent on for the ISOs and RTOs to include in their filings support for their proposals, including a full justification for their proposed credit or collateral provisions, and an explanation of why they reflect an appropriate balance. As discussed below, we find that SPP has not adequately provided such a justification for certain aspects of its filing.

21. Based on the balancing of interests, the Commission accepts and suspends SPP's proposed Credit Policy and other tariff revisions, as conditioned below and subject to the outcome of a technical conference to become effective March 1, 2006. We direct SPP to submit a compliance filing within 30 days from the date of this order to comply with the modifications discussed below. In addition, SPP is also directed to submit OATT provisions implementing a shortened settlement period 250 days after the start up date of market operations or provide an explanation why the settlement period cannot be shortened.

1. Acceptable Types and Forms of Security

22. Protestors argue that SPP should retain flexibility with regard to the types of financial security and the forms of the irrevocable letters it requires.

23. TDU Intervenors argue that irrevocable letters of credit should not be limited to the "forms determined by and acceptable to SPP."¹⁹ They contend that SPP should

¹⁶ *Compliance Order at P 356.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 2.1 of Attachment X.

accept reasonable variations to the proposed form of Letter of Credit in Appendix C, especially since a credit customer only has two business days to obtain a letter of credit.²⁰ They note that banks have their own form of letter of credit and may not be willing to issue one in the form prescribed by SPP. They suggest editing section 2.1 of Attachment X to replace the phrase “determined by and acceptable to SPP” with a reference to Article 7 (Financial Security) of Attachment X.

24. Kansas Municipals argue that obtaining and maintaining letters of credit is an expensive undertaking that places an undue burden on smaller municipal entities. They believe that incorporating flexibility into this provision allows municipal entities to offer other acceptable forms of security such as binding transmission service contracts between municipal agencies and their municipal members, thus effectively removing a barrier to investment. Therefore, they suggest adding the phrase “or other reasonable security” to SPP’s OATT section 32.2.

25. Kansas Municipals claim that the municipals’ lack of access to corporate guaranties gives for-profit corporations an advantage over municipals, unless SPP adopts an alternative option for the municipals. Kansas Municipals urges SPP to retain additional flexibility in determining the unsecured credit available to public power entities. Kansas Municipals also think SPP should take into consideration that municipals are generally comprised of individual cities with high credit ratings.

26. In its answer, SPP argues that even though the Credit Policy states that financial security can be provided either as a cash deposit or an irrevocable letter of credit,²¹ section 7.1.3.1 of the Credit Policy states that SPP may accept variations from the form of an irrevocable letter of credit on a case-by-case basis. SPP also argues that limiting the types of acceptable financial security to cash deposits and irrevocable letters of credit is appropriate and consistent with the credit policies of other RTOs and ISOs that have been accepted by the Commission.²² Furthermore, SPP claims that the limitation on the types of financial security diminishes the administrative burden that would result from other, more complex kinds of security. SPP provides additional reasons for its choice of acceptable forms of financial security. It notes that SPP members, through the stakeholder process, declined to revise these formats. It also notes that allowing additional types of financial security would create greater potential for different terms to

²⁰ Section 3.2.2 of Attachment X.

²¹ Section 7.1 of Attachment X.

²² *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 460. *See also* PJM Interconnection, L.L.C.’s (PJM’s) Tariff, Attachment Q, First Revised Sheet No. 523I.01, Second Revised Sheet No. 523J, Original Sheet No. 523J.01; and Midwest ISO Tariff, Attachment L, First Revised Sheet No. 1240.

be considered preferential, and such evaluations would be time consuming and costly. Finally, SPP notes that the financial security should be liquid, *i.e.*, easily converted to cash to avoid imposing uplift on members and only cash deposits or irrevocable letters of credit fulfill this criterion.

Commission Determination

27. We find that TDU Intervenors' concern related to the form of irrevocable letters of credit is partially satisfied by section 7.1.3.1 of the Credit Policy, which gives SPP discretion to accept variations to the form letter on a case-by-case basis. Consistent with our emphasis on transparency in credit policies, we will direct SPP to amend its Credit Policy to provide a credit customer, upon its request, a written explanation of why SPP rejected that customer's proposed variation to a letter of credit. As TDU Intervenors point out, banks often have their own form of letter of credit, and if SPP will not accept a particular bank's form then, a credit customer will be able to determine why SPP rejected its proposed variation to a letter of credit, and then may either try to negotiate with the bank for a modified form, or try to explain to SPP why its concern is unjustified. To ensure that the definitions in the Credit Policy are consistent, we will require SPP to amend the definition in Financial Security in section 2.1 of Attachment X to replace "determined by and acceptable to SPP" with a reference to Article 7 of Attachment X.

28. We note that SPP proposes to modify OATT section 32.2 (System Impact Study Agreement and Cost Reimbursement)²³ to limit financial security to a cash deposit or an irrevocable letter of credit. SPP intends to delete the option of "other reasonable security acceptable to the Transmission Provider." In *TEMT II Order*, the Commission found that "[c]ash deposits, corporate guaranty, and irrevocable letters of credit are standard instruments in use in other RTO and ISO markets and their use is appropriate in the Midwest ISO market."²⁴ Consistent with our precedent, we accept SPP's proposal to use only cash deposits, corporate guaranties and irrevocable letter of credit as the acceptable types of financial security in its Credit Policy. We also note that this issue was vetted through and approved by SPP's stakeholders. We are persuaded by SPP's arguments that limiting the types of financial security avoids the potential that different terms will be applied to different types of credit customers and has the benefit of diminishing SPP's

²³ Under this section, upon completion of a facilities study, SPP has to provide the customer with a good faith estimate of the cost of direct assignment facilities and/or the customer's share of the cost of any required network upgrades.

²⁴ *TEMT II Order* at P 460. See also PJM's Attachment Q, First Revised Sheet No. 523I.01, Second Revised Sheet No. 523J, Original Sheet No. 523J.01, and Midwest ISO's Attachment L, First Revised Sheet No. 1240.

administrative burden, while ensuring that the financial security is liquid. Therefore, we reject Kansas Municipals' request that SPP should allow alternate types of reasonable security.

2. Total Debt to Total Capitalization Ratio

29. Golden Spread is concerned that, under section 4.2.3.1 of Attachment X, in order to obtain the best score for the debt to capitalization ratio of one, a cooperative's ratio of total debt to total capitalization must be no higher than .50. Golden Spread argues that many creditworthy cooperatives could fail to meet this standard and therefore, the total debt to total capitalization ratio should be .75 or below for a cooperative to receive the best score.²⁵

30. Golden Spread argues that the debt service coverage score should be 1.5 or better instead of 2.0 or higher.²⁶ It argues that requiring a debt service coverage score of 1.5 or better in order to earn a score of one will protect other SPP stakeholders from the risk that they will have to cover the liabilities of a cooperative that defaulted, while protecting cooperatives and their customers from being burdened with excessive costs of posting unnecessarily high levels of financial security.

31. SPP in its answer argues that its proposed total debt to total capitalization and debt service coverage scores are appropriate. SPP explains that in the Fitch rating scale, an AA rating is the third highest rating, with AA+ and AAA being higher. SPP claims that Golden Spread is comparing the total debt to total capitalization ratios and debt service coverage ratios for the third highest Fitch credit rating level to the thresholds of 0.50 (total debt to total capitalization) and 1.99 (debt service coverage), respectively, to achieve the highest rating in these respective categories under the SPP Credit Policy. SPP argues that Golden Spread fails to cite any statistics to show that the highest Fitch rating (AAA) should not correlate to the highest rating allowed under the SPP Credit Policy. SPP argues that it developed these ratios through its stakeholder process, including cooperatives, and that there is no basis to require a change.

Commission Determination

32. We will accept and suspend SPP's proposed total debt to total capitalization and debt service coverage scores, to become effective as proposed, subject to the outcome of a technical conference. SPP seeks to establish scores that will protect other SPP

²⁵ Golden Spread notes that the average debt to total capitalization ratio for cooperatives with an AA rating from Fitch Inc. (Fitch) was .723.

²⁶ Golden Spread notes that Fitch's 2004 research indicated that AA rated cooperatives had an average Debt Service Coverage of 1.5.

stakeholders from the risk that they will have to cover the liabilities of a cooperative that defaulted, while protecting not-for-profit entities and their customers from being unduly burdened with excessive costs of posting unnecessarily high levels of financial security. Golden Spread has raised concerns about SPP's proposal that the highest score on their table is equivalent to the highest standard of a rating agency. Given that, generally, a B+ rating is investment grade; cooperatives may be unlikely to default due to their ability to charge their customer base for service²⁷; and we do not know if, under SPP's proposal, a for-profit entity would be rated higher than a not-for-profit entity despite being rated the same under a Rating Agency's²⁸ report, we find that SPP's proposed scores warrant further examination and discussion and a technical conference will provide an appropriate forum to probe SPP's proposed total debt to total capitalization and debt service coverage scores under section 4.2.3.1 of Attachment X. The Commission finds that SPP's proposal may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept SPP's Credit Policy for filing and suspend its effectiveness for the period set forth below, and permit it to become effective, subject to refund and the outcome of a technical conference.

3. Evaluation of Qualitative Factors and Additional Qualitative Factors

33. Kansas Municipals state that SPP should be required to provide the customer with reasonable detail on how it evaluated the customer's qualitative factors and how it arrived at the resulting numeric value. For example, they assert that SPP should use the strong credit rating of Kansas Power Pool's member cities as a proxy for Kansas Power Pool's rating given that Kansas Power Pool's member cities are long-established and highly-rated municipalities that have elected to address their power supply and transmission needs as a group in the form of KPP, a new municipal energy agency.

34. Kansas Municipals argue that a not-for-profit customer's prior payment history with its prior transmission owner should be added to the list of qualitative factors used to evaluate a customer's creditworthiness. They explain that a municipal entity may have been a long-established customer as part of the native load of a transmission owner for years, but may now be a "new" SPP customer because its contract has expired or terminated.

²⁷ *Credit Policy Statement* at P 14.

²⁸ A Rating Agency is defined as "[a]ny Rating Agency that is a 'Nationally Recognized Statistical Rating Organizations' as defined by the US Securities Exchange Commission. Currently there are four – Dominion Bond Rating Service Ltd., Fitch, Inc., Moody's Investors Service, and the Standard & Poor's Division of McGraw Hill Companies, Inc." Section 2.1 of Attachment X.

35. In response to the argument that additional factors should be added to the list of qualitative characteristics reviewed under section 4.2.3.2, specifically, municipal entities' prior payment histories under prior long-term contracts, SPP notes that section 4.2.3.2 of the Credit Policy does not limit the qualitative measures reviewed to the measures enumerated in the section. Therefore, SPP states that it can consider other appropriate factors, however, it notes that including such payment histories of customers to other entities as one of these factors should not be required as part of SPP's review. It claims that it would be difficult administratively for SPP to accurately investigate and review such information.

Commission Determination

36. The Commission required ISOs and RTOs to consider both qualitative and quantitative measures in assessing the credit risk of a party and post the criteria used to determine these factors to prevent these entities from potentially discriminating against certain market participants.²⁹ In fact, the Commission used the example of municipalities and cooperatives, which may be non-rated companies, but may have strong credit for transmission service due to the nature of their businesses and their ability to charge their customer base for service.³⁰ The Commission upheld Midwest ISO's proposal to weigh the qualitative factors (60 percent) heavier than financial criteria (40 percent) to develop a total composite credit score for public power utilities to be reasonable and acceptable.³¹ It also observed that, generally, public power entities have good credit records and that may not be reflected through financial statements alone.³²

37. At this time we do not believe there is a need to add further qualitative factors, however, we will take note of SPP's statement that section 4.2.3.2 of the Credit Policy does not limit the qualitative measures reviewed to the measures enumerated in the section. Not-for-profit entities can submit qualitative information in their application that they believe improves their creditworthiness. We also note that any entity can seek a written explanation from SPP under section 4.4 of the Credit Policy of how SPP determined the amount of required financial security for that credit customer. We will, however, direct SPP to change its proposed 50 percent qualitative factor and 50 percent financial approach for not-for-profit entities. Consistent with our precedent discussed above, we will require SPP to adopt Midwest ISO's 60-40 percent approach and weigh

²⁹ *Credit Policy Statement* at P 13.

³⁰ *Id.* at P 14.

³¹ *Compliance Order* at P 355 and n.157.

³² *Id.*

qualitative measures heavier than financial ones because such an approach demonstrates to us that public power market participants will not be discriminated against in the credit scoring process.

4. Tangible Net Worth

38. TDU Intervenor urge the Commission to require SPP to adopt a provision similar to Midwest ISO's, which limits reliance on tangible net worth to set public power credit limits by using revenue bond obligations as a proxy for equity for not-for-profit entities.³³ TDU Intervenor argue that section 4.3 of Attachment X, which provides the calculation for tangible net worth, discriminates against public power entities that seek to keep their levels of equity low in order to keep rates low and therefore have low tangible net worth.³⁴ Furthermore, TDU Intervenor argue that the need to consider public power bond indebtedness as a proxy for equity is greater in SPP than in Midwest ISO because of the relatively low percentage of tangible net worth to which public power entities will be entitled in SPP. The maximum in unsecured credit that a not-for-profit can get in SPP is 7.5 percent of tangible net worth, while in Midwest ISO it is 12 percent.³⁵ Therefore, TDU Intervenor propose modifying section 4.3 of Attachment X but note that section 4.3 may need further modification because certain public power entities may have little or no outstanding revenue bonds.

39. Golden Spread argues that, in calculating tangible net worth, changes in equity attributable to accumulated comprehensive income or losses do not impact the creditworthiness of the customer, and therefore, should be removed from Total Equity.³⁶

40. According to SPP, it is appropriate to use tangible net worth to establish a credit customer's unsecured credit allowance. It explains that the percentage of tangible net

³³ *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,163 (2005) and Attachment L, II.B.3. However, TDU Intervenor note that this procedure is applicable only to public power entities whose energy and transmission service payments receive priority over bond payments.

³⁴ Section 4.3 of Attachment X defines Tangible Net Worth as "Total Equity – Intangibles – Treasury Stock."

³⁵ Midwest ISO, Attachment L, Table 1.

³⁶ It explains that such gains and losses are typically associated with hedging arrangements for debt; if the hedged (fixed) interest rate is below market rates, any business entity's tangible equity will be inflated because it includes "accumulated comprehensive income,"; if the hedged rate is higher than current market rates, the entity will have an accumulated comprehensive loss that artificially reduces tangible equity.

worth is one and one-half times higher for not-for-profit entities for a given composite credit score than for small and large companies with the same score. SPP states that the decision to use 7.5 percent arose from its stakeholder process with input from all types of entities. SPP claims that it took into account differences between not-for-profits and other business entities; not-for-profit entities have a different model for the composite credit score calculation that includes different ratio calculations and more weight for qualitative factors than in the large and small company calculations. Moreover, under SPP's proposal, not-for-profit entities are automatically provided with a \$50,000 unsecured credit allowance.

41. Furthermore, SPP argues that using outstanding revenue bond indebtedness in the calculation of tangible net worth would allow entities with higher debt levels to get higher credit limits, leading to the conclusion that higher debt levels are commensurate with lower risk. Instead, SPP suggests that if the revenue bond indebtedness of a particular customer would be subordinate to its SPP indebtedness, the customer could highlight that fact in its credit application.

42. Finally, SPP in its answer contends that the amounts provided in the SPP Credit Policy provisions regarding not-for-profit entities are appropriate for SPP's stakeholders, market, and region, and although they may differ from the amounts in Midwest ISO, these provisions are to protect SPP members from defaults and risk of uplift.

Commission Determination

43. As explained earlier, the Commission defers to the stakeholder process, however, it will not accept unjust and unreasonable, or unduly discriminatory or preferential provisions.

44. The Commission accepted Midwest ISO's proposal to value the security provided by revenue bond obligations when determining the amount of unsecured credit to extend to a market participant.³⁷ Such revisions ensured that appropriate unsecured credit was received by public power entities with outstanding revenue bonds without diminishing Midwest ISO's credit position.³⁸ Consistent with our precedent, we will direct SPP to modify section 4.3 of Attachment X to use outstanding revenue bond indebtedness in the calculation of tangible net worth as a proxy for equity, but only for not-for-profit entities

³⁷ *Midwest ISO Independent Transmission System Operators, Inc.*, 112 FERC ¶ 61,163 at P 1 (2005).

³⁸ *Id.* (explaining that Midwest ISO's credit position is unchanged because its charges are classified as operating expenses that are paid before the bond holders under the terms of the revenue bonds).

whose energy and transmission service payments receive priority over bond payments.³⁹ As explained by TDU Intervenors, such a modification will allow the unsecured credit allowance of entities whose energy and transmission payments receive priority over their bond payments to be based on a percentage of their tangible net worth plus outstanding revenue bond debt.

45. We will reject Golden Spread's request that SPP not use accumulated comprehensive gain or loss in the calculation of tangible net worth. We believe that in certain situations such a gain or loss may impact the calculation of total equity and, therefore, tangible net worth.

5. Total Potential Exposure

46. Under SPP's proposal, a credit customer's Total Potential Exposure is "the sum of the potential exposure to non-payment for market transactions and Transmission Service transactions billed pursuant to the Tariff."⁴⁰ Therefore, the Total Potential Exposure "may be calculated" as the sum of the potential exposure to non-payment for market transactions (Market Exposure) and potential exposure to non-payment associated with Transmission Service transactions (Transmission Service Potential Exposure).⁴¹

47. SPP's proposed Credit Policy defines Market Exposure as the sum of Invoiced Market Settlement Charges (IMSC - all imbalance charges that have been invoiced but not yet paid), Calculated Market Settlement Charges (CMSC - all daily settlement activity that has been calculated but not yet invoiced) and Maximum Estimated Market Exposure (MEME - calculated based on the number of days remaining in the Potential Exposure Window).⁴² SPP summarizes the Potential Exposure Window as the number of days of credit exposure for a Credit Customer equal to the sum of days of service that have been invoiced but not paid, days of service that have been calculated but not invoiced, days of service in the cure period, and days before service can be terminated.

48. SPP uses the Transmission Service Potential Exposure to determine the amount of unsecured credit and/or financial security required to support the particular customer's level of transmission service activity. The higher the exposure of a credit customer, the greater the amount of unsecured credit or financial security that SPP may require it to pay. SPP states that the Transmission Service Potential Exposure period is 125 days long

³⁹ See Midwest ISO's, Attachment L, Section II.B.3.

⁴⁰ Section 5.2 of Attachment X.

⁴¹ Section 5.2.3 of Attachment X.

⁴² Section 5.2.1 of Attachment X.

and is a sum of known exposure components (Invoiced Transmission Service Charges (ITSC), Calculated Transmission Service Charge (CTSC), and Maximum Estimated Transmission Exposure (METE)) that reflects the actual exposure for nonpayment or default that SPP and its members face.⁴³

49. Protestors seek a reduction in the exposure periods to limit their financial exposure. TDU Intervenors argue that estimated exposure window used in the calculation of the Transmission Service Potential Exposure should be 50 days that Midwest ISO uses. Next, TDU Intervenors argue that SPP fails to specify the number of days over which Market Participants' MEME will be calculated.⁴⁴ Specifically, they argue that the definition of Potential Exposure Window, a component used to determine the MEME, fails to provide a specific number of days and that MEME calculation should not factor any additional time for service termination. TDU Intervenors assert that the SPP Credit Policy should be clarified to provide that, as applicable to the Market

⁴³ SPP's calculation is as follows: Monthly bills are invoiced on the third business day of each month and are due fifteen days later (3+15=18). If one of the first three days of a month fall on a weekend, then the first day that invoices can be distributed is the fifth of the month, with payments due on the twentieth (5+15=20). The sum of the number of days of the previous month's bill and the 20 days of exposure during the current month not yet invoiced is 48 (20+28) to 51 (20+31) days of exposure. However, if the invoice is not paid on the due date, another 14 days are added to this total because SPP's OATT provides for a 10 business day cure period (SPP includes two weekends bringing this up to 14 calendar days). *See* SPP Tariff, § 7.3. If the invoice is not paid during that cure period, SPP may initiate termination procedures with the Commission, which may take up to 60 days. Therefore, the total of these days with potential exposure is 125 days (51 + 14 + 60).

⁴⁴ Maximum Estimated Market Exposure is the greater of:

(a) The average of the last three hundred sixty five (365) days of daily settlement activity (or if settlement activity occurred for a lesser period, the average settlement activity during such lesser period), or (b) The average of the last seven (7) days of daily settlement activity (or if settlement activity occurred for a lesser period, the average settlement activity during such lesser period).

Once the greater value is determined that value is multiplied by the number of days remaining in the Potential Exposure Window.

Section 5.2.1 of Attachment X.

Exposure calculations under section 5.2 of Attachment X, the 20 day market exposure period should be no greater than the 6-day estimated market exposure period applied in Midwest ISO.⁴⁵

50. East Texas Cooperatives argues that Transmission Service Potential Exposure calculation may be as high as 125 days under section 5.2.2 of Attachment X. It notes that, under SPP's current credit policy, the transmission exposure period is 50 days. They note that a 50-day transmission exposure period, moreover, is consistent with the *Credit Policy Statement*⁴⁶ and with the exposure periods in the credit policies of other RTOs and ISOs.⁴⁷

51. SPP argues that a 50-day window for the Transmission Service Potential Exposure similar to Midwest ISO's is not appropriate for several reasons. SPP notes that Midwest ISO acknowledged that its reduction of the time period in its exposure calculation shifted the risk to transmission owners with regard to uplift of unpaid charges and payment in full.⁴⁸ Further, SPP contends that the Midwest ISO's shorter time period reflects the Midwest ISO's shorter time to pay invoices (seven days) and the requirement that a failure to make payments when required must be remedied within two days.⁴⁹ Additionally, SPP points out that Midwest ISO's "tariff customer that does not pay a transmission service invoice when due is required to provide the transmission provider with additional financial security equal to 60 days of confirmed transmission service."⁵⁰ Therefore, SPP argues that its proposed Transmission Service Potential Exposure calculation arises out of its stakeholder process that should not be modified.

⁴⁵ Midwest ISO applies different estimated market exposure periods for different product categories, the longest being six days and the shortest two days. Section IV of Attachment L to Midwest ISO's OATT.

⁴⁶ *Credit Policy Statement* at 21 (Commission encouraging the shortening of settlement periods in order to "lower the level of financial assurances required.")

⁴⁷ *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,250 (2005). Midwest ISO's Attachment L, section IV.A.7 (50 days); New York Independent System Operator's Open Access Transmission Tariff (NYISO OATT's) FERC Electric Tariff, Attachment W, section V.A (50 days); and PJM's Attachment L, section II.C. (2 months).

⁴⁸ *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,250 at P 9 (2005).

⁴⁹ *Id.* at PP 20-21.

⁵⁰ *Id.* at P 20.

52. In its answer, SPP argues that its calculation of the MEME, an element of Market Exposure, is clear and should not be limited to a six-day period.

53. SPP argues that the Market Exposure period is not fixed and depends on the timing of the calculation. For instance, weekly bills that are invoiced each Friday for market activity settled for the previous Friday through Thursday will include seven days of IMSC. However, on any day other than Friday, there will be days when market activity has occurred but not yet been invoiced (CMSC). For example, if the exposure calculation is done on a Tuesday, the CMSC is four days of activity from the previous Friday invoicing date through Monday. Also, a cure period of three business days may need to be added, for example, if the exposure calculation is done on a Tuesday, the three business day cure period expires on the Friday after the date the exposure calculation is being made. Furthermore, SPP notes that two additional factors affect the calculation of MEME. A five day period is added because market activity is settled five days after service is taken (the operating date). For example, market activity that took place on November 7 is settled on November 12. Also, the three business day cure period must allow for weekends and holidays.

54. Therefore, SPP points to the example in the Credit Policy, where the exposure calculation takes place on a Tuesday and the Market Exposure period is 20 days: the invoiced charges of seven days (IMSC), the incurred activity which has been recognized but not yet invoiced of four days (CMSC), the cure period of four days (includes the day of the calculation plus the three business days of cure), and the five day period because market activity is settled five days after service is taken. In another example, if the exposure calculation is done on a Thursday and the previous Friday's invoice due on Wednesday has been paid, the Market Exposure totals 17 days: IMSC would be zero because the outstanding invoice from the previous Friday has been paid, CMSC would equal six days from the previous Friday through Wednesday, and MEME would be 11 days (the day the calculation is made, the three business day cure period that is now five days because it falls over a weekend, plus five days because market activity is settled five days after service is taken).

55. TDU Intervenors seek a clarification that, under sections 5.2.1 and 5.2.2 of Attachment X, all applicable components of the Total Potential Exposure calculation⁵¹ will include both charges and credits, *i.e.*, Total Potential Exposure calculations will reflect net charges. They understand the reference in section 5.2.1 to "all imbalance charges that have been invoiced but not paid" to mean net charges. This conclusion is derived from SPP's proposed section 1.3.5 of Attachment AE, which states that SPP will "render invoices to Market Participants detailing net charges or credits associated with

⁵¹ These components are IMSC, CMSC, MEME, ITSC, CTSC and METE.

the provision of Energy Imbalance Service.”⁵² TDU Intervenors suggest editing the definition of Market Settlement Charges to “all imbalance charges *or credits* that have been invoiced but not yet paid” (emphasis added to show suggested edit). Similarly, they suggest amending CMSC to “all daily settlement activity, *including charges or credits*, that have been calculated but not yet invoiced.” Finally, they state that the netting principle should apply to the MEME calculations under section 5.2.1, and ITSC and CTSC under section 5.2.2 of Attachment X.

56. SPP clarifies that its proposed Market Exposure calculations are based on netted amounts. The TDU Intervenors suggest that the components of the Total Potential Exposure calculation in sections 5.2.1, 5.2.2, and 5.2.3 of the Credit Policy should be based on both charges and credits. SPP clarifies that the components are calculated using both charges and credits, and thereby reflect the net position.

Commission Determination

57. The Commission discussed shortening settlement periods at length in its *Credit Policy Statement*. It explained that “[t]he size of credit risk exposure is, in large part, a function of the length of time between computation of the various parts of electricity transactions.”⁵³ It stated that ISOs and RTOs could minimize the exposure period and significantly reduce the credit risk to all market participants by reducing the time between when a cost is incurred and when payment is ultimately received by an ISO/RTO, *i.e.*, shortening the settlement period.⁵⁴ We noted that various ISOs/RTOs had successfully reduced their exposure periods.⁵⁵ Recently, the Commission accepted Midwest ISO’s proposal to reduce the transmission exposure period from 120 days to 50 days.⁵⁶ The Commission found that such a change would benefit transmission customers by making more credit available to conduct other market activities and increase the liquidity of the market as new participants were encouraged to transact and existing participants

⁵² SPP’s filing in Docket No. ER06-451-000 is pending before the Commission.

⁵³ *Credit Policy Statement* at 21 (Commission encouraging the shortening of settlement periods in order to “lower the level of financial assurances required.”).

⁵⁴ *Id.*

⁵⁵ Midwest ISO’s Attachment L, section IV.A.7 (50 days); NYISO’s Attachment W, section V.A (50 days); and PJM’s Attachment L, section II.C. (2 months). *See also Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,250 (2005).

⁵⁶ *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,250 at P 21.

transacted more frequently.⁵⁷ We recognize that SPP's proposal voted on by stakeholders and having different markets at different states of maturity compared to other ISOs/RTOs may require slightly different credit policies. Therefore, we will allow SPP to have a 250 day period at the outset based on their proposal (*i.e.*, two full 125-day settlement cycles), but direct SPP to shorten its settlement period to a 50-day period at the end of that time, or explain why it cannot shorten it to 50 days. In addition, we will accept SPP's proposed exposure periods under section 5.2 of Attachment X but require it to clarify, consistent with TDU Intervenor's request and examples offered by SPP in its Credit Policy and answer, that the MEME will not include any additional time period for service termination.

58. The Commission has stated that it favors netting of revenues due to a market participant against its payment obligations whenever possible.⁵⁸ Netting reduces both mutualized default risk and “[t]he amount of collateral a company must post ... because the collateral determination would often be based on a lower overall outstanding or potential obligation to an ISO/RTO.”⁵⁹ With SPP's clarification that its proposed Market Exposure Calculations are based on netted amounts, we will require SPP to amend sections 5.2.1, 5.2.2, and 5.2.3 of the Credit Policy to reflect such netting, consistent with TDU Intervenor's suggestions. Therefore, SPP is directed to edit the definition of Market Settlement Charges to “all imbalance charges *or credits* that have been invoiced but not yet paid” (emphasis added to show suggested edit); CMSC should be amended to “all daily settlement activity, *including charges or credits*, that have been calculated but not yet invoiced”; and other conforming edits should be made.

6. Unsecured Credit Floor

59. The SPP Credit Policy sets an unsecured credit floor of \$50,000 for not-for-profit entities.⁶⁰

60. Kansas Municipals argue that the \$50,000 unsecured credit floor proposed by SPP for public power entities is too low and must be increased to match the unsecured credit floor of \$250,000 in Midwest ISO's credit policy.⁶¹ Kansas Municipals note that under SPP's Credit Policy, not-for-profit entities may be required to post security and be treated

⁵⁷ *Id.*

⁵⁸ *Credit Policy Statement* at P 25.

⁵⁹ *Id.*

⁶⁰ Section 4.3.1 of Attachment X.

⁶¹ *See TEMT Order II* at P 439.

as new customers even though they have been long-standing customers of a host transmission owner, with good payment histories. Kansas Municipals argue that increasing the floor of the unsecured credit allowance for not-for-profit customers may remedy this situation.

61. SPP in its answer argues that the \$50,000 unsecured credit floor is appropriate because it was established through its open stakeholder process based on the amount of transactions over its system and the amount of risk its members should be required to tolerate. SPP notes that the Commission never directed the Midwest ISO to set a specific floor for not-for-profit entities. Therefore, SPP argues that it should not be required to grant more credit simply because another RTO/ISO in a different region, with different markets, and with different stakeholders, decided to adopt a different standard.

Commission Determination

62. We accept and suspend SPP's proposed \$50,000 unsecured credit floor for not-for-profit entities, subject to the outcome of a technical conference. While the Commission has allowed RTOs the discretion to set the credit floor, it has done so as long as it does not work to exclude other creditworthy participants.⁶² SPP's proposed \$50,000 unsecured credit floor is one-fifth of Midwest ISO's.⁶³ We have stated that while we value the stakeholder process to determine regional creditworthiness, we cannot accept any proposal from the stakeholder process that is unduly burdensome or unduly discriminatory.⁶⁴ We have also noted that despite different markets that are at different stages of maturity requiring slightly different policies, the guiding principles should be the same and the general features of RTO/ISO credit policies accepted by the Commission should serve as a necessary guide.⁶⁵ We find that SPP's proposed unsecured credit floor warrants further examination and discussion and a technical conference will provide an appropriate forum to probe this issue. The Commission finds that SPP's proposal may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept SPP's Credit Policy for filing and suspend its effectiveness for the period set forth below, and permit it to become effective, subject to refund and the outcome of a technical conference.

⁶² *TEMT II Order* at P 439 and *Compliance Order* at P 339.

⁶³ *TEMT II Order* at P 439 and nn.248-50 and *Compliance Order* at P 339 and nn.151-53 (2004) *citing to* NYISO's OATT, Attachment W, Original Sheet No. 729B.

⁶⁴ *TEMT II Order* at P 432 and *Compliance Order* at P 356.

⁶⁵ *TEMT II Order* at 430.

7. Timelines as Applied to Municipal Action

63. Kansas Municipals argue that the timelines proposed by SPP are too strict for municipal action. Section 3.2.2 of Attachment X, which allows SPP to revise its financial security requirements, gives a customer two business days from the receipt of the notice from SPP (or three business days if receipt of notice is after noon) to meet the increased financial security requirement.⁶⁶ Next, section 8.1.6 of Attachment X gives a customer three business days to cure a failure to provide required credit information and up to 5 additional business days if the customer makes a diligent effort to provide the information. Section 8.3 of Attachment X gives a customer three days after its receipt of its notice of default to cure the default.

64. They explain that municipal agencies or municipal entities often require approval from committees and cities and may need to coordinate and consult with several members, which takes longer than a few days. For instance, approval from committees and cities can be obtained at meetings but these meetings only take place once or twice a month. Kansas Municipals assert that SPP should recognize that a public power entity's failure to provide credit information or security within such tight timeframes is not necessarily a function of the entity's inability to provide such information or post such security, but rather a function of a municipal entity's inability to act on such matters prior to obtaining the requisite approvals. Therefore, they recommend that SPP modify its proposal to require "good faith" efforts by municipal entities to provide the information or additional Financial Security as soon as possible, but no later than 30 days.

65. TDU Intervenors assert that credit customers should be required to provide SPP with quarterly financial statements within 10 days rather than 5 days as currently proposed by SPP in section 3.2.4 of Attachment X. They argue that a 10-day timeframe is consistent with the timeframe imposed on customers for submission of other financial statements and is more practicable.

66. SPP states that the timelines for providing additional security and additional financial information in sections 3.2.2, 8.1.6, and 8.3 of the Credit Policy are reasonable to help protect SPP's customers from defaults and uplift. Likewise, contrary to the argument that the quarterly financial statements period should be increased from 5 days to 10 days, that limit also reflects reasonable determinations made in the stakeholder process. SPP argues that a longer time period would add risk exposure to all customers in the market. Furthermore, SPP argues that it would be inappropriate to allow municipal entities a longer time than is required of other customers. SPP notes that each municipal

⁶⁶ Failure to meet the required financial security is considered an automatic default that triggers section 8 of Attachment X, which at a minimum, suspends the customer's unsecured credit allowance for 90 days.

entity is aware of its credit limits set by SPP, and has a duty to track its own exposure and maintain creditworthiness to sustain the credit limits. Thus, SPP notes that prudent behavior by municipal entities will allow them to meet their deadlines without burdening SPP's other customers.

Commission Determination

67. As we have stated before, we have to balance decreasing the risk of other market participants' exposure in the event of default while at the same time ensuring that the credit requirements are not so stringent that they unnecessarily inhibit access to the marketplace. While shorter timeframes help decrease the risk of default and uplift by other credit customers, it may place a burden on a credit customer restricting or preventing it from participating in the market. We agree with the protestors that the timelines for providing additional security and additional financial information in sections 3.2.2, 8.1.6, and 8.3 of the Credit Policy are too stringent as applied to not-for-profit entities. We find that the unique decision-making structures for the not-for-profit entities (versus for-profit entities) must be considered and warrant different timeframes for the not-for-profit entities. We find convincing Kansas Municipals' assertion that a public power entity's failure to provide credit information or security within such tight timeframes does not mean that the entity is unable to provide such information or post such security, but rather that it cannot act on such matters prior to obtaining the requisite approvals.

68. However, we also find merit in SPP's argument that each municipal entity is aware of the credit limits set by SPP, and has a duty to track its own exposure and maintain creditworthiness to sustain the credit limits. Taking these considerations into account, we will direct SPP to modify sections 3.2.2, 8.1.6, and 8.3 of the Credit Policy to state that if a not-for-profit entity cannot provide the information or post security despite its best efforts, it can request and obtain up to two additional weeks from SPP to address the situation. However, we also expect the not-for-profit entities to take necessary steps to avoid triggering the above-mentioned sections. For example, if an irrevocable letter of credit is about to expire, the entity must have a process in place that alerts it in sufficient time to obtain the necessary approvals.

69. We direct SPP to increase the period from 5 to 10 days to provide SPP with quarterly financial statements in section 3.2.4 of Attachment X. We generally defer to the stakeholder process, however, here we will allow a longer period to increase the participation in the market by not-for-profit entities that may be creditworthy but cannot act as quickly as for-profit entities because of their decision-making structure.

70. If SPP finds that it is experiencing a high level of uplift because of these timelines for not-for-profit entities, it may submit a section 205 filing under the FPA seeking a change to these provisions.

8. Reporting Requirements

71. Golden Spread argues that the reporting requirements in SPP's filing may prove too burdensome for cooperatives and small entities.⁶⁷ For example, Golden Spread does not publish quarterly reports. It argues that SPP should be required to work with cooperatives and others in a flexible manner to enable SPP to obtain the information it needs in a timely fashion without unnecessarily burdening its customers.

72. TDU Intervenors claim that certain provisions of Attachment X grant SPP too much discretion, invite discriminatory application and are inconsistent with transparency requirements. For example, TDU Intervenors state that section 3.2.8 permits SPP to request any information at any time from a credit customer that it deems "necessary and appropriate." Similarly, section 3.3 gives SPP the right to use "any information of which it is aware concerning the Credit Customer" in setting a credit limit. TDU Intervenors argue that sections 3.2.8 and 3.3 of Attachment X should be rejected, but if they are not rejected, they should be subject to a reasonableness requirement. For instance, SPP should not seek information from a credit customer that the credit customer does not possess and cannot obtain without significant expense. TDU Intervenors argue that they do not have quarterly cash flow statements and statements of stockholder's equity that SPP requires for initial credit assessments under Attachment X, section 3.1.1.1.b.i, and therefore these financial statements should not be required by SPP.

73. SPP claims that the quarterly financial reports and the initial financial reports are necessary to keep abreast of its customers' financial status. SPP argues that it would be irresponsible to extend credit to its customers without such information. Finally, it argues that because all publicly traded entities produce such reports, it is appropriate to impose this requirement on all the other customers.

74. Golden Spread objects to the proposed section 4.3.4 of the Credit Policy because it provides SPP with discretion to modify an entity's unsecured credit allowance and/or request additional financial information at any time. Golden Spread argues that this section 4.3.4 of Attachment X should be amended so that SPP does not use its discretion to modify a credit customer's unsecured credit allowance, but instead follows the procedures accepted by the Commission and incorporated into SPP's OATT.

75. SPP argues that this discretion is essential to assure that credit extensions reflect current risk, not just historical risk, and to help protect members and customers from risk of defaults. SPP argues that it must have the ability to respond quickly to changes in customers' financial conditions in the dynamic marketplace it operates. Otherwise, SPP claims that it will not be able to respond quickly to changes in customers' financial conditions, its evaluations will not be current and it will not be able to stabilize risk by

⁶⁷ Section 3.1.1.1a.ii of Attachment X.

reducing credit or requiring timely additional security. In that case, the risk of default and uplift increases (and market liquidity can be expected commensurately to decrease). SPP notes that its rapid response allows SPP not only to decrease an entity's unsecured credit allowance, but also to increase it as well.

76. SPP notes that section 4.4 of the Credit Policy requires SPP to provide upon a credit customer's request, a written explanation of how it determined the amount of required financial security for that credit customer. SPP argues that this provision satisfies the Commission's expectation that transmission providers will "provide a customer with a written analysis setting forth how that entity applied its credit standards to that customer, if that customer is required to provide security."⁶⁸ SPP argues that requiring it to disclose all information sources it relied upon and qualitative factors it evaluated would be cost prohibitive and add delay to the credit assessment and determination process.

Commission Determination

77. We find that SPP's reporting requirements are too stringent and that SPP needs to develop more flexible requirements given that not-for-profit entities may not have the financial statements required by SPP. While we agree with SPP that it may need certain financial information and may need various types of information to keep abreast of its customers' financial status, we note that other ISOs and RTOs have provisions that allow them to obtain the necessary information without requesting the same financial statements as they get from for-profit entities. PJM and Midwest ISO recognize that for certain entities some of the standard financial statements may not be applicable and they may need to specify alternate requirements in their tariffs and contain language to this effect when discussing reporting requirements for initial and ongoing credit evaluations.⁶⁹ These tariffs also state that in credit evaluations for cooperatives, government agencies and municipalities, the RTOs may request additional information as part of the overall financial review process and consider other relevant factors in determining financial strength and creditworthiness.⁷⁰ We direct SPP to insert similar language into its credit policy. If SPP has difficulty getting the information it needs from these reports in a timely manner, it should make a filing with the Commission requesting a change in its credit policy.

⁶⁸ *Credit Policy Statement* at P 12.

⁶⁹ Midwest ISO's Attachment L, sections I.A.2.b and I.B.2.b; and PJM's, Attachment Q, Original Sheet Nos. 523, C&F.

⁷⁰ Midwest ISO's Attachment L, sections I.A.2.b and I.B.2.b; and PJM's, Attachment Q, Original Sheet Nos. 523, C&F.

78. We find that the discretionary authority afforded to SPP under Attachment X sections 3.2.8, 3.3 and 4.3.4 is warranted so that it has flexibility when conducting credit evaluations for credit customers. As noted earlier, upon SPP's denial of an unsecured credit allowance or granting an amount that is below a customer's total potential exposure, a customer can request from SPP a written explanation of how it determined a credit customer's financial security amount under section 4.4 of Attachment X. We note that the Commission has allowed PJM and Midwest ISO to retain some discretion in their credit policy to consider alternative measures to determine financial strength and creditworthiness for cooperative and municipal participants.⁷¹ However, the Commission found that such discretion is permissible so long as it does not work to exclude otherwise creditworthy participants,⁷² and we find that the same finding applies here. We will direct SPP to add language to its Credit Policy clarifying that whenever SPP has discretion, it must exercise that discretion in a not unduly discriminatory manner.⁷³

79. Moreover, we note that ISO and RTO credit policies are subject to further refinement and customers that believe they have been discriminated against in the credit scoring process have remedies available to them.⁷⁴ Under the *Credit Policy Statement*, we stated that we will consider taking action on a case-by-case basis or entertain complaints to address significant problems if the goals of transparency and the consideration of qualitative, as well as quantitative, factors are not met.⁷⁵ In addition, to the extent a transmission customer believes that a transmission provider has discriminated in its application of creditworthiness standards, that customer may contact the Commission's enforcement hotline or file a complaint pursuant to section 206 of the FPA.⁷⁶ We even suggested that we will consider standardizing credit procedures through a generic rulemaking if necessary to prevent undue discrimination.⁷⁷

⁷¹ See PJM, Attachment Q, Original Sheet No. Nos. 523 C&F; *TEMT II Order* at P 439; and *Compliance Order* at P 339.

⁷² *TEMT II Order* at P 439 and *Compliance Order* at P 339.

⁷³ See *Florida Power Corporation*, 111 FERC ¶ 61,243 at 62,121 (2005) (transmission provider must apply all tariff provisions in a fair and impartial manner that treats all customers in a non-discriminatory manner if the tariff provisions involve discretion).

⁷⁴ *Compliance Order* at P 356 citing to *Credit Policy Statement* at P 15.

⁷⁵ *Credit Policy Statement* at P 15.

⁷⁶ *Id.*

⁷⁷ *Id.*

9. Use of Rating Agency Reports

80. Section 3.1.2 of Attachment X states that “in the initial Credit Assessment and in SPP’s sole discretion thereafter, SPP will consider Rating Agency reports applicable to the Credit Customer.” Golden Spread and TDU Intervenors question why SPP proposes to use the initial reports differently than subsequent reports in the evaluation of creditworthiness, particularly SPP’s discretionary use of the subsequent reports. Golden Spread requests that the consideration of Rating Agency reports be mandatory, at least for credit customers that are rated by at least one of the Rating Agencies. TDU Intervenors state that Rating Agency reports provide an important independent check on RTO credit assessments and should be considered on an on-going basis. TDU Intervenors note that such a requirement is consistent with Midwest ISO’s Attachment L Credit Policy section I.B.1.

81. SPP argues that it should be allowed to exercise its discretion on whether to rely upon Rating Agency reports in credit assessments for two reasons. First, it argues that the lag in the issuance of assessments of rated entities by rating agencies creates the risk that the rating agency’s reports may be unreliable especially in a short-term operating environment. Therefore, it argues that it should be allowed to use other information that is more current. Second, SPP argues that because many municipalities and cooperatives are not rated entities, such discretion ensures that it will not give undue weight to such ratings to the disadvantage of these entities or automatically deem an entity without a credit rating uncreditworthy.

Commission Determination

82. We agree with the protestors and will require SPP to use a Rating Agency’s reports in its initial (section 3.1.2 of Attachment X) and subsequent evaluation of the creditworthiness of a customer. SPP shall consider the Rating Agency reports for credit customers that are rated by at least one of these agencies. We agree with TDU Intervenors that Rating Agency reports provide an important independent check on RTO credit assessments. Further, we note that such a requirement is consistent with Midwest ISO’s credit policy.⁷⁸ To the extent SPP believes that recent information conflicts with an older rating, SPP may place greater weight on the newer information.

10. Disclosure of Information

83. Kansas Municipals argue that SPP’s use of section 3.3 of Attachment X, which states that SPP will have “the right to utilize, in a Credit Assessment, any information of which it is aware concerning the Credit Customer,” must be conditioned upon a requirement that SPP verify the information with the credit customer before relying on it

⁷⁸ Midwest ISO’s Attachment L, section I.B.1.

to determine a customer's creditworthiness. Kansas Municipals and Golden Spread seek an amendment to this section requiring SPP to disclose any information and the source of the information to prevent a credit customer's creditworthiness from being affected by the use of incorrect or incomplete information. Kansas Municipals further argue that the customer should have the right to dispute the use of such information for the purpose of determining creditworthiness.

84. SPP believes that it should have discretion to use additional information in credit assessments under section 3.3 of the Credit Policy. SPP argues that requiring it to verify and disclose all additional information to each customer that it relies on, will be cost prohibitive and delay the credit assessment process, including the issuance of credit. SPP argues that the Commission has approved the use of other relevant factor categories in ISO/RTO credit determinations,⁷⁹ and noted that the use of such factors does not render a credit policy opaque. Furthermore, SPP points out that section 4.4 of the Credit Policy already provides customers with the ability to request a written explanation of how their required financial security amount was determined. Therefore, all credit customers can seek a written explanation from SPP of their credit determinations.

85. Section 8.3 sets out SPP's legal rights and remedies in the event of customer default, including an automatic suspension of a customer's unsecured credit allowance for 90 days, as well as termination of service in accordance with the OATT. Kansas Municipals note that customers do not have corresponding rights and/or remedies to dispute SPP's determinations or seek a review of SPP's determinations. Therefore, they assert that the Credit Policy should be amended to establish a process to allow credit customers to seek a review of SPP's decision that may produce unjust or unreasonable results, or may be unduly burdensome. At a minimum, Kansas Municipals assert that there should be an express provision in the Credit Policy providing customers with all the rights provided under SPP's OATT.

86. SPP argues that there is no need for explicit dispute and review rights in the Credit Policy because all credit customers have the opportunity to request a written explanation from SPP on how it determined their required financial security under section 4.4 of the Credit Policy. According to SPP, this is sufficient to ensure that SPP implements its Credit Policy in a fair and transparent process without imposing an undue burden and cost on SPP. SPP agrees that upon incorporation of the Credit Policy into the OATT, the disputes arising under it will be subject to OATT dispute resolution procedures.

⁷⁹ *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,053 at P 179, *order on reh'g*, 112 FERC ¶ 61,086 (2005).

Commission Determination

87. We deny Kansas Municipals and Golden Spread's request that we require SPP to disclose and/or verify all information used to determine their creditworthiness, because section 4.4 of Attachment X permits a credit customer to seek a written explanation of how SPP determined the customer's required amount of financial security. SPP's written explanation must contain sufficient detail to enable a credit customer to identify incorrect data that SPP may have obtained from a source other than the credit customer and used to determine a credit customer's creditworthiness. Upon the discovery of incorrect data, the credit customers can use the applicable dispute resolution procedures to dispute such data.

88. We reiterate that with regard to SPP's discretion in obtaining information under the Credit Policy, we will direct SPP to add language to its Credit Policy clarifying that whenever SPP has discretion, it must exercise that discretion in a not unduly discriminatory manner.⁸⁰

89. Given SPP's clarification that upon incorporation of the Credit Policy the disputes arising under Attachment X will be subject to the dispute resolution procedures contained in the OATT, we direct SPP to include a specific provision in Attachment X to that effect. Therefore, we direct SPP to include language in Attachment X that references the applicable dispute resolution procedures in the OATT.

11. Additional Revision

90. Section 19.4 of the Tariff should be revised to refer to "Appendix C" of the Credit Policy rather than "Attachment C" of the Credit Policy.

The Commission orders:

(A) SPP's proposed filing is hereby conditionally accepted and suspended to become effective on March 1, 2006, subject to Ordering Paragraphs (B), (C) and (D), subject to refund and subject to the outcome of the technical conference as discussed in the body of this order.

(B) SPP is hereby ordered to submit a compliance filing within 30 days of the date of this order reflecting the modifications discussed in the body of this order.

⁸⁰ See *Florida Power Corporation*, 111 FERC ¶ 61,243 at 62,121 (2005) (transmission provider must apply all tariff provisions in a fair and impartial manner that treats all customers in a non-discriminatory manner if the tariff provisions involve discretion).

(C) SPP is hereby ordered to submit OATT provisions that provide for a 50-day settlement period or an explanation why this cannot be accomplished within 250 days of the start up date of market operations, as discussed in the body of this order.

(D) The Commission's staff is directed to convene a technical conference and report the results of that conference to the Commission no later than 90 days from the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.