136 FERC ¶ 61,097
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 10, 2011

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER11-3710-000

Wright & Talisman, P.C.
Attention: Carrie L. Bumgarner
1200 G Street, NW
Suite 600
Washington, DC 20005

Dear Ms. Bumgarner:

1. On June 3, 2011, Southwest Power Pool, Inc. (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) designed to curtail non-dispatchable resources in the SPP Energy Imbalance Service (EIS) market during periods of congestion. SPP requests an effective date of December 1, 2011, but requests that the Commission act on the filing within 60 days of the filing to allow sufficient time to perform the software changes before the effective date. In this order, we reject SPP's Filing without prejudice because it is patently deficient, as discussed below.

2. SPP states that it uses certain market tools, referred to as the Market Operations System (MOS) and Curtailment Adjustment Tool (CAT), to dispatch automatically dispatchable resources to relieve congestion while non-dispatchable resources are not automatically dispatched.[1] Instead, SPP contacts non-dispatchable resources via phone to issue directives to lower their output. Consequently, SPP states that unscheduled output from non-dispatchable resources is not treated in the same manner as other scheduled and reserved uses of the transmission system during periods of congestion and may not participate in relieving congestion.

3. SPP states that its stakeholders determined that non-dispatchable resources need to be automatically curtailed during periods of congestion in order for SPP to provide efficient and comparable transmission service. SPP stakeholders approved changes to the

[1] SPP defines Non-Dispatchable Resources as: "Resources meeting any of the following conditions: Intermittent Mode, Start-Up/Shutdown Mode, Test Mode, Qualifying Facilities, exigent conditions." SPP Tariff Section 1.1.

SPP market protocols that would facilitate software changes to the CAT and MOS to enable the calculation of the relief obligation for non-dispatchable resources and automatically send to such resources the dispatch instructions.[2]

4. SPP asserts that under the proposed approach, non-dispatchable resources will be instructed to reduce output during congestion management events through the market system software, as are all dispatchable resources, rather than by phone. Non-dispatchable resources that fail to follow SPP's dispatch instructions during such events will be subject to uninstructed deviation charges except for qualifying facilities (QFs) exercising their rights under section 210 of the Public Utility Regulatory Policies Act[3] (PURPA) to deliver all of their net output to their host utilities.[4]

5. Notice of SPP's Filing was published in the *Federal Register*, 76 Fed. Reg. 36,529 (2011), with interventions and protests due on or before June 24, 2011. American Electric Service Power Corporation, Westar Energy, Inc., and NextEra Energy Resources, LLC filed motions to intervene. Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC filed a joint motion to intervene in support of the proposal and Western Farmers Electric Cooperative (Western Farmers) filed a motion to intervene out-of-time with comments in support of the filing. Acciona Wind Energy USA, LLC (Acciona) filed a motion to intervene and protest and the American Wind Energy Association and the Wind Coalition (collectively, AWEA) filed a joint motion to intervene and protest. Exelon Corporation (Exelon) filed a motion to intervene, a motion for leave to file a protest out of time, a protest, and an answer to SPP's answer. Xcel Energy Services Inc. (Xcel), on behalf of its affiliate Southwestern Public Service Corporation, filed a motion to intervene, a motion for leave to answer, and an answer. SPP also filed an answer.

6. The protesters raise several issues with SPP's Filing, and, among other things, request that the Commission reject the filing for lack of adequate evidentiary support. Other issues raised by the protesters include the possibility of undue discrimination and concerns regarding the treatment of QFs under the proposed rules for curtailment.

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[2] SPP states that the Markets and Operations Committee (MOC) approved the Market Protocol and SPP Tariff revisions at its October 12-13, 2010, meeting and the Board of Directors (Board) approved the revisions on October 26, 2010.

[3] 16 U.S.C. § 824a-3 (2006).

[4] SPP contends that this is consistent with *Southwest Power Pool*, *Inc*., 125 FERC ¶ 61,314 (2008), in which the Commission held that a QF exercising its rights under PURPA to deliver its net output to its host utility will not be subject to any deviation charges related to the EIS market.

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Western Farmers and Exelon's late-filed motions given their interest in the proceeding, the early state of the proceeding, and the absence of undue prejudice or delay.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. Accordingly, the Commission rejects Exelon's, Xcel's, and SPP's answers.

9. For the reasons outlined below, we find SPP's proposal patently deficient and will reject it without prejudice.

10. SPP explains that currently non-dispatchable resources are manually curtailed by issuing a directive via phone[5] and the proposal "would facilitate software changes to the CAT and MOS to enable the calculation of the relief obligation for Non-Dispatchable Resources and automatically send to such resources dispatch instructions to adjust output for the relief obligation."[6] SPP explains the need to automate the dispatch instructions by stating that "[s]imply put, the increase in Non-Dispatchable Resources has exacerbated the impact that manually dispatching these resources has on the SPP markets and transmission system reliability, thus necessitating the development of a more efficient and equitable process to manage Non-Dispatchable Resources during congested periods."[7] In other words, due to the increasing amount of wind generation on SPP's system, and because only the largest of such generation is typically curtailed via phone, the filing could be viewed as SPP merely proposing to automate the curtailment process for non-dispatchable generators.

11. However, SPP alludes to other things, like the curtailment priority of qualifying facilities,[8] that suggest the filing is intended to do more than merely automate the curtailment process for non-dispatchable generators. In fact, the filing could be viewed as SPP proposing to fundamentally change the transmission priorities for non-dispatchable resources. Under this interpretation of the filing, when congestion appears

[5] SPP states that, because the process is not automated, it typically curtails only the largest non-dispatchable generator affecting the constraint. SPP Transmittal Letter, n. 3.

[6] SPP Transmittal Letter at 4-5.

[7] *Id.*, at 4.

[8] SPP Transmittal Letter at 5.

on the system, instead of letting the market economically relieve the constraint, SPP would curtail all non-firm resources even if these resources are the lowest cost generators affecting the constraint. Meanwhile, other traditional generators that self-schedule would not be subject to the same process because they are fully dispatchable.

12. Thus, the proposal and the ramifications of the proposal are not clear from the filing. SPP filed Tariff pages that merely reflect the definition of non-dispatchable resources and revisions to the uninstructed deviation charge section to allow SPP to assess the charge on such resources. SPP did not file testimony or supporting exhibits to provide an explanation of how the proposed Tariff solution remedies the stated problem. The protesting parties also note many aspects of SPP's proposal that are unexplained.

13. When describing the proposal to automate the dispatch instructions for non-dispatchable generators, SPP appears to be describing a situation of automating the issuance of curtailment instructions. However, at times SPP refers to both "automatic curtailment" and "automatic dispatch" of non-dispatchable resources, which may be construed differently. Further, SPP does not explain what non-dispatchable resources can do to avoid the uninstructed deviation charge or whether such resources can become dispatchable. In addition, SPP has not identified the additional telemetry equipment and other requirements it seeks to impose on non-dispatchable resources or whether non-dispatchable resources are capable of meeting any such requirements.

14. SPP states that during periods of congestion, non-dispatchable resources will be directed to operate at or below an adjusted maximum output level. In the case of a non-dispatchable QF exercising its PURPA rights to deliver energy to its host utility, unscheduled output will be curtailed proportionately at the equivalent of a North American Electric Reliability Corporation (NERC) Transmission Loading Relief (TLR) Level 3 priority. While SPP refers to TLR Level 3 curtailments with respect to QFs, SPP does not explain whether the curtailment priority would apply to non-QFs and the effect of the proposal on any other transmission service priorities. In other words, SPP has not provided sufficient detail with respect to which resources will be curtailed. Additionally, without offering any explanation or support, SPP appears to propose to curtail non-dispatchable resources immediately when congestion occurs, rather than first economically redispatching available resources. SPP filed limited Tariff revisions and reserves the details of the proposal for the market protocols, even though the proposal appears to significantly affect transmission priorities as well as the operation of SPP's EIS market.

15. Additionally, SPP has not explained how the proposal to curtail QFs selling energy on an as-available basis pursuant to PURPA is consistent with the Commission's PURPA regulations. As noted, SPP proposes to curtail as-available QFs during TLR Level 3[9] events, under which non-firm transmission service is curtailed to allow higher priority transactions to continue. However, section 307(b) of the PURPA regulations provides that QF sales can only be curtailed in limited circumstances, such as a system emergency,[10] which is defined in section 101(b)(4) of the PURPA regulations as "a condition . . . likely to result in imminent significant disruption of service to customers or imminently likely to endanger life or property."

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[9] NERC TLR Procedures include six levels of TLRs, TLR Levels 1 through 6. TLR Level 1 is the lowest and TLR Level 6 is the highest. TLR Level 1 is described in the NERC Procedures as "the transmission system is secure." TLR Level 3 includes redispatch and reallocation of non-firm service to allow higher priority service to continue. TLR Level 5 is the last set of actions taken before entering into a transmission system emergency and includes curtailment of service to avoid entering into a system emergency. TLR Level 6 is described as a system emergency that requires actions such as system voltage reduction and customer load shedding.

[10] The system emergency exemption in section 307(b) of the PURPA regulations, 18 C.F.R. § 292.307(b) (2011), is one of three exemptions from the PURPA mandatory purchase requirement; the other two are the negative avoided-cost circumstances described in section 304(f), 18 C.F.R. § 292, 304(f) (2011), and a ruling pursuant to section 210(m) of PURPA, 16 U.S.C. § 824a-3(m) (2006), that QFs within the service territory of a requesting utility have nondiscriminatory access to markets that meet one of the three statutory market standards for relief from the PURPA mandatory purchase obligation.

The Commission addressed an application by utilities within SPP to terminate their obligation under PURPA to purchase from QFs larger than 20 MW in *Xcel Energy Services, Inc.*, 122 FERC ¶ 61,048 (2008), *order on reh'g*, 124 FERC ¶ 61,073 (2008) (terminating the obligation of Oklahoma Gas and Electric Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, but declining the request of Southwestern Public Service Company (SPS) because QFs within SPS's service territory do not have nondiscriminatory access to SPP markets due to transmission constraints).

<u>The Commission orders</u>:

SPP's Filing is hereby rejected, without prejudice, as discussed in the body of the order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.