

123 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southwest Power Pool, Inc.

Docket No. OA08-5-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued May 16, 2008)

1. On October 11, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP) submitted its compliance filing as required by Order No. 890.² In this order, we will accept SPP's filing, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC), open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have been approved as independent system operators (ISO) or regional transmission organizations (RTO) were directed to submit, within 210 days from publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007), section 206 compliance filings that contain the non-rate

¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

terms and conditions set forth in Order No. 890 or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission also aligned the compliance filing deadlines for ISOs and RTOs and their transmission-owning members and required public utility transmission owners whose transmission facilities are under the control of RTOs or ISOs to make any necessary tariff filings required to comply with Order No. 890 within 210 days after the publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007).³

II. SPP's Compliance Filing

4. In its October 11, 2007 compliance filing, SPP states that it has incorporated the majority of the revisions adopted in Order No. 890 into its OATT. SPP notes that several of the SPP tariff provisions include previously accepted variations that either require slight modification in order to incorporate Order No. 890 changes, or are not substantively affected by the incorporation of the revisions. SPP states that it has incorporated the Order No. 890 changes to the extent feasible in those sections. SPP also states that there are several revisions to the Order No. 890 *pro forma* OATT that SPP does not propose to implement because the applicable provisions in SPP's OATT are consistent with or superior to the Order No. 890 *pro forma* OATT revisions.⁴ In addition, SPP has submitted a revised Attachment C in its compliance filing. SPP requests an October 11, 2007 effective date.

III. Notice of Filing and Responsive Pleadings

5. Notice of SPP's filing was published in the *Federal Register*, 72 Fed. Reg. 59,282-83 (2007), with interventions and protests due on or before November 1, 2007. Southwestern Power Administration, American Electric Power Service Corporation and Xcel Energy Services, Inc. filed timely motions to intervene. Missouri Joint Municipal Electric Utility Commission (MJMEUC), the Oklahoma Municipal Power Authority (OMPA), and the West Texas Municipal Power Agency (WTMPA) (collectively, TDU Intervenors) filed a timely motion to intervene and protest, and Redbud Energy LP (Redbud) filed a timely motion to intervene and limited protest. On November 16, 2007, SPP filed an answer to Redbud's limited protest and on November

³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 157, 161.

⁴ Specifically, SPP has not revised its OATT to adopt the Order No. 890 *pro forma* OATT revisions for conditional firm point-to-point service, planning redispatch point-to-point service, energy and generator imbalance services and unreserved use penalties. Conditional firm point-to-point service (hereinafter conditional firm service) and planning redispatch point-to-point service (hereinafter planning redispatch service) are options available under long-term firm point-to-point service under the Order No. 890 *pro forma* OATT.

20, 2007, American Wind Energy Association (AWEA) filed a motion to intervene and protest out of time.

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), 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) (2007), the Commission will grant AWEA's late-filed motion to intervene given its interest in the proceeding, the early state of the proceeding, and the absence of undue prejudice or delay.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

8. We accept SPP's filing and require SPP to make a further compliance filing, as discussed below.

1. Conditional Firm Service

a. SPP's Filing

9. In its compliance filing, SPP states that it did not adopt the language of section 15.4(c)⁵ of the Order No. 890 *pro forma* OATT implementing conditional firm service. SPP asserts that RTOs and ISOs with real-time energy markets are not required to adopt the provisions for conditional firm service.

b. Protests and Answer

10. Redbud and AWEA argue that the rationale the Commission used to exempt RTOs and ISOs from offering conditional firm service does not apply to SPP's energy market. Redbud states that, under Order No. 890, RTOs need not provide conditional firm service if they operate real-time energy markets with certain key attributes that make conditional

⁵ Section 15.4 of the *pro forma* OATT is entitled "Obligation to Provide Transmission Service that Requires Expansion or Modification of the Transmission System, Redispatch or Conditional Curtailment."

firm service unnecessary (i.e., primarily the use of bid-based locational pricing and financial transmission rights (FTRs) to address transmission congestion instead of physical curtailment). Redbud asserts that these RTO markets employ market-based congestion management systems that allow customers to buy point-to-point and network transmission service through transmission congestion by means of locational marginal pricing (LMP). AWEA and Redbud state that sales in SPP's imbalance market do not require prior reservation of transmission service and that congestion in that market is managed through use of locational imbalance prices. However, Redbud asserts that unlike other RTO markets, SPP's market is limited to imbalance energy, the vast majority of firm sales in SPP require the prior reservation of firm transmission service, and congestion is managed through Transmission Loading Relief (TLR) procedures, which rely on physical curtailment. AWEA argues that while firm sales in the SPP market rely on firm transmission service and new wind resource development requires long-term transmission service, long-term transmission service is unavailable in most parts of SPP's service territory without significant system upgrades.

11. In addition, Redbud and AWEA state that because SPP does not offer FTRs as a way for new developers to access transmission capacity and pay their way through congestion, conditional firm service is essential to allow customers to make firm sales without incurring the delay and expense of transmission upgrades. According to AWEA, the lack of conditional firm service in SPP maintains a barrier to new market entrants into SPP's service territory. Both AWEA and Redbud request that the Commission order SPP to use the SPP stakeholder process to develop tariff revisions adopting conditional firm service in its OATT.

12. In its answer, SPP states that under Order No. 890 it is not required to adopt conditional firm service because it is an RTO and its Energy Imbalance Services Market (EIS Market) operates in real-time. SPP also states that its EIS Market is not as limiting as Redbud and AWEA assert. SPP states that customers may buy their way through transmission congestion by paying locational imbalance prices, which is a process that does not require prior reservation of transmission service. SPP also notes that generators like Redbud have additional options in that they may offer their entire output into the SPP EIS Market, pursuant to Attachment AE (Energy Imbalance Service Market).

c. Commission Determination

13. In Order No. 890, the Commission found that it would be inappropriate to require RTOs and ISOs with real-time energy markets to adopt the provisions for conditional firm service because customers transacting through RTOs and ISOs are able to buy through transmission congestion in the RTOs' real-time energy markets and need no prior reservation to access transmission.⁶ The Commission stated that voluntary curtailment in

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 992.

order to access transmission is thus not an attractive option given the range of options available for customers transacting in RTOs and ISOs. Accordingly, the Commission found no need to reform existing RTO and ISO procedures to satisfy concerns underlying the adoption of the conditional firm service option.⁷

14. We reject AWEA and Redbud's arguments that SPP should be required to offer conditional firm service. As noted above, in Order No. 890 the Commission found that customers transacting within RTOs and ISOs are able to buy through transmission congestion in the RTOs' real-time energy markets and need no prior reservation to access transmission. Further, in RTOs and ISOs with FTRs, conditional firm service may disrupt the distribution of these rights. Therefore, the Commission found it inappropriate to require RTOs and ISOs with real-time energy markets to adopt the provisions for conditional firm service. Here, SPP explains that in its EIS Market, customers may buy their way through transmission congestion through the use of locational imbalance services, which do not require prior reservation of transmission service. Further, both AWEA and Redbud acknowledge that sales in SPP's EIS Market do not require prior reservation of transmission service and congestion in that market is managed through use of locational imbalance prices.⁸

15. Moreover, we reject as unsubstantiated AWEA's argument that the lack of conditional firm service in SPP maintains a barrier to new market entrants. In its answer, SPP affirms that there are additional options available for customers to access transmission service such as by offering their output into the EIS Market. Accordingly, we reject the protesters' arguments and we will not require SPP to adopt the language of section 15.4(c) of the *pro forma* OATT implementing conditional firm service.

2. Planning Redispatch

a. SPP's Filing

16. In its compliance filing, SPP states that it will not adopt the planning redispatch revisions of sections 13.5 (Transmission Customer Obligations for Facility Additions or Redispatch Costs) or 15.4(b) of the Order No. 890 *pro forma* OATT, including the requirement that transmission providers make available to customers who choose not to commit to system upgrades the option to receive planning redispatch service subject to a biennial reassessment. According to SPP, it already provides for planning redispatch in conjunction with its existing Aggregate Transmission Service Study (ATSS) Procedures under Attachment Z of its OATT and these procedures are consistent with or superior to the planning redispatch service as outlined in Order No. 890.

⁷ See *id.* P 992.

⁸ AWEA Protest at 3; Redbud Protest at 3.

17. SPP states that its ATSS procedures use planning redispatch as a time-limited bridge to provide transmission service in anticipation of system upgrades for which customers have committed to pay. SPP explains that it analyzes all long-term transmission service requests in accordance with its ATSS process and then assesses the redispatch options for the entire group. SPP states that this aggregate process is designed to determine the optimal set of solutions to reduce the overall cost for the system and is preferable to redispatch analysis by individual customers because it provides for better analysis of overall system conditions. Further, SPP states, in the ATSS process the costs of all of the upgrades are allocated to all customers in proportion to the positive incremental power flow impacts of the requested service; therefore, it is unlikely that one customer will be required to pay for an upgrade that will benefit others. Additionally, SPP states that in its order accepting SPP's Attachment Z and in Order No. 890 the Commission recognized the benefits of aggregate studies.⁹ SPP argues that allowing an individual customer to opt out of the ATSS and receive individual planning redispatch service with no commitment to upgrade the system would significantly reduce the value of SPP's ATSS process.

18. While it does not propose to implement the revisions to sections 13.5 and 15.4(b) of the *pro forma* OATT, SPP states that it has incorporated a modified version of the Order No. 890 revisions to section 19.1 (Notice of Need for System Impact Study). Specifically, SPP states that it has adopted the Order No. 890 *pro forma* OATT language relating to a customer's right to decline to have its system impact study include a redispatch option, but that it has limited this provision to short-term requests. SPP states that, in the context of its ATSS process, it would be unproductive to allow a redispatch option to be excluded from system impact studies as part of the ATSS process. In addition, SPP states that it has incorporated the revisions to section 27 (Compensation for New Facilities and Redispatch Costs) and similar revisions to section 13.5 to remove the economic consideration of the cost of redispatch versus upgrades when assessing the redispatch service. SPP concludes that its existing tariff provisions, as modified by its compliance filing, are consistent with or superior to the *pro forma* OATT provisions.

b. Commission Determination

19. In Order No. 890, the Commission directed RTOs and ISOs that already provide planning redispatch pursuant to section 13.5 of the *pro forma* OATT to modify the relevant provisions of their tariffs consistent with the directives of Order No. 890.¹⁰ For the reasons discussed below, the Commission will accept SPP's proposal not to include

⁹ SPP Filing at 4 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370; *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,028, at P 16 (2005)).

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 993.

the revisions to sections 13.5 and 15.4(b) of the *pro forma* OATT and to modify the revisions to section 19.1.

20. We find that SPP's existing tariff provides planning redispatch pursuant to section 13.5 of the Order No. 888¹¹ *pro forma* OATT and, as such, under Order No. 890, SPP was directed to modify the relevant provisions of its tariff consistent with the directives of Order No. 890. However, as noted above, in their Order No. 890 compliance filings, ISOs and RTOs may demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. We find that SPP has made such a showing.

21. SPP explains that it analyzes all long-term transmission service requests in accordance with its ATSS process and then assesses the redispatch options for the aggregate group. It argues that this ATSS process is consistent with or superior to the *pro forma* OATT provisions because this process is designed to determine the optimal set of solutions to reduce the overall cost for the system. In addition, SPP states that because the studies are conducted on an aggregate basis it is unlikely that one customer will be required to pay for an upgrade that will benefit others. We find the use of the ATSS process to be consistent with the *pro forma* OATT because, as we have previously recognized, clustering studies offers potential benefits as needed transmission upgrades are frequently large enough that the upgrade can accommodate more than one transmission service request.¹² Further, because all long-term requests are analyzed under the ATSS process and because costs incurred as a result of the ATSS process are allocated to all customers in proportion to the positive incremental power flow impacts of the requested service, we find it is unlikely that one customer will be required to pay for an upgrade that will benefit others. Accordingly, we will not require SPP to adopt the planning redispatch revisions of sections 13.5 and 15.4(b) of the Order No. 890 *pro forma* OATT and we will accept SPP's modification to section 19.1 as consistent with the planning redispatch provisions of the Order No. 890 *pro forma* OATT.

¹¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹² See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370.

3. Unreserved Use Penalties

a. SPP's Filing

22. In its filing, SPP states that it has adopted the Order No. 890 *pro forma* OATT language in sections 13.7 (Classification of Firm Transmission Service), 14.5 (Classification of Non-Firm Point-To-Point Transmission Service), 28.6 (Nature of Network Integration Transmission Service—Restrictions on Use of Service) and 30.4 (Network Resources—Operation of Network Resources) of its tariff. SPP also states that “the Commission expressed its belief that penalties up to twice the relevant point-to-point rate are just and reasonable.”¹³ SPP asserts that its existing unreserved use penalty provisions, as set forth in sections 13.7 and 14.5 of its tariff, are consistent with the objectives of the Order No. 890 *pro forma* OATT revision.

23. Section 13.7 of SPP's OATT provides, in pertinent part:¹⁴

In the event that a Transmission customer (including Third-Party Sales by a Transmission Owner) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved, the Transmission Customer shall pay the following penalty (in addition to the applicable charges for all of the firm capacity actually used): 200% of the Firm Point-to-Point Transmission Service charge under Schedule 7 plus 200% of the Base Plan Charge assessed under Schedule 11 for the period which the service was actually used. For example, one hour shall be billed at the charge for weekday deliveries, repeated daily use of unreserved capacity within a seven day period shall increase the duration of the period to a weekly duration and multiple instances of unreserved use during more than one seven day period during a calendar month shall increase the duration of the period to a monthly duration.¹⁵

¹³ SPP Filing at 6 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 848).

¹⁴ Section 14.5 has similar language.

¹⁵ SPP FERC Electric Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 58.

b. Protests and Answer

24. TDU Intervenor argue that SPP misinterprets *Allegheny Power*¹⁶ and the requirements of section 13.7(c) of the Order No. 890 *pro forma* OATT. TDU Intervenor argue that under SPP's section 13.7(c) an offending transmission customer must pay an unreserved use penalty of 200 percent of the firm point-to-point transmission service charge under schedule 7 plus 200 percent of the base plan charge assessed under Schedule 11 in addition to the applicable charges for all of the firm capacity actually used. According to TDU Intervenor, in *Midwest Independent System Operator, Inc.*,¹⁷ the Commission clarified that the penalty charge for unauthorized use would be a standard rate for sufficient capacity reserved, plus a penalty of 100 percent of the standard rate to discourage unauthorized used of the transmission service (i.e., a penalty of no more than twice the firm point-to-point rate). TDU Intervenor request that SPP be required to modify its OATT to ensure that the penalties do not exceed the 200 percent limit.

25. In its answer, SPP states that TDU Intervenor's request is an impermissible attempt to present an FPA section 206 complaint in the form of a protest. SPP asserts that its unreserved use penalty provisions are a currently effective part of its OATT previously accepted by the Commission. SPP contends that TDU Intervenor may only seek to change SPP's currently-effective unreserved use penalty provisions in an FPA section 206 complaint proceeding.

c. Commission Determination

26. For the reasons stated below, we find that SPP's unreserved use penalty provisions are inconsistent with the requirements of Order No. 890.

27. In Order No. 890, the Commission determined that a transmission customer would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.¹⁸ The Commission also retained the policy established in *Allegheny Power* that the unreserved use penalty rate may not be greater than twice the firm point-to-point rate for

¹⁶ 80 FERC ¶ 61,143 (1997), *order on reh'g* 85 FERC ¶ 61,235 (1998) (*Allegheny Power*).

¹⁷ 103 FERC ¶ 61,282 (2003) (*Midwest ISO*).

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 838.

the period of unreserved use.¹⁹ The Commission established a rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point rate for the penalty period are just and reasonable, and stated that transmission providers proposing an unreserved use penalty in excess of twice the relevant firm point-to-point rate for pervasive unreserved use could do so in a filing under section 205 of the FPA.²⁰

28. SPP proposes to retain its existing unreserved use penalty charges. Under its existing unreserved use charge, in addition to the applicable charges for all of the firm capacity actually used, SPP assesses 200 percent of the firm point-to-point transmission service charge under Schedule 7 of the SPP OATT plus 200 percent of the base plan charge assessed under Schedule 11 for the period for which the unreserved service was actually used. We find this to be excessive, and no longer just and reasonable. SPP's unreserved use charges are significantly greater than twice the firm point-to-point rate; therefore, these charges are not presumed to be just and reasonable pursuant to Order No. 890.²¹ In addition, SPP did not submit an FPA section 205 filing to support retention of its existing unreserved use charges, nor has SPP shown that unreserved use charges in excess of twice the relevant firm point-to-point rate are necessary to address pervasive unreserved use.

29. Further, we reject SPP's argument that TDU Intervenors may only seek to change SPP's currently-effective unreserved use penalty provisions in a separate FPA section 206 complaint proceeding. Whether or not SPP's unreserved use penalty charges were previously accepted by the Commission, in Order No. 890 the Commission established a rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point rate for the penalty period are just and reasonable; therefore, to the extent that SPP's unreserved use penalties were greater than twice the firm point-to-point rate, in the absence of a showing that such charges are necessary to address pervasive unreserved use, SPP's existing unreserved use penalty provisions are no longer just and reasonable.

30. Accordingly, we direct SPP to file, within 30 days of the date of this order, a further compliance filing updating its unreserved use penalty provisions consistent with

¹⁹ *Id.* P 848 (citing *Allegheny Power*, 80 FERC ¶ 61,143 at 61,545-46).

In *Midwest ISO*, the Commission clarified the unreserved use charge policy established in *Allegheny Power*, stating that the penalty charge for unauthorized use is actually the standard rate that would otherwise apply if sufficient capacity had been reserved, plus a penalty of 100 percent of the standard rate to discourage authorized use of the transmission service. *See Midwest ISO*, 103 FERC ¶ 61,282 at P 23.

²⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 848-49.

²¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 464-65.

Order No. 890. We note that SPP may make a separate section 205 filing proposing unreserved use penalty provisions deviating from the Order No. 890 requirements.

4. Unreserved Use Penalty Revenue Distribution

a. SPP's Filing

31. SPP states that, in its discussion of unreserved use penalties in Order No. 890, the Commission allowed transmission providers to retain the base firm point-to-point transmission charge but required the distribution of any revenue collected above the base firm point-to-point transmission charge. SPP also states that the Commission determined that the transmission provider is free to propose that such penalties be credited against its revenue requirement with assurances that offending customers will not benefit.²² According to SPP, its existing practice is to use any revenues collected from penalties to reduce its administrative charge. SPP states that this method is administratively efficient and that, because the penalty revenues collected are small compared to the entire SPP budget, the penalty revenues have a minimal impact on the SPP administrative charge. Moreover, SPP states that because the administrative charges are paid by all customers, the benefit of the reduced administrative charge does not approach the magnitude of the amount of penalty imposed on each unreserved use.

b. Commission Determination

32. In Order No. 890, the Commission required each transmission provider to submit a compliance filing, proposing a mechanism to identify non-offending transmission customers and a method for distributing the unreserved use penalty revenues to non-offending transmission customers, as well as late study penalties to unaffiliated transmission customers.²³ However, as noted in Order No. 890-A, the procedural mechanism for distribution of operational penalties, including unreserved use penalties, set forth in Order No. 890 was somewhat unclear. In Order No. 890-A, the Commission clarified transmission providers' obligations regarding collection and distribution of operational penalty revenues and filing of compliance reports with the Commission.²⁴ First, if a transmission provider elects to impose unreserved use penalties, it must submit to the Commission a tariff filing under FPA section 205 stating the applicable unreserved use penalty rate. Second, each transmission provider must submit a one-time compliance filing under FPA section 206 proposing the transmission provider's methodology for distributing revenues from late study penalties and, if applicable, unreserved use

²² SPP Filing at 6 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 862).

²³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 861.

²⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

penalties. This one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties²⁵ and need not be stated in a transmission provider's OATT.²⁶ In addition, transmission providers should request an effective date for this distribution mechanism as of the date of the filing and may begin implementing the methodology immediately, subject to refund if the Commission alters the distribution mechanism on review. Finally, the Commission determined that each transmission provider must report on its penalty assessments and distributions in an annual compliance report to be submitted on or before the deadline for submitting FERC Form-1, as established by the Commission's Office of Enforcement each year.

33. In addition, in response to a suggestion that the Commission allow transmission providers to credit operational penalties against the transmission provider's transmission revenue requirement, we noted that the transmission provider is free to propose this mechanism, with assurances that offending customers will not benefit, and we will decide the appropriateness of the proposal on a case-by-case basis.²⁷

34. We find that SPP's proposal to use unreserved use penalty revenues to reduce its transmission revenue requirement to be inconsistent with the requirements of Order No. 890. As noted above, a transmission provider may propose to credit operational penalties against its transmission revenue requirement with assurances that offending customers will not benefit; however, SPP's proposal does not assure that offending customers will not benefit. Rather, SPP appears to argue that while its proposal will reduce the administrative charges paid by its customers, any benefit from the reduced administrative charge will be insignificant. SPP does not explain how its proposal is consistent with Order No. 890, when offending customers may benefit from a reduction in the administrative charges they pay.²⁸

35. While we find SPP's proposal to be inconsistent with the requirements of Order No. 890, we note that in Order No. 890-A the Commission clarified that transmission providers are required to submit their one-time compliance filings under FPA section 206

²⁵ *Id.*

²⁶ *Cf. Florida Power & Light Co.*, 122 FERC ¶ 61,079, at P 25 (2008) (noting that Order Nos. 890 and 890-A did not require that the methodology pertaining to the annual informational filings be included in a transmission provider's OATT).

²⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 862.

²⁸ We note that in developing its distribution methodologies, a transmission provider may have the flexibility to minimize administrative burdens by establishing reasonable minimum thresholds to trigger a distribution. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 475.

proposing their methodologies for distributing revenues from unreserved use penalties and late study penalties prior to the first distribution of those operational penalties. Therefore, we direct SPP to submit a one-time compliance filing proposing a methodology for distributing revenues from unreserved use penalties and late study penalties, consistent with the requirements of Order No. 890, prior to the first distribution of those operational penalties.

5. Energy and Generator Imbalance Services

a. SPP's Filing

36. SPP does not propose to incorporate into its OATT the revisions to the *pro forma* OATT Schedule 4 (Energy Imbalance Service) and the new Schedule 9 (Generator Imbalance Service) adopted in the Order No. 890. SPP states that the *pro forma* language does not reflect the existence of a centralized market and that its existing EIS Market, previously approved by the Commission, is consistent with or superior to the services under Schedules 4 and 9 of the Order No. 890 *pro forma* OATT. SPP notes that the Commission has recently determined that the previously-approved variations in the imbalance provisions for another transmission provider were consistent with the requirements of the *pro forma* OATT.²⁹

b. Commission Determination

37. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. In addressing concerns regarding the appropriateness of requiring ISOs and RTOs to adopt the *pro forma* energy and generator imbalance services, the Commission recognized that locational marginal pricing based markets, such as those operated by ISOs and RTOs, “can provide an efficient and nondiscriminatory means of settling imbalances.”³⁰ Furthermore, in Order No. 890, the Commission stated that it was not proposing to redesign ISO/RTO markets in this rulemaking.³¹ Therefore, since SPP’s EIS Market settles real-time imbalances in a non-discriminatory manner which reflects the incremental value of energy at specific locations in the market, we conclude that SPP’s imbalance market is consistent with the Order No. 890 *pro forma* OATT. Accordingly, we will not require SPP to file revisions in its OATT to include the revisions to Schedule 4 and the new Schedule 9 adopted in Order No. 890.

²⁹ SPP Filing at 6 (citing *Sierra Pacific Resources Operating Cos.*, 120 FERC ¶ 61,039 (2007)).

³⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 670.

³¹ *Id.*

6. Procedures for Addressing Parallel Flows

38. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled “Procedures for Addressing Parallel Flows” that is to be “filed by the Transmission Provider.” The Commission in the NERC Transmission Loading Relief Order³² amended the *pro forma* OATT to incorporate NERC’s Transmission Loading Relief (TLR) procedures. The Commission also required that every transmission-operating public utility adopting NERC’s TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination—Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent Interconnection-wide congestion management methods used in the WECC (WSCC Unscheduled Flow Mitigation Plan) and ERCOT (section 7 of the ERCOT Protocols) regions.³³ As a result, all transmission providers must complete Attachment J by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

39. SPP has not filed any procedures in its Attachment R.³⁴ SPP is directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment R as shown below:

The North American Electric Reliability Corporation’s (“NERC”)’s TLR Procedures originally filed March 18, 1998, which are now the mandatory Reliability Standards that address TLR, and any amendments thereto, on file and accepted by the Commission, are hereby incorporated and made part of this tariff. See www.nerc.com for the current version of the NERC’s TLR Procedures.

³² *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

³³ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007) at P 961-65, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

³⁴ SPP’s Attachment R is equivalent to the *pro forma* Attachment J, Procedures for Addressing Parallel Flows.

7. Rollover Rights Effective Date

40. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.³⁵

41. SPP has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of October 11, 2007. However, SPP's Attachment K, setting forth its transmission planning process, which was filed December 14, 2007 in Docket No. OA08-61-000, has not yet been accepted by the Commission. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct SPP to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. SPP should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment K, requesting an effective date commensurate with the date of that filing.

8. Attachment C- Methodology to Assess Available Transfer Capability

42. In its compliance filing, SPP submitted a revised version of Attachment C to its OATT as required by Order No. 890. We accept SPP's revised Attachment C, as modified below, to be effective October 11, 2007. We also direct SPP to file, within 30 days of the date of this order, a further compliance filing as discussed below.

a. ATC Methodology

43. In Order No. 890, the Commission required a transmission provider to clearly identify which methodology it employs (e.g., contract path, network ATC, or network Available Flowgate Capacity (AFC)). The transmission provider also must describe in detail the specific mathematical algorithms used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling, operating and planning horizons.³⁶ Further, the

³⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

³⁶ *Id.* at pro forma OATT, Att. C; see also *id.* P 323.

actual mathematical algorithms must be posted on the transmission provider's web site, with the link noted in the transmission provider's Attachment C.³⁷

44. We have reviewed SPP's filing and find that SPP's revised Attachment C does not provide the link to SPP's web site with the actual mathematical algorithms. Therefore, SPP's filing fails to comply with Order No. 890. We direct SPP to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide the link to SPP's web site with the actual mathematical algorithms, as required in Order No. 890.

b. AFC

45. In Order No. 890, the Commission required that if a transmission provider uses an AFC methodology to calculate ATC, it must: (i) explain its definition of AFC; (ii) explain its AFC calculation methodology; (iii) explain its process for converting AFC into ATC for OASIS posting; (iv) list the databases that are used in its AFC assessments; and (v) explain the assumptions used in its AFC assessments regarding the load levels, generation dispatch, and modeling of both planned and contingency outages.³⁸

46. We have reviewed SPP's filing and find that SPP's revised Attachment C does not contain an explanation regarding modeling of contingency outages. Therefore, SPP fails to comply with Order No. 890. We direct SPP to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide an explanation regarding modeling of contingency outages.

c. Detailed Explanation of the ATC Components³⁹

i. TTC

47. In Order No. 890, the Commission required a transmission provider to: (i) explain its definition of TTC; (ii) explain its TTC calculation methodology for both the operating and planning horizons; (iii) list the databases used in its TTC assessments; and (iv) explain the assumptions used in its TTC assessments regarding the load levels, generation dispatch, and the modeling of both planned and contingency outages.⁴⁰

³⁷ *Id.* P 325, 328.

³⁸ *Id.* at *pro forma* OATT, Att. C.

³⁹ The ATC components are total transfer capability (TTC), existing transmission commitments (ETC), capacity benefit margin (CBM), and transmission reserve margin (TRM).

⁴⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, Att. C.

48. We have reviewed SPP's Attachment C filing and find that SPP's revised Attachment C does not provide a clear definition for TTC and does not present a detailed explanation of SPP's calculation methodology. Furthermore, the databases used to calculate TTC are not listed. Therefore, SPP fails to comply with Order No. 890. We direct SPP to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide a clear definition for TTC, a detailed explanation of its TTC calculation methodology, as well as a list of the databases used to calculate TTC.

ii. ETC

49. In Order No. 890, the Commission required a transmission provider to explain: (i) its definition of ETC; (ii) the calculation methodology used to determine the transmission capacity to be set aside for native load (including network load) and non-OATT customers (including, if applicable, an explanation of assumptions on the selection of generators that are modeled in service) for both the operating and planning horizons; (iii) how point-to-point transmission service requests are incorporated; (iv) how rollover rights are accounted for; and (v) its processes for ensuring that non-firm capacity is released properly (e.g., when real-time schedules replace the associated transmission service requests in its real-time calculations).⁴¹

50. We have reviewed SPP's filing and find that SPP's revised Attachment C does not provide a clear definition for ETC. The definition should identify what services ETC is set aside for such as for native load, point-to-point reservations, rollover rights, post-backs or counter-flows. Therefore, SPP fails to comply with Order No. 890. We direct SPP to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide a clear definition for ETC.

iii. TRM

51. In Order No. 890, the Commission required a transmission provider to explain: (i) its definition of TRM; (ii) its TRM calculation methodology (e.g., its assumption on load forecast errors, forecast errors in system topology or distribution factors and loop flow sources) for both the operating and planning horizons; (iii) the databases used in its TRM assessments; and (iv) the conditions under which the transmission provider uses TRM. If the transmission provider does not use TRM, it must so state.⁴²

52. We have reviewed SPP's filing and find that SPP's revised Attachment C fails to provide a list of databases used to calculate TRM. SPP also does not provide the list of conditions under which TRM is used. Therefore, SPP fails to comply with Order

⁴¹ *Id.*

⁴² *Id.*

No. 890. We direct SPP to file, within 30 days of issuance of this order, a further compliance filing that revises its Attachment C to provide a list of the databases used in its TRM calculations and the list of conditions under which TRM is used.

53. Accordingly, we will accept SPP's compliance filing, as modified, to be effective October 11, 2007. We also direct SPP to file, within 30 days of the date of this order, a further compliance filing as required above.

The Commission orders:

(A) SPP's compliance filing is hereby accepted, as modified, effective October 11, 2007, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.