

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. RT04-1-003  
ER04-48-003

ORDER ON REHEARING AND DIRECTING COMPLIANCE FILING

(Issued February 11, 2005)

1. This order addresses requests for rehearing of the Commission's order issued in this proceeding on July 2, 2004 (July 2 Order),<sup>1</sup> regarding SPP's first compliance filing submitted in furtherance of its application for regional transmission organization (RTO) status. As discussed below, we will grant in part, deny in part, and dismiss as moot in part the rehearing requests, and direct SPP to submit a further compliance filing.
2. This order benefits customers by encouraging continued development of cost-effective wholesale regional power markets and further development of RTOs.

**Background**

3. By order issued February 10, 2004 (February 10 Order),<sup>2</sup> the Commission conditionally granted SPP's application for recognition as an RTO. Pursuant to Order Nos. 2000 and 2000-A,<sup>3</sup> we directed SPP to make additional tariff, organizational and other changes prior to our granting SPP RTO status. These changes primarily related to SPP's scope and configuration, independence and governance, operational authority,

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<sup>1</sup> *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,003 (2004).

<sup>2</sup> *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh'g*, 109 FERC ¶ 61,010 (2004).

<sup>3</sup> *Regional Transmission Organizations, Order No. 2000*, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 31,226-27 (1999), *order on reh'g, Order No. 2000-A*, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 & 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

grandfathered agreements and bundled retail load, available transmission capability (ATC) calculations, market monitoring unit, and transmission planning and expansion responsibilities.

4. The July 2 Order addressed SPP's compliance filing to the February 10 Order. We recognized that SPP had made significant progress toward satisfying the prerequisites for RTO status.<sup>4</sup> However, we directed SPP to make further filings in order to be fully compliant with the February 10 Order and achieve recognition as an RTO.

5. Southwest Industrial Customer Coalition and the New Mexico Attorney General (collectively, Southwest Industrial), Golden Spread Electric Cooperative, Inc. (Golden Spread), Sunflower Electric Power Corporation (Sunflower Electric), and East Texas Cooperatives<sup>5</sup> each filed a timely request for rehearing of the July 2 Order.

6. Relevant portions of the July 2 Order and corresponding rehearing arguments are discussed, by issue, below

### **Procedural Matters**

7. Midwest Energy, Inc. (Midwest Energy) submitted an answer to East Texas Cooperatives' rehearing request. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits answers to rehearing requests. Accordingly, we reject Midwest Energy's answer.

### **Members Committee**

#### **July 2 Order**

8. In the July 2 Order, we recognized SPP's efforts in amending its Members Committee structure but found that it did not do so in a manner consistent with *WestConnect*,<sup>6</sup> as we had directed in the February 10 Order. In *WestConnect*, two of the eight proposed sectors were earmarked for end-use customers (one for "large retail customers" and one for "small retail customers"). These seats were in addition to one of the two sectors that the Commission required to be added, i.e., public interest organizations, which included consumer advocates and other entities that are largely

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<sup>4</sup> July 2 Order at P 3.

<sup>5</sup> East Texas Cooperatives include: East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

<sup>6</sup> *Arizona Public Service Co.*, 101 FERC ¶ 61,033 at P 44, *order on reh'g*, 101 FERC ¶ 61,350 (2002) (*WestConnect*).

representative of end-use customer interests.<sup>7</sup> Therefore, we required SPP to add two classes to its Members Committee to ensure that all stakeholders are represented, including one seat for large retail customers and one seat for small retail customers.<sup>8</sup>

9. However, we rejected Southwest Industrial's argument that end-users should be exempt from certain fees or requirements, finding that it would be unfair and discriminatory. We further noted that financial obligations are essential to RTO membership and that, in any case, Southwest Industrial had not supported its claim that it would be double-charged for certain SPP expenses.<sup>9</sup>

### **Request for Rehearing**

10. On rehearing, Southwest Industrial reiterates its argument that certain fee provisions in SPP's Bylaws and Membership Agreement would be unjust and unreasonable as applied to end-users and that end-users should be exempt from such financial responsibilities.<sup>10</sup> Southwest Industrial seeks Commission clarification that allocation of fees, expenses, and other financial exposure to SPP Members based exclusively upon a participant's wholesale transactions is consistent with cost-causation principles. Otherwise, Southwest Industrial contends, retail customer Members of SPP will be exposed to double-payment of SPP financial obligations and find it extremely difficult to secure corporate clearance to participate in SPP, and SPP ultimately will continue to be without retail customer Members.

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<sup>7</sup> *WestConnect*, 101 FERC at P 56.

<sup>8</sup> July 2 Order at P 35.

<sup>9</sup> *Id.* at P 36 and n.26.

<sup>10</sup> Southwest Industrial states that section 8.3 of the Bylaws provides for a direct per capita assignment of at least a share of NERC expenses to all Members. Southwest Industrial states that retail customers' load is included in the Net Energy for Load allocator for load-serving entities (LSEs), and therefore, retail customers are wrongly exposed to double-payment of costs. Southwest Industrial further argues that section 8.7 of the Bylaws establishes an exit fee for any withdrawing Member of the Membership Agreement. Southwest Industrial also points to section 4.2.2 of the Membership Agreement, which requires withdrawing Members to pay a share of SPP's long-term obligations. Southwest Industrial seeks Commission clarification that these types of exit fees should not apply to retail customers that do not engage in wholesale market activities and do not purchase transmission service from SPP. More specifically, Southwest Industrial states that any exit fee should not include an allocator that assesses costs on a per capita basis to all SPP Members.

11. Southwest Industrial further argues that the Commission has approved far less cumbersome membership requirements for other independent system operators (ISO) and RTOs, which exempt or partially exempt retail customers from certain participation costs.<sup>11</sup> Southwest Industrial argues that the July 2 Order departs from this precedent and erroneously places the burden on Southwest Industrial to demonstrate that it would be double-charged. Southwest Industrial argues that, since SPP proposed to add retail customers to its Members Committee, section 205 of the Federal Power Act (FPA)<sup>12</sup> requires SPP to demonstrate that no other corresponding changes are warranted.

### **Commission Determination**

12. We will grant in part and deny in part Southwest Industrial's request for rehearing on this issue. We first emphasize that, while the Commission might have approved other RTO or ISO agreements that allow for fee exemptions, the Commission did not mandate specific exemptions, and we decline to do so here. Moreover, Southwest Industrial erroneously argues that the FPA requires SPP to show that no other corresponding tariff changes, such as fee exemptions, are warranted, in addition to supporting revisions SPP affirmatively seeks. The FPA has no such requirement. Rather, because the Membership Agreement has been on file with the Commission since at least year 2000<sup>13</sup> (and providing specific exemptions for end-users is not a prerequisite to RTO status), the burden is on Southwest Industrial to properly seek and support revisions not sought by SPP.<sup>14</sup> Southwest Industrial has not provided any evidence that the financial obligations about which it complains are excessive or will preclude end-users from joining SPP.

13. Notwithstanding the foregoing, we emphasize that the February 10 and July 2 Orders required SPP to structure its Members Committee in a manner consistent with *WestConnect*. While the Commission did not require any specific fee exemptions in that case, we did require *WestConnect* to provide waivers or reductions of application or annual membership fees on a non-discriminatory, case-by-case basis for legitimate public interest groups (which may include end-users) upon the written request of such entities.<sup>15</sup> Consistent with *WestConnect* and our prior orders in this case, we will direct SPP to revise its Bylaws and Membership Agreement to provide for the same process.

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<sup>11</sup> Southwest Industrial provides a summary of relevant provisions pertaining to the New York Independent System Operator, Inc. (NYISO); PJM Interconnection, LLC (PJM); the Midwest Independent Transmission System Operator, Inc. (Midwest ISO); and New England Power Pool (NEPOOL).

<sup>12</sup> 16 U.S.C. § 824d (2000).

<sup>13</sup> See *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,895 (1999).

<sup>14</sup> See 16 U.S.C. § 824e (2000).

<sup>15</sup> *WestConnect*, 101 FERC at P 26.

## **Grandfathered Agreements (GFAs) and Bundled Retail Load**

### **July 2 Order**

14. The Commission found that SPP had substantially complied with the February 10 Order's requirement that all load be made subject to the SPP OATT. However, we directed SPP to remove any exceptions to such requirement.<sup>16</sup>

15. We further found that SPP had not fully complied with the requirement that it disclose the magnitude of its grandfathered wholesale and bundled retail load, the percentage of loads that will be to the total load served under the SPP OATT, and a schedule for converting its GFAs to the SPP OATT, consistent with the guidance provided to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). We also stated that we would require SPP, as it commits to do, to follow our guidance in Midwest ISO orders to develop a mechanism to convert GFAs to the SPP OATT to ensure efficient, non-discriminatory market operations.<sup>17</sup>

### **Request for Rehearing**

16. Sunflower Electric seeks clarification that the Commission has not prejudged the issue of whether conversion is required. Sunflower Electric states that SPP and its stakeholders have not yet decided what type of longer-term market is appropriate for the region and that the Commission should not require conversion, much less expedited conversion, without a clearer picture of market structure. In addition, Sunflower Electric asserts that the February 10 Order is inconsistent with Commission statements recognizing legitimate interests of contract parties under existing agreements.<sup>18</sup>

17. East Texas Cooperatives argue that several of their contracts should be included in SPP's list of GFAs (set forth in Attachment W). They contend that, under SPP's OATT, GFAs include transmission under bundled wholesale contracts, and that many of their contracts fall within that category.

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<sup>16</sup> July 2 Order at P 75.

<sup>17</sup> *Id.* at P 76.

<sup>18</sup> Sunflower Electric cites *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 at P 46 (2004); *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,196 at P 64 (2003); Order No. 2000.

18. East Texas Cooperatives further assert that the Commission should ensure that SPP develops a mechanism to convert GFAs to the SPP OATT. Noting that the February 10 Order required such a mechanism, East Texas Cooperatives challenge as inadequate SPP's statement that conversion or elimination of GFAs will occur in accordance with the terms of individual agreements, as well as SPP's statement that it will continue discussions with its members on this issue.

### **Commission Determination**

19. We will deny requests for rehearing on this point. As an initial matter, Sunflower Electric's arguments are beyond the scope of rehearing of the July 2 Order and should have been raised in a request for rehearing of the February 10 Order. Sunflower Electric did not seek rehearing of that order and may not circumvent the FPA and Commission regulations by seeking redress now. Nevertheless, we note our statement in the February 10 Order that, while we "encourage transmission customers with grandfathered contracts to convert to direct service under the SPP OATT . . . we are not requiring such conversion nor are we abrogating any contracts."<sup>19</sup>

20. With regard to East Texas Cooperatives' argument that certain contracts should have been listed on Attachment W, we note that in the July 2 Order, we found that Attachment W was inadequate and that SPP had not fully complied with the requirement that it disclose the magnitude of its grandfathered wholesale and bundled retail load. In response, SPP filed a second compliance filing that we addressed by order issued October 1, 2004 (October 1 Compliance Order).<sup>20</sup> Appendix 6 to SPP's second compliance filing provided a summary of individual GFAs (as described in the October 1 Compliance Order<sup>21</sup>), several of which listed an East Texas Cooperative member as either a buying or selling party. East Texas Cooperatives did not protest that filing or seek rehearing of the October 1 Compliance Order accepting Appendix 6. Under these circumstances, we believe that East Texas Cooperatives' arguments on this point are moot.

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<sup>19</sup> February 10 Order at P 108.

<sup>20</sup> *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004).

<sup>21</sup> October 1 Compliance Order at P 39.

21. We will deny rehearing with regard to East Texas Cooperatives' argument that SPP should have developed a specific plan for converting GFAs to the SPP OATT. The Commission addressed a similar argument in the July 2 Order. As we there specified, we have not required SPP to adopt a specific plan for converting GFAs to its OATT.<sup>22</sup> SPP has committed to follow our guidance in Midwest ISO orders to develop a mechanism, and, as we stated in the July 2 Order, we will hold it to that commitment.<sup>23</sup>

### **Compensation for Customer-Owned Transmission Facilities**

#### **July 2 Order**

22. In the July 2 Order, we reiterated the February 10 Order's requirement that SPP submit a timetable for resolution of issues regarding the inclusion of more than one transmission owner's facilities in a single transmission pricing zone, as well as distribution of revenues by SPP in such shared zones. While we had directed SPP to include in its compliance filing a timetable for resolving such concerns, SPP had not submitted the timetable, and we redirected it to do so.<sup>24</sup>

#### **Rehearing Request**

23. East Texas Cooperatives argue that, if SPP submits a timetable and the Commission concludes that it satisfies the February 10 and July 2 Order, the Commission should ensure that SPP adheres to it. East Texas Cooperatives further state that, if SPP's stakeholders cannot come to a consensus on a definition of transmission and compensation for customer-owned facilities through the stakeholder process by a date certain, SPP's independent Board of Directors or the Commission should decide the definitions.

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<sup>22</sup> July 2 Order at P 76.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at P 78.

### **Commission Determination**

24. We will deny rehearing on this issue. SPP ultimately submitted the timetable, and we accepted it in the October 1 Compliance Order.<sup>25</sup> We further directed SPP to report to the Commission if the Board of Directors does not take action on a proposal for resolving customer compensation issues by July 31, 2005, the date by which SPP expected such action to occur.<sup>26</sup> Given SPP's statement and our directive in the October 1 Order, we find East Texas Cooperatives' concerns to be premature.

### **Transmission Planning and Expansion**

#### **July 2 Order**

25. In the July 2 Order, the Commission noted its earlier finding (in the February 10 Order) that SPP's previously proposed Attachment O (setting forth its transmission planning and expansion procedures) failed to provide SPP with the authority to independently oversee the regional transmission plan and solely determine the priority of transmission planning projects that address reliability and economic needs. We found in the July 2 Order that SPP's second proposed Attachment O, as well as its timeline depicting the specific milestones in the two-year expansion plan, satisfied the February 10 Order's requirement on this issue. We noted that SPP's planning framework provides that SPP's planning staff will develop the regional transmission expansion plan consistent with good utility practice.<sup>27</sup>

26. We rejected concerns that SPP had made only minor modifications to Attachment O, and that the underlying procedures that originally gave rise to Commission concerns about the absence of SPP control remained. We found that, through its independent Board, SPP will exercise sufficient oversight over transmission planning activities. As we stated in the July 2 Order, while section 1.0 of Attachment O allows TOs to develop their own transmission planning criteria, their criteria must conform to SPP Criteria and NERC Planning Standards. SPP has made it evident that its staff is vested with planning responsibility, independent of the TOs. Attachment O provides that the input of TOs and other stakeholders will be considered in the planning process, but will not impede SPP's ability to provide non-discriminatory transmission planning criteria.<sup>28</sup>

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<sup>25</sup> October 1 Compliance Order at P 57.

<sup>26</sup> *Id.*

<sup>27</sup> July 2 Order at P 114.

<sup>28</sup> *Id.* at P 115

27. In addition, we found that Attachment O addressed Golden Spread's protest that only SPP members, and not customers, may initiate an expansion plan. As we stated in the July 2 Order, Attachment O sets forth the process for determining the need for new facilities, while including customers, members, and other entities that may be impacted. Attachment O states that a review can be made by the Transmission Provider, any SPP Member, or can be initiated by any SPP organizational group. Furthermore, if the TO is unable to determine alternatives, then SPP can establish a task force that includes facilities that might be affected by the limiting facility. We further noted that SPP has initiated regional transmission planning meetings.<sup>29</sup>

### **Request for Rehearing**

28. On rehearing, Golden Spread reiterates its argument that Attachment O, as accepted in the July 2 Order, fails to address the Commission's concerns identified in the February 10 Order. Golden Spread also reiterates its concern that Attachment O (and specifically, section 3.0) does not appear to provide for parties other than TOs to propose solutions when a need for a new or upgraded facility exists. Golden Spread argues that the Commission should require SPP to amend Attachment O to permit customers to propose their own solutions, rather than limiting them to initiate reviews of plans submitted by TOs.

29. Sunflower Electric asserts that the revised Attachment O fails to give SPP final approval right for transmission facilities construction plans developed by SPP TOs, and therefore, fails to comply with the February 10 Order. Sunflower Electric contends that the July 2 Order's failure to address this issue could permit overlapping and parallel plans by SPP and the individual TOs. Sunflower Electric seeks insertion of an explicit approval right in Attachment O.

### **Commission Determination**

30. We find that Golden Spread and Sunflower Electric have raised no new issues on rehearing that were not addressed in July 2 Order. As we found in the July 2 Order (summarized above), Attachment O vests SPP with sufficient independence and authority over transmission planning and expansion, in a manner consistent with the February 10 Order and Order No. 2000. Further, customers may participate in the planning and expansion process by providing stakeholder input, and nothing prevents them from working in concert with SPP or relevant TOs to develop plans for new or upgraded facilities.

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<sup>29</sup> *Id.* at P 116.

## **Regional State Committee (RSC)**

### **July 2 Order**

31. We found that SPP properly modified its Bylaws to define the “primary responsibilities” of the RSC, exactly and only as described in the February 10 Order.<sup>30</sup> We found that while section 7.2 of the Bylaws retained language that the RSC “shall be established to provide both direction and input on all matters pertinent to the participation of Members in SPP,” that language was not inconsistent with our directive that SPP modify its Bylaws to incorporate only the primary responsibilities we delineated. We stated that, like any other market participant, the RSC should provide direction and input into the SPP process.<sup>31</sup>

### **Request for Rehearing**

32. East Texas Cooperatives seek Commission clarification that, other than directing SPP to make section 205 filings relaying RSC proposals on issues on which it has “primary responsibility,” the RSC may direct no further actions of SPP. East Texas Cooperatives seek further clarification that the Commission retains the final authority to approve, deny, or modify any proposal filed at the behest of the RSC.

### **Commission Determination**

33. We will grant rehearing on this issue to the extent that we have previously provided clarification. Subsequent to East Texas Cooperatives’ request for rehearing of the July 2 Order, the Commission clarified in an October 1, 2004 order<sup>32</sup> that SPP voluntarily agreed to file with the Commission, pursuant to section 205, certain regional

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<sup>30</sup> In the February 10 Order at P 218, we directed SPP to modify its Bylaws to incorporate only certain functions. More specifically, we stated that the RSC should have primary responsibility for determining regional proposals and the transition process in the following areas: (1) whether and to what extent participant funding would be used for transmission enhancements; (2) whether license plate or postage stamp rates will be used for the regional access charge; (3) financial transmission right (FTR) allocation where a locational price methodology is used; and (4) the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers’ existing firm rights. We stated that, if the RSC reaches a decision on the methodology that should be used, SPP would file this methodology pursuant to section 205 of the FPA, and that SPP can also file its own proposal under section 205.<sup>30</sup>

<sup>31</sup> July 2 Order at 128.

<sup>32</sup> *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,010 (2004) (October 1 Rehearing Order).

proposals that the RSC may develop.<sup>33</sup> Because SPP agreed to file these proposals, we found that “the February 10 Order language on this issue no longer governs.”<sup>34</sup> Furthermore, we emphasized that, like any proposal filed pursuant to section 205, proposals filed by SPP, whether on its own accord or voluntarily at the behest of the RSC, are subject to Commission review and disposition.<sup>35</sup>

### **Postage Stamp Rates**

#### **July 2 Order**

34. In the July 2 Order, we declined to address arguments calling for a transition to a postage-stamp rate design, noting that they do not respond to the issue of whether SPP complied with the February 10 Order.<sup>36</sup>

#### **Request for Rehearing**

35. Sunflower Electric again urges the Commission to encourage migration of SPP to a postage stamp rate design.

#### **Commission Determination**

36. We will deny rehearing on this issue, for the same reason cited above.

#### **The Commission orders:**

(A) Southwest Industrial’s, Golden Spread’s, East Texas Cooperatives’ and Sunflower Electric’s request for rehearing are granted in part, denied in part, and dismissed as moot in part, as discussed in the body of this order.

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<sup>33</sup> *Id.* at P 92.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at P 91.

<sup>36</sup> July 2 Order at P 19.

(B) SPP is hereby directed to submit a compliance filing revising its Bylaws and Membership Agreement, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.