

125 FERC ¶ 61,314
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. ER09-149-000

ORDER CONDITIONALLY ACCEPTING TARIFF FILING

(Issued December 18, 2008)

1. On October 28, 2008, Southwest Power Pool, Inc. (SPP) filed revised tariff sheets containing a series of amendments to its open access transmission tariff (Tariff) to implement various improvements to its Energy Imbalance Services Market (Energy Imbalance Market) (October 28 Filing). SPP requests an effective date of December 27, 2008 for these modifications. For the reasons discussed below, the Commission will conditionally accept SPP's proposed modifications, subject to SPP submitting a compliance filing within 30 days of the date of this order to make the proposal consistent with the rights of qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA).¹

I. Background

2. SPP is a regional transmission organization that administers the Energy Imbalance Market, a real-time centralized energy market based on least cost bid-based security constrained economic dispatch and location marginal pricing.² SPP launched the Energy Imbalance Market on February 1, 2007.³

3. SPP states that its proposed revisions were developed through SPP's stakeholder process, with all entities with an interest able to participate in their development and

¹ 16 U.S.C. § 824a-3 (2006).

² See *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, *order on reh'g*, 116 FERC ¶ 61,289, *order on compliance*, 116 FERC ¶ 61,053, *order on reh'g and compliance*, 117 FERC ¶ 61,110 (2006).

³ See *Southwest Power Pool, Inc.*, 118 FERC ¶ 61,055 (2007) (authorizing SPP to start its imbalance market on February 1, 2007).

approval. SPP requests that because the proposed revisions have been vetted through its stakeholder process, the Commission extend substantial deference to the wishes of SPP's stakeholders.

II. Details of Filing

4. In its filing, SPP states that since the implementation of the Energy Imbalance Market on February 1, 2007, it has functioned largely as intended. However, SPP asserts that experience with the Energy Imbalance Market has indicated the need for certain revisions. SPP notes that in the order conditionally approving SPP's Energy Imbalance Market, the Commission "recognize[d] that the implementation of organized markets is to some extent an iterative process that requires modifications to tariff provisions after the transmission provider and market participants gain actual market experience."⁴ To that end, SPP proposes six revisions to Attachment AE of its Tariff.

5. SPP states that three of its proposed modifications are related to the manner in which uninstructed resource deviation (Deviation) charges are determined.⁵ Specifically, SPP states that in section 4.1(d) of Attachment AE, it has removed the reference to the Expected Operating Level for a resource in MW as communicated in the transmission provider's (SPP's) dispatch instructions and replaced it with the term Maximum Capacity Operating Limit, which SPP defines as the resource physical maximum sustainable output for each operating hour from the Resource Plan. SPP states that this revision expands the resource operating tolerance to a more realistic level by basing it on the Maximum Capacity Operating Limit listed in the Resource Plan rather than the dispatch instruction a resource is receiving.⁶

6. SPP also proposes to expand the Deviation exception in Section 4.1(e) of Attachment AE for start-up and shut-down mode to include the start-up and shutdown of individual units registered in the aggregate as a single resource. SPP states that this modification allows market participants with several units acting as a single resource to avoid Deviation charges when bringing up one unit at a time for operational purposes in

⁴ See October 28 Filing at 4, citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 at P 2.

⁵ SPP defines an uninstructed resource deviation as the difference between the Dispatch Instruction and the real time operating level of a resource. See SPP Market Protocols, section 8.5.

⁶ SPP defines Resource Plans as: "A Market Participant's plan to meet its energy obligations including specification of Resource operating characteristics." See SPP Tariff, Attachment AE, section 1.1.30.

order to reach its dispatched MW level. SPP states that its final revision to the Deviation provisions further modifies section 4.1(e) of Attachment AE to specify that redeployment by a balancing authority should be included on the list of uninstructed resource deviation exceptions. SPP states that this modification was inadvertently omitted from Tariff revisions proposed by SPP in a filing in Docket No. ER06-451-009, which the Commission accepted in relevant part without comment.⁷

7. SPP next proposes to modify Section 1.2.2(a) of Attachment AE to incorporate section 12.3 of SPP's Market Protocols, which provides additional detail concerning registration changes and the timing necessary to ensure Good Utility Practices are applied when making registrations and system model updates. SPP states that the current section 1.2.2(a) requires that applications for a market participant to provide services in the Energy Imbalance Market must be submitted to SPP no later than 45 calendar days prior to the expected date of participation. SPP states that section 12.3 of its Market Protocols outlines the specific business events that a market participant may put into action when applying to become a market participant or to change its market participant status.⁸ SPP also states that section 12.3 includes specific time periods associated with each business event, some of which are greater than 45 days, to ensure completion of necessary system changes. SPP states that its proposal is a product of SPP's experience with the Energy Imbalance Market and is necessary to ensure a high level of accuracy of data in the system. Furthermore, SPP states that this modification will give prospective market participants assurance of the time needed to prepare for participation in the Energy Imbalance Market.

8. SPP next proposes a new section 1.2.2(g) to Attachment AE to refine the definition of requirements for registration of all loads and resources in the Energy Imbalance Market footprint. SPP states that this proposal would allow it to register loads or resources, including Behind-the-Meter Generation of 10 MW or greater, such that the refusal or failure to register as a Market Participant would not exempt a unit from registration and operational obligations.⁹ Accordingly, SPP's proposal would allow it to file an unexecuted agreement with the Commission if the resource is not registered by another Market Participant.

⁷ See *Southwest Power Pool, Inc.*, 117 FERC ¶ 61,139, at P 34 (2006).

⁸ See SPP Market Protocols, section 12.3.

⁹ SPP defines Behind-the-Meter Generation as: “[A] generation unit that is connected on the load side of a load Meter Settlement Location and is agreed to by the load Market Participant that is the registered owner of the Meter Settlement Location to serve all or part of its capacity, energy or Ancillary Service needs.” See SPP Tariff, Attachment AE, proposed section 1.1.2(a).

9. SPP notes that it incorporated other revisions to accommodate the new proposed section 1.2.2(g), including a new definition for Behind-the-Meter Generation, a modified definition for Market Participant that allows SPP to file an unexecuted agreement on behalf of a Market Participant if no consensus is reached, and a revised section 1.2.1 of Attachment AE, which requires each Market Participant to execute the service agreement specified in Attachment AH of SPP's Tariff.

10. Finally, SPP proposes to add language to section 4.3 of Attachment AE, which SPP states will mitigate the impact on reliability and price volatility of the SPPSPSTies flowgate between SPP and Southwestern Public Service Company (SPS).¹⁰ Specifically, SPP states that the revision would allow the SPP Reliability Coordinator to activate this specific flowgate in the real-time balancing studies. SPP further states that it would issue a Transmission Loading Relief Procedure only when schedules are indicated at or above the five percent threshold of the North American Electric Reliability Corporation's Interchange Distribution Calculator.

III. Notice of Filing and Responsive Pleadings

11. Notice of SPP's October 28 Filing was published in the *Federal Register*, 73 Fed. Reg. 65,842 (2008), with interventions and protests due on or before November 18, 2008. Motions to intervene were filed by Calpine Corporation, Babcock & Brown Renewable Holdings Inc., Dogwood Energy, LLC, Golden Spread Electric Cooperative, Inc., Covanta Energy Corporation (Covanta), Sunflower Electric Power Corporation, and Mid-Kansas Electric Company, LLC. Xcel Energy Services, Inc. (Xcel), on behalf of SPS, filed a motion to intervene and comments. John Deere Renewables, LLC (John Deere) filed a motion to intervene and protest. On December 3, 2008, SPP and Xcel filed answers. On December 15, 2008, John Deere filed an answer in response to SPP's and Xcel's answers.

12. Xcel supports SPP's proposed revisions concerning the requirements for registration of loads and resources in the Energy Imbalance Market footprint and the proposal to grant SPP the authority under its Tariff to unilaterally register otherwise unregistered resources, and Xcel states that SPP's proposal will appropriately allow SPP (a) to ensure that all loads and resources are properly registered, and (b) to obtain the information needed to satisfy its reliability and accounting requirements. Moreover, Xcel states that SPP's proposal places registration on the appropriate party, namely the resource interconnection customer that has chosen to interconnect to the SPP system and generate power within SPP, rather than some other entity such as the utility balancing authority where the resource is located. Xcel notes that in the JD Wind Order, the

¹⁰ The flowgate consists of six ties between SPP and SPS and is monitored by the SPP Reliability Coordinator.

Commission rejected the argument that a utility that is required to purchase a QF's power pursuant to PURPA should also be required to register the QF's resources.¹¹

13. Xcel further states that SPP's registration policy will have a positive effect on current practices that trigger certain Energy Imbalance Market charges in the form of disgorgement of profits on purchases and sales. Xcel states that fluctuations in the unregistered generator's output may prevent load serving entities from making accurate load forecasts, thereby exposing the load serving entities to disgorgement when the load forecast error exceeds a four percent threshold. Xcel contends that by requiring registration of all generating units, SPP will mitigate the load fluctuation and errors that drive these inappropriate disgorgement charges.

14. Additionally, Xcel states that SPP's proposal is consistent with the principle that using "distribution" facilities to make deliveries of wholesale sales is a Commission-jurisdictional activity.¹² Xcel also states that during the stakeholder process, certain stakeholders argued that some of their wholesale sales transactions are not Commission-jurisdictional because some of their resources are interconnected to SPS distribution facilities. Xcel disagrees with this position, stating that "FERC's assertion of jurisdiction over all wholesale transmissions, regardless of the nature of the facility, is clearly within the scope of its statutory authority."¹³ Accordingly, Xcel states, SPP's proposed registration authority extends to distribution-connected resources, where these resources engage in wholesale, Commission-jurisdictional transactions.

15. Finally, Xcel states that it supports SPP's proposal that would permit activation of the SPPSPSTies flowgate in SPP balancing studies without the SPP Reliability Coordinator issuing transmission loading relief procedures.

16. In its comments, Covanta notes that in its October 28 Filing, SPP proposes to revise Attachment AE of its OATT to provide SPP with the authority to register loads or resources, including Behind-the-Meter Generation of 10 MW or greater, in its Energy

¹¹ See Xcel Comments at 7, citing *Xcel Energy Service, Inc. v. Southwest Power Pool, Inc.*, 118 FERC ¶ 61,232, at P 27 (2007) (JD Wind Order).

¹² See Xcel Comments at 8, citing *Transmission Access Policy Study Group (TAPS) v. FERC*, 225 F.3d 667, 696 (D.C. Cir. 2000), *aff'd New York v. FERC*, 535 U.S. 1 (2002) (finding that, under the Federal Power Act, the Commission has authority over "all aspects of wholesale sales...regardless of the facilities used").

¹³ See Xcel Comments at 8, citing *TAPS v. FERC*, 225 F.3d at 696 (emphasis added). Xcel states that the court used the term "wholesale transmissions" to mean the delivery of wholesale sales.

Imbalance Market footprint.¹⁴ Covanta requests that the Commission clarify that SPP's October 28 Filing's registration requirement does not preclude Covanta's Behind-the-Meter QF sales to Public Service Company of Oklahoma (PSO) while registration is being pursued. Covanta states that it recently acquired an indirect, 100 percent interest in a QF in Tulsa, Oklahoma (Tulsa Facility),¹⁵ which has been interconnected to PSO's system for many years and sold power to PSO until the middle of last year when the prior owner ceased operation of the facility. Covanta states that PSO and Covanta have negotiated a power purchase agreement pursuant to PURPA, under which Covanta will sell as-available power to PSO. Covanta further states that the agreement has been circulated in final execution form. Covanta notes, however, that the Tulsa Facility's return to service is subject to the installation of new PSO/SPP compliant metering and telecommunications equipment, which Covanta expects will occur in the next several weeks.

17. Covanta states that while it does not believe that registration of the Tulsa Facility is a precondition to initiating sales of power to PSO, in order to enable deliveries to begin as soon as possible, the draft power purchase agreement provides that PSO will seek approvals from SPP, the balancing authority, and the transmission provider to treat the Tulsa Facility as Behind the Meter Generation while PSO, with Covanta's good faith cooperation, pursues registration of the Tulsa Facility with SPP.

18. In the alternative, Covanta requests that the Commission grandfather the Tulsa Facility from the registration process at least during the temporary period in which it operates as Behind-the-Meter Generation while PSO seeks to register the Tulsa Facility. Covanta asserts that it can begin selling as-available power from the Tulsa Facility to PSO in a matter of weeks, but states that if PSO must now begin the registration process, sale of electricity output from the Tulsa Facility may be delayed for up to six months.¹⁶

19. In its protest, John Deere states that while it does not object to the requirement to register generating units with SPP, it does object to SPP's proposed Tariff revision in section 1.2.2(g) of Attachment AE. John Deere contends that the registration requirement within SPP is not merely an informational or reliability requirement, because each market participant will be required to execute the service agreement specified in Attachment AH of SPP's Tariff. John Deere notes that if a resource does not execute a

¹⁴ See October 28 Filing at 6-8.

¹⁵ The Tulsa Facility has been certified by the Commission as a QF, and it submitted its most recent self-recertification as a QF on October 2, 2008. See Covanta Comments at 2, citing *Covanta WBH, LLC*, Docket No. QF82-168-005.

¹⁶ See Covanta Comments at 6, citing October 28 Filing at 6.

service agreement, SPP proposes to unilaterally file a service agreement in the name of the interconnection customer for a resource, regardless of whether the interconnection agreement is subject to state or federal jurisdiction. Therefore, John Deere states, under SPP's proposal, its QFs would be required to "participat[e] in the [Energy Imbalance Market]" and "supply to [SPP] Imbalance Energy" through the following service agreement provisions:

2. The Customer *has submitted an application for participation in the [Energy Imbalance Market]* and has registered its resources in accordance with the market application and asset registration procedures specified in the Market Protocols...
3. To the extent that the Customer is not a Transmission Customer, a Network Customer, a Generation Interconnection Customer or a Transmission Owner under the Tariff, *Customer represents and warrants that it has obtained the necessary transmission service* from third parties to enable it to deliver Imbalance Energy to the Transmission System from its registered Resources and Customer has provided sufficient proof of said transmission service to the Transmission Provider...
5. The Transmission Provider agrees to provide and the *Customer agrees to take and pay for, or to supply to the Transmission provider, Imbalance Energy* in accordance with the provisions of the Transmission Provider's Tariff and to satisfy all obligations under the terms and conditions of the Transmission Provider's Tariff, as may be amended from time-to-time, filed with the Commission.¹⁷

20. John Deere states that SPP's proposed Tariff revision creates an unjust and unreasonable result that would override section 292.303(a) of the Commission's regulations, which provides that a QF has the right to sell 100 percent of its output to its host utility under PURPA.¹⁸ John Deere states that the revisions in section 1.2.2(g) of

¹⁷ See SPP Tariff, Attachment AH, Paragraphs 2, 3, and 5 (emphasis added).

¹⁸ See 18 C.F.R. § 292.303(a) (2008). John Deere also notes that the Commission has the ability to remove this obligation to purchase QF output for certain utilities, but this is not applicable for QF sales to the John Deere QF's host utility, SPS. John Deere states that the Commission affirmatively denied SPS's request to lift its PURPA purchase

(continued...)

Attachment AE, together with the Market Participant Service Agreement in Attachment AH, effectively mandate that the John Deere QFs sell non-QF power to SPP through its wholesale markets, which is inconsistent with John Deere's rights under PURPA. John Deere asserts that SPP does not have the authority to propose a revision to the SPP Tariff that overrides these specific rights.

21. John Deere also notes that section 1.2.2(g) of Attachment AE also requires units of less than 10 MW to become market participants at the discretion of the market participant that owns the meter settlement location if the generating unit is not defined as Behind-the-Meter Generation. Therefore, John Deere argues, QFs would be forced to sell non-QF power into the SPP wholesale markets, which would strip away the exemption from section 205 of the Federal Power Act that is granted to QFs of 20 MW or less by PURPA and the Commission's regulations.¹⁹ John Deere states that under Section 292.601 of the Commission's regulations, QFs "of 20 MW or smaller" are exempt from Sections 205 and 206 of the Federal Power Act,²⁰ which exempts these QFs from being required to have tariffs on file with Commission, to file for authorization to sell power at market-based rates, to perform analysis demonstrating compliance with the Commission's standards in Part 35, and to perform ongoing reporting as required by the Commission's Section 205 and Part 35 requirements.²¹

obligation and recently confirmed this denial in its order on rehearing. *See Xcel Energy Services, Inc., et al.*, 122 FERC ¶ 61,048, *order denying reh'g*, 124 FERC ¶ 61,073 (2008).

¹⁹ John Deere's QFs in SPP include the following: Wind 1 (10 MW), Wind 2 (10 MW), Wind 3 (10 MW), Wind 4 (79.8 MW), Wind 5 (10 MW), Wind 6 (10 MW), Wind 7 (10 MW), Wind 8 (10 MW), Wind 9 (10 MW), Wind 10 (10 MW), Wind 11 (10 MW), and High Plains Wind Power (10 MW).

²⁰ *See* 18 C.F.R. § 292.601 (2008).

²¹ *See* John Deere Comments at 17, citing Order No. 69, 45 Fed. Reg. 12,214, 12,232 (Feb. 25, 1980) ("Sections 203, 204, 205, 206, 301, 302 and 204 of the Federal Power Act *reflect traditional rate regulation* or regulation of securities of public utilities. *The Commission has determined that qualifying facilities shall be exempted from these sections of the Federal Power Act.*") (emphasis added); *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 Fed. Reg. 7852 (Feb. 15, 2006) (Order No. 671) FERC Stats. & Regs. ¶ 31,203 (2006), *Order on Reh'g*, Order No. 671-A, 71 Fed. Reg. 30,585 (May 30, 2006) (Order No. 671) FERC Stats. & Regs. ¶ 31,219 (2006) (maintaining the exemption from Section 205 for QFs of 20 MW or less and QFs of 30 MW or less selling pursuant to a state regulations implementing Section 210 of PURPA), *Order on Clarification*, 114 FERC ¶ 61,128 (2006).

22. Furthermore, John Deere states that all but one of John Deere's QFs are interconnected at distribution voltage and under the Public Utility Commission of Texas (Texas Commission) jurisdictional distribution generation interconnection agreements.²² John Deere states that under Texas Commission rules, these QFs are defined as Distributed Generation, and the Texas Commission prohibits certain types of charges from being levied on Distributed Generation, including distributed line charges, interconnection operations and maintenance costs, and transmission charges.²³ John Deere argues that SPP's proposed Tariff revision will subject John Deere's distribution interconnected QFs to these types of charges, which John Deere could not have foreseen based on Texas Commission rules.

23. John Deere asserts that there are conditions that could be added to the Tariff revisions that would make it just and reasonable. First, John Deere argues that if the Commission accepts SPP's proposed section 1.2.2(g) to Attachment AE, the Commission should condition its acceptance with a clear statement that the provision does not impact or override John Deere's existing rights under PURPA, and in the event of any conflict, the PURPA rules and regulations would control. Specifically, John Deere asserts that SPP may not impose an obligation on John Deere's QFs through its registration requirements to sell into the Energy Imbalance Market where those QFs are already selling 100 percent of their output to their host utility under PURPA. Similarly, John Deere requests that the Commission make clear that the section 205 exemption is not waived, and that John Deere's QFs that are 20 MW or smaller are not required to obtain market-based rate authority if they continue to sell 100 percent of their output under PURPA.

24. Alternatively, John Deere suggests two additional forms of conditional acceptance. First John Deere argues that the Commission could grandfather its QFs pre-existing practice of selling 100 percent of their output to their host utility. John Deere contends that by grandfathering only existing QFs already making these sales, the Commission would significantly narrow the exemption from forced QF sales into the Energy Imbalance Market, and it would only apply as long as the QFs continue to sell 100 percent of their output to their host utility under PURPA.

25. Second, John Deere states that the Commission could conditionally approve SPP's Tariff revisions provided that SPP allow the John Deere QFs to use dynamic scheduling to address energy imbalances, as well as exempting the John Deere QFs from being required to take transmission service without the consent of the Balancing Authority.

²² See John Deere Comments at 9.

²³ See John Deere Comments at 10, citing 16 T.A.C. § 25.211(d).

John Deere notes that SPP has stated that this option is particularly well suited for intermittent resources such as wind, and moreover, would resolve the John Deere QFs' concerns about conflicts with sales of 100 percent of their output under PURPA.

26. SPP filed an answer to the protests and comments of Covanta and John Deere. SPP states that QFs that register with SPP are not required to sell any power into the Energy Imbalance Market and may sell the entirety of their output to their host utilities. SPP thus argues that John Deere's concerns about a conflict between SPP's proposal and PURPA are misplaced. SPP states that it is amenable to permitting existing interconnected QFs to sell power to their host utilities while the QFs are completing their registration process, but new QFs must complete registration with SPP prior to commencing any energy sales.

27. Xcel filed an answer to John Deere's protest. Xcel states that it supports SPP's proposal and argues that John Deere, in its protest, is attempting to undo commitments it accepted in a registration agreement (Registration Agreement) as part of a settlement agreement between John Deere and Xcel in Docket No. EL07-28-000, pursuant to which the John Deere QFs are currently registered to SPS. Xcel explains that John Deere filed a complaint against SPS at the Texas Commission seeking an order finding that a legally enforceable obligation was created requiring John Deere to sell and SPS to purchase all energy produced by John Deere QFs; among the issues is the term of the legally enforceable obligation and the basis of the avoided cost rate for an SPS purchase from the John Deere facilities. According to Xcel, the Registration Agreement provides that if SPS prevails before the Texas Commission, and the Texas Commission determines there is no legally enforceable obligation, then John Deere must register the resources, unless SPP changes its requirements so that QF resources need not be registered to either the seller or buyer.

28. Thus, Xcel argues that the SPP proposal will not result in John Deere being registered against its will, or forced to sell output against its will, because any John Deere registration will only take place if the Texas Commission rules against John Deere. Furthermore, Xcel contends that the registration will take place as part of John Deere's consent, as contained in the Registration Agreement. Therefore, Xcel concludes that John Deere's intent in protesting SPP's filing is to avoid the registration obligation that it agreed to.

29. Xcel also argues that the SPP proposal should be approved because of the benefits it brings to the Energy Imbalance Market. Registration of behind the meter generation, including QFs, will give SPP the information needed to satisfy reliability and accounting requirements. Xcel states that the changes correct a misallocation of financial responsibility for miscalculations of generator output.

30. Xcel argues that John Deere's dynamic scheduling proposal is premature and should be addressed in the SPP stakeholder process rather than as part of its protest to the SPP filing.

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP's and Xcel's answers and John Deere's answer to those answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

33. In this filing, SPP proposes six revisions to its Energy Imbalance Market. Five of the six proposed revisions were not protested by any party. We find those five proposed revisions to be just and reasonable and, accordingly, we accept them. However, as discussed below, SPP has not shown its sixth proposal, authorizing SPP to unilaterally register any resource, to be just and reasonable. Therefore, we conditionally accept SPP's proposal to grant itself the authority to register any resource within the Energy Imbalance Market's footprint, subject to SPP making a compliance filing consistent with this order.

34. SPP notes that this issue arose in response to a March 22, 2007 Commission order, in which the Commission found that SPP had improperly registered QF resources owned by John Deere.²⁴ In that case, SPP unilaterally registered John Deere as a resource of Xcel in the Energy Imbalance Market. John Deere supported SPP's registration, arguing that Xcel is obligated under PURPA (as implemented by state regulations) to purchase all of the output from John Deere's QFs. Xcel brought a complaint, arguing that SPP lacked the authority to register a resource owned and operated by a third-party. The

²⁴ JD Wind Order at P 19-31. In the JD Wind Order, the owner of the wind facilities at issue here was John Deere Wind Energy, and so that order referred to the company as JD Wind. In this filing, the name of the owner is John Deere Renewables, LLC. Because the entities are the same for the purposes of this order, we refer to the company throughout the order as John Deere.

Commission agreed, finding that SPP did not operate the resources and that only Market Participants that operated resources were permitted to register those resources under SPP's Tariff.²⁵ The Commission also noted that

[w]hile purchasing utilities are not required under PURPA and related regulations to register QF facilities as resources under coordination arrangements, such as those contemplated by [John Deere], such agreements are consistent with the PURPA purchase obligation, and we expect utilities, such as Xcel, that are requested to enter into such arrangements, will in good faith negotiate and enter into such arrangements. In this regard, failure to enter into such arrangements will not excuse utilities from the obligations to interconnect with and purchase from QFs, imposed by PURPA and our regulations implementing PURPA. Accordingly, this order should in no way be taken as permission for Xcel to refuse to purchase from or to discontinue its purchases from the [John Deere] facilities.²⁶

Thus, it was the Commission's hope that John Deere and Xcel would be able to negotiate an agreement providing for the registration of John Deere's generation resources consistent with Xcel's obligations under PURPA. While Xcel and John Deere did reach an agreement in Docket No. EL07-87-000, it did not resolve all issues between the parties, including whether a legally enforceable obligation has been created, the term of any such obligation, and the rates for any such obligation.²⁷

35. SPP states that its proposal is intended to give it the right to register a resource, including behind-the-meter generation of 10 MW or greater, to enable SPP to have the scheduling and supply information it needs to operate the Energy Imbalance Market. SPP states that a central issue raised during the stakeholder deliberation of this registration requirement was the impact that this revision may have on the rights of a QF generator to make sales to its host utility under PURPA and state regulations implementing PURPA. SPP asserts that it does not intend to preclude any sales that a QF has the right to make. However, SPP states that it is necessary to have specific scheduling and supply information for each resource to account for all energy flows into

²⁵ *Id.* P 20.

²⁶ *Id.* P 27.

²⁷ All these are matters that are appropriately decided in the Texas Commission proceeding.

and out of the transmission grid, and requiring all loads and resources to register with SPP will provide SPP with the information it needs to operate the Energy Imbalance Market properly.

36. While we generally agree with the information-gathering aspect of SPP's proposed registration requirement, SPP's proposal, as formulated now, would require more than just the provision of operational information from non-participating resources such as John Deere. While SPP states that it is not its intent to deny John Deere its statutory and rule-based rights under PURPA,²⁸ registration in the Energy Imbalance Market could require John Deere to purchase and sell power into the Energy Imbalance Market.²⁹ For example, if John Deere failed to meet its scheduled generation level by under-generating, it could be forced to purchase power in the Energy Imbalance Market to make up for the shortfall. Such requirements go beyond the gathering of operational information needed by SPP to operate its market. More importantly, such requirements could violate John Deere's rights under PURPA and our regulations implementing PURPA which allow John Deere to sell its net output to SPS at its interconnection with SPS at SPS's avoided cost.

37. The Commission summarized the PURPA purchase obligation in Order No. 688 as follows:

Each electric utility is required under section 210 to offer to purchase available electric energy from cogeneration and small power production facilities which obtain qualifying status. The rates for such purchases from QFs must be just and reasonable to the ratepayers of the utility, in the public interest, and must not discriminate against cogenerators or small power producers. Rates also must not exceed the incremental cost to the electric utility of alternative electric energy (also known as the electric utility's "avoided costs"). . . Rates for the purchase of energy from and the sale of energy to a QF are set by the appropriate state regulatory

²⁸ October 28 filing at 7.

²⁹ SPP, in its answer, acknowledges John Deere will be subject to imbalance charges under the proposed tariff changes. SPP Answer at 4 & n.12. Xcel's answer assumes that QFs will be subject to charges but justifies the charges as correcting a misallocation of economic responsibility for deviating from schedules. Xcel Answer at 9-10.

authority or non-regulated utility pursuant to the Commission's regulations.³⁰

38. To the extent that SPP's proposed registration requirement triggers any charges that change what a QF recovers under PURPA's purchase obligation, as implemented by the state regulatory authority, that requirement is unjust and unreasonable.³¹ SPP may not compel participation in the Energy Imbalance Market by, or otherwise trigger deviation charges for, QFs exercising their PURPA rights to deliver power to their host utilities.

39. Furthermore, we grant Covanta's request for clarification that SPP's registration requirement does not preclude behind-the-meter QF sales to purchasing utilities while registration is being pursued. As indicated above, nothing in SPP's tariff filing can supersede the rights of QFs under PURPA to make sales to host utilities.³² Accordingly, as in the JD Wind Order, we find that registration of a QF is not a prerequisite to a purchasing utility's purchase obligation under PURPA.

40. Therefore, we will accept SPP's proposed registration requirement only to the extent that it provides for the collection of operational information relevant to SPP's administration of the Energy Imbalance Market from QFs entitled to enforce the PURPA

³⁰ *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 23 (2006), *order on rehearing*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007), *appeal pending sub nom. American Forest & Paper Assoc. v. FERC*, D.C. Cir. No. 07-1328 (citing 18 C.F.R. § 292.301-308 (2006)).

³¹ Nothing in our regulations prohibits a state commission from finding that registration in an imbalance services market should be factored into the avoided cost analysis for a QF such as John Deere. As noted in Xcel's answer, it appears that the Texas Commission is currently undertaking such an analysis in the proceeding before that Commission. We also note that the result of the Texas Commission proceeding on the issue of whether a legally enforceable obligation has been created between John Deere and SPS may lead to John Deere's self-registration in the Energy Imbalance Market pursuant to the Registration Agreement. However, the result of the Texas Commission proceeding does not inform our decision here as to whether SPP can unilaterally register a QF, potentially subjecting it to obligations in the Energy Imbalance Market inconsistent with its PURPA rights.

³² *See* JD Wind Order at P 27.

purchase obligation.³³ Our acceptance is conditioned on SPP making a compliance filing that removes any obligation for such QF resources to actively participate in the Energy Imbalance Market or to pay charges that stem from the registration.

The Commission orders:

SPP's order is hereby conditionally accepted, to be effective December 27, 2008, subject to SPP making a compliance filing within 30 days of the date this order issues, consistent with above discussion.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³³ We note that this information-only registration condition does not apply to new contracts or obligations from QFs found to have non-discriminatory access to markets pursuant to Order No. 688. *See Xcel Energy Services, Inc.*, 122 FERC ¶ 61,048, at P 22, *order denying reh'g*, 124 FERC ¶ 61, 073 (2008).